

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re)	Case No. _____
)	
DEONDRE ARTHUR STATEN,)	CAPITAL CASE
)	
On Habeas Corpus)	Related Direct Appeal Case
)	No. S025122
)	(Los Angeles County Superior
)	Court Case No. KA006698)
_____)	

PETITION FOR WRIT OF HABEAS CORPUS
[Third Petition – Original Petition Case No. S107302]

TO: THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Petitioner, Deondre Arthur Staten (“Petitioner”), through his counsel, respectfully petitions this Court for a writ of habeas corpus and by this verified petition sets forth the following facts and causes for the issuance of the writ:

I

PROCEDURAL HISTORY AND PRELIMINARY ALLEGATIONS

1. Petitioner is currently unlawfully confined and restrained of his liberty at San Quentin State Prison by Roderick Q. Hickman, Secretary, California Department of Corrections and Rehabilitation, and by S.W. Ornoski, Warden.
2. The name and location of the court which entered the judgment of conviction and sentence under attack is the Superior Court of Los Angeles County, State of California, Pomona, California, Criminal Case Number KA006698.
3. The date of the judgment of conviction January 16, 1992.
4. The sentence is that petitioner be put to death.
5. Petitioner was charged in a two count information filed April 9, 1991. Count one charged petitioner with the murder of Arthur Staten (petitioner's father), in violation of California Penal Code, Section 187(a). Count one further charged that petitioner personally used a firearm during the commission of the murder, in violation of California Penal Code, Sections 1203.06(a)(1) and 12022.5. Count two charged petitioner with the murder of Faye Staten (petitioner's mother), in violation of California Penal Code, Section 187(a). Count two further charged that petitioner personally used a deadly and dangerous weapon, to wit, a knife, during the commission of the murder, in violation of

California Penal Code, Sections 12022(b). Both counts charged that the murders of Arthur and Faye Staten were carried out for financial gain and that the offense involved multiple murder victims, both special circumstances under California Penal Code, Sections 190.2(a)(1) and 190.2(a)(3).

6. Petitioner was tried by jury and found guilty on both counts. The jury found both murders to be in the first degree, found that petitioner personally used a firearm as alleged in count one and personally used a knife as alleged in count two. The jury also found the special circumstance allegations of financial gain and multiple murder victims to be true in both counts. Following a penalty phase, on December 6, 1991 the same jury fixed the punishment for both counts as death.

7. Petitioner testified during the guilt phase of the trial and denied guilt. Petitioner did not testify during the penalty phase of the trial.

8. Petitioner appealed his conviction and death sentences.

9. The facts of petitioner's appeal are as follows:

(A) This Court unanimously affirmed petitioner's convictions and sentence on November 9, 2000 in *People v. Staten* (2000) 24 Cal.4th 434 (2000).

On January 24, 2001, petitioner's petition for rehearing was denied and the remittitur was issued to the Los Angeles Superior Court.

(B) On May 24, 2001, petitioner filed a petition for writ of certiorari in

the Supreme Court of the United States seeking review of certain federal constitutional issues adjudicated adversely to petitioner by this Court. On October 1, 2001, the Supreme Court of the United States issued an order denying the petition.

10. On October 24, 2001, an order was entered by the United States District Court for the Central District of California staying execution of the sentence of death until final disposition of a federal habeas corpus petition to be filed on behalf of petitioner. On November 5, 2001, Jerry L. Newton, Esq. was appointed by the Honorable Audrey B. Collins, United States District Judge, Central District of California, to represent petitioner in this proceeding. On November 16, 2001, this Court appointed Norman D. James, Esq. as second counsel for petitioner. The federal habeas matter is presently assigned to the Honorable George H. King, United States District Judge.

11. On May 20, 2002, petitioner filed with this Court his first petition for writ of habeas corpus, *In re Deondre Arthur Staten*, Case No. S107302. The petition was denied on September 10, 2003.

12. On December 19, 2003, petitioner filed a petition for writ of habeas corpus in the United States District Court in *Deondre Arthur Staten v. Jeanne Woodford, Warden of California State Prison At San Quentin*, Case No. CV 01-

9178-GHK.

13. On January 8, 2004, a second habeas petition, S121789, was filed in this Court due to the failure of the direct appeal and first habeas petition to present to this Court for consideration certain federal constitutional claims. The federal proceeding was stayed pending this Court's disposition of the second petition, which was denied on July 13, 2005.

14. On July 25, 2005, petitioner filed in the federal proceeding an amended petition containing claims newly exhausted as a result of this Court's denial of his second state habeas petition. The amended petition also included a new claim and new allegations to an existing claim based upon recently obtained information and evidence concerning a contract between the so-called Pomona Contract Lawyer's Association and Los Angeles County [the "PCLA" contract]. This agreement, effective only in the East District of the Los Angeles County Superior Court located in Pomona, California, provided for the appointment of conflicts counsel from a panel of nine signatory lawyers in all cases, including death penalty cases, for a flat fee of \$991.67 per case. Petitioner alleged, as he does herein, that appointment of counsel under this contract violated his Sixth Amendment Right to Counsel, and his Rights to Equal Protection and Due Process under the Fifth and Fourteenth Amendments to the United States Constitution.

