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IN THE
Supreme Court of the United States

RODNEY GENE BEELER, *Petitioner*,

v.

DAO VANG, *Respondent*.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

**APPENDIX IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

AMY KARLIN
Interim Federal Public Defender
JOHN S. CROUCHLEY*
MARTA VANLANDINGHAM
Deputy Federal Public Defenders
321 East 2nd Street
Los Angeles, California 90012
Telephone: (213) 894-1743
Facsimile: (213) 894-0081
John_Crouchley@fd.org

Attorneys for Petitioner
**Counsel of Record*

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FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RODNEY GENE BEELER,

Petitioner-Appellant,

v.

RONALD BROOMFIELD, Acting
Warden, California State Prison at San
Quentin,

Respondent-Appellee.

No. 20-99014

D.C. No.
2:96-cv-00606-
GW

OPINION

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Argued and Submitted December 11, 2024
Pasadena, California

Filed January 23, 2026

Before: Johnnie B. Rawlinson, Jacqueline H. Nguyen, and
Jennifer Sung, Circuit Judges.

Opinion by Judge Nguyen

SUMMARY*

Habeas Corpus / Death Penalty

The panel affirmed the district court's denial of Rodney Gene Beeler's habeas corpus petition challenging his California conviction and death sentence for first-degree murder.

Beeler raised three arguments concerning his competency to stand trial: (1) the trial court procedurally erred by not sua sponte holding a competency hearing; (2) he was incompetent to stand trial; and (3) defense counsel was ineffective in failing to raise his incompetency. Beeler also argued that, because he established a prima facie case, the California Supreme Court's summary denial of relief without issuing an order to show cause was unreasonable. Applying the highly deferential review required under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), the panel held that the California Supreme Court could have reasonably concluded the evidence does not sufficiently support Beeler's competency claims.

Beeler argued that his counsel provided ineffective assistance by failing to investigate and present evidence regarding his mental illness and organic brain damage at both the guilt and penalty phases. The panel held that, under

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

AEDPA review, the district court correctly denied Beeler's ineffective assistance of counsel claims.

- Beeler claimed that defense counsel should have used penalty phase mitigation and extra-record evidence of his mental illness and brain damage at the guilt phase to show that he did not form the specific intent to kill. The panel held that even assuming defense counsel performed deficiently in its investigation and presentation of evidence, Beeler was not prejudiced by counsel's decisions. And while Beeler was clearly not prejudiced, the California Supreme Court could also have determined that trial counsel acted reasonably and diligently during the guilt stage.
- Beeler claimed that the neurological evidence not presented at the penalty phase would have constituted additional mitigation, and there is a reasonable probability that one juror would have made a different decision based on that evidence. The panel held that the California Supreme Court could have reasonably determined that defense counsel's performance was not deficient, as counsel diligently sought neurological testing both before trial and after Beeler volunteered new information. Beeler failed to establish a prima facie case as to the ineffective assistance of counsel at the

penalty phase, and the California Supreme Court's summary denial of this claim was reasonable.

Beeler alleged that the trial court coerced the jury's death verdict by failing to replace a juror with an alternate after the juror informed the court of his father's sudden death. Applying AEDPA review, the panel held that the California Supreme Court neither erroneously applied federal law nor made an unreasonable determination.

The panel rejected as foreclosed by *Karis v. Calderon*, 283 F.3d 1117 (9th Cir. 2002), Beeler's argument that California fails to adequately narrow the pool of defendants eligible for the death penalty.

COUNSEL

Marta VanLandingham (argued) and John S. Crouchley, Deputy Federal Public Defenders; Cuauhtemoc Ortega, Federal Public Defender; Office of the Federal Public Defender, Los Angeles, California; for Petitioner-Appellant.

Vincent P. LaPietra (argued), Lise S. Jacobson, and Stephanie A. Mitchell, Deputy Attorneys General; Holly D. Wilkens, Supervising Deputy Attorney General; James W. Bilderback II, Senior Assistant Attorney General; Rob Bonta, California Attorney General; Office of the California Attorney General, San Diego, California; for Respondent-Appellee.

Susan Garvey and Natalie Link, Habeas Corpus Resource Center, San Francisco, California, for Amicus Curiae Habeas Corpus Resource Center.

Jessica E. Oats, Senior Deputy State Public Defender; Mary K. McComb, State Public Defender; Office of The State Public Defender, Sacramento, California; for Amicus Curiae Office of The State Public Defender.

OPINION

NGUYEN, Circuit Judge:

A jury sentenced Rodney Gene Beeler to death following his conviction for the first-degree murder of Anthony “Tony” Joseph Stevenson during a daytime robbery in December 1985. Beeler appeals the district court’s denial of his petition for writ of habeas corpus. We affirm.

I. BACKGROUND¹

A. The Guilt Phase

Tony Stevenson lived with his two brothers, Michael and Dino, in a house in Orange, California. On the morning of December 30, 1985, all three brothers left for work. But just before 11:00 a.m., the Stevensons’ neighbor discovered Tony lying on the front lawn of the neighbor’s house, shot in the back. Police and paramedics arrived after the neighbor called 911, but Tony died at the scene.

The rear, sliding-glass door of Tony’s house had been pried open with a screwdriver, and the house had been ransacked. Bullets for Tony’s .22-caliber semi-automatic rifle were strewn across his bed. The rifle was found on a

¹ These facts are largely taken from the California Supreme court’s opinion in Beeler’s direct appeal, *People v. Beeler*, 9 Cal. 4th 953 (1995).

hallway floor, its wooden parts badly damaged. One of the bedroom doors had a large gash that police attributed to the butt of the rifle. Jewelry, a camera and lens, \$1,200 in cash, a dark blue gym bag, Dino's fake Rolex watch, and Michael's .22-caliber single-action Ruger revolver, which he kept unloaded under his bed with two bullets nearby, were taken from the house. Michael's gun was never recovered.

An autopsy revealed Tony died from a single .22 caliber bullet that entered his back and pierced his lung and heart. The muzzle of the gun had been more than two feet away from Tony when he was shot. A ballistics expert determined the bullet that killed Tony was not fired from the broken rifle found inside the house but could have been fired from Michael's missing revolver. Another .22 caliber bullet was found lodged in a car parked across the street from the Stevensons' house. But the recovered bullet was too damaged to determine whether it had been fired from either weapon.

A small bullet hole in the screen door aligned with the bullet hole in the car across the street, suggesting a gun was shot through the screen door. Relying on the evidence of forced entry, ransacking, and a violent struggle inside the Stevensons' house, the prosecution theorized that Tony had returned home during a burglary and confronted the perpetrator, but as he fled the house, the perpetrator shot him in the back with Michael's gun.

Beeler, whose identity as the burglar is not at issue in this appeal, was linked to the crime by fingerprint evidence and the testimony of three neighbors. In one of the bedrooms, Beeler's fingerprint was found on top of a file cabinet. Floyd Raney, a neighbor living down the street from the Stevensons, testified that he was in his garage around the

time of the killing with the door open. Raney heard a motor running outside and saw a pickup truck parked directly across the street. Beeler approached Raney in his garage in what Raney described as pale blue jeans and a solid blue shirt. Beeler asked Raney, “My cat jumped the wall in your backyard. Would you look back there, please, and see if my cat is back there?” When Raney returned from checking the backyard, he saw Beeler taking off in the pickup truck. About fifteen minutes later, the police arrived in response to the discovery of Tony’s body. At trial, Raney identified a picture of Beeler’s truck as being similar to the one he saw the day of the murder.

Lavada Hoskins lived on the street running parallel to the Stevensons’ street. A block wall ran between the backyards of the houses on Hoskins’s street and the Stevensons’ street, including Raney’s yard. The morning of the killing, Hoskins was in her backyard talking to her neighbor, Fern Awalt, when both women saw a man walking along the top of the block wall between 10:30 a.m. and 11:30 a.m. Neither Hoskins nor Awalt saw the man’s face, but Hoskins recalled him wearing a blue plaid shirt and carrying a small, dark sports bag. Awalt remembered the man wearing work pants and a solid blue shirt. Neither woman saw any other unknown person in the neighborhood around the time of the killing.

The prosecution also offered testimony of Beeler’s coworkers to link him to the crime. At the time of the killing, Beeler worked as a senior line operator at a laminated products company. Jim Anderson, who reported to Beeler, testified that Beeler had left work early, at about 10 a.m., on the day of the killing. Calvin Brunsting, the company’s manager, testified that Beeler’s timecard for December 30, 1985, showed him clocking in at 5:45 a.m. But sometime

after December 30, Beeler had asked him to write in that Beeler had left at 3:40 p.m., explaining that he had forgotten to clock out.

John Lorenzi, another coworker, testified that sometime between Christmas and New Year's Eve, Beeler had said to him, "John, let me ask you a hypothetical question. If I was—if you were robbing somebody's house, someone who lived there caught you in the act, would you shoot him?" Lorenzi replied, "Why? Did you kill somebody?" Lorenzi testified that Beeler became upset and responded, "No, asshole." Beeler posed a similar question to Anderson, asking "Hypothetically speaking, if you were robbing a house and the guy came home—the guy that lived there, this is, came home and you had a gun, would you shoot him?" Anderson said, "No, I wouldn't. I wouldn't put myself in that position to begin with. Why, did you do something, did you kill somebody?" Beeler said no and walked away.

Sometime after January 1, 1986, Beeler offered Anderson the stolen watch for \$500. On January 7, 1986, Beeler sold an Italian gold charm taken from the Stevensons. Police eventually searched Beeler's locker at work and found the stolen camera and lens.

The defense offered two alternative theories to counter the intent-to-kill requirement of the felony-murder special circumstance. The primary theory was that Beeler's work supervisor, Mitchell Jackley, participated in the burglary and was the actual killer. Jackley testified for the prosecution at Beeler's preliminary hearing under a grant of immunity for receiving stolen property from Beeler. But the defense called him as a witness at trial in an attempt to undermine his credibility.

The defense argued that Jackley knew details about the crime that suggested he was the shooter. Jackley testified that he had breakfast with Beeler the day of the killing and authorized Beeler to leave work early. Beeler told Jackley later that day that he had broken into the Stevensons' house and killed Tony. Jackley also testified that he stole the key to Beeler's locker and found the camera, handling it with silk gloves so as not to leave fingerprints.

On January 9, 1986, Jackley called the police to implicate Beeler for killing Tony. Jackley testified that he reported Beeler anonymously because he feared being connected to the crime for two reasons. First, Jackley said he had been inside the Stevensons' house before the killing because his wife was acquainted with Dino, so he feared his fingerprints might show up. Second, Jackley testified that he had previously been charged with murder. Additionally, Jackley had received stolen belongings from Beeler from a prior robbery.

Jackley provided the following account of the crime to police investigators:

The way [Beeler] explained it to me is that while he was in the house, that is, ah, ah, Tony apparently's his name, came in and brought his—brought his dog in? Ya. Called his dog. His dog was with him. [Beeler] was saying his dog was with him and he thought he was calling some friends or somethin' and then—what the fuck else did he say?—he said right after that took place, [Beeler] apparently was in one of the bedrooms, he said or somethin', and went behind the corner or somethin' like that And the guy

[Tony] went into his room. He [Beeler] told me he [Tony] came out with a goddamn ah rifle and told him he was gonna beat the shit out of him with it, and he's gonna to do [*sic*] bodily damage And he [Beeler] said somethin' to the effect that they got into an altercation in the hallway, and that the guy came at him with a rifle, used it like a club—.

Jackley provided other details of the crime. For instance, Beeler told him he “hit” two rooms in the Stevensons’ house and was in the third when Tony unexpectedly returned home. Beeler took a .22-caliber revolver from the house and shot Tony in the back with a hollow-point bullet as Tony ran away from the house. Beeler told Jackley that Tony fell on the front lawn and that Beeler escaped “down a brick wall running on the back of” the Stevensons’ house. Beeler said he had left his truck idling and had a conversation with a person outside the house at the end of the wall.

The defense attacked Jackley’s credibility with the fact that he had been charged with a similar crime years earlier, but those charges were dropped once Jackley agreed to testify for the prosecution. Jackley and his accomplices were arrested in 1974 in connection with a robbery-murder in South Carolina. Jackley admitted to the burglary but denied any involvement with the killing. Jackley provided a similar story in that case, alleging that one of his acquaintances confessed the killing to Jackley, an anonymous call was made to the police implicating that defendant, Jackley had received stolen goods from the defendant, and Jackley knew many of the details of the crime. And, similar to this case,

the charges against Jackley were dropped once he testified for the prosecution.

Jackley also admitted to three other burglaries in which he knew the victims, the items taken were similar to those stolen from the Stevensons' house, and his fingerprints were not found at any of the crime scenes. The defense argued that all the similarities to the instant case pointed to Jackley as the killer and principal burglar, not Beeler.

The second theory the defense offered assumed that Beeler was the shooter but that the evidence of the bullet's trajectory was consistent with "at least two reasonable interpretations." One was the prosecutor's theory; the other was that during the struggle inside the house, Tony used the rifle to fire a shot "down the hall" that hit the car outside, and Beeler fell and shot Tony as Tony was standing over him. The prosecution's expert conceded on cross-examination that the evidence of the bullet's trajectory was compatible with this defense theory.

After a seven-day guilt-phase trial and less than a half day of deliberations, the jury found Beeler guilty of first-degree murder and burglary. The jury also found Beeler personally used a handgun during the commission of the offense and the felony-murder special circumstance to be true, making Beeler eligible for the death penalty.

B. The Penalty Phase

1. Prosecution's Case in Aggravation

During the penalty phase, the prosecution presented evidence of Beeler's three prior burglaries and one prior rape. The parties stipulated that Beeler had convictions for second-degree burglary in 1971, first-degree burglary in 1974, and second-degree burglary in 1976. He was

committed to the California Youth Authority for the first burglary and sentenced to state prison for the subsequent convictions.

In 1985, Beeler raped Roxanne Doyle as she was delivering newspapers. She testified that he told her a false story about his truck breaking down as an excuse to accompany her along her route. After Doyle completed her deliveries, Beeler hit her in the face, forced her to the ground, and orally and vaginally raped her while threatening her with a knife.

Beeler then forced Doyle to give him her wedding and engagement rings. She begged to keep her rings because she had recently gotten married, but he threatened, “Give me your rings or I’ll cut your finger off.” He also laughed when he discovered that he had broken her eyeglasses. Beeler’s coworker testified that when Beeler arrived at work that morning, he bragged that he had robbed and “fucked the shit out of” a “good looking” woman with a “nice figure” and “big tits.”

2. The Defense’s Case in Mitigation

The defense presented a substantial mitigation case, featuring five mental health experts and several lay witnesses from Beeler’s personal life.² The mitigation evidence focused on the physical and sexual abuse Beeler suffered as a child and his long-term mental impairments. The defense also offered evidence of his positive qualities as

² A total of five mental health expert witnesses testified on Beeler’s behalf. At counsel’s request, the trial court appointed two additional psychologists, Drs. Jay Adams and Francis Crinella, to evaluate Beeler, but they did not testify.

a father and his successful adjustment to the structured setting of incarceration.

Beeler's mother, Lillian Morris, testified that Beeler had been a normal child growing up, even though Beeler's father was known to beat him and his brother, Tom. This abuse involved beating the boys with a piece of automotive rubber when Beeler was as young as six years old. Nonetheless, it was not until she and Beeler's father separated in 1960—when Beeler was about ten years old—that Beeler began to show behavioral issues. After the separation, Beeler and his brother were forced to live with their father and stepmother Lorna Jenkins, who treated Beeler cruelly.

The jury heard from several lay and expert witnesses about Jenkins' abuse of Beeler. Beeler's mother said that Jenkins prevented Beeler from having contact with or receiving presents from his mother. Beeler's stepsister, Rebecca Mullins, testified that Jenkins was "a very violent person" who abused Beeler and her other children. Jenkins would burn Beeler's hands with a lighter, lock him in the closet from 30 minutes to several hours, force him to eat fruit preserves until he vomited, and beat him with a belt buckle hard enough to draw blood and leave welts.

Several neighbors also testified to Jenkins' abuse of Beeler. Byron and Barbara Fellows testified that on one occasion Jenkins punished Beeler for smoking by forcing him to smoke unfiltered cigarettes until he burned his lips and fingers. On another occasion, Beeler was outside at 4:00 a.m. after being locked in the closet all night. The neighbors later reported Jenkins to the police when Beeler's brother came to their house with injuries to his body from being beaten with an electrical cord. Jolene Higley testified that she was "raised with [Beeler] like a sister" and witnessed the

severe abuse inflicted on Beeler by his stepmother, who regularly referred to him as “a little bastard.” The abuse included being locked in a small closet for hours, chained to a basement post, thrown down a flight of stairs with his hands tied behind his back, beaten with a belt buckle and brush, and forced to hold his hands over a flame. Moreover, Beeler once touched Higley “in the breast and vagina area,” and said, “It’s okay, Mom showed me this.”

Dr. Lenore Walker, a clinical and forensic psychologist, provided some of the most disturbing testimony regarding Jenkins. Dr. Walker testified that she and her associate, Lon Kopit, another psychologist, spent 29.5 hours over the course of fourteen sessions interviewing Beeler and administering cognitive and personality tests. In addition to the other abuse already described, Dr. Walker deemed credible Beeler’s accounts of Jenkins smearing fecal matter on his face as punishment for soiling himself and the sexual abuse she inflicted when Beeler was between the ages of ten and twelve. She would tie his penis back with a string and make him wear dresses because she wanted him to look like a girl. Later, she began inserting her soiled tampons into his anus and forcing him to masturbate and orally copulate her. She would also masturbate him and painfully squeeze his testicles to prevent him from reaching an orgasm, or “take the semen and smear it all over his face” as punishment. This abuse progressed to vaginal intercourse during which Beeler was not allowed to reach an orgasm.

In 1964, there was a juvenile proceeding due to the reported abuse. Dr. Robbert Lippold, a former clinical psychologist who had assessed Jenkins characterized her as a “potentially explosive” and “character-disordered individual who . . . was fully capable of operating in a very bizarre and very disturbed manner,” including sexually.

Jenkins admitted to Dr. Lippold that she had beat Beeler and his brother but appeared to be “more concerned about being caught than the action itself.” Even though “deprivation of custody cases were relatively rare at that point in time,” Dr. Lippold recommended to the court that “the children be taken away from her.”

Beeler was removed from Jenkins’ home and thereafter spent time in foster homes, mental hospitals, youth camps, the military, and prison. Cleo Christensen’s family was one of Beeler’s foster homes. Christensen testified that he caught Beeler molesting his four-year-old son in a corn field. At the caseworker’s direction, Christensen took Beeler back to his stepmother, even though he was reluctant to do so because he knew that Beeler previously had been “tied up to a pole and beaten by her.” In 1966, Beeler was committed to a mental hospital. Upon his release, Beeler temporarily moved in with his mother, but she did not receive any refills for his medication or other information regarding his mental health issues. John Cahill, a camp counselor while Beeler was incarcerated at Spring Mountain Youth Camp as a 15-year-old, testified that Beeler was “a pitiful character” who “tended to be easily manipulated and generally picked on.” Another camp counselor, Marlin Robinson, said Beeler did not engage in violent or aggressive behavior but would steal “small inconsequential items.”

Dr. Noble testified to his examination of Beeler in 1971, while he worked for the California Department of Corrections. Dr. Noble opined that Jenkins was “extremely vicious” to Beeler, priming him from an early age to view his life as a cycle of misbehavior and punishment. He believed that Beeler’s prior burglaries were “almost routine, automatic kind of behaviors” and a subconscious cry for help because “he had virtually no insight” into his “psychiatric

problems.” Dr. Noble had recommended psychotherapy for Beeler, but the prison only provided him with medication used to treat manic depression.

According to Dr. Walker, Beeler’s past abuse caused him to experience various forms of gender confusion and engage in sexual misconduct and compulsive theft. Beeler also had learning disorders, and suffered from feelings of guilt, a need to be punished, and dissociative symptoms, which manifested in him “often wak[ing] up in the middle of a burglary” without “know[ing] how he got there or . . . what he was doing.” She believed that his tendency to steal was not motivated by greed, but by a compulsion he could not control. In her opinion, Beeler exhibited “a very inconsistent, unusual kind of diagnostic pattern” that was consistent with—but went beyond—post-traumatic stress and dissociative disorders. At times, “his mind [was] so interfered with that . . . he would look like a schizophrenic” or “profoundly emotionally disturbed,” but “there [we]re other times when he d[id] not appear to be that way.” Particularly during bouts of significant stress, Beeler would become “psychotic” and “not know the difference between . . . what is real and what is in his head.” Dr. Walker noted that Beeler had consistently “plead[ed]” for counseling and psychotherapy, but the institutional systems had offered only medication, including the antipsychotic medication Stelazine, and had not provided “the kind of help that would have made a difference for him.”

Similarly, Dr. Stephen Wells, a clinical psychologist, found that Jenkins’ prolonged and severe abuse “was almost an impossible group of experiences [for Beeler] to recover from.” Dr. Wells generally agreed with Dr. Walker regarding Beeler’s severe emotional problems, including “occasional psychotic episodes” and bouts of dissociation

during which “he did things without being aware of what he was doing.”

Dr. Walker, Dr. Noble, and Dr. Wells all testified that Beeler had adjusted well to an institutionalized setting. For instance, Beeler had volunteered to help the prison laundry and chapel during an inmate strike. And Dr. Wells determined that Beeler would not pose a danger to guards or inmates if he were to serve a sentence of life without the possibility of parole.

Beeler has two children, who were minors at the time of the trial. Beeler’s wife, Kathleen Beeler, and his welding instructor, Lee Saylor, both testified that Beeler was a loving father to his two children and that he never abused them. Dr. John Selden, another clinical psychologist, testified that he had been treating Beeler and his five-year-old son for behavioral issues around the time of the murder. Dr. Selden learned that the family was under great stress due to medical and financial problems and that Beeler was very concerned about his family’s welfare and not repeating the abuse he himself had suffered as a child. He also testified that Beeler’s son seemed very attached to him.

3. Closing Arguments, Verdict, and Sentencing

On July 12, 1988, after deliberating for one full day and brief portions of two others, the jury reached its death verdict. At defense counsel’s request, the sentencing hearing was continued to November 4. On November 4, defense counsel successfully moved for a second continuance, asserting, among other things, the need to investigate a previously unreported head injury, which Beeler had only recently realized was potentially significant.

On December 16, the trial court held a hearing on Beeler's motion, brought pursuant to *People v. Marsden*, 465 P.2d 44, 49 (Cal. 1970) (in bank), seeking to discharge and substitute counsel. At the hearing, Beeler stated that he wanted to undergo an electroencephalogram ("EEG") and a computed axial tomography ("CAT") scan, imploring, "I feel there is something wrong." Defense counsel explained that, during the time granted by the previous continuance, they had deemed such tests unnecessary after investigating and consulting with two doctors about the possibility of organic brain damage based on Beeler's self-reported blackouts from several years ago. But defense counsel stated that Beeler "has today informed us, for the first time, that these blackouts, such as the two or three that we were previously aware of, continue and [occur] perhaps even on a daily basis now." Beeler said at the hearing that the new blackouts, which he had not reported to the jail medical staff, "last for a few minutes but I'm having them so often that hours go by that I don't even remember what's going on." The trial court denied the *Marsden* motion but granted counsel's motion for a third continuance.

On January 27, 1989, the trial court again granted a fourth continuance for counsel to "obtain[] . . . additional expert information based on tests yet to be completed." On March 24, counsel obtained a fifth continuance to allow psychiatrist Dr. Monte Buchsbaum time to complete analysis and calculations on recent positron emission topography ("PET") scan results of Beeler's brain, after which a forensic neurologist would review Dr. Buchsbaum's findings and conclusions.