15. Petitioner's allegations and claim pertaining to the PLCA contract were challenged by the State on exhaustion grounds, and on January 19, 2006 petitioner's PCLA claim, claim 11, was found to be unexhausted by the Honorable George H. King, United States District Judge. However, Judge King concluded that claim 1, pertaining to denial of second counsel, had not been fundamentally altered and rendered unexhausted by the inclusion of new PCLA allegations in support of that claim. The denial of second counsel claim is, nonetheless, re-alleged in this third state petition (as Claim One) with the new PCLA allegations so that this Court may have an opportunity to give consideration to their potential impact on the claim.¹ The PCLA facts, including what amounts to a contractual prohibition against the appointment of two attorneys to represent a defendant in any case, even a capital case notwithstanding this Court's decision in *Keenan v. Superior Court* (1982) 31 Cal.3d 424, serve to shed light on what petitioner alleges to have been improper and constitutionally impermissible reasons for not only the trial court's denial of second counsel, but trial counsel's strange and ineffectual effort in seeking such an appointment in the first instance.

16. Petitioner hereby incorporates herein and requests that the Court take

¹ The new allegations of Claim One are contained in paragraphs 70 and 72 through 77 (pp. 50-55) of this petition.

judicial notice of the certified record on appeal and all pleadings and exhibits on file in this Court in connection with petitioner's direct appeal and first state habeas petition.

II

PETITIONER'S CLAIMS ARE NOT PROCEDURALLY BARRED

17. Petitioner contends that Claim One, alleging constitutional error in the denial of appointment to second counsel, is not barred by the Waltreus rule, notwithstanding that this issue was raised and denied in petitioner's automatic appeal. *People v. Staten* (2000) 24 Cal.4th 434, 447. The Waltreus bar does not apply where petitioner's claim depends on facts that were not, and could not have been in the appellate record. *In re Harris* (1993) 5 Cal.4th 813, 828 fn.7, 834 fn.8. Claim One as alleged herein is now supported by facts that are outside the appellate record and could not have been made a part of the appellate record on automatic appeal, viz the appointment of petitioner's defense attorney under the terms of the PCLA contract. The existence of the PCLA contract, and the fact that petitioner's trial defense attorney was appointed pursuant to the contract, *appears nowhere in the trial record*, was unknown to petitioner, and could not have been a part of the record on appeal. Thus, Claim One, as supported by outside the record facts, is necessarily left to be raised in habeas, not on direct appeal. Accordingly,

it is not barred by the *Waltreus* rule.

18. Moreover, Claim One comes within the exceptions to the *Waltreus* rule in that the error alleged is a violation of petitioner's fundamental constitutional rights to due process of law and right to counsel, and is therefore cognizable in a post-appeal habeas corpus even when previously rejected on direct appeal.

In re Masching (1953) 41 Cal.2d 530. The constitutional error raised in the present Claim One "is both clear and fundamental," and, as is alleged in the claim, constitutes a structural defect that strikes at the heart of the trial process. As such, it is within the exceptions to the *Waltreus* rule. *In re Harris, supra* at 834.

19. Nor is Claim One with its new PCLA allegations, or Claim Two, which is founded on the PCLA contract, subject to bar as successive or untimely under *In re Robbins* (1998) 18 Cal.4th 770, and *In re Clark* (1993) 5 Cal.4th 750. As the attached declarations of federal counsel, Norman D. James (Exhibit 1) and Jerry L. Newton (Exhibit 2) demonstrate, the facts upon which the PCLA allegations and claim are based have only recently been discovered, and have been brought to this Court without substantial delay and with good cause for any delay that has occurred. Petitioner himself was completely unaware of the PCLA contract, and, indeed, neither he nor his appellate attorney had reason to be aware of any

irregularity with regard to the appointment of trial counsel.² When vague information was received concerning the existence of some sort of an agreement under which conflicts counsel were appointed in the Pomona Superior Court, trial defense counsel advised that his appointment had not been made under such a contract. No reason existed to doubt the truth or accuracy of that representation or to expend further money and effort investigating the matter. That was particularly so because, at that time the mere fact that counsel may have been appointed under such a contract did not provide a “triggering fact” such as to require a follow-up investigation (beyond inquiring of trial counsel as was done) into the possibility that a constitutional claim cognizable in habeas corpus existed. Not until the late summer and fall of 2005 did additional information and documents fortuitously come into the hands of counsel so as to permit further investigation to establish a factual and legal basis for the existence of the PCLA allegations as they pertain to this petitioner.

20. Even should this petition be found to be delayed and successive, this Court should consider the claims herein because a fundamental miscarriage of justice has occurred in these proceedings. *In Re Clark, supra* at 760-61. This

² As earlier noted, the record contains no reference to the PCLA contract before, during, or following Mr. Tyre’s appointment to represent petitioner.

miscarriage of justice has resulted from the fact that (1) the petitioner is actually innocent of the crime for which he was convicted, and (2) petitioner's trial was so fundamentally unfair that absent the error committed by both the trial court and petitioner's trial counsel, no reasonable jury would have convicted petitioner. The constitutional error raised in Claim Two "is both clear and fundamental," and, as is alleged in the claim, constitutes a structural defect that strikes at the heart of the trial process. *In re Harris, supra* at 834.

III **STATEMENT OF THE FACTS**

Overview Of The Evidence

21. Petitioner Deondre Arthur Staten was tried, convicted and sentenced to death for the murder of his parents Faye and Ray Staten on October 12, 1990. The case was entirely circumstantial – no scientific evidence, no confession and no real motive. As the prosecutor conceded in his opening statement, he would not be able to prove that Deondre was the actual murderer, only that Deondre was somehow "involved" in the double homicide: "... there is no direct evidence; that [sic] is an entirely circumstantial case . . . Mr. Staten was *involved* in these murders. And I use the word involved because I do not necessarily expect to prove to you that Mr. Staten, that is, the defendant, killed these people himself or

by himself . . .” (6 RT 810).³

22. In October 1990, Deondre was a 24 year old African American who lived at home with his mother and father, Faye and Ray Staten. Deondre was a high school graduate who worked part time and was in a musical group called “The First Amendment.” His parents owned and operated a hair salon and beauty supply business in La Puente. Family members, friends, neighbors and co-workers all described the relationship between Deondre and his mother and father as warm and loving, albeit the stronger relationship was with his mother since his father was the stricter of the two. Around midnight on October 12, 1990, Deondre’s parents returned home from a two week vacation trip. Deondre testified that he met his parents upon their return, helped them unload their suitcases and then left the family residence to drive to a fast food restaurant for something to eat. Upon his return some fifteen to twenty minutes later, he entered the family residence and discovered that his father had been shot in the back of his head in the master bedroom and his mother had been stabbed eighteen times in a hallway leading to the dining room/kitchen. Spray painted on a mirror in the family living room were the letters and word “ESD Kills”, a graffiti message from a violent Hispanic

³ “RT” stands for the reporter’s transcript of proceedings, preceded by volume number and followed by page number.

street gang known as the East Side Dukes which operated in the same neighborhood where the Statens lived. Several witnesses testified during the trial that Deondre had been chased, shot at and harassed by this gang and that the gang hated African Americans and had painted graffiti messages such as “ESD Kills Niggers” around the neighborhood. Despite the apparent linkage between this gang and the murder of Faye and Ray Staten, the police focused their investigation entirely on Deondre, primarily because Deondre was a beneficiary of some \$300,000 in life insurance proceeds on policies owned by his parents and Deondre had a less than perfect relationship with his father. The problem with this picture, however, is that Deondre loved both of his parents, never submitted a claim for any of the insurance proceeds other than to pay for his parents’ funeral expenses, had no motive to kill his parents, did not write the graffiti message left after the murders and was not home at the time these violent crimes took place.

1. The Staten Family

23. In October 1990, the Staten family was a middle-class African American family living in their own home located at 446 South Faxina Avenue in La Puente. Petitioner’s father, Ray Staten, was 44 years old and his mother, Faye, was 43 years old. Ray and Faye Staten had two children, petitioner Deondre, age 24, who lived with his mother and father at the Faxina Avenue

location, and his younger brother Lavelle, age 21, who was mentally retarded, a ward of the state and who resided at a state run home for the developmentally disabled in Covina (9 RT 1541). Deondre graduated from Nogales High School, where he established a good relationship with the vice-principal and was a member of the school's football team (16 RT 2681-82).

24. Ray and Faye Staten both worked in a hair salon and beauty supply store they owned in La Puente named Najamah's. Deondre worked part time at Najamah's, part time as a driver and mechanic and was a member of a musical group called The First Amendment. Ray and Faye Staten owned their home and business, as well as a black pickup truck used primarily by Ray and a Cadillac used primarily by Faye. Ray and Faye also owned four life insurance policies. Faye owned two \$100,000 term life policies, Ray owned one \$100,000 term life policy and Ray also owned one \$3,000 IRA annuity policy (8 RT 1387-89). Faye and Ray were primary beneficiaries on each other's life insurance policies, with both Deondre and Lavelle named as contingent beneficiaries. In August 1990, Lavelle was dropped from the policies as a contingent beneficiary since Lavelle was a ward of the state and Ray didn't want the state to receive any of the insurance proceeds (8 RT 1407).

25. Deondre's relationship with his mother Faye was described by four

neighbors, six close friends, four family members and one co-worker as being close, loving and warm.⁴ Deondre's relationship with his father was described as loving by the Staten side of the family, described by friends and acquaintances as good but not as close as the relationship Deondre had with his mother, and was described by Faye's side of the family (the McKays) as strained.⁵ A few prosecution witnesses painted a somewhat different picture of the relationship. Judith McKay, Faye's sister, described the relationship between Deondre and his father as strained because his father thought Deondre was lazy (9 RT 1688). Elizabeth Watts, Faye's best friend, recalled hearing Deondre say prior to his parents vacation that his mother "would never hit him again" and that he would "take his father out". Ms. Watts also stated that she did not believe these

⁴ The neighbors were Michael Hartman (6 RT 857-58), Craig Hartman (6 RT 889), Bertha Sanchez (6 RT 964) and Raphael Sanchez (7 RT 1051). The close friends were Matthew Nottingham (7 RT 1118), Elizabeth Watts (11 RT 1977), Karen Johnson (13 RT 2216), Minnie Cole (16 RT 2655-57), Brian Ellis (17 RT 2789) and Quincy Murphy (17 RT 2810). The family members were Faye's nephew Duane McKay (9 RT 1607), Ray's mother Korea Staten (16 RT 2715), Ray's cousin Lendoria Horn (17 RT 2777) and Ray's brother Lenard Staten (17 RT 2785). The co-worker was Audrey January (8 RT 1372).