While the trial court had previously warned against further delays, defense counsel requested a sixth continuance at the next hearing on May 5. As support, defense counsel

filed their own declaration, stating that preliminary interpretations from the neurological testing indicated “significant evidence of dysfunction in the right temporal and bilateral frontal lobes of Mr. Beeler’s brain.” Counsel explained that while this evidence was potentially relevant to the guilt phase issue of intent and the penalty phase issue of mitigation, there was no further information available because “the people who gave the test . . . aren’t really qualified to interpret the data,” and a qualified expert had just agreed to conduct the analysis. The trial court denied the continuance motion, expressing doubt that any expert could provide new insights into Beeler’s mental status. The trial court also emphasized that defense counsel “ha[d] done a diligent effort in pursuing everything that [they saw] fit,” and the failure to find a new expert was not due to delay or incompetence.

At that same hearing, the trial court denied the defense’s motion for a new trial based on insufficient evidence of intent to kill and Beeler’s alleged organic brain damage. The trial court further denied the defense motion to modify the death verdict after reweighing the aggravating and mitigating circumstances.

4. Post-Trial Proceedings

On automatic direct appeal, the California Supreme Court affirmed Beeler’s conviction and sentence in a reasoned opinion, issued on April 10, 1995. *See Beeler*, 9 Cal. 4th 953. The U.S. Supreme Court denied certiorari.

Beeler filed his first state habeas petition while his appeal was pending. As relevant here, he claimed that trial counsel was prejudicially ineffective for failing to present evidence of his diagnoses of organic brain damage, possible seizure disorder and multiple personality disorder in the guilt

and penalty phases of his trial and for failing to provide competent evidence of his organic brain damage before sentencing. In November 1995, the California Supreme Court denied the petition on the merits as well as some of the claims on procedural grounds.

Beeler filed a second state habeas petition in 1997, arguing that he had been incompetent to stand trial, the trial court violated his rights by failing to sua sponte hold a competency hearing, and trial counsel rendered prejudicially ineffective assistance for failing to declare a doubt as to his competency. Beeler also asked the California Supreme Court to reconsider his prior ineffective assistance of counsel claim. In 2004, the state court denied the petition on the merits, except for Beeler's claim that he was incompetent to be executed, which it denied as premature. The court also ruled that certain claims and/or subclaims were procedurally barred, including Beeler's claim that the trial court erred by failing to conduct competency proceedings.

Beeler filed a first amended federal habeas petition on February 11, 2005, and the district court granted the State's motion to dismiss an unexhausted claim. On September 9, 2009, Beeler filed an amended petition without the unexhausted claim. On December 2, 2020, the district court entered judgment denying the amended petition and issued a certificate of appealability on claims K (incompetency claim) and L (ineffective assistance of counsel at guilt and penalty phases) of the amended petition. Beeler timely appealed.

II. STANDARD OF REVIEW

We have jurisdiction under 28 U.S.C. § 2253, and we review de novo a district court's denial of habeas relief. *Avena v. Chappell*, 932 F.3d 1237, 1247 (9th Cir. 2019).

Because Beeler filed his federal habeas petition after April 24, 1996, the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) applies. *Murray v. Schriro*, 745 F.3d 984, 996 (9th Cir. 2014). Under AEDPA, habeas relief is barred unless the state court’s denial of the claim “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(1)–(2).

Review under § 2254(d) applies to the last reasoned state court decision. *Hibbler v. Benedetti*, 693 F.3d 1140, 1146 (9th Cir. 2012). This court “confine[s its] § 2254(d)(1) analysis to the state court’s *actual* decisions and analysis,” as opposed to “some *hypothetical* alternative rationale.” *Frantz v. Hazey*, 533 F.3d 724, 738 (9th Cir. 2008) (en banc). However, where there is no reasoned state court decision addressing a claim, we conduct the AEDPA analysis by “consider[ing] what arguments or theories could have supported the state court’s summary denial.” *Montiel v. Chappell*, 43 F.4th 942, 958 (9th Cir. 2022) (citing *Harrington v. Richter*, 562 U.S. 86, 96, 102 (2011)), *cert. denied*, 143 S. Ct. 1785 (2023).

When determining whether the state court violated § 2254(d), we look to California’s procedures for handling habeas petitions, which require the state court to issue an order to show cause when the petitioner makes out a prima facie case for relief on a claim. *See Cullen v. Pinholster*, 563 U.S. 170, 188 n.12 (2011); *People v. Duvall*, 886 P.2d 1252, 1258 (Cal. 1995) (in bank). “If no prima facie case for relief is stated, the court will summarily deny the petition.” *Duvall*, 886 P.2d at 1258. The California Supreme Court

finds a prima facie case for relief when, ““assuming the petition’s factual allegations are true, the petitioner would be entitled to relief.”” *In re Figueroa*, 412 P.3d 356, 364 (Cal. 2018) (quoting *Duvall*, 886 P.2d at 1258); *but see Pinholster*, 563 U.S. at 188 n.12 (noting that “wholly conclusory allegations” do not state a prima facie case for relief under California law). As a result, while the California Supreme Court’s summary denial in this context “is a decision on the merits and thus entitled to AEDPA deference,” *Ochoa v. Davis*, 50 F.4th 865, 888 (9th Cir. 2022), *cert. denied sub nom Ochoa v. Smith*, 144 S. Ct. 381 (2023), such a denial “necessarily assume[s] the truth of [the petitioner’s] factual allegations,” *Michaels v. Davis*, 51 F.4th 904, 940 n.17 (9th Cir. 2022).

We treat Beeler’s opening brief, which addresses two uncertified issues, as an application to expand the certificate of appealability, *see* Fed. R. App. P. 22(b)(2) and Ninth Cir. R. 22-1(e), and we grant the application as to both.

III. DISCUSSION

A. Competency Claim

Beeler raises three arguments concerning his competency to stand trial: (1) the trial court procedurally erred by not sua sponte holding a competency hearing; (2) he was incompetent to stand trial; and (3) defense counsel was ineffective in failing to raise his incompetency. Beeler also argues that, because he established a prima facie case, the California Supreme Court’s summary denial of relief without issuing an order to show cause was unreasonable. Applying the “highly deferential” AEDPA review, *Clark v. Arnold*, 769 F.3d 711, 724 (9th Cir. 2014), we are compelled to find that the California Supreme Court could have reasonably concluded the evidence does not sufficiently

support Beeler’s competency claims, *see Montiel*, 43 F.4th at 958; 28 U.S.C. § 2254(d)(2).

1.

“[T]he criminal trial of an incompetent defendant violates due process.” *Medina v. California*, 505 U.S. 437, 453 (1992). Competency requires “the capacity to understand the nature and object of the proceedings . . . , to consult with counsel, and to assist in preparing [one’s] defense.” *Drope v. Missouri*, 420 U.S. 162, 171 (1975). “Competency disputes can give rise to two distinct claims—substantive and procedural—that trigger different analyses under the general heading of due process.” *Lounsbury v. Thompson*, 374 F.3d 785, 788 (9th Cir. 2004).

As to procedural competency, the trial court must sua sponte conduct a hearing to determine a defendant’s competency if “the evidence before [it] raises a ‘bona fide doubt’ as to a defendant’s competence.” *Maxwell v. Roe*, 606 F.3d 561, 568 (9th Cir. 2010) (quoting *Pate v. Robinson*, 383 U.S. 375, 385 (1966)); *see also People v. Rogers*, 141 P.3d 135, 152 (Cal. 2006) (noting that California Penal Code § 1368 similarly provides that the trial court must “suspend trial proceedings and conduct a competency hearing whenever the court is presented with . . . evidence that raises a reasonable or bona fide doubt concerning the defendant’s competence”). A bona fide doubt exists when “a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to stand trial.” *Stanley v. Cullen*, 633 F.3d 852, 860 (9th Cir. 2011) (internal quotation marks omitted). Under this standard, the trial court must have been presented with substantial

evidence of incompetence. *Williams v. Woodford*, 384 F.3d 567, 604 (9th Cir. 2004).

While the court’s “responsibility [to conduct competency assessment] continues throughout trial,” *Maxwell*, 606 F.3d at 568, there is no “general standard with respect to the nature or quantum of evidence necessary” to trigger a hearing, *Drope*, 420 U.S. at 172. Instead, “the trial judge must evaluate all the evidence and evaluate the probative value of each piece of evidence in light of the others.” *Chavez v. United States*, 656 F.2d 512, 518 (9th Cir. 1981). Relevant “evidence includes the defendant’s demeanor before the trial judge, irrational behavior of the defendant, and available medical evaluations of the defendant’s competence to stand trial.” *Williams*, 384 F.3d at 604 (citing *Drope*, 420 U.S. at 180). The evidence may include the observations of trial counsel, *Medina*, 505 U.S. at 450, but counsel’s opinion “certainly is not determinative,” *Hernandez v. Ylst*, 930 F.2d 714, 718 (9th Cir. 1991); *see also Michaels*, 51 F.4th at 943 (explaining that, “[g]iven the generality and flexibility of the competency inquiry,” state courts have even more leeway under AEDPA in reaching a reasonable decision).

Beeler points to three categories of evidence to support his claim.³ He first points to significant trial testimony recounting his childhood, institutionalizations, and mental health issues, which included schizophrenia, manic depression, and dissociation. He next points to post-verdict

³ Beeler never states when exactly the trial court should have ordered a competency hearing. Nonetheless, “[t]he competency right does not end at a conviction, but rather persists through sentencing,” *United States v. Dreyer*, 705 F.3d 951, 961 (9th Cir. 2013) (cleaned up), so the totality of the circumstances will be considered.

evidence of his self-reported blackouts and counsel's assertion that the uninterpreted raw testing data showed "significant evidence of [neurological] dysfunction." And lastly, Beeler relies on juror declarations stating that, during the trial, Beeler "seldom talked to his attorneys," "did not show any emotion," "looked very strange," and "just [sat] like a lump."

The evidence of Beeler's mental health and blackouts does not raise a bona fide doubt as to his competency because none of it demonstrates "a causal connection between the mental disease or defect and his inability to understand the proceedings." *United States v. Neal*, 776 F.3d 645, 656 (9th Cir. 2015); *see also United States v. Garza*, 751 F.3d 1130, 1136 (9th Cir. 2014) ("Even a mentally deranged defendant is out of luck if there is no indication that he failed to understand or assist in his criminal proceedings."). Trial counsel and expert witnesses never raised an argument regarding his competency to stand trial but instead focused on connecting Beeler's mental health to the issues of his guilt and penalty. In fact, Dr. Walker specifically testified that Beeler was aware of the charges against him, understood the purpose of psychological tests, and shared his views on his wife's potential as a witness. *See Davis v. Woodford*, 384 F.3d 628, 647 (9th Cir. 2004) (rejecting competency claim in part because the expert "gave no indication that he thought [petitioner] was not competent").

Nor does Beeler allege that he displayed any irregular behavior in or out of the courtroom. *See Williams*, 384 F.3d at 605 (deeming it relevant that petitioner did not "evidence any bizarre or irrational behavior"). He cites to juror declarations that describe his passivity at the counsel table, but such evidence on its own neither proves nor disproves

competency. *See, e.g., Odle v. Woodford*, 238 F.3d 1084, 1088–89 (9th Cir. 2001). Moreover, the trial court had more information as to Beeler’s capabilities than the jury. For example, the trial court was informed that Beeler had significantly participated in the preparation of a lengthy mitigation document. And at sentencing, the trial court observed Beeler coherently explain the reasons for his *Marsden* motion. Because the evidence at trial was insufficient to raise doubt as to his competency, we cannot conclude that the California Supreme Court acted unreasonably in denying this claim. *See* 28 U.S.C. § 2254(d)(2).

2.

Beeler next raises a substantive due process argument based on his claim that he was incompetent to stand trial. *See Williams*, 384 F.3d at 608. In comparison to procedural competency, substantive competency involves both an easier and a more difficult standard. It involves an easier standard because, unlike procedural competency, review of substantive competency is not limited to the “facts and evidence that were” at “the state trial court before and during trial.” *Williams*, 384 F.3d at 608. It involves a more difficult standard, however, because the petitioner must show actual incompetence at the time of trial. *Id.* In assessing actual incompetence, the court “disfavor[s] retrospective determinations of incompetence, and give[s] considerable weight to the lack of contemporaneous evidence of a petitioner’s incompetence to stand trial.” *Id.* Moreover, while “not a trained mental health professional,” *Odle*, 238 F.3d at 1088–89, the fact that counsel did not move for a competency hearing is “especially relevant,” *Williams*, 384 F.3d at 608; *see* Cal. Penal Code § 1368 (providing that either counsel or the trial court may move for a competency

hearing); *Medina*, 505 U.S. at 450 (noting that “defense counsel will often have the best-informed view of the defendant’s ability to participate in [the] defense”).

Because, as discussed above, the evidence during trial was not enough to raise a bona fide doubt of competency, Beeler’s success on the substantive competency claim necessarily hinges on evidence that was not available to the trial court. *See Williams*, 384 F.3d at 608. On appeal, Beeler points to five pieces of additional evidence. First, in a declaration filed alongside Beeler’s first state habeas petition, Dr. Walker stated that she “advised Beeler’s counsel that Beeler’s blackouts and mental condition may have a neurological basis, and . . . that counsel [should] retain a neurologist and neuropsychologist.” Second, Dr. Wells also provided a declaration, in which he declared that he had “recommended to [counsel] that Beeler undergo a highly sophisticated mental health evaluation to alleviate” his self-reported “auditory and visual hallucinations.” Third, a declaration from Dr. Monte Buchsbaum—the doctor who evaluated Beeler’s post-verdict EEG and PET scans—confirmed counsel’s representation to the trial court that Beeler’s scans showed brain abnormalities consistent with head injury. Dr. Buchsbaum declared that Beeler’s results were “among the most abnormal” he had seen and were “similar to those often found in people diagnosed as schizophrenics.” Fourth, jail records showed that before and during trial, Beeler was on suicide watch, reported hearing voices, suffered head injuries, pulled out his toenails, was prescribed antidepressant and antipsychotic medications, and experienced chest pains. Fifth, declarations from three fellow inmates stated that Beeler appeared to be mentally impaired, “understood very little of what went on at his trial,” “would not have been able to assist his attorneys,”

“did not seem to understand the difference between his lawyers and people who were potentially hostile to his defense,” and “had memory lapses that covered long periods of time.”

As with the procedural incompetency claim, the new evidence of declarations from the medical professionals and the jail records do not causally connect Beeler’s mental health problems with his competency to stand trial. *See Neal*, 776 F.3d at 656; *Garza*, 751 F.3d at 1136. For instance, the jail records reflect that Beeler attributed his self-harm that resulted in his placement on suicide watch “to racial unrest on his floor and fear for his physical safety.” *See also Dennis ex rel. Butko v. Budge*, 378 F.3d 880, 892 (9th Cir. 2004) (“[E]vidence of suicidal ideation or attempts to commit suicide in the past is insufficient to demonstrate incompetency.”). Medical reports from the jail reflected that Beeler pulled out his toenails as a result of his stress about going to court and as a means of manipulation. Further, the reports noted that the antidepressant medications had helped with his behavior and mood. As a result, instead of being indicative of an inability to understand the proceedings or participate in his defense, the mental health issues experienced by Beeler in jail appear to have been the product of situational stress or malingering, and his symptoms had been effectively treated. *See, e.g., United States v. Telles*, 18 F.4th 290, 300–01 (9th Cir. 2021) (explaining that malingering “behavior does nothing to demonstrate [a defendant’s] inability to understand the proceedings or assist in his defense”). And while the medical professional declarations comment on the severity of Beeler’s mental health issues, none of the declarations assert that his struggles interfered with his competency to stand trial.

The declarations from Beeler’s fellow inmates provide a stronger causal connection between Beeler’s mental health and his competency, but they do not render the California Supreme Court’s denial of this issue unreasonable under AEDPA because they are merely conclusory lay opinions of Beeler’s alleged incompetence. *See Alpha & Omega Dev., LP v. Whillock Contracting, Inc.*, 200 Cal. App. 4th 656, 664 (2011) (noting that “speculative” or “conclusory” declarations are insufficient to make a prima facie case under California law). The inmates were not medical professionals, did not attend any of Beeler’s courtroom proceedings, and did not participate in any discussions between Beeler and counsel. Further, the declarations are refuted by Dr. Walker’s testimony about Beeler’s competence, Beeler’s active participation in the case before the trial court, the absence of comment by any of the medical experts, and the lack of concern by both the trial court and defense counsel as to his competency. *See Medina*, 505 U.S. at 450; *Boyde v. Brown*, 404 F.3d 1159, 1167 (9th Cir. 2005) (“[T]he most telling evidence that [petitioner] was competent at trial is that neither defense counsel—who would have had every incentive to point out that his client was incapable of assisting with his defense—nor the trial court even hinted that [he] was incompetent.”). Under deferential AEDPA review, we affirm the district court’s denial of habeas relief on this claim.

3.

For counsel to be found ineffective for failing to raise a competency issue, there must have been “sufficient indicia of incompetence to give objectively reasonable counsel reason to doubt the defendant’s competency, and . . . a reasonable probability that the defendant would have been found incompetent to stand trial had the issue been raised

and fully considered.” *Stanley*, 633 F.3d at 862 (internal quotation marks omitted). Similar to substantive competency, “additional evidence submitted . . . [in a] state habeas petition is cognizable as to [an ineffective assistance of counsel] competency claim.” *Michaels*, 51 F.4th at 943.

Beeler’s ineffective assistance of counsel claim relies on the same evidence presented to support the procedural and substantive competency claims. As a result, his ineffective assistance of counsel claim fails for the same reasons. *Davis*, 384 F.3d at 647 (“In light of our evaluation of the substantive competence claim, [petitioner’s] claim that his trial attorneys rendered ineffective assistance of counsel by failing to move for a competency hearing in the trial court also fails.”); *see also Stanley*, 633 F.3d at 862–63 (holding that an ineffective assistance competency claim lacked merit where both the trial and post-conviction experts failed to conclude that petitioner was incompetent).

4.

Because the California Supreme Court could have reasonably concluded that Beeler’s evidence of substantive and procedural incompetency did not establish a prima facie case, Beeler’s claim that there should have been an evidentiary hearing on his competency claim also lacks merit. *See Pinholster*, 563 U.S. at 188 n.12; *Michaels*, 51 F.4th at 940 n.17. His claim that the district court was required to conduct a hearing fails for the same reason. *See Murray v. Schriro*, 882 F.3d 778, 802 (9th Cir. 2018) (“[S]o long as we are reviewing a petitioner’s claim under AEDPA, our review is limited to the facts before the state court and the petitioner is not entitled to an evidentiary hearing in federal court.”).

B. Guilt and Penalty Phases Ineffective Assistance of Counsel Claims

Beeler argues that his counsel provided ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), by failing to investigate and present evidence regarding his “mental illness and [organic brain damage]” at both the guilt and penalty phases.

To succeed on this claim, the “defendant must show that counsel’s representation fell below an objective standard of reasonableness” and prejudiced him, “considering all the circumstances.” *Id.* at 687–88. Under this standard, “[c]ounsel in a death-penalty case has ‘a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.’” *Andrus v. Texas*, 590 U.S. 806, 814 (2020) (per curiam) (quoting *Wiggins v. Smith*, 539 U.S. 510, 521 (2003)). “[T]he defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” *Strickland*, 466 U.S. at 689 (internal quotation marks omitted). Our examination of defense counsel’s performance “must be highly deferential,” *Strickland*, 466 U.S. at 689, and, when conducted through AEDPA’s lens, our review of counsel performance is “doubly deferential,” *Hardy v. Chappell*, 849 F.3d 803, 825 n.10 (9th Cir. 2016).

To show that the deficient performance was prejudicial, the defendant must establish that the alleged errors “actually had an adverse effect on the defense,” meaning that “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 693–94. “Establishing prejudice in the death sentence context requires a showing that ‘there is a reasonable probability

that, absent the errors, the sentencer would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.”” *Bible v. Ryan*, 571 F.3d 860, 870 (9th Cir. 2009) (quoting *Strickland*, 466 U.S. at 695) (cleaned up). We do not apply “double deference” in the prejudice analysis. *Hardy*, 849 F.3d at 825 n.10.

Again, we conclude that the district court, under AEDPA review, correctly denied Beeler’s ineffective assistance of counsel claim.

1.

Counsel consulted with five psychologists before trial, and two of those psychologists, Drs. Wells and Walker, recommended that Beeler also be evaluated by a neurologist. Dr. Walker declared that defense counsel had “represented to [her] that they had already petitioned the court for funds for the appointment of a neurologist, but their request was denied.” On appeal, Beeler asserts that defense counsel had lied to Dr. Walker, but he provides no explanation or evidentiary support.

As discussed above, after receiving a death verdict, Beeler pressed defense counsel for neurological testing based on his newly reported head injury and frequency of blackouts. In response, counsel arranged for Dr. Arnold Starr, a neurologist, to interview Beeler. Dr. Starr reported that Beeler’s “mental status would be in keeping with someone who was mentally slow with an IQ estimated to be 75 or 80.” Dr. Starr also suggested a possible diagnosis of schizophrenia based on Beeler’s history of trauma, institutionalizations, and self-reported auditory hallucinations. Accordingly, Dr. Starr recommended neurological testing, including a PET scan. Defense counsel had a PET scan conducted and hired Dr. Buchsbaum to

review the scan. Dr. Buschbaum determined that Beeler's PET scan indicated "brain damage or dysfunction." But the trial court denied the defense motion for an additional continuance to have a qualified neurologist review the scan.

About four years later, in connection with Beeler's first state habeas petition, he was evaluated by Dr. Jonathan Pincus, a neurologist, and Dr. Stephen Marmer, a psychiatrist. Dr. Pincus's report states that, after reviewing Beeler's medical and social history, as well as examining him, Dr. Pincus was "convinced that Mr. Beeler has brain damage." He opined that Beeler's reported blackouts "could be dissociative episodes or seizures," and recommended an 8-hour EEG in order to confirm a possible "diagnosis of epilepsy." Dr. Marmer also focused on Beeler's blackouts, concluding that Beeler suffers from multiple personality disorder, a type of dissociative disorder. He believed that "Beeler's host personality does not have control over the conduct of his alternate personalities and generally suffers from a blackout while alternate personalities are present." As a result, Dr. Marmer opined that it was highly probable that "Beeler's host personality was not . . . co-conscious at the time of the death of [Tony] Stevenson" or "the rape of Mrs. Doyle, if Beeler was present at all."

2.

Beeler first claims that defense counsel should have used penalty phase mitigation and extra-record evidence of his mental illness and brain damage at the guilt phase to show that he did not form the specific intent to kill. He argues that had defense counsel presented evidence showing that he lacked "the capacity to think clearly enough, in the panic of the moment, to form the specific intent to kill," the jury

would not have found true the burglary murder special circumstance.

But even assuming defense counsel performed deficiently in its investigation and presentation of evidence, Beeler was not prejudiced by counsel's decisions. *See Strickland*, 466 U.S. at 697 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.").

To the extent Beeler is arguing that his counsel should have presented a defense of diminished capacity, his argument fails because at the time of his trial, that defense was not allowed by California law. *Noguera v. Davis*, 5 F.4th 1020, 1048 (9th Cir. 2021) ("[B]ecause [the] murder took place after June 1982, a diminished capacity defense was unavailable to [petitioner] under California law."). As a result, defense counsel could have only used the mental health evidence to argue that Beeler did not form the specific intent to kill. Cal. Penal Code § 28 ("Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent . . ."). Neither Beeler's trial experts nor post-trial experts, however, opined that his mental health issues prevented him from forming the intent to kill. These experts gave opinions only about compulsion, dissociation, epilepsy, and multiple personality disorder. As a result, without a nexus between Beeler's conditions and his specific intent, any mental health evidence would have been inadmissible at the guilt phase.