⁵ The Staten family members were Ray's mother Korea Staten (16 RT 2715) and Ray's brother Lenard Staten (17 RT 2784-85). The friends and acquaintances were Audrey January (8 RT 1372), Elizabeth Watts (11 RT 1977), Brian Ellis (17 RT 2789) and Quincy Murphy (17 RT 2809-10). The McKay family member was Judith McKay (9 RT 1667).

comments were serious, that Deondre was upset when he made them and that Deondre was very close to his mother (11 RT 1977; 12 RT 2004-05). Kimberly Wilder, Faye's niece, claimed that Deondre failed to show remorse after the murders and did not cry at the funeral (9 RT 1614-15). Kimberly also admitted that Deondre was not an emotional person (9 RT 1636). Karen Johnson, the mother of one of Deondre's friends, stated that Deondre had a close relationship with his mother, but claimed that she once heard Deondre say he would shoot his father (13 RT 2214-16). Ms. Johnson claimed that she reported this threat to the case agent, Detective George Roberts. However, Detective Roberts testified that he had no recollection of any such threat being conveyed to him by Ms. Johnson (14 RT 2435). John Nichols and Bishop Higgins, friends of Deondre, both stated that in March 1990, while they were at Nichols' home playing basketball, Deondre told them he would make \$200,000 if his parents were killed and requested their assistance (7 RT 1168; 15 RT 2542). Nichols stated that he didn't take the comment seriously since Deondre was laughing and joking when he made the statement (7 RT 1201, 1251). During Deondre's testimony, he described the relationship with both his mother and father as close, but added that his relationship with his mother was stronger because his father tended to be strict with him (17 RT 2825-27).

2. The East Side Dukes

26. David Watkins, a Sergeant with the Los Angeles Sheriff's Department and a purported gang expert, testified that the East Side Dukes were a violent street gang made up exclusively of Hispanics (10 RT 1722). The East Side Dukes were known to kill people (10 RT 1731). The territory claimed by the East Side Dukes included the area where the Staten residence was located (10 RT 1734). Sergeant Watkins testified that in 1990, the East Side Dukes kept a safe house on Faxina Avenue near the Staten residence (10 RT 1824).⁶ He testified that he had also observed graffiti written by the East Side Dukes proclaiming "East Side Dukes Kills Niggers" (10 RT 1758).

27. Michael Hartman lived next door to the Staten residence at 449 South Faxina Avenue, La Puente. He testified that the East Side Dukes claimed as their territory the area immediately behind his house (6 RT 844). His son, Craig Hartman, testified that he could hear gunshots being fired all the time in the area near his home (6 RT 883). Raphael Sanchez, a postal employee residing two doors from the Staten residence at 456 South Faxina, La Puente, testified that he heard guns being fired every night about a block away from his home (7 RT 1058).

⁶ Detective George Roberts, the case agent, identified the safe house as being at 555 South Faxina, which would be approximately one block from the Staten residence (10 RT 1824).

His son, Eugene Sanchez, testified that the East Side Dukes were a local gang and that when he would go to bed at night he would hear gunshots usually between 10:00 and 12:00 p.m. (7 RT 1071).

28. Several neighbors and friends of Deondre had experienced difficulties with the East Side Dukes. Brian Ellis testified that on one occasion he was standing at the intersection of Faxina Avenue and Northam Avenue with Deondre and a few other friends when a group of East Side Dukes drove by in a car and threw a beer bottle in the direction of Deondre (17 RT 2790-91). In the year preceding the murder of the Statens, Quincy Murphy, one of Deondre's friends, was standing outside the residence of John Nichols with Nichols and Deondre. Nichols lived about a block from Deondre. Murphy testified that a group of the East Side Dukes drove slowly by Murphy, Nichols and Deondre and words were exchanged. One of the gang members told Deondre "I know where you stay. I'm going to get you, fat boy" (17 RT 2818). Brandon Booker, an acquaintance of Deondre who lived in the neighborhood, described the East Side Dukes as prejudiced against blacks. He described an incident involving East Side Dukes shooting at blacks near a fast food restaurant, shooting at the homes of blacks living in East Side Dukes territory, and described Faxina Avenue as East Side Dukes territory (9 RT 1336, 1344, 1347). Booker also described a conversation

with Deondre in which Deondre told Booker that he had been chased and shot at by East Side Dukes gang members (9 RT 1336).

29. John Nichols, one of Deondre's friends who lived about a block from the Staten residence, testified that he was standing outside his home with Deondre and Quincy Murphy in early 1990 when a car full of East Side Dukes gang members pulled up and threatened Deondre (7 RT 1138-39). Nichols testified that a few months prior to that, the East Side Dukes came by his residence and drew guns on both he and Deondre (7 RT 1140-41). Deondre told Nichols that he was being threatened by the East Side Dukes and Nichols had observed graffiti in the neighborhood stating "East Side Dukes Kills Niggers" (7 RT 1141, 1213). Nichols, who was black, testified that whenever he would encounter East Side Dukes gang members he would receive "hard stares" (7 RT 1233).

30. Dr. Armando T. Morales, a 30 year member of the UCLA faculty, a professor of psychiatry and biobehavioral sciences at the neuropsychiatric institute and hospital at the UCLA school of medicine, a former Los Angeles County probation officer, an author of studies on gang behavior and activities and a consultant to the California Youth Authority, in a declaration submitted in support of the petitioner's state habeas petition described the East Side Dukes as an "extremely violent" Hispanic street gang active in the La Puente area where the

Statens lived in 1990. According to Dr. Morales, the East Side Dukes were well known for hating blacks and would on occasion attack and kill blacks and shoot up their houses.

31. Evidence developed in the state habeas investigation revealed antagonism between Ray, Deondre and the East Side Dukes resulting from drug activities engaged in by both Ray and Deondre inside the “turf” claimed by the East Side Dukes. Ray Staten was involved with illegal drugs. He was admitted to Saint Joseph Hospital in January of 1989 for treatment of alcoholism and cocaine addiction. The cocaine addiction involved “freebasing rock as much as money allows” (Declarations and Exhibits In Support Of Petition For Writ Of Habeas Corpus [hereinafter “Declarations”], Vol. II, p. 246). According to Keith Taylor, an acquaintance of Deondre, the East Side Dukes sold drugs in the neighborhood around Nogales High School. Taylor alleged that both Deondre and his father were involved in selling drugs in territory claimed by the East Side Dukes. This led to a confrontation between Deondre and East Side Duke gang members (Declarations, Vol. I, pp. 17-18). Brian Ellis, another friend of Deondre, also asserted that Ray Staten was involved in selling cocaine (Declarations, Vol. I, p. 19). Quincy Murphy, another acquaintance of Deondre, stated that there was animosity between the East Side Dukes and both Ray and Deondre Staten because

both Ray and Deondre were selling crack cocaine in territory claimed by the East Side Dukes (Declarations, Vol. I, p. 21).

32. Ray and Faye were "very security conscious" (9 RT 1657). There were wrought iron security bars on all doors and windows at their home on Faxina Avenue which were usually kept locked (6 RT 839, 869). In September of 1988, Faye purchased a .38 caliber revolver (8 RT 1354-55). This gun was kept in a desk in the office at the beauty supply business (9 RT 1502-03). Faye also carried a .22 caliber derringer in her purse (9 RT 1659). In August 1990, Deondre called his cousin Kimberly, told her that he was in trouble with a Mexican gang, and asked her if she could help him obtain a gun for his protection (9 RT 1610, 1640).

33. Deondre testified that he had lived at the Faxina Avenue residence for thirteen years. His troubles with the East Side Dukes began while he was attending Nogales High School. Over the years since high school, Deondre had been threatened on numerous occasions by gang members. After being threatened by East Side Duke gang members in front of Nichols residence in the presence of Nichols and Murphy, Deondre was shot at by these gang members after leaving Nichols ' house (17 RT 2836). While his parents were on vacation, Deondre received telephone threats from gang members (17 RT 2837).

3. Events Occurring During The Vacation

34. In late September 1990, Ray and Faye departed on a two week vacation. They drove Ray's pickup truck to Faye's parents home in South Central Los Angeles and then left from there for a two week vacation to Egypt. Deondre was left at home with Faye's Cadillac for transportation and charged by his parents with looking after the residence and the hair salon and beauty supply business.

35. The Cadillac developed engine trouble and became inoperable a few days after Deondre's parents left on vacation (17 RT 2832). As a result, Deondre had to rely on his friends Quincy Murphy, Brian Ellis and John Nichols for rides (7 RT 1142; 17 RT 2832). While Deondre's parents were on vacation, Nichols spent a considerable amount of time at the Staten residence (7 RT 1128). Deondre worked at the hair salon, cleaning up the premises and collecting rent checks from hair stylists working there (8 RT 1369; 17 RT 2792, 2833). On one occasion Nichols picked Deondre up at the hair salon and Deondre had in his possession Faye's .38 caliber revolver (17 RT 2840). According to Nichols, Deondre claimed that he purchased the gun (7 RT 1147). That same day, Deondre gave Nichols his mother's .22 caliber derringer for his own protection from the East Side Dukes since Nichols was staying with Deondre (7 RT 1156; 17 RT 2838). During this time frame, both Nichols and Deondre were receiving threats from East Side

Dukes gang members (7 RT 1137-40; 8 RT 1271; 17 RT 2836).

36. A few days prior to Deondre's parents returning from vacation, Nichols was spending the evening at the Staten residence with Deondre. Vernon Burden, a friend of Nichols, also stopped by that evening. While Burden was in the kitchen making phone calls and Nichols was sleeping on a sofa in the living room, Deondre emerged from his bedroom carrying his mother's .38 caliber revolver. Deondre told Nichols and Burden that he thought he heard something in the back yard. He also told them "I wish they [East Side Dukes] would leave my family alone and stop calling here and harassing me" (8 RT 1271). Deondre went into the back yard but did not find anyone there. He then returned to the kitchen area and asked Burden if Burden could obtain a silencer or make a silencer for the .38 caliber revolver. Burden told Deondre to tape a potato to the gun with duct tape (8 RT 1279-80). The next day, Deondre went outside to the back yard and discovered the words "ESD" painted in white on the patio. He called Nichols and Booker to come over to see the graffiti. Nichols observed the graffiti and heard Deondre state that the East Side Dukes were "going to get theirs" (7 RT 1159). When Booker went to the residence later that day, he also observed the graffiti. Deondre had the .38 caliber revolver with him at the time. Deondre asked Booker to see if he could find out who had painted the graffiti in the back yard (8 RT

1334; 17 RT 2839).