Moreover, the crime scene evidence strongly disputes a finding of lack of specific intent. Beeler's mental incapacity argument relies on the premise that the circumstances of the

crime—even without consideration of his mental health evidence—showed a lack of intent. While the defense theorized that Tony had been shot during a struggle inside the house, significant evidence established that Beeler shot Tony in the back as Tony fled from the house. *James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (holding that conclusory allegations that fail to explain how counsel could have rebutted overwhelming evidence of guilt are insufficient to warrant relief under *Strickland*). And defense counsel had in fact argued during trial that the killing was unintentional and done in the heat of the struggle. The jury chose the prosecution’s view that the killing was intentional.

The penalty phase mental health evidence likely would not have changed the jury’s determination, as it could have been easily rebutted. *See Andrews v. Davis*, 944 F.3d 1092, 1108–09 (9th Cir. 2019). Any evidence suggesting that Beeler had no memory of the killing due to a blackout or dissociation would have been contradicted by his post-crime activities, including his discussion of the crime with coworkers and efforts to create an alibi. Evidence of dissociation also could have opened the door to additional rebuttal, such as Beeler’s bragging about his rape of Doyle despite a similar claim of having suffered a blackout during that crime. *See Bolin v. Davis*, 13 F.4th 797, 821 (9th Cir. 2021) (noting that, under California law, expert mental health testimony could have opened door to rebuttal evidence).

Similarly, the additional neurological evidence collected after trial could have been rebutted. Expert testimony suggesting that Beeler was suffering from a seizure or multiple personality disorder at the time of the crime would have been rebutted by his deliberate shooting of Tony, his furtive post-crime conduct, as well as the fact that Dr.

Walker never diagnosed Beeler as suffering from multiple personality disorder. *See id.* at 816 (holding that “a reasonable jurist could conclude that [petitioner’s] neurological deficits theory [wa]s of uncertain relevance to the offenses” and “unpersuasive” because it did not explain petitioner’s “deliberate shooting of three people and his strategic thinking after the murders”); *Williams*, 384 F.3d at 617 (holding that counsel reasonably could have determined that “a defense of diminished mental capacity was not feasible” in part because “[t]he facts of the crimes reflected deliberate and methodical action”).

Beeler points to juror declarations discussing what effect learning about Beeler’s brain damage would have had on their assessment of his crimes and his failure to testify, but that evidence is barred by the no-impeachment rule. *See* Fed. R. Evid. 606(b)(1) (prohibiting, subject to exceptions not applicable here, “a juror’s affidavit or evidence of a juror’s statement” regarding “the effect of anything on that juror’s or another juror’s vote[] or any juror’s mental processes concerning the verdict”); *see also* Cal. Evid. Code § 1150(a) (“No evidence is admissible to show the effect of [a] statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.”). Further, the juror declarations merely state that the jurors thought the evidence of brain damage “would have explained more . . . about Mr. Beeler’s actions” or “why [Beeler’s] judgment was so impaired.” These are vague statements that do not affirmatively say that the evidence would have changed their verdict.

While Beeler was clearly not prejudiced, the California Supreme Court could have also determined that trial counsel acted reasonably and diligently during the guilt stage. For

instance, trial counsel presented various defense theories, such as that another person shot Tony, which “indicate[d] active and capable advocacy.” *Harrington*, 562 U.S. at 111.

And trial counsel’s decision not to pursue a defense based on Beeler’s alleged inability to form intent was not because defense counsel failed to investigate. Beeler argues that “numerous red flags” should have alerted counsel to the fact that he had brain damage, such as the abuse he suffered as a child, his impaired motor skills, his repeated institutionalizations, evidence of a head injury, signs of depression and memory lapses, and more. But the record shows that trial counsel heeded these “red flags,” hiring numerous medical professionals to evaluate Beeler both before and after trial. Beeler does not provide any support for his assertion that defense counsel lied about unsuccessfully filing a pre-trial request for funds to hire a neurologist. In fact, the evidence shows that counsel diligently attempted to pursue the issue when Beeler volunteered new information before sentencing. But as discussed above, this evidence would not have been helpful to Beeler at the guilt phase, so counsel’s decision not to present it does not show deficient performance. Accordingly, we affirm the denial of habeas relief as to Beeler’s claim of a *Strickland* violation at the guilt phase.

3.

Beeler also claims that the neurological evidence not presented at the penalty phase would have constituted additional mitigation, and there is a reasonable probability that one juror would have made a different decision based on

that evidence.⁴ Just as with Beeler’s claim of guilt-phase ineffective assistance of counsel, the California Supreme Court could have reasonably determined that defense counsel’s performance was not deficient, as counsel diligently sought neurological testing both before trial and after Beeler volunteered new information. *See Demetrulias v. Davis*, 14 F.4th 898, 915 (9th Cir. 2021) (“Because we conclude that [counsel’s] performance was not deficient, we need not address whether [the petitioner] was prejudiced by any deficiency.”).

The California Supreme Court could have also reasonably determined that even if counsel had lacked diligence, counsel’s failures did not prejudice Beeler. The additional neurological testing would have done little to explain or excuse Tony’s killing. Dr. Starr, the neurologist who interviewed Beeler prior to sentencing, stated that testing was needed to offer an affirmative diagnosis regarding organic brain damage. Dr. Buchsbaum, who determined that Beeler’s PET scan “indicated . . . brain damage or dysfunction,” was a psychiatrist and did not offer a neurological diagnosis. Dr. Pincus, who evaluated Beeler

⁴ As an initial matter, the parties dispute which California Supreme Court ruling we should review for this claim. Beeler asserts that this court should “look through” that California Supreme Court’s 2004 summary denial and review the reasoning of the California Supreme Court’s direct appeal opinion while still taking into account “the additional supporting evidence” presented on state habeas. *See Wilson v. Sellers*, 584 U.S. 122, 125 (2018) (holding that a federal habeas court should “look through” an unexplained state court decision and apply AEDPA deference to “the last related state-court decision that does provide a relevant rationale”). But “the operative decision is the California Supreme Court’s summary denial because its decision on direct review did not address [Beeler’s] more fully developed claim” *Cain v. Chappell*, 870 F.3d 1003, 1018 n.5 (9th Cir. 2017).

for his state habeas petitions, concluded that Beeler has organic brain damage, but he also qualified its impact on Beeler and recommended additional testing to confirm a possible diagnosis of epilepsy. *See Runningeagle v. Ryan*, 825 F.3d 970, 987–88 (9th Cir. 2016) (concluding that mental health reports were “not of material mitigating weight” because the experts “used qualifying language” and “gave no affirmative diagnosis”).

Dr. Marmer’s diagnosis of multiple personality disorder could have also been refuted by Dr. Walker’s assessment and findings that Beeler understood the nature of his actions. The jury likely would have accorded little weight to this speculative and indefinite evidence. *Apelt v. Ryan*, 878 F.3d 800, 834 (9th Cir. 2017) (determining that an ineffective assistance mitigation claim failed for lack of prejudice in part because “none of the proffered mitigating evidence excuse[d] [the petitioner’s] callousness” or “reduce[d] [his] responsibility for planning and carrying out the murder”).

More importantly, defense counsel presented an extensive mitigation case. Through the testimony of nineteen lay and expert witnesses, defense counsel offered classic and substantial mitigation evidence regarding Beeler’s severe childhood abuse, mental health issues, positive character, and institutional adjustment. *See Avena*, 932 F.3d at 1249 (“[T]estimony by character witnesses and the presentation of a defendant’s social history and background play a fundamental role in securing confidence in the outcome of the penalty phase.”); *Bonin v. Calderon*, 59 F.3d 815, 834 (9th Cir. 1995) (concluding it was reasonable for counsel to rely on an “institutional adjustment” theory for mitigation without also presenting brain dysfunction or psychiatric testimony); *cf. Summerlin v. Schriro*, 427 F.3d 623, 635 (9th Cir. 2005) (en banc) (noting

that counsel failed to present “available classic mitigation evidence concerning family history, abuse, ... and mental disorders”). And contrary to Beeler’s assertion, trial counsel provided extensive evidence of his social history. Given the relative weakness of the unrepresented evidence, combined with counsel’s extensive mitigation presentation, the neurological evidence likely would not have affected the jury’s balancing of the aggravating and mitigating circumstances.

As a result, Beeler failed to establish a *prima facie* case as to the ineffective assistance of counsel at the penalty phase, and the California Supreme Court’s summary denial of this claim was reasonable.

4.

Finally, as with the competency claim, Beeler asserts that he established a *prima facie* case, so the California Supreme Court’s summary denial of his ineffective assistance claims was unreasonable. As discussed, Beeler’s ineffective assistance claims lack merit, so the California Supreme Court reasonably denied relief, and no federal hearing was required under AEDPA. *See Pinholster*, 563 U.S. at 188 n.12; *Michaels*, 51 F.4th at 940 n.17; *Murray*, 882 F.3d at 802. We therefore affirm the denial of habeas relief as to all of Beeler’s claims of ineffective assistance of counsel.

C. Coercion of Death Verdict Claim

Beeler alleges that the trial court coerced the jury’s death verdict by failing to replace a juror, Michael C., with an alternate after Michael C. informed the court of his father’s sudden death. According to Beeler, the trial court placed the jury in the “suddenly intensified” position of either reaching a verdict during a truncated morning deliberation session, or

“fac[ing] . . . the prospect of their service being extended” until Michael C. returned from his father’s funeral the following week. Applying AEDPA review, we find that the California Supreme Court neither erroneously applied federal law nor made an unreasonable determination.

1.

Before the start of the third day of jury deliberations on Tuesday, July 12, 1988, Michael C. called the court clerk to explain that his father had suddenly died and he had scheduled a flight for 2 p.m. that afternoon. The attorneys were informed of the dilemma but were delayed at another courthouse, so at 10:00 a.m., the court met with Michael C. ex parte to discuss the issue. The court instructed Michael C. to continue deliberations, which would be recessed “sometime before noon” in order to allow him to leave for the airport. The court also instructed Michael C. that deliberations would resume on the following Monday, July 18, when he was scheduled to return from his father’s funeral. Michael C. then returned to the jury room to deliberate, and the trial court did not pass along any further instructions or information to the rest of the jury.

The attorneys arrived shortly thereafter. Outside the presence of the jury, the court relayed its decision, to which counsel then objected and requested that Michael C. be replaced with an alternate. Defense counsel argued that “the jury may feel some sense of urgency in reaching a verdict today” because “if they have to come back next week that’s going to put them beyond” the court’s earlier estimate that the case would not extend past the middle of July. Counsel also expressed concern that the court had failed to inquire into Michael C.’s emotional state or admonish him and the

other jurors to refrain from quickly reaching a verdict in order to avoid returning the following week.

In declining to appoint an alternate, the trial court explained that keeping Michael C. on the jury would result in only a two-day delay in deliberations in light of Beeler having a medical appointment that afternoon and Friday being an off-day. The court also stated that it would reconvene the jury at 11:00 a.m. The jury, however, reached its death verdict before 11:00 a.m.

Prior to reading the verdict, with counsel and the jury present, the trial court inquired of the jury foreman whether the jurors felt pressure to reach a decision due to Michael C.'s situation. The jury foreman responded negatively. The trial court further probed, "if any juror now feels that they need additional time to discuss the case or reconsider the verdict because of the pressure of time, I'll hear from any juror." After receiving no response, the trial court then requested that any juror who had such a feeling to "please raise your hand." None of the jurors raised a hand. The trial court continued to press, asking whether the fact that Michael C. was going to be excused and there was a probability that deliberations would not resume until the following Monday had anything to do with the verdict the jury reached. The jury foreman again answered, "no." The trial court asked the jurors whether anyone felt "differently than that, that there might be some impropriety in the verdict because of the press of time? If so, please raise your hand." Again, no juror raised a hand or voiced any disagreement. The trial court then proceeded with reading the jury's death verdict. After the verdict was read, the trial court inquired whether this was the jury's verdict which, in unison, the jury affirmed. The court then individually polled each member

of the jury, and each answered affirmatively that the verdict read was his or her verdict.

On direct appeal, Beeler claimed that Michael C.'s presence on the jury resulted in a coerced penalty-phase verdict. The California Supreme Court rejected this contention, holding that the trial court did not abuse its discretion in denying Beeler's request to excuse the juror. Beeler again raised the issue as part of his second state habeas petition, which he supplemented with declarations from jury members. For instance, juror Catherine A. declared that

On the last day of our deliberations, a juror came in and told the rest of us that his father had passed away and that he had to leave that afternoon for the funeral. He stated that we should get this done and urged us to reach a verdict that day because if we did not, we would have to introduce an alternate to our deliberations and everything would get more complicated.

And Harold W. stated that after four days of deliberations,

I did not want to hold everything up if I could not convince others of my positions. . . . I told my fellow jurors that I just did not feel it was right to give Mr. Beeler the death penalty. But everyone knew I was the one holding up the verdict, and given the

situation, I did not feel like I could take any more of the jurors' time.

Lois L. recalled that the penalty deliberations had been going on for days without any consensus. But on the morning her fellow juror had a death in the family, the jurors came to a unanimous decision on the first vote. Similarly, Walter P. said that the verdict and sentence were just but also recalled that the jury reached a verdict quickly after learning that a juror needed to leave to attend a funeral.

2.

As a threshold issue, the parties dispute whether AEDPA deference or de novo review applies to this issue. Beeler asserts the last reasoned decision is the California Supreme Court's majority opinion on direct appeal, as the denial on state habeas merely stated that his claim failed procedurally and on the merits. *Kipp v. Davis*, 971 F.3d 939, 948 (9th Cir. 2020) ("When the state's highest court does not provide reasoning for its decision, a federal habeas court may 'look through the unexplained decision to the last related state-court decision that does provide a relevant rationale' and 'presume that the unexplained decision adopted the same reasoning.'" (quoting *Wilson*, 584 U.S. at 125)). Because the majority opinion on direct appeal failed to address the federal aspect of his claim, Beeler argues that de novo review applies. See *Pirtle v. Morgan*, 313 F.3d 1160, 1167 (9th Cir. 2002) ("[W]hen it is clear that a state court has not reached the merits of a properly raised issue, we must review it de novo.").

The State disagrees on two points. First, the State argues that the look through doctrine is inapplicable because the California Supreme Court clearly denied the claim on

different grounds on state habeas than it did on direct appeal. *See Kernan v. Hinojosa*, 578 U.S. 412, 415 (2016) (“It quite obviously rested upon some different ground. [The] ‘look-through’ approach is therefore inapplicable.”). Second, even looking through to the opinion on direct appeal, the California Supreme Court’s majority necessarily rejected the federal aspect of the claim, so AEDPA deference is appropriate.⁵

The State is correct that Beeler’s jury coercion claim was denied on the merits on state habeas, and “AEDPA deference ‘applies even where there has been a summary denial.’” *Ochoa*, 50 F.4th at 888 (quoting *Pinholster*, 563 U.S. at 187). As a result, even if we “look through” to the majority opinion

⁵ The State contends the claim is procedurally barred due to the California Supreme Court’s alternative untimeliness determination. The California Supreme Court did not explain why it found this claim untimely. If the claim was not altered, the state’s time-bar ruling does not constitute a procedural bar or affect the proper exhaustion of the claim on direct appeal. *See Koerner v. Grigas*, 328 F.3d 1039, 1053 (9th Cir. 2003) (“A claim cannot be both previously litigated and procedurally defaulted; either it was raised in a prior proceeding or it was not.”). It is therefore likely that the California Supreme Court deemed Beeler’s addition of the juror declarations to have altered the claim such that the procedural bar applies.

We have not resolved the question of whether the addition of evidence changes a claim. *See Reno v. Davis*, 46 F.4th 821, 831 n.4 (9th Cir. 2022), *cert. denied sub nom. Reno v. Broomfield*, 144 S. Ct. 119 (2023) (stating that where the state contended that new evidence changed the claim, this court did “not resolve this question” because it found that the claim did not survive AEDPA review on the merits). We need not resolve it here because, regardless, the claim does not survive review on the merits even with the additional evidence. *See Apelt*, 878 F.3d at 825 (“[W]hen a state court ‘double-barrels’ its decision—holding that a claim was procedurally barred and denying the claim on its merits—both its procedural default ruling and its merits ruling are entitled to deferential review by federal courts, as intended by AEDPA.”).

on direct appeal to fill in the summary denial on habeas, we must apply deference to the underlying reasoning. *Wilson*, 584 U.S. at 125 (explaining that a federal habeas court should “look through” an unexplained state court decision and apply AEDPA deference to “the last related state-court decision that does provide a relevant rationale”).

Moreover, Beeler’s argument that we should “look through” to the majority opinion on direct appeal is incompatible with Beeler’s claim that the California Supreme Court has failed to address his constitutional claim entirely. While the look-through doctrine instructs that we should rely on the reasoning provided in an earlier ruling to fill the gaps of an unreasoned opinion, *Kipp*, 971 F.3d at 948, Beeler asks that we look through the summary denial on state habeas to conclude that the preceding opinion on direct appeal had *no* reasoning. Beeler cites no legal support for such a maneuver. Absent such showing, we apply the traditional analysis called for by AEDPA, “consider[ing] what arguments or theories could have supported the state court’s summary denial.” *Montiel*, 43 F.4th at 958 (citing *Richter*, 562 U.S. at 96, 102).

Even if we were to “look through” to the majority opinion on direct appeal, that opinion does not establish that the California Supreme Court failed to address the federal claim. “[W]hen a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.” *Johnson v. Williams*, 568 U.S. 289, 298 (2013) (quoting *Richter*, 562 U.S. at 99). The presumption, often referred to as the “*Richter* presumption,” is “strong but rebuttable.” *Id.* at 301. “We adhere to this ‘strong’ presumption because ‘it is not the

uniform practice of busy state courts to discuss separately every single claim to which a defendant makes even a passing reference.” *Sherman v. Gittere*, 92 F.4th 868, 875–76 (9th Cir. 2024) (quoting *Johnson*, 568 U.S. at 298). As a result, federal habeas law “does not require a state court to give reasons before its decision can be deemed to have been ‘adjudicated on the merits.’” *Johnson*, 568 U.S. at 298 (quoting *Richter*, 562 U.S. at 100).

To be sure, this presumption can “rebutted” in “limited” or “unusual circumstances.” *Id.* at 301–02. “Thus, for example, the presumption doesn’t hold if the federal claim was ‘rejected as a result of sheer inadvertence.’” *Sherman*, 92 F.4th at 876 (quoting *Johnson*, 568 U.S. at 302–03). But “‘the evidence’ must ‘very clearly’ lead to ‘the conclusion that a federal claim was inadvertently overlooked in state court.’” *Id.* (quoting *Johnson*, 568 U.S. at 303).

Beeler points to Justice Kennard’s dissent as proof that the majority failed to consider the federal law. Justice Kennard criticized the majority for “analyz[ing] the trial court’s conduct . . . solely in terms of [California] Penal Code section 1089 More fundamental constitutional rights, however, are also implicated by the trial court’s course of action.” *Beeler*, 9 Cal. 4th at 1012. While Justice Kennard is correct that the majority opinion focused on Penal Code § 1089, *see id.* at 989, that does not necessarily lead to the conclusion that the federal claim was overlooked. The California Supreme Court may have simply regarded the claim as “too insubstantial to merit discussion.” *See Johnson*, 568 U.S. at 299. Indeed, it may very well be that the dissent’s criticism merely shows that the majority decided against writing on the federal claim in its opinion, not that the majority overlooked the issue.

Moreover, we cannot say the California Supreme Court “inadvertently overlooked” the issue when Justice Kennard’s dissent, as Beeler himself recognizes, brought it to the attention of the California Supreme Court.⁶ And for us to conclude that a line in a dissent speaks for the majority is not only unprecedented, but in the habeas context, upends the AEDPA deference we owe the majority opinion. We therefore conclude that the California Supreme Court addressed Beeler’s Sixth Amendment jury coercion claim on the merits and apply AEDPA deference.

3.

“Any criminal defendant, and especially any capital defendant, being tried by a jury is entitled to the uncoerced verdict of that body.” *Lowenfield v. Phelps*, 484 U.S. 231, 241 (1988). Whether “the trial court’s actions and inactions were noncoercive” should be assessed “individually and cumulatively.” *Early v. Packer*, 537 U.S. 3, 9 (2002).

Beeler points to several cases, but none shows that the California Supreme Court unreasonably applied clearly established federal law. *Wright v. Van Patten*, 552 U.S. 120, 126 (2008) (“Because our cases give no clear answer to the question presented, let alone one in [the defendant]’s favor, ‘it cannot be said that the state court unreasonably applied clearly established Federal law.’” (cleaned up) (quoting *Carey v. Musladin*, 549 U.S. 70, 77 (2006))). Beeler cites *Shields v. United States*, 273 U.S. 583, 587 (1927) to argue that there is coercion if the trial court’s direction to the jury

⁶ In fact, it is likely that the issue was deliberated by the Justices. See generally Justice Goodwin Liu, *How the California Supreme Court Actually Works: A Reply to Professor Bussel*, 61 UCLA L. Rev. 1246, 1255 (2014) (detailing the California Supreme Court’s unique and intensive “deliberative process” of issuing opinions).

caused the jury to render a verdict “which they were plainly reluctant to return.” But *Shields* concerned a district court’s ex parte instruction to a deadlocked jury to continue deliberating, which violated the defendant’s right “to be present from the time the jury is impaneled until its discharge after rendering the verdict.” 273 U.S. at 584–85, 588–89. It did not concern a defendant’s Sixth Amendment right to an uncoerced jury.

Beeler also cites to *Jenkins v. United States*, 380 U.S. 445 (1965) (per curiam) and *United States v. United States Gypsum Co.*, 438 U.S. 422 (1978), but they are factually distinct. In *Jenkins*, the Supreme Court held that the district court coerced the deadlocked jury’s verdict by demanding that, “You have got to reach a decision in this case” after they had been deliberating for only two hours. 380 U.S. at 446. And in *Gypsum Co.*, the jury foreman had an ex parte discussion with the judge about the deteriorating health of the jurors and the jury’s deadlock, and the trial court’s stern response gave the foreman the impression that there must be a verdict “one way or the other.” 438 U.S. at 432. In contrast, the jury here never indicated that it was deadlocked, there was no supplemental instruction requiring the jury to reach a verdict, and the trial court did not indicate the jury was taking too long. To the contrary, the trial court repeatedly confirmed that the verdict was reached unanimously and voluntarily and was not rushed.

Additionally, because neither *Shields*, *Jenkins*, nor *Gypsum Co.* were decided on constitutional grounds, Beeler cannot rely on them under AEDPA. See *Rushen v. Spain*, 464 U.S. 114, 119 n.4 (1983) (explaining that *Shields* was decided on non-constitutionally based rules of orderly trial procedure); *Early*, 537 U.S. at 10 (“Neither *Jenkins* nor *Gypsum Co.* is relevant to the § 2254(d)(1) determination,

since neither case sets forth a rule applicable to state-court proceedings. . . . [N]either opinion purported to interpret any provision of the Constitution. That alone would be enough to defeat a claim that their application to state-court proceedings is ‘clearly established.’”). We thus affirm the district court’s denial of Beeler’s jury coercion claim.⁷

D. California’s Death Eligibility Process

Beeler’s last uncertified claim argues that California fails to adequately narrow the pool of defendants eligible for the death penalty under the 1978 statute. This argument is foreclosed. *See Karis v. Calderon*, 283 F.3d 1117, 1141 n.11 (9th Cir. 2002) (rejecting “argument that [California’s sentencing] scheme does not adequately narrow the class of persons eligible for the death penalty”); *Mayfield v. Woodford*, 270 F.3d 915, 924 (9th Cir. 2001) (denying a certificate of appealability because “[a] reasonable jurist could not debate . . . that the 1978 California statute, which narrowed the class of death-eligible defendants at both the guilt and penalty phases, was constitutional”). We affirm the denial of this claim.