37. On October 11, 1990, the night before Ray and Faye returned home, Deondre threw a party at the Staten residence attended by some fifteen to twenty people (8 RT 1237; 17 RT 2928). A fight broke out involving two men and two women, one of whom was the ex-boyfriend of a girl Nichols had invited to the party (7 RT 1151). Nichols borrowed the .38 caliber revolver from Deondre and escorted his date home. Nichols then returned to the Staten residence and gave the .38 caliber revolver back to Deondre (7 RT 1154). When Deondre first took the gun from his mother's office, it was fully loaded (i.e. 5 hollow point bullets) (17 RT 2890). When Nichols returned the gun to Deondre on October 11, 1990, Nichols heard the gun being fired into the air once (7 RT 1154), but did not see who fired the gun (7 RT 1204-05). The following day, October 12, 1990, Deondre discovered the gun was missing. Matthew Nottingham, a friend of both Nichols and Deondre, dropped by the Staten residence between 3:00 and 5:00 p.m. the afternoon of October 12, 1990 and visited with Deondre. Nottingham observed at that time that the house was "nice and clean – it was organized". Nottingham did not think the condition of the house would upset either Ray or Faye when they returned later that evening (7 RT 1120). During the course of this visit, Deondre stated that if he ever had to go to prison, he hoped it would be a federal prison and

not a state prison since state prisons had inmates convicted of mass murders and serial killings (7 RT 1117). Another friend, Winston Burt, dropped by that same afternoon with John Nichols. Burt saw what he thought might be the handle of a gun in Deondre's pants pocket (7 RT 1079-80). Nichols was not sure whether Deondre had the .38 in his possession on October 12, 1990 (7 RT 1205-06).

Nichols and Burt left the Staten residence around 6:30 p.m.. At the time Nichols thought the house appeared "clean and neat" and its condition would not upset either Ray or Faye upon their return home later that evening (7 RT 1215-16).

4. The Statens Return Home

38. Ray and Faye Staten returned from their vacation on Thursday, October 11, 1990 at approximately 11:30 p.m. (9 RT 1643). Instead of going to their own residence in La Puente, they spent the night at the McKay residence, Faye's parents' home, located at 325 West 73rd Street, Los Angeles. The next morning Kimberly Wilder, Deondre's cousin who lived in a duplex behind the McKay residence, called Deondre at home to tell him she thought Ray and Faye would be returning home that morning (9 RT 1634). Deondre had previously asked Wilder to call him to let him know when to expect his parents so that he would have an opportunity to clean up the house before they got home (9 RT 1612). After hearing from Wilder, Deondre spent most of the day cleaning up the house,

mowing the lawn and trimming the hedges (17 RT 2846). Brian Ellis went by the house around 11:00 a.m. on October 12, 1990 and observed Deondre cleaning the house (17 RT 2793). Matthew Nottingham dropped by at 3:00 p.m. that same day and observed the house "nice and clean" (7 RT 1120). John Nichols and Winston Burt dropped by sometime thereafter to visit with Deondre. When they left at 6:30 p.m., the house was "clean and neat" (7 RT 1215-16).

39. Ray and Faye Staten did not return to La Puente that morning, but rather stayed in Los Angeles to make a court appearance (9 RT 1634). Afterwards, they returned to Faye's parents for a family gathering at 7:00 p.m. to view vacation videos (9 RT 1509). Deondre called the McKay residence around 6:30 p.m. and spoke with Faye's sister, Judith McKay. McKay invited Deondre to join them at the family gathering (9 RT 1645) but Deondre told McKay that Faye's Cadillac was not running and hence he could not drive from La Puente to Los Angeles (9 RT 1672).

40. The family gathering to view the vacation videos took place the evening of October 12, 1990 at the McKay residence. After looking at the vacation videos, the gathering broke up. Bobbye Williams, Faye's sister, testified that Ray and Faye left the McKay residence sometime between 11:20 and 11:25 p.m. to drive home in Ray's pickup (9 RT 1511). Faye's sister Judith McKay was more

specific. She testified that Ms. Williams actually left before Ray and Faye, sometime around 11:23 p.m. (9 RT 1673), and that Ray and Faye left two minutes later at 11:25 p.m. (9 RT 1673).

41. October 12, 1990 was a Friday evening. The distance from the McKay residence, 325 West 73rd Street, Los Angeles to the Staten residence, 446 South Faxina, La Puente, is 29.39 miles.⁷ As noted, *post*, Ray had been drinking at the family gathering. A toxicology test performed during his autopsy three days later revealed a blood alcohol content of 0.126% (11 RT 1926). Assuming Ray left the McKay residence at 11:25 p.m., as claimed by Judith McKay, and arrived home at the Faxina location at 11:40 p.m., as claimed by the prosecutor, Ray would have had to average approximately 120 miles per hour for the entirety of the 29.39 mile drive home – surface streets included. Assuming Ray left the McKay residence at 11:20 p.m., as claimed by Bobbye Williams,⁸ and arrived home at 11:40 p.m., as claimed by the prosecutor, Ray would have had to average approximately 90 miles

⁷ Reference to the “Mapquest” web site shows the distance between these two residences and that the most direct route between them utilizes the Harbor Freeway (I-110), the San Bernardino Freeway (I-10), the Pomona Freeway (I-60) and the surface streets off the Pomona Freeway to the Staten residence.

⁸ Of course, Ms. Williams was only guessing as to the time the Statens left the McKay residence since Williams left *before* the Statens that evening (9 RT 1673).

per hour for the entirety of the 29.39 mile drive home – surface streets included.⁹ Duane McKay, Faye’s brother, was also present at the family gathering. He testified that he left the party shortly before 11:00 p.m. and drove to his home near the Los Angeles Sports Arena (3939 South Figueroa, Los Angeles) (9 RT 1606-07). The distance from the McKay residence to the Sports Arena is 2.97 miles.¹⁰ Duane McKay testified that it took him between ten and twelve minutes to drive home that evening. This would indicate that McKay drove home at approximately 18 miles per hour, suggesting heavy traffic on the Harbor Freeway that Friday evening.