⁷ The California Supreme Court also could have reasonably found that the evidence does not amount to coercion. The trial court surveyed the jurors multiple times to ensure that there was no “impropriety in the verdict because of the press of time.” And none of the jurors claimed that the delay *caused* them to change their vote. The most serious declaration came from juror Harold W., who stated that he switched his vote because he “did not want to hold everything up if [he] could not convince others” to choose life without the possibility of parole and “given the situation, [he] did not feel like [he] could take any more of the jurors’ time.” But Harold W. did not say whether the “situation” had to do with Michael C.’s family tragedy as opposed to feeling that no one else would agree with him or that he was coerced into changing his vote.

IV. CONCLUSION

We affirm the district court's denial of Beeler's petition for a writ of habeas corpus.

AFFIRMED.

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 **RODNEY GENE BEELER,**
12 **Petitioner,**

13 **v.**

14 **KEVIN CHAPPELL, Warden of the**
15 **California State Prison at San Quentin,**

16 **Respondent.**
17

CV 96-0606 GW

DEATH PENALTY CASE

**ORDER RE: PETITIONER'S
BRIEF ADDRESSING
APPLICATION OF
28 U.S.C. § 2254(d)
TO GUILT PHASE CLAIMS**

18 On December 21, 2012, Petitioner filed his Opening Brief Addressing Application
19 of 28 U.S.C. § 2254(d) to Guilt Phase Claims (Brief); on February 19, 2013, Respondent
20 filed an Opposition; and on April 12, 2013, Petitioner filed a Reply. In the Brief, Petitioner
21 seeks relief on his claims of ineffective assistance of counsel, prosecutorial misconduct, trial
22 court error, and competence.

23 Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the
24 Court finds that this matter is appropriate for decision without oral argument. After
25 considering the papers and the arguments therein, the Court rules as follows.

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FACTUAL AND PROCEDURAL BACKGROUND

I. Underlying Case and State Proceedings

Petitioner was sentenced to death after being convicted of one count of first degree murder and one count of burglary committed with the personal use of a firearm. The jury found to be true the special circumstance that the murder was committed during a burglary.

Petitioner's conviction was for the murder of Antonio Joseph Stevenson (henceforth "Tony" or "Stevenson"). The prosecution's theory of the case was that Petitioner entered Stevenson's residence to commit a burglary; Stevenson returned home and discovered Petitioner; and Petitioner shot Stevenson as he fled the house.

The following facts are summarized primary from the California Supreme Court's affirmance of Petitioner's conviction on direct appeal, People v. Beeler, 9 Cal. 4th 953, 965-72 (1995).

Stevenson lived in a home in Orange, California, with his two brothers, Dino and Michael. Shortly before 11:00 a.m. on December 30, 1985, Stevenson was found lying on a neighbor's lawn after having been shot in the back. Police and paramedics were called to the scene, and Stevenson died on the lawn.

The rear sliding-glass door of the Stevenson's home had been pried open with a screwdriver, and the home had been ransacked. Bullets for Stevenson's .22 caliber semi-automatic Marlin rifle were strewn across his bed. The rifle was shattered on the hallway floor. Michael's bedroom door had a large gash that was attributed to the butt of Stevenson's rifle.

Items missing from the home included: some jewelry (including a gold chain and an Italian gold charm), a 35-millimeter camera, \$1,200 in cash, a dark blue gym bag, Dino's fake Rolex watch, and a .22 caliber single-action/nine and one-half inch barrel Ruger revolver, which belonged to Michael, who kept it loaded under his bed with two bullets nearby.

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1 An autopsy indicated that Stevenson died from a single gunshot wound from a .22
2 caliber long-rifle bullet that entered the left side of his back at an upward 45-degree angle,
3 struck his left lung, and pierced his heart. There was no exit wound. The muzzle of the gun
4 was more than two feet away from Stevenson when it was fired. The bullet was not fired
5 from the .22 caliber Marlin rifle, but it could have been fired from a .22 caliber single-action
6 Ruger revolver similar to the one taken from Michael's bedroom. That gun was never
7 recovered.

8 Physical evidence implicating Petitioner in the crime included his fingerprint found
9 on top of a file cabinet in the southwest bedroom of the Stevenson residence. Police located
10 a bullet hole in a car parked on the street in front of the Stevenson house, and the car's
11 owner testified that she had parked the car at that location about 9:30 in the morning of the
12 shooting. Testing indicated that the bullet was consistent with a .22 caliber long-rifle
13 projectile, but law enforcement could make no further conclusions as to the nature or source
14 of the bullet because of extensive damage to it caused by passing through the car door. The
15 front door of the Stevenson house was open, but the screen door was closed. The screen
16 door appeared to be punctured with a small bullet hole, although no gun powder residue was
17 found on the screen. Police ran a string from the hole in the screen door to the bullet hole
18 in the car door, and concluded that the bullet found in the car could have been fired from
19 inside the house through the screen.

20 The investigator conducting the string test found an indentation on the "very well
21 taken care of and landscaped and trimmed" front lawn of the Stevenson residence, as well
22 as a "rounded portion where it appeared something had fallen down, possibly a knee, right
23 into the lawn underneath the string." *Id.* at 966-67. Right next to the indentation, "there
24 was a disturbance where the grass had actually been pulled up." *Id.* at 967. The
25 prosecution argued that this evidence implied that Stevenson had been shot from inside the
26 house as he was running across the yard trying to escape from a burglar.

27 ///

1 Stevenson and his brothers resided at 1144 Everett Street. At the time of the shooting,
2 Floyd Raney lived nearby at 1104 Everett Street. Raney was in his garage with the door
3 open when he heard a motor running. Raney then went into his driveway and saw a pickup
4 truck parked directly across the street. Petitioner approached Raney's garage. He wore pale
5 blue jeans and what appeared to be a solid blue shirt. Petitioner said to Raney, "my cat
6 jumped the wall in your backyard. Would you look back there, please, and see if my cat is
7 back there?" Id. Raney stepped into his backyard to look for the cat, but Petitioner was
8 leaving in the truck when he returned to his garage. At trial, Raney identified a photograph
9 of Petitioner's truck as being similar to the truck Raney saw that day.

10 Everett Street runs east to west, and parallel immediately to the south is East Rose
11 Avenue. A six feet high block wall runs between the backyards of the houses on the south
12 side of Everett and those on the north side of East Rose. Lavada Hoskins resided at 115
13 East Rose at the time of the shooting, and the common wall ran along the rear edge of her
14 backyard. On the morning of the shooting, Hoskins was in her backyard talking to Fern
15 Awalt, her next-door neighbor. Both women saw a man walking along the top of the block
16 wall. Awalt recalled the time as being between 10:30 a.m. and 11:30 a.m. Neither woman
17 saw the man's face, but Hoskins recalled that he was wearing a blue plaid shirt and carrying
18 a small dark sports bag. Awalt did not see a bag, and recalled the man was wearing work
19 pants and a solid blue shirt. Neither Hoskins, Awalt, nor Raney saw any other unknown
20 persons in the area near the time of the shooting.

21 Petitioner worked at a laminated products company as a senior line operator. Jim
22 Anderson worked at the company with Petitioner, and recalled that Petitioner left work early
23 the day of the shooting, about 10:00 a.m., and did not return until the afternoon. Calvin
24 Brunsting, the company's manager in charge of time cards, testified that Petitioner's card
25 for December 30, 1985, indicated that he clocked into work at approximately 5:45 a.m.
26 Sometime after December 30, 1985, Petitioner asked Brunsting to write on Petitioner's card
27 the time he left on December 30, 1985, and the time he came to work the following day.

28

1 Petitioner told Brunsting that he had forgotten to punch the clock for those times. Brunsting
2 agreed, and indicated on Petitioner's card for December 30, 1985, that he had left work at
3 3:40 p.m.

4 John Lorenzi also worked with Petitioner and testified that, one day between
5 Christmas and New Year's Eve in 1985, Petitioner had asked him hypothetically, "if you
6 were robbing somebody's house, someone who lived there caught you in the act, would you
7 shoot him?" Id. at 968. Lorenzi replied to Petitioner, "Why? Did you kill somebody?" Id.
8 Petitioner became upset and responded to Lorenzi, "No, asshole." Id.

9 Similarly, Petitioner's co-worker Anderson testified that Petitioner asked him,
10 "Hypothetically speaking, if you were robbing a house and the guy came home – the guy
11 that lived there, this is, came home and you had a gun, would you shoot him?" Id.
12 Anderson testified that he replied that he would not, because he would not put himself in
13 that position to begin with, and Anderson asked whether Petitioner had killed someone.
14 Petitioner denied having done so, and walked away.

15 At some point after January 1, 1986, Petitioner attempted to sell Dino's watch to
16 Anderson for \$500. On January 7, 1986, Petitioner sold the Italian gold charm taken from
17 the Stevenson house to an acquaintance. In Petitioner's locker at work, the police found the
18 camera and lens taken from the Stevenson house.

19 Petitioner's primary defense was that Mitchell Jackley, one of his supervisors at work,
20 participated in the robbery and was the actual killer. Jackley was granted immunity in
21 exchange for testifying for the prosecution at Petitioner's preliminary hearing¹ and was
22 called by the defense to testify at trial. Petitioner attacked Jackley on two fronts: (1) his
23 intimate knowledge of the crime details suggested he might have been the killer; and (2) he

24
25 ¹ At the trial, Jackley testified that he had been obtaining stolen goods from Petitioner for a
26 period of time prior to December 1985. He also stated that his understanding was that he "was not going
27 to get prosecuted for the murder of Mr. Stevenson" but also that the immunity he had been granted from the
28 prosecution was for the crime of receiving stolen property. (See Reporter's Daily Trial Transcript ("R.T.")
at 2246, 2332, and 2338-39.)

1 had been charged in a similar theft/murder crime several years prior but those charges were
2 dismissed against him after he testified for the prosecution in that case.

3 At trial, Jackley testified that he had had breakfast with Petitioner the day of the
4 killing, after which he authorized Petitioner to leave work. Later that day, Petitioner
5 allegedly told Jackley that he had entered the Stevenson house and killed Stevenson.
6 Sometime thereafter, Jackley stole a key to Petitioner's locker and observed inside a camera,
7 which he handled with silk gloves so that he would not leave fingerprints on it. On January
8 9, 1986, Jackley anonymously called the police and implicated Petitioner in the Stevenson
9 killing. Jackley explained that he called anonymously because he was concerned he might
10 be accused of the crime, because: (1) Jackley had been in the victim's house on at least one
11 occasion prior to the killing and was afraid his fingerprints might be found there²; and (2)
12 Jackley had been charged with a prior murder. Jackley also admitted to having received
13 from Petitioner a ring that Petitioner allegedly had stolen during a rape and robbery.

14 Jackley recounted to the police that Petitioner told him the following story about his
15 crimes at the Stevenson house :

16 The way he explained it to me is that while he was in the house, that is,
17 ah, ah, Tony [Stevenson] apparently's his name, came in and brought his dog
18 in? Ya. Called his dog. His dog was with him. Rodney [Petitioner] was
19 saying his dog was with him and he thought he was calling some friends or
20 somethin' and then - what the fuck else did he say? - he said right after that
21 took place, Rodney apparently was in one of the bedrooms, he said or
22 somethin', and went behind the corner or somethin' like that And the guy
23 [Tony] went into his room. He [Petitioner] told me he [Tony] came out with
24 a goddamn ah rifle and told him he was gonna beat the shit out of him with it,
25 and he's gonna to do [sic] bodily damage And he [Petitioner] said
26 somethin' to the effect that they got into an altercation in the hallway, and that
27 the guy came at him with a rifle, used it like a club.

28 Id. at 969.

29 In addition, Jackley testified about other details of the crime that Petitioner allegedly

26 ² Jackley's wife was a friend of Dino and, according to Jackley's testimony, on one occasion
27 prior to the murder, Jackley had been in the Stevenson home after dropping Dino off at the residence
28 following a night of drinking. (See R.T. at 2282-83 and 2356-57.)

1 told him, as well. Petitioner had “hit” two rooms in the house and was in a third when
2 Stevenson interrupted him. Petitioner took a .22 caliber revolver from the house and shot
3 Stevenson in the back with a hollow-point bullet as Stevenson was running away from the
4 house. Stevenson fell on the front lawn. Petitioner escaped the area “down a brick wall
5 running on the back of” Stevenson’s house. His truck was idling, and he had a
6 conversation with a person outside the house at the wall’s end.

7 The defense elicited evidence that Jackley, his wife, and two of his acquaintances
8 were arrested in 1974 in connection with a robbery-murder in South Carolina. Jackley
9 admitted he had previously committed a burglary with one of these acquaintances but
10 denied involvement in the subsequent, separate killing. Similar to Petitioner’s case, one
11 of the South Carolina defendants allegedly confessed the killing to Jackley; an anonymous
12 call was made to police implicating that defendant; Jackley knew many details of the crime;
13 and Jackley had received stolen goods from those defendants. The South Carolina charges
14 against Jackley, however, were dropped after he testified for the prosecution against his
15 acquaintances. In addition, Jackley admitted to three other burglaries in which: (1) he
16 knew the victims; (2) the items taken were similar to those taken from the Stevenson house;
17 and (3) his fingerprints were not found in any of the houses. Based on these similarities,
18 Petitioner’s counsel argued that one could reasonably conclude that Jackley was the killer
19 and mastermind burglar in this case.³

20 At the penalty phase, the prosecution introduced Petitioner’s prior burglary
21 convictions from 1971, 1974, and 1976. In addition, the prosecution presented evidence
22 in aggravation that Petitioner raped a female newspaper carrier early in the morning in
23

24 ³ In response to this argument, the prosecution maintained that: (1) there was no evidence that
25 Jackley committed the murder in the prior similar case, much less evidence placing him at the crime scene
26 in this case; (2) there were numerous differences between the two theft/murders; (3) Petitioner never told
27 his coworkers Anderson and Lorenzi that Jackley participated in the theft and committed the murder; and
28 (4) Jackley turned in Dino’s watch which he found in Petitioner’s locker after Petitioner had attempted to
sell the watch to Anderson. (R.T. at 2521-27.)

In his direct appeal and his state and federal habeas proceedings, Petitioner has not asserted any
challenges in connection with Jackley’s trial testimony.

1 1985. Later that day, Petitioner boasted to a co-worker in vulgar language about having
2 sex with a woman after he robbed her.

3 In Petitioner's defense, members of his family, former neighbors, a psychologist, and
4 a psychiatrist testified about his traumatic childhood, which included severe sexual and
5 physical abuse by his stepmother. His stepmother often called Petitioner "a little bastard,"
6 and repeatedly beat him with sticks, belt buckles, and brushes. She threw him down a flight
7 of stairs with his hands tied. Sometimes, she chained him to a basement post for several
8 days, forced him to urinate and defecate in his underpants, and then beat him for that, as
9 well. She smeared his feces on his face, and held his hands over flames. She once pulled
10 his thumbs out of their sockets, and forced him to eat fruit preserves until he vomited.
11 Petitioner's father beat him, as well.

12 Dr. Lenore Walker, a licensed psychologist, testified to Petitioner's recounting of
13 abuse by his stepmother. According to Dr. Walker, the stepmother told Petitioner she
14 wanted him to look like a girl, so she dressed him in her daughter's panties and dresses, and
15 made him wash dishes. She tied a string around his penis, "pulling it back of him so that
16 you couldn't see he had a penis in front of him, and tying the penis to his waist and telling
17 him he looked better that way." *Id.* at 971. Dr. Walker continued the account of abuse:

18
19 . . . Then she moved into giving him enemas, using Vaseline and taking
20 a tampon, at first just a clean tampon, and then she would use her own soiled,
21 bloody tampons and insert them in his anus. . . . [¶] In addition, she would
22 make him insert tampons in her vagina so she was having him touch her as
23 well, and she would make him fondle her vagina area and have him lick her
24 vagina area so she could reach a climax. . . . [¶] She would also masturbate him
25 at that age - as he got older, some of it is progressing as he got older - between
26 the two-year period of time of 10 and 12, but not allow him to reach an orgasm.
27 When he was a little older and he would reach an orgasm, she would take the
28 semen and smear it all over his face and he would be punished for that. In
addition, in order to prevent him from reaching a climax, she would squeeze
his testicles, and he remembers that being done with great pain to him. Later
on, she would have intercourse with him and insert his penis in her vagina but
not allow him to reach an orgasm.

Id.

1 Eventually, Petitioner was taken from his family and lived in foster homes, mental
2 hospitals, a youth correctional facility in Nevada, and prison.

3 As Dr. Walker explained, Petitioner suffered from a variety of mental illnesses due
4 to this molestation and abuse, including schizophrenia and disassociation, which could best
5 be described as comparable to, but more severe than, post-traumatic stress syndrome. Dr.
6 Walker stated that Petitioner is very confused, with guilt feelings and a need to be punished.
7 She explained that his tendency to steal was not motivated by greed, but by a compulsion
8 he could not control. She reported that Petitioner had told her he would often wake up in
9 the middle of a burglary and not know what he was doing there.

10 John Cahill, a counselor at a Nevada youth camp where Petitioner had been
11 incarcerated, testified on Petitioner's behalf. He explained that Petitioner was a "pitiful
12 character" and tended to be easily manipulated and generally picked on. Id.

13 Dr. Ernest Noble, a psychiatrist employed by the California Department of
14 Corrections, testified that he had examined Petitioner in 1971 during one of his
15 incarcerations, and concluded that: "he had been brought up in a very highly chaotic home
16 environment. And I felt his stepmother was extremely vicious to him. I felt in some way
17 that she had set up a template in his head for prison or incarceration very early" Id.
18 Dr. Noble also observed that Petitioner's thumbs looked distorted, lending support for
19 Petitioner's description of abuse by his stepmother.

20 Dr. Stephen Wells, a clinical psychologist who examined Petitioner and reviewed his
21 records, described Petitioner's long history of abuse. Dr. Wells concluded: "Given the
22 nature, the prolonged administration and the severity of the mental, the physical, and the
23 sexual abuse, I would say that taken all together, it was almost an impossible group of
24 experiences to recover from. The physical abuse alone, which his stepmother admitted to
25 me when I saw her in Utah itself, was profound and extreme" Id. at 972. Dr. Wells
26 also testified that Petitioner suffered from severe emotional problems stemming from his
27 abuse.

1 Petitioner had two minor children. Petitioner's wife testified that he was a loving
2 father. Dr. John Selden, a clinical psychologist, testified he had been treating Petitioner's
3 five-year-old son for numerous behavioral problems. His son seemed very attached to
4 Petitioner. Petitioner's family was under great stress from medical and financial problems.
5 It was Dr. Selden's opinion that Petitioner was very concerned for his children's welfare.

6 **II. Federal Habeas Proceedings**

7 Petitioner filed his initial Petition in this case on October 10, 1997. Following a stay
8 of federal proceedings to allow Petitioner to exhaust new allegations in state court,
9 proceedings resumed in this Court and Petitioner filed an Amended Petition on December
10 7, 2004. Petitioner then filed the First Amended Petition on February 11, 2005, and
11 Respondent filed an Answer on August 30, 2005.

12 On June 13, 2007, this Court granted the parties' proposed briefing schedule
13 regarding the filing of a motion to dismiss based on non-exhaustion. According to that
14 briefing schedule, Respondent filed his Motion to Dismiss Claim JJ on September 10, 2007;
15 Petitioner filed his Opposition on October 9, 2007; and Respondent filed his Reply on
16 November 6, 2007. On July 18, 2009, the Court granted Respondent's Motion to Dismiss
17 Claim JJ, ordered that Petitioner delete Claim JJ or withdraw the FAP, and directed the
18 parties to follow the June 13, 2007 briefing schedule. On September 9, 2009, Petitioner
19 filed an Amended Petition ("AP") with Claim JJ deleted.

20 On September 25, 2009, Petitioner filed a Request seeking to modify the briefing
21 schedule in view of the fact that new counsel (the Federal Public Defender) recently had
22 been appointed to represent Petitioner. Following a review of the parties' requests regarding
23 briefing schedules, the Court conducted a Status Conference on October 8, 2009, and set a
24 briefing schedule on Respondent's procedural default motion. On January 5, 2011, after
25 reviewing the parties' briefing on Respondent's procedural default motion, the Court denied
26 the motion, except to the extent that Respondent asserted challenges based on counsel's
27 failure to object at trial (Claims H and N, and subparts of Claims K, S, and U), as to which
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1 it was denied without prejudice. While awaiting the parties' briefing schedule on discovery,
2 the Supreme Court decided Cullen v. Pinholster, ___ U.S. ___, 131 U.S. 1388 (2011).
3 Thereafter, the Court reviewed the parties' briefing regarding the impact of this case on
4 Petitioner's right for factual development or an evidentiary hearing, which closed on
5 January 12, 2012. On April 12, 2012, the Court found that, for each claim on which
6 Petitioner seeks an evidentiary hearing, he must demonstrate that the California Supreme
7 Court unreasonably applied clearly established federal law or unreasonably determined the
8 facts under 28 U.S.C. § 2254(d), solely based on the record before the California Supreme
9 Court.

10 After seeking a modification of the briefing schedule from the Court, Petitioner split
11 the briefing directed by the Court into guilt and penalty phase claims. In addressing the
12 guilt phase claims, Petitioner filed the Brief on December 21, 2012; Respondent filed his
13 Opposition on February 19, 2013; and Petitioner filed the Reply on April 12, 2013. The
14 briefing on the penalty phase claims closed on July 15, 2013.

15 In the Brief, Petitioner seeks to demonstrate a violation of § 2254(d) as to certain guilt
16 phase claims, such that he should be entitled to relief and/or an evidentiary hearing. (Br. at
17 2.) The Court now addresses the briefing on these guilt phase claims.

18 DISCUSSION

19 I. Standards

20 The amendments to 28 U.S.C. § 2254 effected by the Anti-Terrorism and Effective
21 Death Penalty Act of 1996 (AEDPA) governs the AP, because this case was filed after the
22 effective date of that statute. Woodford v. Garceau, 538 U.S. 202, 210 (2003). Under the
23 AEDPA, a state prisoner whose claim has been "adjudicated on the merits" cannot obtain
24 federal habeas relief unless that adjudication: "(1) resulted in a decision that was contrary
25 to, or involved an unreasonable application of, clearly established Federal law, as
26 determined by the Supreme Court of the United States; or (2) resulted in a decision that was
27 based on an unreasonable determination of the facts in light of the evidence presented in the
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1 State court proceeding.” 28 U.S.C. § 2254(d)(1) and (2). Because Petitioner’s claims in the
2 AP were adjudicated on the merits, he must satisfy either § 2254(d)(1) or § 2254(d)(2) in
3 order to obtain relief in this case.

4 Clearly established law, for purposes of § 2254(d)(1) review, means the Supreme
5 Court holdings in existence at the time of the state court decision in issue. Greene v. Fisher,
6 ___ U.S. ___, 132 S. Ct. 38, 44-45 (2011); Cullen v. Pinholster, ___ U.S. ___, 131 S. Ct.
7 1388, 1399 (2011); Harrington v. Richter, ___ U.S. ___, 131 S. Ct. 770, 785 (2011). Under
8 § 2254(d)(1)’s first prong, a state court decision is “contrary to” federal law if the state court
9 applies a rule that contradicts the relevant Supreme Court holdings or reaches a different
10 conclusion than that reached by the high court on materially indistinguishable facts. Price
11 v. Vincent, 538 U.S. 634, 640 (2003). Section 2254(d)(1)’s “unreasonable application”
12 second prong constitutes an objective standard that is not satisfied merely by finding that
13 a state court erred in applying clearly established law. Richter, 131 S. Ct. at 784; Lockyer
14 v. Andrade, 538 U.S. 63, 75 (2003). “The question . . . is not whether a federal court
15 believes the state court’s determination was incorrect but whether that determination was
16 unreasonable -- a substantially higher threshold.” Schriro v. Landrigan, 550 U.S. 465, 473
17 (2007); see also Xiong v. Felker, 681 F.3d 1067, 1074 (9th Cir. 2012) (holding that the state
18 court’s incorrect or erroneous determination is insufficient, because the § 2254(d)(1)
19 “inquiry is strictly limited to whether the state court’s application of clearly established
20 Supreme Court precedent” was objectively unreasonable), cert. denied, ___ U.S. ___, 133
21 S. Ct. 989 (2013).

22 In determining whether there has been an “unreasonable determination of the facts”
23 under § 2254(d)(2), the district court must review whether the “fact-finding process itself
24 is defective.” Milke v. Ryan, 711 F.3d 998, 1007 (9th Cir. 2013) (citing Taylor v. Maddox,
25 366 F.3d 992, 1000 (9th Cir. 2004)). A district court cannot uphold a determination of the
26 facts by the state court where there is a defect that causes the district court to “more than
27 merely doubt whether the process operated properly.” Id. (citing Taylor, 366 F.3d at 1000).

1 In addition, “[w]e have held that, ‘where the state courts plainly misapprehend or misstate
2 the record in making their findings, and the misapprehension goes to a material factual issue
3 that is central to petitioner’s claim, that misapprehension can fatally undermine the fact-
4 finding process, rendering the resulting factual finding unreasonable.’” Id. (citing and
5 quoting Taylor, 366 F.3d at 1001).

6 In applying these standards, the Court looks to the last reasoned state court decision
7 on the claim presented. See DeWeaver v. Runnels, 556 F.3d 995, 997 (2009). Here, the last
8 reasoned state court decision for some of the claims that were also raised in Petitioner’s
9 direct appeal is California Supreme Court’s decision on direct appeal. For those claims
10 where there is only a summary denial, “a habeas court must determine what arguments or
11 theories supported, . . . or could have supported, the state court’s decision; and then it must
12 ask whether it is possible fairminded jurists could disagree that those arguments or theories
13 are inconsistent with the holding in a prior decision of this Court.” Richter, 131 S. Ct. at
14 786; Pinholster, 131 S. Ct. at 1403. A federal court has the authority to issue habeas relief
15 only “where there is no possibility fairminded jurists could disagree that the state court’s
16 decision conflicts with [the Supreme Court’s] precedents.” Richter, 131 S. Ct. at 786.

17 “In deciding whether to grant an evidentiary hearing, a federal court must consider
18 whether such a hearing could enable an applicant to prove the petition’s factual allegations,
19 which, if true, would entitle the applicant to federal habeas relief.” Landrigan, 550 U.S. at
20 474 (citation omitted). “It follows that if the record refutes the applicant’s factual
21 allegations or otherwise precludes habeas relief, a district court is not required to hold an
22 evidentiary hearing.” Id.

23 In addition, before granting an evidentiary hearing on any claim, the Court shall
24 ascertain the reasonableness of the state supreme court’s decision under § 2254(d) based on
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1 the record that was before the state court that adjudicated the claim on the merits.⁴ See
2 Pinholster, 131 S. Ct. at 1398. The Court makes the § 2254(d) determination prior to
3 eliciting further evidence at an evidentiary hearing, because “evidence introduced in federal
4 court has no bearing on § 2254(d)(1) review.”⁵ Id. at 1400. As the Supreme Court further
5 observed in Pinholster, “[a]lthough state prisoners may sometimes submit new evidence in
6 federal court, AEDPA’s statutory scheme is designed to strongly discourage them from
7 doing so.” Id. at 1401.

8 To determine whether the state court violated § 2254(d) based on the record that was
9 before it, the Court must look to the California procedures for handling habeas petitions,
10 which requires the state court to issue an order to show cause when a petitioner makes out
11 a prima facie case for relief on a claim. Id. at 1402 n.2. The California Supreme Court has
12 explained that a petitioner has alleged a prima facie case for relief where the claim is
13 “sufficient on its face,” such that, assuming the factual allegations in the petition to be true,
14 the claim “states facts that . . . entitle the petitioner to relief.” People v. Duvall, 9 Cal. 4th
15 464, 474-75 (1995). Nevertheless, “conclusory” allegations do not suffice to state a prima
16 facie case for relief, which includes instances where the petitioner either failed to “provide
17 any explanation of the basis for the allegations” or failed to state “fully and with
18 particularity the facts on which relief is sought.” Id. at 474.

19 In deciding whether the state court applied correct legal principles in an objectively
20 unreasonable way, the district court must analyze the state court’s method, as well as its
21 result. Nunes v. Mueller, 350 F.3d 1045, 1054 (9th Cir. 2003) (citations omitted)). In
22 Nunes, the Ninth Circuit determined that the state court’s rejection of the petitioner’s claim
23 was unreasonable under both § 2254(d)(1) and (2). Id. First, because the petitioner had

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25 ⁴ Respondent does not contend that Petitioner seeks to rely upon evidence that was not before
the state court in the present briefing. (See Opp. at 23-24.)

26 ⁵ Although Pinholster specifically addressed the application of § 2254(d)(1), it further noted
27 that, based on the explicit language of § 2254(d)(2), the consideration of federally-developed evidence is
also precluded as to a § 2254(d)(2) determination. Id. at 1400 n.7.

1 made a prima facie claim for ineffective assistance, taking the petitioner's allegations at face
2 value (i.e., that his attorney gave him the wrong information and advice about the state's
3 plea offer and, if he had been accurately informed, he would have taken the plea bargain),
4 the state court should have afforded him an evidentiary hearing. Id. at 1054-55. Second,
5 the state court's findings viewed as a factual determination were in error, given that the state
6 court had gone well beyond its task of assessing the allegations for sufficiency and had
7 made improper credibility determinations without providing an evidentiary hearing. Id. at
8 1055. However, in Nunes, the Ninth Circuit noted that, "there may be instances where the
9 state court can determine without a hearing that a criminal defendant's allegations are
10 entirely without credibility or that the allegations would not justify relief even if proved."
11 Id. at 1053-54.

12 In describing the instances when an evidentiary hearing is necessary in federal habeas
13 proceedings, the Ninth Circuit has further explained that "[t]o find the state court's fact
14 finding process defective [under § 2254(d)(2)] in a material way, or, perhaps completely
15 lacking, 'we must more than merely doubt whether the process operated properly. Rather,
16 we must be satisfied that any appellate court to whom the defect is pointed out would be
17 unreasonable in holding that the state court's fact-finding process was adequate.'" Hurles
18 v. Ryan, 706 F.3d 1021, 1030 (9th Cir. 2013) (citing Taylor, 366 F.3d at 1000). In Hurles,
19 the Ninth Circuit remanded the case for an evidentiary hearing on the issue of the state court
20 judge's failure to recuse herself in view of the state court's rendering of factual findings
21 denying the petitioner's judicial bias claim without an evidentiary hearing or other
22 opportunity to present evidence. 706 F.3d at 1038-39. Accordingly, such factual findings
23 of the state court were not entitled to the "cloak" of the "presumption of correctness" under
24 § 2254(e)(1). Id. at 1038. The Ninth Circuit further reasoned that an evidentiary hearing
25 was required, where the habeas petitioner had not failed to develop the factual basis of his
26 claim in state court under 28 U.S.C. § 2254(e)(2), and: (1) the petitioner has demonstrated
27 his entitlement to an evidentiary hearing pursuant to Townsend v. Sain, 372 U.S. 293, 313

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(1963); and (2), the allegations, if true, would entitle him to relief. *Id.* at 1039 (citation omitted). Under *Townsend*, a federal court must conduct an evidentiary hearing when: (1) the state court's factual determinations are not fairly supported by the record as a whole; and (2) the fact-finding procedure used by the state court was not adequate to afford a full and fair hearing. *Id.* (citing *Townsend*, 372 U.S. at 313). Because the petitioner's allegation of judicial bias would, if proved, entitle him to federal habeas relief, the Ninth Circuit held that the district court had abused its discretion in denying the claim without conducting an evidentiary hearing. *Id.* (citing *Stanley v. Schriro*, 598 F.3d 612, 617 (9th Cir. 2010)).

To the extent that Respondent contends that some of these claims are procedurally barred, the Court notes that it maintains authority to resolve any claim on the merits rather than addressing whether it is procedurally barred. *Lambrix v. Singletary*, 520 U.S. 518, 524-25 (1997) (finding that a court can elect against deciding a procedural bar issue when a claim can be readily resolved on the merits).

II. Ineffective Assistance Claims

Petitioner seeks an evidentiary hearing in connection with his ineffective assistance of counsel claims in Claims G and L. (Br. at 25-83.) Specifically, in Claim G, Petitioner alleges that his counsel failed to adequately investigate and present a defense that an accidental/unintentional shooting occurred while Petitioner was acting in self-defense, and challenge the prosecution's theory of an intentional shot to the resident's back while he was fleeing (Br. at 25-50; AP at 59-73); and in Claim L, Petitioner alleges that his counsel failed to investigate and present evidence of Petitioner's mental state, given that he suffered from organic brain damage ("OBD") and other serious mental illnesses at the time of the offenses (Br. at 51-83; 109-30).

The Sixth Amendment to the United States Constitution guarantees the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Ineffective assistance of counsel claims are analyzed pursuant to the standard set forth in *Strickland*, which constitutes "clearly established Federal law, as determined by the Supreme Court of

1 the United States,” for purposes of federal habeas review of an ineffective assistance claim.
2 Bell v. Cone, 535 U.S. 685, 698 (2002); Dows v. Wood, 211 F.3d 480, 484 (9th Cir. 2000).

3 To prevail on his ineffective assistance of counsel claims, Petitioner must demonstrate
4 that: (1) his counsel’s performance was deficient; and (2) the deficient performance
5 prejudiced his defense. Strickland, 466 U.S. at 688-93. See also Yarborough v. Gentry, 540
6 U.S. 1 (2003) (per curiam) (stating that the Sixth Amendment right “is denied when a
7 defense attorney’s performance falls below an objective standard of reasonableness and
8 thereby prejudices the defense”). As both prongs of the Strickland test must be satisfied in
9 order to establish a constitutional violation, a failure to satisfy either prong requires that a
10 petitioner’s ineffective assistance claim be denied. Strickland, 466 U.S. at 697 (finding no
11 need to address deficiency of performance if lack of prejudice is obvious); Williams v.
12 Calderon, 52 F.3d 1465, 1470 (9th Cir. 1995) (same); Siripongs v. Calderon, 133 F.3d 732,
13 737 (9th Cir. 1998) (finding no need to address prejudice when petitioner cannot establish
14 deficient performance).

15 The first prong of the Strickland test -- deficient performance -- requires a showing
16 that counsel’s performance was “outside the wide range of professionally competent
17 assistance.” Strickland, 466 U.S. at 690. The relevant inquiry under Strickland is not what
18 defense counsel could have done, but whether counsel’s choices were reasonable. See
19 Babbitt v. Calderon, 151 F.3d 1170, 1173 (9th Cir. 1998); see also Wiggins v. Smith, 539
20 U.S. 510, 511 (2003) (stating that the issue is “not whether counsel should have presented
21 a mitigation case,” but whether “the investigation supporting counsel’s decision not to
22 introduce mitigating evidence . . . *was itself reasonable*”; emphasis in original).

23 Due to the difficulties inherent in making the above-described evaluation, there is a
24 strong presumption that counsel’s conduct falls within the wide range of reasonable
25 professional assistance. Strickland, 466 U.S. at 689; see also Bell, 535 U.S. at 702 (holding
26 that a habeas court “must indulge” in this “strong presumption” because “it is all too easy
27 to conclude that a particular act or omission of counsel was unreasonable in the harsh light
28

1 of hindsight"). Petitioner must "overcome the presumption that, under the circumstances,
2 the challenged action might be considered sound trial strategy." Strickland, 466 U.S. at 689
3 (internal quotation marks and citation omitted); see also Bell, 535 U.S. at 698 (finding that,
4 even if an ineffective assistance claim is not subject to § 2254(d)(1) deference, the petitioner
5 still must overcome the presumption that counsel's conduct might be considered sound trial
6 strategy); Murtishaw v. Woodford, 255 F.3d 926, 939 (9th Cir. 2001) ("The defendant bears
7 the heavy burden of proving that counsel's assistance was neither reasonable nor the result
8 of sound trial strategy.").

9 The second prong of the Strickland test -- prejudice -- requires a showing of a
10 "reasonable probability that, but for counsel's unprofessional errors, the result of the
11 proceeding would have been different." Strickland, 466 U.S. at 694. A reasonable
12 probability is a probability "sufficient to undermine confidence in the outcome." Id.; see
13 also Woodford v. Visciotti, 537 U.S. 19, 22 (2002).

14 For a petitioner to succeed on an ineffective assistance of counsel claim in a § 2254
15 proceeding, the "pivotal question is whether the state court's application of the Strickland
16 standard was unreasonable[; t]his is different from asking whether defense counsel's
17 performance fell below Strickland's standard." Richter, 131 S. Ct. at 785. Thus, the criteria
18 created by Strickland, when applied in combination with the AEDPA, amount to a standard
19 of double deference. Id. at 788.

20 The precise question posed by Claims G and L is whether counsel's investigation and
21 presentation of evidence in connection with Petitioner's theory of self-defense and his
22 mental state was constitutionally inadequate and, if so, whether Petitioner's defense was
23 thereby prejudiced. In describing the standards counsel must undertake in conducting an
24 adequate investigation, the Supreme Court has explained:

25
26 . . . [S]trategic choices made after thorough investigation of law and
27 facts relevant to plausible options are virtually unchallengeable; and strategic
28 choices made after less than complete investigation are reasonable precisely to

1 the extent that reasonable professional judgments support the limitations on
2 investigation. . . . Counsel has a duty to make reasonable investigations or to
3 make a reasonable decision that makes particular investigations unnecessary.
4 In any ineffectiveness case, a particular decision not to investigate must be
5 directly assessed for reasonableness in all of the circumstances, applying a
6 heavy measure of deference to counsel's judgments.

7 . . . [W]hen the facts that support a certain potential line of defense are
8 generally known to counsel because of what the defendant has said, the need
9 for further investigation may be considerably diminished or eliminated entirely.
10 And when a defendant has given counsel reason to believe that pursuing
11 certain investigations would be fruitless or even harmful, counsel's failure to
12 pursue those investigations may not later be challenged as unreasonable.

13 Strickland, 466 U.S. at 690-91. A court must consider the objective reasonableness of the
14 decision in light of all the circumstances under the prevailing norms in assessing counsel's
15 investigative choices. Wiggins, 539 U.S. at 521-23.

16 **A. Counsel's Failure to Investigate and Present Evidence of an Unintentional**
17 **Shooting by Petitioner in Self-defense**

18 In Claim G, Petitioner alleges that his counsel provided ineffective assistance of
19 counsel by failing to: (1) investigate and present evidence that an accidental and
20 unintentional shooting occurred by Petitioner while acting in self-defense; and (2) challenge
21 the prosecution's theory of an intentional shot to Stevenson's back while he was fleeing.
22 (Br. at 26.) Specifically, Petitioner contends that, "[t]his case is really about an unarmed
23 daytime home intruder who was discovered unexpectedly by one of the residents returning
24 home – a young healthy man who grabbed his own rifle and proceeded to attack." (Id. at
25 25.) According to Petitioner, a struggle ensued and Stevenson was fatally shot with one of
26 the guns kept in his house. (Id. at 26.)

27 Petitioner notes that both the theory offered by the prosecution and the defense had
28 to account for the pathologist's testimony that the bullet entered Stevenson's back at a 45
degree upward angle. (Id. at 27.) Petitioner contends that trial counsel was deficient, in that
they failed to offer little evidence to prove their theory, aside from a life-sized dummy (also
used by the prosecution) to demonstrate the possible relative positions of the victim and

1 intruder. (Id. at 31.) However, in addition to the life-sized dummy, the prosecution used
2 a laser beam to reconstruct the “string test,” which allegedly followed the door-to-car
3 trajectory. (Id. at 32.) The prosecution further argued that there was evidence of an
4 “indentation” in the front yard created by Stevenson’s knee as he fell and an area of “pulled
5 up grass” next to it in the path of the door-to-car trajectory. (Id.)

6 Specifically, Petitioner contends that counsel failed to investigate and present
7 evidence refuting the prosecution’s explanation for the 45 degree upward angle, which they
8 did not challenge or investigate. (Id. at 33.) If an appropriate investigation had been
9 undertaken, Petitioner contends that counsel could have discovered: (1) evidence
10 suggesting the high improbability that Stevenson was running across the yard bent at a 45
11 degree angle, as maintained by the prosecution; (2) evidence indicating the unlikeliness
12 that the “indentation” in the yard or the “pulled up grass” was caused by Stevenson fleeing;
13 (3) the “indentation” was not underneath the door-to-car trajectory; and 4) the .22 single
14 action Ruger revolver thought to have been the murder weapon could have fired a shot
15 without the hammer being manually cocked if it were dropped onto the floor. (Id. at 34.)
16 Petitioner further argues that counsel inadequately failed to use existing evidence (gunshot
17 residue (GSR) or Stevenson’s clothing) to challenge the state’s theory, or test key evidence,
18 in order to show that Stevenson aggressively attacked the intruder and also struggled with
19 the intruder over the revolver when it fired or fired his own rifle during the struggle. (Id.)

20 In his post-conviction proceedings, Petitioner presented the declaration of Devinder
21 Grewel, an expert in gun handling, in support of Petitioner’s assertion that the Ruger
22 handgun had to be manually cocked before it could fire. In his declaration, Grewel states
23 that the Ruger could have fired, “assuming the gun was not retrofitted with a safety interlock
24 on the firing pin,” even if the gun had not been cocked, “if the weapon were dropped on the
25 floor or knocked into a wall or even if it hit someone’s head.” (Ex. 2, Grewel Decl., ¶ 34.)
26 In order to refute the prosecution’s assertion that the victim was shot while fleeing from his
27 home, Petitioner presented evidence suggesting that it would be implausible for an untrained
28

1 person to flee danger in a bent position. (*Id.*, 16; Ex. 1, Toby Gloekler Decl., ¶¶ 15, 17.)
2 Petitioner further points to the evidence of low levels of GSR found of the victim's hands
3 that counsel should have used to support the defense argument that the victim was shot after
4 aggressively attacking the intruder and struggling with him. (Ex 1, Gloecker Decl., ¶ 22
5 (stating that GSR on the victim's hands suggests that the victim's hands were in the vicinity
6 of a .22 pistol when it was discharged).)

7 In addition, in order to refute the evidence elicited from Detective Jensen using a
8 string to depict the possible trajectory of the bullet and his testimony suggesting that
9 Stevenson's fall caused a disturbance of the grass and nearby indentation, Petitioner
10 presented evidence in his post-conviction proceedings indicating that: (1) it was highly
11 improbable that the indentation on the lawn was created by Stevenson falling due to the lack
12 of force from the fall and the victim's clothing; (2) it was improbable that the victim had
13 pulled up the grass with a hand after his knee impacted the ground; and (3) the indentation
14 and pulled up grass were two to three feet away from the prosecution's door-to-car trajectory
15 path. (Ex. 2, Grewel Decl., ¶¶ 23-27 (finding that the indentation in the grass could not have
16 been caused by the victim's knee falling on it), ¶¶ 28-33 (finding that a person would not
17 naturally put a hand on the ground by his knee in order to get up); Ex. 1, Gloeckler Decl.,
18 ¶¶ 18-20 (stating that neither the victim's pants nor shoes support the idea that his knee
19 made the indentation); Ex. 7 (Grewel's Diagram indicating that the indentation was two to
20 three feet away from the screen door to car trajectory); Ex 8, Randy Peterson Decl., ¶ 2
21 (stating that the stains on the victim's pants were consistent with stains he would have
22 received during the course of the heating and air conditioning installation assignment
23 Peterson had given the victim on the day of his death), ¶ 4 (stating that Tony had guns, was
24 quick, and would not back down if cornered).)

25 In rejecting Petitioner's challenge to the prosecution's theory that Stevenson was shot
26 while fleeing from Petitioner on direct appeal, the last reasoned state court decision this
27 issue, the California Supreme Court stated:

1 Respondent contends the victim was shot in the back while fleeing from
2 defendant, who was in the act of burglarizing the victim's home. [Petitioner]
3 contends that there is no credible evidence of where the victim was when he
4 was shot. [Petitioner] points to testimony by the prosecution's pathologist that
5 he could not state "the exact position the gun was in when the gun was fired
6 or the exact position the deceased was in when the gun was fired." [Petitioner]
7 seems to suggest that the victim may have been shot inside the house rather
8 than outside on the lawn and that, if he was shot inside, that fact would support
9 the theory of a struggle with [Petitioner], which might negate specific intent.
10 The evidence at least equally, however, also supports the inference sought by
11 the prosecution. [Petitioner's] contention is also beside the point. The
12 evidence showed the victim as shot in the back from a distance of at least two
13 feet. This plainly supports an inference that he was shot while fleeing.

14 Respondent contends the fatal shot pierced the victim's heart. To be
15 sure, the precise location of the internal wound does not by itself necessarily
16 establish that [Petitioner] aimed for the victim's heart or that he intended to
17 kill, but this evidence does at least permit that inference. That is sufficient.
18 Moreover, the far more persuasive fact is that the victim was shot in the back
19 in the area of the heart. Evidence the bullet pierced the heart added little to the
20 prosecution's case.

21 Beeler, 9 Cal. 4th at 985-86.

22 In addition, in connection with the bullet and trajectory evidence and the lawn
23 disturbance, the California Supreme Court found that:

24 Although the evidence does not mandate the inferences on which
25 respondent relies, it does permit those inferences. The fact there was only one
26 bullet hole in the screen door does not necessarily refute the inference that both
27 shots were fired from inside the house. One of the shots could have been fired
28 while the door was open or while the shooter was perhaps standing in the
29 doorway. Trajectory testing showed that "It was consistent for someone to
30 have fired a weapon inside the residence, have a clear line of fire and hit the
31 car out in front of the residence." This clearly permits the inference that at
32 least one shot was fired from inside the residence. Moreover, in connection
33 with that same test, police found in the front lawn an indentation directly
34 underneath the string used to measure the trajectory, "A rounded portion
35 where it appeared something had fallen down, possibly a knee, right into the
36 lawn underneath the string. And then right next to the indentation, the rounded
37 portion, there was a disturbance where the grass had actually been pulled up."
38 The lawn indentation permitted the inference the victim was shot and fell in the
39 line of trajectory from the house to the car. This, in turn, would support the
40 inference that both shots were fired from the same location, i.e., from inside the
41 house. Moreover, the bullet retrieved from the victim's body could have been
42 fired from the revolver, and the bullet from the car was the same type of
43 projectile as the bullet retrieved from the victim's body. The foregoing
44 evidence taken as a whole clearly permits the inferences that two shots were
45 fired from the revolver and that they were both fired from inside the house.
46 Most important, the dispute over how many shots were fired from which
47 weapon and from what location is largely beside the point. At a bare
48 minimum, the record supports inferences that defendant fired two shots, one

1 of which struck the victim in the back.