5. The Murders Of Ray And Faye Staten – Two Distinct Time-Lines

42. The prosecution theory of the murders of Ray and Faye Staten was based entirely on one assumption: The Statens arrived home from the family gathering at approximately 11:40 p.m. and were murdered by Deondre Staten

⁹ Detective George Roberts, the case agent, testified that the distance between the McKay residence and the Staten residence was 28.4 miles and that he drove same on a weekday at around 11:00 p.m. in 24 minutes, or averaging a little more than 50 miles per hour (14 RT 2406-07, 2427). This time line would still place the Statens returning home after their neighbors claimed they heard the shots which supposedly killed Ray Staten, discussed *post*.

¹⁰ Reference to the “Mapquest” web site shows the distance between the McKay residence and the Los Angeles Sports Arena (3939 South Figueroa) and the most direct route between them, utilizing the Harbor Freeway (I-110).

sometime during a commercial break on the television news program "Nightline" which occurred from 11:47:20 p.m. to 11:47:50 p.m. on October 12, 1990. As noted *ante*, this assumes Ray Staten, while legally drunk, drove home on a Friday night from South Central Los Angeles to La Puente at speeds somewhere between 90 to 120 miles per hour.

43. Bertha Sanchez, her husband Raphael, her son Eugene, a baby daughter and her niece Regina Ontiveros lived two doors away from the Staten residence at 456 South Faxina Avenue, La Puente (6 RT 907). On October 12, 1990, Raphael got home from his job at the post office about 11:30 p.m. (6 RT 907; 7 RT 1019). Bertha fixed Raphael dinner and then went into the garage to do some laundry. The garage door was open, facing onto Faxina Avenue. Bertha Sanchez testified that at 11:40 p.m. she saw Ray's pickup drive by and pull into the driveway in front of the Staten residence (6 RT 916). This would have been approximately fifteen minutes after the Statens left their homecoming party at the McKay residence in South Central Los Angeles. Sanchez then finished doing laundry and went into her home, where she and her husband retired to the bedroom to watch the television program "Nightline", which was on from 11:30 p.m. to midnight. Sanchez testified that she heard three gunshots – one "muffled" (i.e., the so-called "silencer", discussed *post*) and two "clear" (6 RT 919, 940). The shots were fired

during a commercial break on the Nightline television program (6 RT 924).¹¹ Bertha Sanchez testified that the shots were fired "about ten to twelve" (6 RT 923). Her husband Raphael testified he heard the shots being fired "between 11:45 or ten minutes to 12:00" (7 RT 1026). Raphael went to a bedroom window which looked out on Faxina Avenue, from which he was able to see a portion of the Staten residence. Raphael did not see anyone, hear anyone nor observe any cars drive by (7 RT 1027-29).

44. Both Bertha and Raphael reviewed a videotape of the Nightline television program and identified the commercial break during which they heard the gunshots (6 RT 923-24; 7 RT 1032-35). Raphael Sanchez identified the commercial as a "car" commercial (7 RT 1035). The logs for the commercials which aired that night on Nightline reflect that the only car commercial which ran that evening (Acura/Integra) took place between 11:47:20 and 11:47:50 p.m. (trial exhibit 46; 9 RT 1490).¹² Hence, the time line drawn by the prosecutor

¹¹ As noted, *ante*, it was not uncommon to hear gunshots being fired in this neighborhood which abutted the "turf" of the East Side Dukes.

¹² Both Bertha and Raphael Sanchez reviewed the videotape of the Nightline program with a Los Angeles Sheriff's detective (6 RT 931-34; 7 RT 1034-35), in all probability the case agent Detective George Roberts. However, the record never specifically identifies the commercial or the timing of the commercial, other than the testimony of Raphael Sanchez that it was a "car" commercial.

established that Ray and Faye Staten left the McKay residence at 11:25 p.m., drove some 29 plus miles home to La Puente in approximately fifteen minutes (thus averaging approximately 120 miles per hour while Ray was legally intoxicated), arrived home at 11:40 p.m. and were murdered by their son Deondre sometime between 11:47:20 and 11:47:50 p.m..

45. The second time line was provided by Deondre and corroborated by various witnesses and telephone records. Deondre spent October 12, 1990, cleaning the house and yard in preparation for his parents return later that evening (7 RT 1120, 1215; 9 RT 1613-15; 17 RT 2793, 2846). At 6:18 p.m. that same day, he telephoned the McKay residence in South Central Los Angeles (213-750-1535, trial exhibit 52) from his home in La Puente and spoke with Faye's sister Judith McKay. McKay asked Deondre if he was going to attend the family gathering and Deondre told McKay he could not since the only car available to him, Faye's Cadillac, was inoperable (9 RT 1672). Deondre also called the McKay residence at 7:46 p.m. and 9:06 p.m. during the family gathering (trial exhibit 52).

46. According to John Nichols, Deondre's friend, Deondre paged him (818-417-2365) between fifteen and twenty times on October 12, 1990 (7 RT 1217; 8

RT 1247).¹³ Because Deondre did not have transportation, he wanted Nichols to come to his house to pick him up to go out (17 RT 2854; 18 RT 3037). At 12:04 a.m., Deondre received a telephone call from Faye's sister Bobbye Williams. Williams called to find out if Ray and Faye had made it home safely from the party at the McKay residence (9 RT 1514).¹⁴ Deondre told Williams that they were not yet home and that he was planning to go out later that evening (9 RT 1515-16). According to Deondre, his parents arrived home sometime between "five and ten after twelve" (17 RT 2864; 18 RT 3019).¹⁵ Assuming Ray and Faye left the McKay party at 11:25 p.m. and arrived home sometime around 12:05 a.m., they would have averaged a more realistic 40 miles per hour portal to portal for the approximately 30 mile drive home.

¹³ The actual number of times Deondre called Nichols' pager on October 12 was twenty-six (trial exhibit 52). Seventeen of these pages took place after the 6:18 p.m. telephone call with Judith McKay.

¹⁴ The concern expressed by Williams may well have been related to the fact that Ray left the party with a blood alcohol content of at least 0.12.

¹⁵ This was after Raphael and Bertha Sanchez went to bed. Bertha testified that she thought she heard Ray's pickup leave the residence at 12:20 a.m. (6 RT 928), but this could just as easily have been her hearing the vehicle arrive at the Staten residence. Ms. Sanchez was not at all clear as to times. When interviewed by Deputy Los Angeles Sheriff Edward Andrade a few hours after the Staten's bodies were discovered, Sanchez advised Deputy Andrade that she heard the gunshots being fired "after 12:30" (15 RT 2625).

47. Deondre testified that after his parents arrived home he helped his parents unload their luggage and then visited with them (17 RT 2864-65; 18 RT 3019-20). At 12:25 a.m., he placed another telephone call to Nichols to see if he would come pick him up (trial exhibit 52).¹⁶ At 12:31 a.m. Faye's sister Bobbye Williams called again to inquire if Ray and Faye had made it home safely from the party. Deondre answered the telephone and said his parents were home. Williams did not ask to speak with Ray or Faye and simply hung up after telling Deondre "well, okay" (9 RT 1517-18).¹⁷ Deondre continued visiting with his parents until approximately 12:45 a.m., when he borrowed his father's truck to run to a fast food restaurant for something to eat (17 RT 2865-66; 18 RT 3022-23).¹⁸ Deondre

¹⁶ It seems highly unlikely that Deondre would page Nichols and ask him to come by his house and pick him up if his parents were already dead inside the residence.

¹⁷ This short telephone conversation is again consistent with Williams being concerned solely about whether Ray made it home safely because of his drinking at the party. The conversation is also inconsistent with Ray and Faye being dead at the time of the call. Deondre told Williams his parents were home – he could hardly be expected to make such a comment if they were dead. What would have happened if his aunt had asked to speak with her sister?

¹⁸ The prosecutor claimed that Ray was jealous of his pickup and would never let Deondre drive same. However, Ray's mother, Korea Staten, personally observed Deondre driving Ray's pickup truck (16 RT 2728). Patricia Oseguera, a neighbor of the Statens, personally saw Deondre driving Ray's pickup truck on at least five or six prior occasions (16 RT 2738). Robert Oseguera, a neighbor and the husband of Patricia, also personally observed Deondre driving Ray's pickup

borrowed the truck because Faye's Cadillac was not operable (17 RT 2865-66).

To the best of Deondre's recollection, he returned home at approximately 1:00 a.m. (17 RT 2867). He parked the truck in the driveway and entered the residence.

Inside, he found his father shot in the bedroom and his mother stabbed to death in a hallway. The words "ESD Kills" was spray-painted on the living room mirror.

Deondre then ran screaming next door to the Hartman residence. Michael

Hartman recalled that Deondre knocked on his door sometime between 1:03 and 1:05 a.m. (6 RT 829).

48. Regina Ontiveros, the Sanchez' niece, returned home from an evening out with friends at approximately 12:45 a.m. on October 13, 1990 (6 RT 970; 7 RT 1004). She parked her car on the street outside the Sanchez residence and went inside to change clothes. She remained inside for approximately ten to fifteen minutes, returned to her car and left around 1:00 a.m.. Neither she nor a passenger in her car, Christina Cross, observed any unusual activity or cars during this time frame (6 RT 970-72; 7 RT 1000-05). Eugene Sanchez, the son of Bertha and Raphael Sanchez, walked home from a neighbor's house at approximately 12:46

truck (16 RT 2752). Lendoria Horn, Ray's cousin, observed Deondre driving both Faye's Cadillac and Ray's pickup truck (17 RT 2778-79). Brian Ellis and Quincy Murphy, friends of Deondre, likewise testified that they had observed Deondre drive Ray's pickup truck (17 RT 2789-90, 2811-12).

a.m. on October 13, 1990 (7 RT 1064). Upon arriving home, he entered the residence and spoke briefly with his cousin Regina Ontiveros. He did not observe any vehicle traffic on Faxina during his walk home (7 RT 1065). Hence, the time line drawn by the defense established that the Statens returned home shortly after midnight, that Deondre visited with them until sometime after his aunt called at 12:31 a.m., that Deondre left the residence between 12:30 and 1:00 a.m. to drive to a fast food restaurant, that he returned home at 1:00 a.m. or shortly thereafter and discovered his parents murdered and that he then ran next door to the Hartman residence sometime around 1:05 a.m. the morning of October 13, 1990.

6. The Crime Scene

49. Deondre ran next door to the Hartman residence shortly after 1:00 a.m. on October 13, 1990 and reported to Michael Hartman that his parents had been murdered. Hartman told his son Craig to call "911" and then went with Craig and Deondre to the Staten residence, where he discovered the bodies of both Ray and Faye. The Hartmans and Deondre exited the residence without disturbing or touching anything inside the residence and waited in the driveway until the arrival of the officers from the Los Angeles Sheriff's Office.

50. Deputy Gary Lindenmeyer received the radio call shortly after 1:00 a.m. and proceeded to the Staten residence with his partner, Deputy Stone (11 RT