2 Id. at 985.

3 Here, Petitioner cannot allege a colorable claim that his counsel was deficient in
4 failing to make the above additional arguments that an unintentional shooting occurred
5 while Petitioner was acting in self-defense. At trial, counsel argued at length to the jury that
6 Stevenson was shot during a struggle that occurred after the victim returned home to find
7 an unarmed intruder. (R.T. at 2468-71 (arguing that Stevenson was shot accidentally during
8 a struggle based facts showing that: the rifle was already loaded and left in the hall in line
9 with the bullet hole door and car; there were fibers on Stevensons's
10 hands from an unknown origin; and the angle of the bullet suggests that the shooter could
11 have been on the ground.) Counsel further argued that Jackley and Petitioner committed the
12 burglary together, and Jackley, not Petitioner, was the shooter. (R.T. at 2477-2506 (arguing
13 that the neighbors identified two different intruders; Petitioner's actions suggested that he
14 was not present when the shooting occurred; the prosecution inexplicably failed to call
15 Jackley as a witness; and Jackley had previously participated in similar crimes with a partner
16 where Jackley knew the victims and then attempted to blame his partner.)

17 Nevertheless, the prosecution put forth damning evidence against Petitioner,
18 including: Petitioner's finger print that was found in a bedroom in the Stevenson home;
19 testimony provided by Stevenson's neighbor Floyd Raney, identifying Petitioner as being
20 in the neighborhood near the time of the murder; items taken during the burglary that were
21 found in Petitioner's locker; Jackley's testimony that Petitioner confessed to him that he
22 shot Stevenson while Stevenson was running away from his home; and testimony from two
23 other co-workers, Jim Anderson and John Lorenzi, that Petitioner asked them whether they
24 would shoot the owner of a home if they were burglarizing the home and the owner came
25 home during the burglary. (See R.T. at 2431-32, 2445, 2452-53.) Given the evidence
26 presented at trial, counsel's arguments to the jury constituted a valid, strategic way to
27 interpret the evidence in Petitioner's favor.

Moreover, for the reasons stated by the California Supreme Court, the evidence plainly supported the inference that Stevenson was shot in the back in the area of the heart while he was fleeing from his home. This evidence sufficed to support the jury's conclusion that Petitioner shot Stevenson while he was fleeing, and intended to kill him. In addition, the California Supreme Court reasonably concluded that, regardless of how many shots were fired from which weapon and from what location, the evidence supported an inference that two shots were fired from the revolver and that they were both fired from inside the house. Petitioner's argument that counsel was deficient in not advancing any additional arguments regarding the firing of the gun is unavailing. The evidence Petitioner submitted from the experts is speculative, at best, as to whether the gun could have been fired without being cocked. It could be, as Respondent suggests, that counsel made a strategic decision not to challenge the evidence regarding the firing of the Ruger handgun, the likely murder weapon which had not been recovered, as it could have emphasized to the jury that the weapon probably had been stolen by Petitioner. Jennings v. Woodford, 290 F.3d 1006, 1014 (9th Cir. 2002) (finding that counsel have considerable latitude to make strategic decisions). In addition, eliciting further evidence to suggest that Stevenson aggressively attacked Petitioner as the intruder could have back-fired, as the jury could have viewed it as assailing the victim.⁶ Brown, 530 F.3d at 1036 (finding that counsel's failure not to cross-examine an expert where such a cross-examination might have backfired was not deficient performance).

Furthermore, Petitioner's allegations that his counsel was deficient for failing to elicit any expert evidence of biomechanics regarding Stevenson's body position are without merit. As Petitioner concedes, counsel did present evidence at trial to show that the victim could have been shot during a struggle while the shooter was on the ground. (Br. at 31, Ex. 12-J;

⁶ Because Petitioner cannot allege deficient performance based on his counsel's failure to adequately investigate and present a self-defense theory, it is unnecessary to address Respondent's additional arguments that this defense was not available to him under the circumstances of this case pursuant to California law. (See Opp. at 39.)

1 R.T. at 2471.) Neither one of Petitioner's post-conviction experts put forth testimony
2 proving that the victim held his body in a specific position as he ran or that he was in a
3 specific position when he was shot. The evidence at trial more than supported the finding
4 that Stevenson did in fact run at an angle (whether it was an angle of 45 degrees or 49
5 degrees). Stevenson could have been in this position unconsciously or in a conscious effort
6 to avoid being shot, or could have been stumbling or falling while running across the lawn.
7 The additional expert evidence Petitioner proffered in his post-conviction proceedings
8 would have added little, if anything, to this determination. See also, e.g., Wong v.
9 Belmontes, 558 U.S. 15, 22 (2009) (reasoning that counsel is not ineffective for failing to
10 present cumulative evidence).

11 Thus, Petitioner has not overcome the "doubly deferential" standard required under
12 Strickland and § 2254(d) to show that the California Supreme Court's rejection of this claim
13 was objectively unreasonable.

14 **B. Counsel's Failure to Investigate and Present Evidence of Petitioner's**
15 **Mental Health Defects**

16 In Claim L, Petitioner alleges that his counsel was ineffective because they failed to
17 adequately challenge the intent to kill evidence with evidence pertaining to Petitioner's
18 mental state. (Br. at 157-92; AP at 109-29.) Specifically, Petitioner contends that, although
19 counsel were alerted to the likelihood that Petitioner suffered from organic brain damage
20 (OBD) and other serious mental illnesses, they failed to consult with medical experts in
21 order to adequately investigate the OBD and other mental illnesses. (Br. at 157-59.) Such
22 evidence could have shown that Petitioner lacked the capacity to form the requisite intent.
23 (Id.)

24 At trial, after presenting expert testimony regarding Petitioner's mental state,
25 Petitioner's counsel requested a continuance for an expert to further evaluate the findings
26 rendered by his various mental health experts because there was "something terribly wrong
27 with [Petitioner's] brain" that could be relevant in the guilt and special circumstance
28

1 determination. (R.T. at 3300.) The trial court denied the request, explaining that the
2 evidence from medical professionals indicated that Petitioner was functioning “in the
3 normal range of intelligence” during the trial, and “we were all privy to the facts of his
4 conduct and how he was functioning at the time surrounding the event.” (R.T. at 3303.)
5 The trial court further stated that there was no mental health expert who could further
6 illuminate the issue, and recognized that counsel had not been dilatory or incompetent in
7 pursuing such information. (R.T. at 3305.)

8 In connection with these allegations, Petitioner’s counsel explored and presented
9 significant expert and other evidence. (Ex. 21 (May 27, 1993 Stephen Wells, J.D., Ph.D.
10 Decl., stating that he told Tom Gleim, a private investigator for the defense, that Petitioner
11 had reported auditory and visual hallucinations to him in October 1986, and recommended
12 in January 1987 that Petitioner undergo a “highly sophisticated mental health evaluation to
13 alleviate his distress.”); Ex. 22 (May 21, 1993 Gleim Decl., stating that Petitioner had told
14 him in 1987 that he would “wake up” during a burglary and he had no recollection of the
15 woman who had charged him with rape); Ex. 23 (May 25, 1993 Lenore Walker, Ed. D.
16 Decl., stating that, prior to the guilt phase, she recommended Petitioner to be evaluated for
17 neurological damage, given his reports of black-outs and background of severe abuse); Ex.
18 35 (June 1, 1993 Arnold Starr, M.D. Decl., stating that, based on his neurological
19 examination of Petitioner, he diagnosed him with mental retardation with schizophrenia and
20 recommended counsel to obtain an MRI and PET scan in order to discover any structural
21 defect in Petitioner’s brain); Ex. 36 (June 1, 1993 Monte Buchsbaum, M.D. Decl., stating
22 that, on February 15, 1989, he performed an EEG and PET scan on Petitioner; the results
23 were abnormal and indicated that Petitioner suffered from brain damage or dysfunction and
24 were consistent with head injury, schizophrenia, mental retardation, diminished capacity and
25 poor judgment; and he did not testify, as counsel had informed him that “the judge did not
26 care about medical evidence”; Ex. 37 (April 24, 1993 John Mazziotta, M.D., Ph.D. Decl.,
27 stating that counsel had called in order to obtain an opinion as to Petitioner the next day,

1 which was insufficient time for Dr. Mazziotta to render an opinion; he did not recall
2 reviewing any documentation; and he would not have rendered an opinion as to whether
3 Petitioner's brain damage affected his planning, judgment or ability to control his conduct.)

4 However, evidence obtained from experts well after the trial suggests that Petitioner
5 suffers from some form of brain damage and indicate more severe diagnoses. (Ex. 38 (June
6 11, 1993 Jonathan Pincus, M.D., Decl., stating that he "is convinced that [Petitioner] has
7 brain damage," and that "[b]rain damage can reduce the inhibiting controls that are normally
8 utilized to dampen anti-social impulses"; Petitioner experienced "blank episodes" which
9 could be "disassociative episodes or seizures"; an EEG should be performed in order to
10 make a diagnosis of epilepsy; and the records of Petitioner's son suggest that Petitioner may
11 suffer from a seizure disorder and further support the need for an EEG); June 25, 1993
12 Stephen Marmer, M.D., Ph. D. Decl., stating that Petitioner suffers from multiple personality
13 disorder; "[Petitioner's] host personality does not have control over the conduct of his
14 alternate personalities and generally suffers from a blackout while alternate personalities are
15 present"; and at the time of Stevenson's death, "it is highly probably [sic] that [Petitioner's]
16 host personality was not available and was not co-conscious.".)

17 In rejecting these allegations on direct review, the last reasoned state court decision
18 addressing this claim, the California Supreme Court held:

19 [Petitioner] contends the record ". . . is replete with references
20 demonstrating that counsel had sufficient indications of brain damage to
21 warrant an investigation [of his neurological health] at least by the time of
22 [Petitioner's] penalty phase trial." [Petitioner] points to the testimony of two
23 of [Petitioner's] penalty phase witnesses that he claims should have triggered
24 this inquiry. We are not persuaded.

25 Dr. Lenore Walker, a forensic psychologist, testified [Petitioner]
26 suffered from disassociation, i.e., events of memory loss or unawareness of
27 what he was doing. Dr. Stephen Wells, another psychologist, also testified ".
28 . . there appears to be a very much an element of what is called dissociation
[sic] involving memory consciousness, a person is – person's awareness of
what he is doing." The psychologists did not testify that they suspected any
organic brain damage. Nothing in the record supports a conclusion that
evidence of memory loss and disassociation should have alerted counsel to a
need for neurological testing for organic brain damage. Nor did [Petitioner's]
own psychologists testify that such testing was needed.

1 Dr. Walker also testified that, when [Petitioner] was a child he was
2 subjected to terrible physical, emotional, and sexual abuse by his stepmother.
3 A childhood neighbor testified likewise, recounting among other things an
4 incident in which [Petitioner] was pushed down a flight of stairs. [Petitioner]
5 points to his long history of mental health problems' and contends this history
6 should have triggered some investigation into a possible neurological link to
7 those problems. Again, nothing in the record supports the conclusion that
8 [Petitioner's] terrible childhood and prior diagnoses supported an inference of
9 organic brain damage that would warrant neurological testimony.

10 In short, the record does not support [Petitioner's] contention that the
11 evidence at trial should have caused his counsel to seek neurological testing.

12 9 Cal. 4th at 1007. Petitioner's allegations were denied on the merits on habeas review, as
13 well.

14 In addressing whether counsel inadequately failed to investigate and discover
15 significant mitigating evidence pertaining to the petitioner's brain function in Rompilla v.
16 Beard, 545 U.S. 374, 379-80 (2005), the Supreme Court found that it was insufficient for
17 counsel to simply rely on the statements of the petitioner and his family that there was no
18 mitigating evidence. In Rompilla, counsel's failure to investigate the petitioner's prior
19 conviction file for rape and assault fell below the level of reasonable performance, given
20 that counsel knew that the prosecution intended to prove that the petitioner had a history of
21 violent felony convictions. Id. at 383-84. Moreover, the file that counsel failed to
22 adequately review contained evidence suggesting that the petitioner suffered from
23 schizophrenia and other disorders that left him with severe cognitive deficits, as well as
24 evidence of a highly abusive home life. Id. at 390-91. The Supreme Court held that
25 counsel's actions constituted ineffective assistance, because the jury might have reached
26 a different conclusion had counsel presented this evidence, rather than the "few naked pleas
27 for mercy" that the jury heard. Id. at 393.

28 More recently, the Supreme Court in Pinholster addressed ineffective assistance
claims based on the failure to investigate mental health mitigation evidence in a capital case.
131 S. Ct. at 1391. There, the petitioner's counsel conceded before the penalty phase began
that he had not prepared "to offer anything by way of mitigation." Id. at 1395. At the

1 penalty phase, the prosecution presented evidence from eight witnesses who testified about
2 the petitioner's history of threatening and violent behavior. Id. at 1396. The defense called
3 only one witness, the petitioner's mother, who testified about the petitioner's troubled
4 childhood and adolescent years and described the petitioner as a "perfect gentleman." Id.
5 At the request of the defense prior to the penalty phase, Dr. John Stalberg examined the
6 petitioner and diagnosed him with "antisocial personality disorder," and found that the
7 petitioner "was not under the influence of extreme mental or emotional disturbance" at the
8 time of the murders. Id.

9 The California Supreme Court eventually denied Pinholster's ineffective assistance
10 claim on the merits in a state habeas petition that was supported with school, medical, and
11 legal records, and declarations showing that the petitioner suffered from bipolar mood
12 disorder and seizure disorders. Id. On federal habeas review, the district court granted
13 relief after an evidentiary hearing in which the petitioner elicited additional mitigating
14 evidence, including evidence from two new medical experts who found that the petitioner
15 suffered from partial epilepsy and brain injury. Id. at 1397. The Ninth Circuit ultimately
16 affirmed that decision in an en banc decision, holding that the district court could consider
17 new evidence in determining whether the California Supreme Court's decision was
18 "contrary to, or involved an unreasonable application of, clearly established Federal law"
19 under § 2254(d)(1). Id. at 7. The Supreme Court ultimately held that Pinholster failed to
20 show that the California Supreme Court unreasonably applied federal law in deciding that
21 his trial court's performance was not deficient. Id. at 1403. The Supreme Court reasoned
22 that counsel could have had a strategic reason for presenting the testimony of his mother,
23 based on the "family sympathy" defense in order to create sympathy, not for the petitioner,
24 but for his mother. Id. at 1404-05. The Supreme Court further explained that this decision
25 was reasonable, because counsel was challenged at the penalty phase with an unsympathetic
26 client who seemed to "glorify" his "hundreds of robberies," which limited their feasible
27 mitigation strategies. Id. at 1405. It further noted that Dr. Stalberg, the defense trial expert,

1 was aware of the petitioner's hyperactivity as a youngster and his hospitalization at age 14
2 for alleged epileptic disorder, among other things, and nevertheless informed counsel that
3 the petitioner did not suffer from brain damage and did not have an impaired ability to
4 appreciate the criminality of his conduct. Id. Thus, the judgment of the Ninth Circuit was
5 reversed. Id. at 1411.

6 Here, Petitioner cannot show that the California Supreme Court unreasonably denied
7 this claim. The evidence Petitioner presented suggested that counsel was diligent in having
8 Petitioner evaluated for possible brain damage. Dr. Starr performed a neurological exam
9 on Petitioner, and recommended that counsel obtain a PET scan.⁷ (Ex. 35.) Dr. Buchsbaum
10 stated that, at the request of counsel, he conducted an EEG and PET on Petitioner on
11 February 15, 1989, and thereafter discussed the results with counsel. (Ex. 36.) Although
12 Dr. Buchsbaum found Petitioner suffered from brain damage or dysfunction that was
13 "consistent with" head injury, schizophrenia, mental retardation, diminished capacity and
14 poor judgment, Dr. Buchsbaum's declaration does not provide a definitive diagnosis or
15 indicate that Petitioner lacked the intent to commit the crimes with which he was charged.

16 In addition, the evidence indicates that counsel was aware of Petitioner's reported
17 black-outs and memory lapses, and thoroughly investigated them. Based on Petitioner's
18 reports to Gleim and Dr. Wells, Dr. Walker was retained and provided testimony at trial that
19 Petitioner had no memory or an imperfect memory of his various crimes, which resulted
20 from his emotional response of disassociation. Prior to trial, Petitioner was examined by Dr.
21 Walker and Dr. Kopit. (C.T. at 438.) Based on Dr. Walker's concern that Petitioner's
22 severe abuse might have caused brain damage, she suggested that Petitioner's counsel retain
23 a neurologist and neuropsychologist to evaluate Petitioner's neurological condition. (Ex.

24
25 ⁷ To the extent that Dr. Starr found that Petitioner was mentally retarded with symptoms of
26 schizophrenia, his conclusion appears to be based on entirely upon the history provided by Petitioner, whose
27 account of his memory and other mental problems is at odds with other evidence in the record, including
the trial testimony of his coworkers, that was credited by the jury in favor of other evidence suggesting that
Petitioner had "blacked-out" during the murder. See *infra* pp. 29-31. Moreover, given that Dr. Starr
ultimately suggested further testing, his diagnosis did not appear to be conclusive.

23.) In fact, counsel diligently sought neurological evaluations from Dr. Mazziotta, Dr. Starr, and Dr. Buchsbaum. (Exs. 35, 36, 37.)

At trial, Dr. Walker testified that Petitioner's "mind is not working right," and "his cognitive skills are being interfered with by the emotional problems so he has learning problems." (R.T. at 2998.) She further testified that Petitioner suffered from disassociation, and had no memory of the rape of Ms. Doyle,⁸ and was "very confused about [the Stevenson incident] and remembers parts of it, but parts of it he has no memory at all." (R.T. 2999.) Dr. Walker explained that Petitioner had a history of memory lapses due to his abuse and molestation. (R.T. at 2999-3000.) Dr. Walker explained that the abuse had a "profound effect" on Petitioner's abilities to learn and relate to other people, and led to his compulsive stealing. (R.T. at 3015.) Dr. Walker testified that Petitioner had been diagnosed with a various disorders, including schizophrenia, and "the most consistent thing I can say, that most of the time he is very confused about what does and doesn't happen." (R.T. at 3017.) In addition, Dr. Walker testified that Petitioner had told her that "he would often wake up in a middle of a burglary and not know how he got there or not know what he was doing there." (R.T. at 3073.)

Thus, through the testimony elicited from Dr. Walker, counsel attempted to account for Petitioner's behavior by explaining that it resulted from an episode of disassociation and black-out, of which Petitioner had an imperfect memory. Moreover, the declarations of Dr. Walker, Dr. Starr, and Dr. Buchsbaum support the California Supreme Court's conclusion that counsel acted diligently and competently in seeking to obtain a neurological evaluation in order to investigate a theory of definitive brain damage, as the trial court also concluded. However, despite counsel's efforts, the trial court found that there was not sufficient support for that theory in order to justify funding for further investigation by a neurologist. (R.T. at 3305.) Consequently, this case is distinguishable from Rompilla, where counsel did

⁸ The prosecution presented evidence regarding Petitioner's prior rape and robbery of Ms. Doyle to show aggravating circumstances at the penalty phase.

1 nothing whatsoever to discover and present to the jury evidence of Petitioner's abusive
2 background and cognitive deficits.

3 Furthermore, in contrast to the testimony provided by Dr. Walker, the prosecution
4 presented significant compelling evidence demonstrating that Petitioner was aware of his
5 surroundings and in control during the Stevenson burglary and murder, as well as the Doyle
6 rape. (R.T. at 2029-35 (testimony by Lorenzi that Petitioner had asked him hypothetically
7 whether he would shoot the homeowner if the homeowner caught him in the act of
8 burglary); R.T. at 2043 (similarly testimony by Anderson); R.T. at 1906 (testimony that a
9 camera stolen from Stevenson's residence was found in Petitioner's work locker); R.T. at
10 2042 (Anderson's testimony that Petitioner had Stevenson's watch in his locker that
11 Petitioner tried to sell Anderson for \$500); R.T. at 2299-302 (Jackley's testimony that he
12 found the stolen camera in Petitioner's locker); and R.T. at 2669-70 (Anderson's testimony
13 that Petitioner had bragged to him about robbing a nice-looking woman by taking her purse
14 and wedding ring, then raping her.)

15 Moreover, the fact that Dr. Pincus and Dr. Marmer concluded that Petitioner's
16 neurological impairments were more severe does not invalidate the conclusions reached by
17 another neurologist, Dr. Buchsbaum, who evaluated Petitioner at the time of his trial and
18 found no dysfunction precluding Petitioner from forming the requisite intent to commit his
19 crimes or causing him to be unaware of his actions. See also, e.g., Davis v. Singletary, 119
20 F.3d 1471, 1475 (11th Cir. 1997) (finding that the "mere fact a defendant can find, years
21 after the fact, a mental health expert who will testify favorably for him does not demonstrate
22 that trial counsel was ineffective for failing to produce that expert at trial."). Like Dr.
23 Buchsbaum, Dr. Pincus did not conclude that Petitioner's brain damage caused him to be
24 unaware of his actions or precluded him from forming the requisite intent. In addition, Dr.
25 Marmer's conclusion that Petitioner lacked knowledge of the actions of his alternate
26 personality, who was "in control" during the Stevenson incident, are contradicted by the
27 evidence presented at trial demonstrating Petitioner's full awareness of the incident that the

1 jury apparently credited in favor of other expert evidence suggesting that Petitioner had no
2 memory of it.⁹ Landrigan, 550 U.S. at 474 (holding that no evidentiary hearing is required
3 where the petitioner's factual assertions are rebutted by the record). Indeed, the declarations
4 of Dr. Marmer or Dr. Pincus only state that they reviewed medical and psychiatric records,
5 and it does not appear that either Dr. Marmer or Dr. Pincus reviewed the trial record in
6 rendering their findings. (See Exs. 38, 39.)

7 Thus, just as counsel's decision not to further investigate and present evidence of the
8 petitioner's mental illnesses did not constitute ineffective assistance in Pinholster in view
9 of conflicts in that evidence and the unsympathetic portrait presented by the petitioner,
10 counsel's decision here not to further investigate and present evidence regarding Petitioner's
11 brain damage and mental illnesses was not deficient given the conflicts in the evidence
12 regarding Petitioner's memory of the events of the Stevenson murder. In fact, the record
13 plainly shows that counsel advanced the best arguments that he could in order to convince
14 the trial judge to obtain further neurological testing, which the trial judge denied, expressly
15 noting counsel's diligence and competence in obtaining evidence regarding Petitioner's
16 mental disorders and deficiencies. (R.T. at 3305.) Moreover, any additional expert
17 testimony suggesting that Petitioner was unaware, for whatever reason, of the events of the
18 murder likely would have been rejected by the jury, as the jury evidently rejected that
19 explanation provided by Dr. Walker in view of the other strong evidence to the contrary.¹⁰
20 Belmontes, 558 U.S. at 22 (holding that counsel cannot be found ineffective for failing to
21 present cumulative evidence). Consequently, this Court is not satisfied that any appellate

22
23 ⁹ No evidentiary hearing is necessary to explore Dr. Pincus's suggestion that Petitioner may
24 suffer from epilepsy, which also could account for his actions (Ex. 38). It strains credulity to believe that
25 Petitioner -- during the course of an epileptic seizure -- struggled with Stevenson, picked up a gun, and shot
26 Stevenson through the heart while Stevenson was running away. See, e.g., Nunes, 350 F.3d at 1053-54
27 (finding that a state court can dispense with a hearing in instances where the allegations are without
28 credibility or merit).

26 ¹⁰ Because the evidence upon which Petitioner relies would not have added to the evidence
27 presented at trial, it is unnecessary to address Respondent's assertion that such evidence would have been
28 inadmissible under California Penal Code §§ 28 and 29. (Opp. at 62.)

1 court to whom these allegations were presented “would be unreasonable in holding that the
2 state court’s fact-finding process was adequate.” Hurles, 706 F.3d at 1030.

3 Accordingly, the California Supreme Court did not unreasonably apply the law or
4 unreasonably determine the facts under § 2254(d).

5 **C. Counsel’s Failure to Perform Competently due to Being Overworked**

6 Petitioner next contends in Claim G that his counsel failed to devote sufficient time
7 to his case because they were carrying “overloaded schedules.” (Br. at 53-55; AP at 70.)
8 In support of this claim, Petitioner lists the cases handled by his trial counsel, John Barnett
9 and Otha Standifer, during the time that they were preparing for and trying Petitioner’s case.
10 (Id.)

11 However, Petitioner failed to provide any evidence, such as a declaration from either
12 counsel, demonstrating that counsel’s caseload prevented either of them from devoting the
13 time necessary to prepare and try Petitioner’s case. See, e.g., Gentry v. Sinclair, 705 F.3d
14 884, 900 (9th Cir.) (rejecting allegations of deficiency for not investigating the petitioner’s
15 psychological condition where the petitioner did not present supporting declarations from
16 his counsel affirmatively showing that they failed to investigate this evidence), cert. denied,
17 ___ U.S. ___, 82 U.S.L.W. 3181 (Oct. 7, 2013). Consequently, Petitioner cannot show that
18 the California Supreme Court unreasonably applied the law or determined the facts in
19 violation of § 2254(d) in denying these allegations.

20 **D. The California Supreme Court’s Application of the Wrong Prejudice**
21 **Standard**

22 Finally, Petitioner argues that the California Supreme Court erred in resolving his
23 ineffective assistance claims, because it applied an incorrect constitutional standard for
24 assessing prejudice. (Br. at 73-75.) Specifically, Petitioner claims that the state court erred
25 by applying Lockhart v. Fretwell, 506 U.S. 364 (1993), in the same manner later found to
26 be unconstitutional in Williams v. Taylor, 529 U.S. 362 (2000). (Br. at 73-75.)

27 In Williams, the Supreme Court reasoned that, although the Strickland test provides
28

1 adequate guidance for resolving nearly all ineffective assistance claims, “there are some
2 situations in which the overriding focus on fundamental fairness may affect the analysis.”
3 529 U.S. at 391. For instance, in Fretwell, “we concluded that, giving the overriding interest
4 in fundamental fairness, the likelihood of a different outcome attributable to an incorrect
5 interpretation of the law should be regarded as a potential ‘windfall’ to the defendant rather
6 than the legitimate ‘prejudice’ contemplated by our opinion in Strickland.” Williams, 529
7 U.S. at 392. In Fretwell, the death sentence the state had imposed on the defendant had been
8 based on an aggravating circumstance (i.e., murder for pecuniary gain) that duplicated an
9 element of the underlying felony (i.e., murder in the course of a robbery). Id. Shortly before
10 the trial, the circuit had held that such “double counting was impermissible, but Fretwell’s
11 lawyer failed to object to the use of the pecuniary gain aggravator. Id. However, the
12 authority holding that “double counting” was impermissible was overruled after Fretwell’s
13 trial. Id. Consequently, even though a trial judge probably would have sustained an
14 objection to the double counting, it had later become apparent that the state had a right to
15 rely on the disputed aggravating evidence. Id. Accordingly, because the ineffectiveness of
16 Fretwell’s counsel had not deprived him of any substantive or procedural right, the Supreme
17 Court found that Fretwell could not satisfy the “prejudice” prong of the Strickland test. Id.
18 at 392-93.

19 The Supreme Court in Williams explained that the Virginia Supreme Court erred in
20 holding that Fretwell supplanted the rule for determining prejudice set forth in Strickland.
21 529 U.S. at 391. In Fretwell, it was undisputed that the petitioner had a constitutionally-
22 protected right to provide the jury mitigating evidence that his trial counsel deficiently failed
23 to offer or discover. Id. at 393. However, the Virginia Supreme Court erred by requiring
24 a separate inquiry into fundamental fairness, based on its flawed reading of Fretwell, even
25 though the petitioner had been able to show his lawyer was ineffective and his
26 ineffectiveness probably affected the outcome of the proceeding. The Supreme Court
27 explained that the state supreme court unreasonably applied clearly established federal law
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1 in its denial of the ineffective assistance claim, because its decision “turned on its erroneous
2 view that a ‘mere’ difference in outcome is not sufficient to establish constitutionally
3 ineffective assistance of counsel.” Id. at 397 (citations omitted). In addition, the state
4 supreme court’s prejudice determination unreasonably failed to evaluate the totality of
5 available mitigation evidence, and incorrectly viewed the determination of the trial judge,
6 who found prejudice, as resting on “the notion that a single item of omitted evidence, not
7 matter how trivial, would require a hearing.” Id. at 397-98.

8 Thus, under Williams, determining prejudice by looking at the outcome in the absence
9 of counsel’s deficiencies is usually consistent with reviewing the fundamental fairness of
10 the trial, except in the few situations where prejudice may be presumed or where, as in
11 Fretwell, counsel’s deficiency would operate as a “windfall” to a petitioner. Moreover, a
12 state court’s use of a prejudice standard, that includes reviewing whether counsel’s deficient
13 performance rendered the proceeding itself unfair and the result of the proceeding
14 “unreliable,” is not necessarily an unconstitutional prejudice formulation under Williams.
15 Indeed, this formulation derives from Strickland, where, in finding that “the defendant must
16 show that the deficient performance prejudiced the defense,” the Supreme Court further
17 explained that “[t]his requires showing that counsel’s errors were so serious was to deprive
18 the defendant of a fair trial, a trial whose result is unreliable.” 466 U.S. at 487. In addition,
19 the Supreme Court in Strickland explained that, “[a]n ineffective assistance claim asserts the
20 absence of one of the crucial assurances that the result of the proceeding is reliable, so
21 finality concerns are somewhat weaker and the appropriate standard of prejudice should be
22 somewhat lower. The result of a proceeding can be rendered unreliable, and hence the
23 proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance
24 of the evidence to have determined the outcome.” 466 U.S. at 694. See also Williams, 529
25 U.S. 392 n.17 (“[The prejudice component of the Strickland test] focuses on the question
26 whether counsel’s deficient performance renders the result of the trial unreliable or the
27 proceeding fundamentally unfair.”) (citing Strickland, 466 U.S. at 687) .

1 Here, Petitioner cannot show that the California Supreme Court incorrectly applied
2 the prejudice standard in his case, as contemplated by Williams. Furthermore Petitioner's
3 citations of California Supreme Court authority fail to show that the state high court was
4 applying Strickland in an unconstitutional manner. For instance, in In re Harris, 5 Cal. 4th
5 813, 833-34 (1993), the California Supreme Court granted the defendant's habeas petition
6 regarding the trial court's trying and sentencing him as a minor, rather than an adult, and
7 only discussed ineffective assistance of counsel in connection with an exception to the
8 Waltreus rule, without resolving any ineffective assistance claim in that case. In In re
9 Avena, 12 Cal. 4th 694, 721-22 & n.5 (1996), the California Supreme Court held that
10 considering prejudice under either formulation (*i.e.*, whether the result of the proceeding
11 would have been different but for counsel's errors or whether counsel's errors rendered the
12 proceeding fundamentally unfair), the petitioner's claims failed.

13 Similarly, in In re Hardy, 41 Cal. 4th 977, 1019 (2007), the California Supreme Court
14 cited Fretwell's language, that "the question is 'whether counsel's deficient performance
15 renders the result of the trial unreliable or the proceeding fundamentally unfair.'" Id. at 1019
16 (citations omitted). In finding no prejudice at the guilt phase, the California Supreme Court
17 correctly followed Strickland, reasoning that, because the petitioner would have been
18 convicted of the two first degree murders irrespective on his counsel's unreasonable failure
19 to investigate and present evidence, he failed to demonstrate he would have obtained a more
20 favorable outcome at the guilt phase. Id. at 1030. However, it found prejudice at the
21 penalty phase based on its correct application of Strickland, stating that "we conclude that
22 there is a reasonable probability the jury, had it heard the evidence indicating Boyd and not
23 petitioner was most likely the person who actually killed the victims, would have voted for
24 a life sentence instead of the penalty of death." Id. at 1032.¹¹

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26 ¹¹ Petitioner's other two pre-Williams cases likewise fail to demonstrate an incorrect application
27 of the prejudice prong. See In re Visciotti, 14 Cal. 4th 325, 352 (1996) (finding that no prejudice occurred,
28 as "[it] is not probable that had this evidence been presented a more favorable result would have resulted

1 In addition, in In re Valdez, 49 Cal. 4th 715, 729-38 (2010), the California Supreme
2 Court noted that, in determining prejudice under Strickland, there must be a “reasonable
3 probability that, but for counsel’s unprofessional errors, the result of the proceeding would
4 have been different,” and in determining such prejudice, the court must also look at whether
5 the “result of the trial [was] unreliable or the proceeding [was] fundamentally unfair.” Id.
6 (citations omitted). Generally, the California Supreme Court found that counsel’s
7 performance had not been deficient. Id. at 733 (finding that made a reasonable tactical
8 choice regarding the evidence at the guilt phase), and at 737 (finding that petitioner failed
9 to show his counsel did not adequately investigate and present mitigation evidence at the
10 penalty phase). As to the only respect that counsel’s performance had been deficient (*i.e.*,
11 counsel’s failure to thoroughly interview petitioner relative to the crime itself), the state
12 court found that the petitioner “failed to offer any evidence as to what [he] would have told
13 [trial counsel]” and, thus, failed to demonstrate prejudice. Id. at 737 n.8. Thus, the
14 California Supreme Court properly applied the Strickland prejudice standard it had cited in
15 finding that there was no evidence indicating that the result of the proceeding would have
16 been different. Id. Accordingly, Petitioner has not shown that the California Supreme Court
17 incorrectly applied the prejudice standard in his case, much less applied it in a way that
18 violated § 2254(d).

19 Accordingly, Petitioner has not shown a violation of § 2254(d) with respect to his
20 guilt phase ineffective assistance claims set forth in Claims G and L.

21 **III. Prosecutorial Misconduct**

22 In Claim H, Petitioner alleges that the State intentionally destroyed exculpatory and
23 mitigating evidence. Specifically, Petitioner contends that: (1) the State destroyed
24 material and exculpatory evidence by failing to excise and microscopically examine
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26 at the penalty phase.”); In re Cudjo, 20 Cal. 4th 673, 700 (1999) (finding no prejudice, because the petitioner
27 had not demonstrated that “the trial would have resulted in an outcome more favorable to petitioner if
28 counsel had presented available evidence concerning the alleged culpability of Ubaldo Prokuda.”).

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1 discolorations on Stevenson's hands to determine if they were bruises caused in connection
2 with a struggle; and (2) the State failed to determine if Stevenson's broken rifle had been
3 fired recently. (Br. at 83-104; AP at 73-77.)

4 At trial, Dr. Fukumoto testified that he had reviewed the photographs of Stevenson
5 and the transcribed autopsy performed by Dr. Bolduc, and confirmed that the standard
6 procedures had been followed. (R.T. at 1933.) Dr. Fukumoto concluded that the victim
7 died from a gunshot wound, with a bullet entering his left lung and heart. (R.T. at 1934.)
8 Dr. Fukumoto testified that he did not see any other injury or trauma sustained by the victim,
9 and he saw no evidence, in the transcript of the autopsy or the photographs, of defensive
10 wounds or any other wounds that would indicate a fight. (R.T. at 1943-44.)

11 On cross-examination, Dr. Fukumoto agreed that Dr. Bolduc had provided a cause of
12 death based on a police report, instead of his own examination, in another murder case.
13 (R.T. at 1952.) In addition, Dr. Fukumoto agreed that he would not be able to determine if
14 the victim had punched or grabbed another person, and any bruising of the hands would
15 occur rapidly. (R.T. at 1953-54.) Dr. Fukumoto agreed that the photographs showed that
16 Stevenson had darkening under his fingers at the base of the hand, the thumb, and at the
17 base of the index finger. (R.T. at 1956; see also Exs. 14, 15 (photographs of Stevenson's
18 left and right hands at the autopsy).) However, these areas had not been excised in order to
19 determine whether they were in fact bruises and, if so, whether they had been sustained at
20 or near the time of death. (R.T. at 1957.) Dr. Fukumoto further agreed that, in addition to
21 the conclusion suggested by the prosecution that Stevenson was shot as he was running bent
22 over, it could have been possible that the victim was standing with the shooter on the
23 ground. (R.T. at 1959.)

24 In addition, Stan Slonina of the crime laboratory of the Orange County Sheriff's
25 Department testified in connection with the examination of the .22 caliber Marlin rifle.
26 (R.T. at 2102-36.) Slonina testified that he found the rifle in parts along the hallway, and
27 it was not loaded. (R.T. at 2104-05.) After taking the rifle to the crime lab, the rifle was
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1 test-fired, and the results indicated no malfunctioning. (R.T. at 2105.) In addition, Slonina
2 testified that the bullet that killed Stevenson had been fired from a different gun than the
3 Marlin rifle, and could have been fired from a .22 caliber long rifle Ruger revolver. (R.T.
4 at 2113.)¹²

5 On direct appeal, the California Supreme Court denied Petitioner's allegations on the
6 grounds that they were barred due to counsel's failure to raise a contemporaneous objection.
7 Beeler, 9 Cal. 4th at 975. In addition, the California Supreme Court rejected the allegations
8 on their merits. Id. at 975-76. In rejecting Petitioner's allegations regarding the alleged
9 failure of the State to examine the discolorations on the victim's hands, the California
10 Supreme Court explained:

11 Even with the benefit of hindsight, we are not persuaded the evidence
12 would have had any meaningful exculpatory value. If an examination had
13 revealed the victim's hands were bruised during the burglary, such evidence
14 would not point necessarily to the conclusion he had struggled with
15 [Petitioner]. Moreover, even that conclusion would have aided [Petitioner]
16 only minimally, if at all. That the victim was struggling to protect himself or
17 his home does not itself negate the finding that he was intentionally killed.
18 One could just as reasonably conclude to the contrary – that he was killed
19 because he was struggling. The lack of exculpatory value is also
20 demonstrated by defense counsel's argument to the jury. Emphasizing various
21 aspects of the crime scene evidence in detail, counsel argued that the killing
22 was not intentional. Counsel did not refer, however, to the discolorations on
23 the victim's hands and did not suggest the victim had been bruised during the
24 alleged struggle. Even if viewed in the light most favorable to [Petitioner],
25 the best that can be said is that the evidence of bruising might have had some
26 minimal exculpatory value. That is not enough. The constitutional duty to
27 preserve evidence is "limited to evidence that might be expected to play a
28 significant role in the suspect's defense." (Trombetta, *supra*, 467 U.S. 479,
488 [81 L. Ed. 2d 413, 422] *italics added, fn. omitted*.) We find to be
farfetched the notion that a jury would find anything significantly exculpatory
in the fact, if it was a fact, that a resident was shot while struggling to defend
himself and his home from a burglar. We therefore cannot conclude that the
police were aware during their investigation of any exculpatory value in
possible bruises on the victim's hands.

12 Richard S. Brown, a senior criminalist with the Orange County Sheriff-Coroner Department,
testified that he received the bullet which was recovered from the deceased and was admitted at trial as
Exhibit 86. (R.T. at 2137-38, 2146.) Slonina testified that a "Ruger Brand . . . single six, .22 long rifle
revolver" is "one of the types of guns, that the bullet in [Exhibit] 86 could have been fired from." (R.T. at
2113.)

1 Id. at 977.

2 In denying Petitioner's allegations regarding the test-firing of the rifle, the California
3 Supreme Court explained:

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5 ... We reject this contention for several reasons, including [Petitioner's]
6 failure to establish as a factual predicate that the testing he seeks was not done.
7 Stanley Slonina, employed as a firearms specialist in the Orange County
8 Sheriff's crime laboratory, testified he recovered and examined the rifle at the
9 crime scene on the day of the killing. Defense counsel did not ask Slonina on
10 cross-examination if he checked the temperature of the rifle, smelled
11 gunpowder, or conducted any other field examination to determine if the rifle
12 had been recently fired. Even if we assume, however, that no such
13 determination was made, [Petitioner] also fails to show the test-firing
14 precluded the further testing he claims should or could have been done.
15 Perhaps most obvious by omission is [Petitioner's] failure to establish the
16 existence of any subsequent laboratory test that would have shown whether the
17 rifle was fired on the day of the killing. [Petitioner] cannot fairly charge the
18 prosecution with precluding testing that may not have been possible.

19 Moreover, even if we assume to be true [Petitioner's] factual premise
20 that the test-firing precluded further testing and that such testing would have
21 shown the rifle was fired the day of the killing, [Petitioner] has failed to show
22 the testing would have had any exculpatory value that would have reasonably
23 been apparent to the police. (See, e.g., *People v. Webb*, *supra*, 6 Cal. 4th 494,
24 518-20 [rejecting the defendant's contention that police should have preserved
25 a revolver].) Evidence the rifle was fired the day of the killing would not have
26 established it was fired by the victim- the key to [Petitioner's] claim.
27 Moreover, we find most attenuated the notion that [Petitioner] could establish
28 a lack of intent by showing a struggle based on the fact that the victim might
have fired the rifle. As with the claim regarding the discolorations on the
victim's hands, the victim's struggle to protect himself or his home does not
itself negate the finding he was intentionally killed. Evidence that the rifle was
fired the day of the killing would not have played a "significant role in the
suspect's defense." (*Trombetta*, *supra*, 467 U.S. 479, 488 [81 L. Ed. 2d 413,
422] italics added, fn. omitted.)

21 Id. at 977-78.

22 In describing the duty of law enforcement to preserve evidence, the Supreme Court
23 has explained that law enforcement does not have "an undifferentiated and absolute duty to
24 retain and to preserve all material that might be of conceivable evidentiary significance in
25 a particular prosecution." *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). However, a
26 defendant can show a due process violation if law enforcement fails to preserve evidence
27 that "possess[es] an exculpatory value that was apparent before the evidence was destroyed
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1 and [is] of such a nature that the defendant would be unable to obtain comparable evidence
2 by other reasonable available means.” California v. Trombetta, 467 U.S. 479, 489 (1984).
3 Where the evidence is only potentially useful and not materially exculpatory, the party must
4 show bad faith in order to demonstrate a due process violation. Youngblood, 488 U.S. at
5 57-58; United States v. Del Toro-Barboza, 673 F.3d 1135, 1177 (9th Cir. 2012).

6 Here, as an initial matter, Petitioner has not shown cause and prejudice to excuse the
7 procedural bar based on counsel’s failure to make a contemporaneous objection. See Bonin
8 v. Calderon, 59 F.3d 815, 842-43 (9th Cir. 1995) (finding that failure to make a
9 contemporaneous objection constitutes a valid procedural bar); Coleman v. Thompson, 501
10 U.S. 722, 753 (1991) (finding that a petitioner must establish cause and prejudice to
11 overcome procedural default). Furthermore, Petitioner cannot show that the California
12 Supreme Court’s rejection of his claim on the merits was unreasonable.

13 First, with respect to the State’s alleged failure to excise and examine the
14 discolorations on Stevenson’s hands, Petitioner fails to set forth a colorable Trombetta
15 violation. As the California Supreme Court aptly explained, the exculpatory value of these
16 darkened areas on Stevenson’s hands, even assuming they were in fact bruises, could not
17 be established. That Stevenson may have struggled with Petitioner, and even perhaps
18 sustained bruises, does negate the other evidence indicating Stevenson was intentionally
19 killed as he attempted to flee by being shot in the back through the heart. Thus, as the
20 California Supreme Court reasoned, even if Petitioner could establish that Stevenson had
21 sustained bruises, it is “farfetched” that a jury “would find anything significantly
22 exculpatory in the fact . . . that a resident was shot while struggling to defend himself and
23 his home from a burglar.” Beeler, 9 Cal. 4th at 977. See also, e.g., United States v. Estrada,
24 453 F.3d 1208,1212-13 (9th Cir. 2006) (finding no Trombetta violation due to the sale of
25 a truck that had carried methamphetamine, because the truck itself was not apparently
26 exculpatory given that it would not necessarily show that the petitioner did not have
27 possession of the pseudoephedrine). Consequently, there is no basis in the record for
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1 concluding that law enforcement in this case was aware of the possible exculpatory value
2 of the bruises on Stevenson's hands. Finally, although Petitioner attempts to allege "bad
3 faith" by pointing to the fact that Dr. Bolduc had performed an insufficient investigation in
4 another case (Reply at 60-61), such allegations fail to show bad faith in this case and, in any
5 event, are negated by Dr. Fukumoto's testimony that he had independently reviewed
6 Stevenson's autopsy report and photographs in reaching his own conclusions.¹³ Landrigan,
7 550 U.S. at 474 (holding that no evidentiary hearing is required where the record refutes the
8 petitioner's factual allegations). Thus, the California Supreme Court's rejection of these
9 allegations was not an unreasonable application of the law or determination of facts.

10 Second, Petitioner's allegations regarding the State's handling of the rifle similarly
11 were reasonably rejected by the California Supreme Court. Petitioner contends that, by test-
12 firing the Marlin rifle, Slonina "eliminated the possibility that the rifle could be examined
13 and tested by the defense to see if it had been fired at or around the time of the homicide."
14 (Br. at 90.) Petitioner further contends that if the rifle had been examined, it would have
15 shown that the rifle had in fact been fired close to the time of Stevenson's death. (Id.)
16 Based on this evidence, Petitioner maintains that the jury could have reasonably inferred that
17 the rifle was fired by Stevenson while he was in the residence. (Id.) However, it is
18 undisputed that Slonina was not questioned as to whether he had checked the rifle to
19 determine whether it had been fired in the Stevenson house on the day Stevenson was shot.
20 Moreover, as the California Supreme Court explained, even if it were assumed that the rifle
21 had been shot on the day of the killing, there would still be no evidence that it was shot by

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23 ¹³ Petitioner's reliance upon Miller v. Vasquez, 868 F.2d 1116, 1120 (9th Cir. 1989), in support
24 of this argument, is misplaced. In Miller, the petitioner had been charged with assault with a deadly weapon,
25 and law enforcement failed to collect the victim's blood-stained jacket for testing or photograph the injuries
26 to the petitioner's arm given that the petitioner claimed the victim dug her fingernails into his arms. Id. at
27 1120-21. There, the petitioner supported his bad faith allegation with evidence indicating that the judge at
28 the preliminary hearing found that the officer's testimony that he forgot the jacket to lack credibility and
allegations showing that the officer had tried to dissuade witnesses from testifying by informing them of the
petitioner's criminal history and indicating that their testimony would not exonerate him. Id. By contrast,
here, Petitioner points to no apparent exculpatory value of the items in dispute, and his allegations of bad
faith are unsupported.

1 Stevenson. Further, even if it had been shot by Stevenson, “[a] victim’s struggle to protect
2 himself or his home does not itself negate the finding he was intentionally killed.” Beeler,
3 9 Cal. 4th at 978. Thus, once again, Petitioner’s allegations regarding the apparent
4 exculpatory value of this evidence are unsupported by the record. Estrada, 453 F.3d at
5 1212-13. Finally, Petitioner points to no specific evidence in alleging bad faith in
6 connection with this claim, and the record fails to support such allegations. See James v.
7 Borg, 24 F.3d 20, 26 (9th Cir. 1999) (“Conclusory allegations which are not supported by
8 a statement of specific facts do not warrant habeas relief.”)

9 Accordingly, Petitioner cannot demonstrate a violation of § 2254(d) in connection
10 with Claim H.

11 **IV. Admission of Autopsy Report**

12 In Claim I, Petitioner contends that the trial court improperly admitted into evidence
13 the victim’s autopsy reports. (Br. at 104; AP at 77-80.) Specifically, Petitioner contends
14 that he was prejudiced by the incompetent performance of Dr. Bolduc, the coroner who
15 failed to examine the victim’s hands to determine if he had sustained recent bruises, and the
16 admission into evidence Dr. Bolduc’s autopsy report, because the prosecution did not call
17 him to testify even though he was available, thereby violating Petitioner’s constitutional
18 right to confront and cross-examine Dr. Bolduc at trial. (Id.)

19 At trial, the prosecution called Dr. Fukumoto, another pathologist who did not
20 participate in the autopsy, to testify as to the autopsy and its conclusions. The prosecution
21 explained that Dr. Bolduc had left his medical practice under unfavorable conditions
22 concerning an unrelated case. Despite Petitioner’s objection, the autopsy report was
23 admitted into evidence under California Evidence Code § 1271, the business records
24 exception to California’s hearsay rule. (R.T. at 2198-99.)

25 Petitioner attacked this decision on four grounds in his direct appeal: (1) the
26 prosecution failed to establish the autopsy report’s trustworthiness; (2) Dr. Bolduc was not
27 unavailable and should have been required to testify; (3) admission of the report into
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1 evidence without an opportunity for Petitioner to cross-examine Dr. Bolduc violated
2 Petitioner's constitutional right of confrontation; and (4) the report contained inadmissible
3 medical opinion. Beeler, 9 Cal. 4th at 978.

4 The California Supreme Court rejected all four grounds, and found that the autopsy
5 report was properly admitted as a business record under California Evidence Code § 1271.
6 Id. Specifically, the California Supreme Court stated:

7 [Petitioner] contends admission of the report was error because it "was
8 premised on the puzzling conclusion that Dr. Bolduc was unavailable."
9 [Petitioner] does not clearly explain the point of this assertion, but he seems
10 to contend that because the report was not sufficiently trustworthy to be
11 admitted under Evidence Code section 1271 his constitutional right of
12 confrontation entitled him to cross-examine Dr. Bolduc regarding the report.
13 (Evidence Code section 1271 itself states no requirement that the person who
14 prepared the business record testify regarding its contents.) We rejected a
15 similar contention in People v. Clark (1992) 3 Cal. 4th 41, 158 [10 Cal. Rptr.
16 2d 554, 833 P.2d 561], in which the physician who conducted an autopsy and
17 prepared the report died before being called to testify about his report. A
18 different physician was permitted, as in the present case, to testify about the
19 report over the defendant's objection. We explained that the report was
20 properly admitted into evidence as an official record under Evidence Code
21 section 1280. Thus, "The contents of Dr. Carpenter's [the examining
22 physician's] report were admitted under a 'firmly rooted' exception to the
23 hearsay rule that carries sufficient indicia of reliability to satisfy the
24 requirements of the confrontation clause." (3 Cal. 4th at p. 159; see also
25 People v. Demes (1963) 220 Cal. App. 2d 423, 442 [33 Cal. Rptr. 896] [no
26 error in allowing physician other than the examining coroner to testify
27 regarding autopsy report]; People v. Wardlow (1981) 118 Cal. App. 3d 375,
28 388 [173 Cal. Rptr. 500] [same].)

19 The same principle obtains in the present case even though the report
20 was admitted under Evidence Code section 1271, the business records
21 exception to the hearsay rule, rather than under Evidence Code section 1280,
22 the official records exception. "[T]he cases require the same showing of
23 trustworthiness in regard to an official record as is required under the business
24 records exception Section 1280 constitutes the law declared in these
25 cases by explicitly requiring the same showing of trustworthiness that is
26 required in Section 1271." (Cal. Law Revision Com. com., Deering Ann.
27 Evid. Code (1965 ed.) 1280, p. 438 [citations omitted].) In light of our
28 conclusion that the trial court was within its discretion in finding Dr. Bolduc's
report sufficiently reliable to be admitted under Evidence Code section 1271,
[Petitioner's] right of confrontation was not violated.

... Dr. Bolduc's conclusion regarding the cause of death - a bullet
wound to the heart - was based on his direct observation and is no different in
kind from a diagnosis of a broken femur, the example noted in Terrell of an
observed fact. Indeed, all of Dr. Bolduc's relevant conclusions are of this

1 type. He concluded in his report that: (1) "There is an entrance gunshot
2 wound of the posterior left chest [i.e., the back]" (2) "This is a distant
3 gunshot wound entrance The wound is free of gunpowder, burns or
4 stripping." (3) The shot pierced the heart. (4) "The direction of the [bullet]
track is forwards, up 45 degrees and left to right 10 degrees." None of these
conclusions, including that regarding the cause of death, was inadmissible
under Evidence Code section 1271.

5 . . . We note People v. Williams (1959) 174 Cal. App. 2d 364 [345 P.2d
6 47], a murder case in which, as in the present case, a physician testified
7 regarding the contents of an autopsy conducted by another physician. The
8 court observed, "[t]he sole and only purpose served by the records in the trial
9 was to establish the cause of death. Appellant certainly was not prejudiced by
10 this testimony because neither at trial nor here, does he seriously challenge the
11 fact that the life of the deceased was terminated by a gunshot wound." (*Id.* At
p. 391.) Likewise here, Dr. Bolduc's conclusion that the victim died from a
gunshot wound to the heart is not disputed. Nor does [Petitioner] dispute Dr.
Bolduc's conclusion that the victim was shot in the back. Similarly,
criminalist Richard Brown testified independently of the autopsy report that
the distance from the gun muzzle to the victim was at least two feet.
Admission of these conclusions was not prejudicial to [Petitioner].

12 Beeler, 9 Cal. 4th at 979-980.

13 When the State seeks to offer a declarant's out-of-court statement into evidence
14 against the accused, the Confrontation Clause requires that the prosecutor either produce
15 the declarant or demonstrate his unavailability. Ohio v. Roberts, 448 U.S. 56, 65-66, 100
16 S. Ct. 2531, 2539 (1981). In Roberts, the Supreme Court explained that the Confrontation
17 Clause did not, however, bar the admission of certain well-established hearsay exceptions,
18 such as the business records exception. *Id.* at 66 & n. 8 (citing Comment, 30 La. L. Rev.
19 651, 668 (1970) (stating that business and public records exceptions "would seem to be
20 among the safest of the hearsay exceptions").); see also United States v. Miller, 830 F.2d
21 1073, 1077 (9th Cir. 1987) (finding that "the admission of business records is a firmly-
22 rooted exception to the hearsay rule" and "[did] not offend the Confrontation Clause.")
23 (citations omitted).

24 Here, the parties agree that Roberts governs Petitioner's Confrontation Clause
25 challenge. (Opp. at 48; Reply at 63, 65.) Petitioner further concedes that Supreme Court
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1 authority subsequent to Roberts does not apply retroactively to this claim.¹⁴ (Br. at 108 at
2 n.29.) As the California Supreme Court explained, the trial court properly found that the
3 autopsy report was a “business record” under California law. See Estelle v. McGuire, 502
4 U.S. 62, 70 (1991) (holding that state evidentiary rulings are not cognizable in a federal
5 habeas proceeding unless the admission of the evidence violated the petitioner’s due
6 process right). Consequently, under Roberts, Petitioner’s Confrontation Clause challenge
7 fails, as the autopsy report fell within a firmly-rooted exception to the hearsay rule, which
8 was exempted from Confrontation Clause violations under the clearly established law at
9 the time of Petitioner’s conviction. Thus, Respondent did not need to show that Dr. Bolduc
10 was “unavailable” for the autopsy report to be admitted into evidence based on the
11 testimony of Dr. Fukumoto. See Meras, 676 F.3d at 1188 (finding that the state court’s
12 decision that a lab report’s introduction into evidence through the testimony of the author’s
13 supervisor did not violate Confrontation Clause was not an unreasonable application of
14 clearly established law at the time of the state court’s decision). The California Supreme
15 Court’s decision that Petitioner’s “right of confrontation was not violated” by the
16 introduction of the autopsy report was therefore not contrary to clearly established federal
17 law at the time of Petitioner’s trial nor an unreasonable determination of facts.

18 Moreover, Petitioner’s argument that he was prejudiced by the coroner’s failure to
19 adequately investigate the discolorations on the victim’s hands and unidentified fiber’s on
20 the victim’s clothes, which could have shown a struggle, is unavailing. Given the evidence
21 at trial showed that the gun was fired two or more feet from the victim’s back and the bullet
22 pierced the victim’s heart, the jury likely would have rejected any further evidence in
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24 ¹⁴ To the extent that Roberts was abrogated by Crawford v. Washington, 541 U.S. 36 (2004),
25 Crawford does not control here as it was not the clearly established law at the time of Petitioner’s trial.
26 See also Meras v. Sisto, 676 F.3d 1184, 1188-89 (9th Cir. 2012) (holding that the state court’s decision that
27 forensic lab report was not testimonial and properly admitted as a business record was not an unreasonable
28 application of clearly established law based on pre-Crawford authority at the time of the state court’s
decision); see also Whorton v. Bockting, 549 U.S. 406, 421 (2007) (holding that Crawford does not apply
retroactively on collateral review).

1 support of Petitioner's self-defense theory. See also Whelchel v. Washington, 232 F.3d
2 1197, 1205 (9th Cir. 2000) ("A Confrontation Clause violation is subject to harmless error
3 analysis.") (citation omitted). Regardless, any challenge that the autopsy report contained
4 inadmissible opinion evidence as to the cause of death was waived for the failure to object
5 on this ground at trial, and Petitioner has not shown cause and prejudice to overcome that
6 procedural bar. Bonin, 59 F.3d at 842-43; Coleman, 501 U.S. at 753.

7 Accordingly, because the California Supreme Court did not unreasonably apply
8 clearly established law or unreasonably determine the facts in denying this claim, Petitioner
9 cannot satisfy § 2254(d) as to Claim I.

10 **V. Competence**

11 In Claim K, Petitioner alleges that his constitutional rights were violated because he
12 was incompetent to stand trial, assist his attorneys, waive his constitutional rights to a
13 speedy trial and a trial on his convictions, and be executed. (Br. at 123-56; AP at 90-108.)
14 In addition, Petitioner alleges in connection with this claim that his trial counsel were
15 ineffective for failing to seek a competency determination in the trial court, and the trial
16 court erred in failing to initiate a competence hearing under California Penal Code § 1368.
17 (Id.) Thus, in this claim, Petitioner alleges: a substantive competence claim; an ineffective
18 assistance claim; and a procedural competence claim based on the trial court's failure to
19 conduct a competence hearing in accordance with California law. (Br. at 124-25.)

20 Petitioner contends that he set forth this claim initially in his second state habeas
21 petition. (Br. at 125, citing Lodgement 12 (Second State Petition, October 10, 1997).) The
22 California Supreme Court denied this claim summarily on the merits, except as to the
23 allegations that Petitioner is incompetent to be executed, which it denied as premature
24 because no execution date had been set. (Lodgement 19 (California Supreme Court Order,
25 November 10, 2004).) In addition, the California Supreme Court found that the allegations

1 that the trial court violated Riggins v. Nevada, 504 U.S. 127 (1992)¹⁵ were procedurally
2 barred as untimely and for failure to raise them in the trial court, and the allegations that
3 the trial court failed to conduct a competence hearing were procedurally barred because the
4 allegations could have been but were not raised on appeal.¹⁶ (Id.)

5 In support of his incompetence claim, Petitioner cites various evidence indicating a
6 history of mental impairments. (Br. at 126 (citing Ex. 16 (Lorna Beeler (Petitioner's
7 stepmother) Decl., stating that Petitioner's mother was an alcoholic who left her husband
8 and family and Petitioner's father was abusive); Ex. 17 (Robert Lippold, M.A. Decl.,
9 stating that he performed a psychological evaluation in 1964 on Petitioner's stepmother and
10 concluded that she suffered from psychotic episodes, lacked control over her emotions
11 when she lost her temper, and treated her stepchildren cruelly); Ex. 18 (Lorna Beeler's
12 industrial school records).)

13 In addition, Petitioner points to various medical records, which indicate that
14 Petitioner was taking psychotropic medication at the time of trial. (Ex. 20 (142 pages of
15 medical records from the Orange County Jail from the 1980s indicating that Petitioner was
16 getting medication, including Elavil, for his psychiatric symptoms and would engage in
17 self-destructive behavior, such as pulling out his toenails and banging his head, due to his
18 depression and anxiety)¹⁷.) Petitioner also relies upon the declarations provided by various

20 ¹⁵ In Riggins, the Supreme Court held that it was error to order the defendant to be administered
21 anti-psychotic drugs during his trial, notwithstanding his objection, without making findings that there were
22 no less intrusive alternatives, the medication was medically appropriate, and it was essential for the
defendant's safety or the safety of others. 504 U.S. at 135.

23 ¹⁶ Respondent contends that the California Supreme Court denied this claim on the merits on
24 direct review. (Opp. at 52 (citing Beeler, 9 Cal. 4th at 1001-10).) However, a review of that decision shows
25 that the California Supreme Court addressed Petitioner's alleged brain damage and neurological deficits on
direct review, but not his alleged competence claims. In addition, the Court notes that Respondent's Dixon
bar challenge was rejected in its January 5, 2011 Order.

26 ¹⁷ Although Petitioner contends that "voices" told him to tear out his toenails (Br. at 127), the
27 prison records indicate that Petitioner reported wanting to tear out his toenails as a self-destructive behavior
28 brought on by his anxiety and depression (Ex. 20, p. 444 (March 7, 1989 record indicating that Petitioner
"has been feeling anxious and may go back to his acting out of pulling his toenails"), p. 519 (March 6, 1989

1 medical professionals discussed in connection with Claim L. (Ex. 21 (Wells Decl.,
2 recommending a neurological evaluation); Ex. 23 (Walker Decl., stating that Petitioner
3 suffered from memory lapses and black-outs and advising a neurological evaluation); Ex.
4 36 (Buchsbaum Decl.); Ex. 35 (Dr. Starr Decl.); Ex. 38 (Dr. Pincus Decl.).)

5 Petitioner further relies upon declarations from fellow inmates regarding his
6 symptoms and ability to assist his counsel. (Ex. 25 (Robert Paduano Decl., stating that “it
7 seemed that [Petitioner] understood very little of what went on at his trial,” and he found
8 Petitioner to be “a mentally deficient, confused individual” who “had a habit of blanking
9 out”); Ex. 26 (Thomas Maniscalco Decl., stating that Petitioner shared characteristics with
10 “mentally retarded or disabled” people and “could not have been able to assist his
11 attorneys”); and Ex. 27 (Daniel Duffy Decl., stating that Petitioner “was severely mentally
12 impaired” and had memory lapses, and he did “not think Petitioner was able to comprehend
13 many of the proceedings at his trial.”).) In addition, Petitioner relies upon the declarations
14 of several jurors regarding their observations of him during trial. (Ex. 28 (Lois Lyon Decl.,
15 stating that Petitioner seldom spoke with his attorneys); Ex. 29 (Catherine Alsup Decl.,
16 stating that Petitioner did not testify or participate much in the proceedings); Ex. 30 (Harold
17 Walker Decl., stating that Petitioner sat like a “lump” during the proceedings and
18 sometimes whispered to his attorney, but not much).)

19 As the Supreme Court has explained, due process requires that a trial court conduct
20 a hearing on a defendant’s competence to stand trial when confronted with evidence raising
21 a bona fide doubt as to the defendant’s competence. See Pate v. Robinson, 383 U.S. 375,
22 386-88 (1966). A “bona fide doubt” exists if there is substantial evidence of incompetence,
23 or substantial evidence that the defendant lacks the capacity to consult with his attorneys
24 with a reasonable degree of understanding and understand the proceedings against him.
25 Williams v. Woodford, 384 F.3d 567, 604 (9th Cir. 2004). Factors relevant to this

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27 inmate medical message slip stating: “I have been experiencing alternating apprehension and depression.
28 I get to a point that I want to pull my toenails out.”).

1 determination include “evidence of a defendant’s irrational behavior, his demeanor at trial,
2 and any prior medical opinion on competence to stand trial.” Drope v. Missouri, 420 U.S.
3 162, 180 (1975). Other evidence includes the observations provided by trial counsel.
4 Medina v. California, 505 U.S. 437, 450 (1992) (“[D]efense counsel will often have the
5 best-informed view of the defendant’s ability to participate in his defense.”); but see
6 Hernandez v. Ylst, 930 F.2d 714, 718 (9th Cir. 1991) (“[T]he opinion of counsel certainly
7 is not determinative.”).

8 In assessing a substantive due process claim based on a defendant’s incompetence,
9 the Supreme Court has explained that the test of a defendant’s competency to stand trial is
10 whether the defendant “has sufficient present ability to consult with his lawyer with
11 reasonable degree of rational understanding and whether he has a rational as well as factual
12 understanding of the proceedings against him.” Dusky v. United States, 362 U.S. 402
13 (1960). “It has long been accepted that a person whose mental condition is such that he
14 lacks the capacity to understand the nature and object of the proceedings against him, to
15 consult with counsel, and to assist in preparing his defense may not be subjected to trial.”
16 Drope, 420 U.S. at 171.

17 Here, Petitioner fails to demonstrate a violation of § 2254(d) in connection with the
18 California Supreme Court’s rejection of his allegations that he was actually incompetent
19 during his trial. As detailed above in connection with Claim L, counsel presented much
20 evidence, including the testimony of Dr. Walker, suggesting that Petitioner was
21 experiencing black-outs and had an imperfect memory. However, neither Dr. Walker nor
22 any of the other physicians who evaluated Petitioner at the time of trial indicated that
23 Petitioner was unable to assist his attorneys during trial or understand the proceedings
24 against him. (See Exs. 21, 23, 35, 36; R.T. at 2298-3073.) Cf. Pate, 383 U.S. at 383
25 (noting that all four of the defense witnesses expressed an opinion that the defendant was
26 insane). Moreover, the evidence presented by the prosecution suggesting that Petitioner
27 was fully aware of the events of the murder supported the conclusion that Petitioner had

1 the capacity to assist his attorneys and understand the proceedings against him. Thus,
2 because Petitioner cannot demonstrate that there is “no possibility that fairminded jurists
3 could disagree that the state court’s decision [rejecting these allegations] conflicts with
4 [Supreme Court] precedents,” he cannot obtain habeas relief on these allegations. Richter,
5 131 S. Ct. at 786.

6 Furthermore, Petitioner cannot show that the California Supreme Court’s decision
7 rejecting his claim that the trial court violated his due process rights by not conducting a
8 competence hearing under California Penal Code § 1368 was objectively unreasonable.
9 The trial court had before it no expert evidence demonstrating that Petitioner was
10 incompetent. In addition, Petitioner points to no odd or unusual behavior during the trial
11 that would have required the trial court to conduct such a hearing. See, e.g., Davis v.
12 Woodford, 384 F.3d 628, 645 (9th Cir. 2004) (holding that, although the defendant “acted
13 in ways that were detrimental to his case,” the trial judge lacked substantial evidence of the
14 defendant’s incompetence that would necessitate a hearing). Even the observations of the
15 jurors indicate that Petitioner did not act out or behave in a bizarre fashion, and suggest that
16 Petitioner had at least some communication with his counsel. (Exs. 28-30.) Cf. Maxwell
17 v. Roe, 606 F.3d 561, 569 (9th Cir. 2010) (finding that the record indicated that a
18 competence hearing was necessitated, where the defendant was unable to verbally or
19 physically control himself in the courtroom; exhibited increasingly paranoid and psychotic
20 behavior that impaired his communication with defense counsel and reasoning regarding
21 his defense; attempted suicide in th midst of trial; and spent a substantial portion of trial
22 involuntarily committed to a hospital psychiatric ward as a danger to others, himself, or
23 gravely disabled); Torres v. Prunty, 223 F.3d 1103, 1109-10 (9th Cir. 2000) (holding that
24 “defendant’s unusual and self-defeating behavior in the courtroom suggested that an
25 inquiry into competence was required.”). Given this evidence, the fact that Petitioner was
26 receiving psychotropic medication did not require the trial judge to conduct a competence
27 hearing. See Fallada v. Dugger, 819 F.2d 1564, 1569 (11th Cir. 1987) (holding that there

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1 was no error in failing to conduct a hearing as to the defendant's competence, even though
2 he was taking anti-psychotic medication during trial, where three doctors found the
3 defendant to be competent, the defendant's demeanor was not unusual and he appeared
4 communicative with counsel).

5 As explained in connection with Claim L regarding Petitioner's allegations that
6 counsel was ineffective for failing to investigate and present evidence of his OBD and other
7 mental illnesses, Petitioner's allegations that counsel was ineffective for failing to
8 investigate his lack of competence similarly are without merit. Counsel diligently
9 investigated and sought to obtain evidence regarding Petitioner's brain damage, although
10 the trial court ultimately denied any further continuance to obtain additional information
11 supporting that theory. (R.T. at 3305.) In addition, counsel had Petitioner evaluated by
12 several psychologists and neurologists, and no expert who examined Petitioner at the time
13 of trial found that he was incompetent. Counsel further investigated Petitioner's family
14 background, and presented his family members to testify as to his upbringing and the abuse
15 he suffered. See Beeler, 9 Cal. 4th at 970 ("Members of defendant's family, former
16 neighbors, a psychologist, and a psychiatrist among others, testified that he was subjected
17 for years to extreme psychological, physical, verbal, and sexual abuse by his stepmother.").
18 Thus, given all of the efforts by Petitioner's counsel to investigate and present evidence
19 regarding Petitioner's mental illness, lack of awareness during his crimes, and brain
20 damage and cognitive deficits, Petitioner's argument that his counsel should have done
21 more to investigate and present evidence of his incompetence is unavailing. See also
22 Davis, 384 F.3d at 644, 647 (finding that, because the petitioner failed to show that he was
23 in fact incompetent and the trial court erred by not conducting a competency hearing, his
24 corresponding ineffective assistance of counsel claim also failed). Consequently, Petitioner
25 cannot overcome the standard of "double deference" to show that the California Supreme
26 Court unreasonably rejected his allegations that counsel failed to investigate his potential
27 lack of competence.

1 Accordingly, the California Supreme Court's rejection of these allegations in Claim
2 K was not an unreasonable application of the law or determination of the facts in violation
3 of § 2254(d).

4 **CONCLUSION**

5 For the foregoing reasons, because Petitioner cannot show that the California
6 Supreme Court violated § 2254(d) in rejecting Petitioner's allegations that: (1) counsel was
7 ineffective for failing to investigate and present additional evidence to support the defense
8 theory and further challenge the prosecution's evidence, as set forth in Claim G; (2) the
9 prosecution mishandled exculpatory or mitigating evidence because the pathologist failed
10 during the autopsy to excise and microscopically examine discolorations in the victim's
11 hands to determine whether they were bruises, and the rifle that was found in the victim's
12 home was not tested to determine if it had been fired recently before it was test-fired, as set
13 forth in Claim H; (3) the admission into evidence of the victim's autopsy report and a
14 different pathologist testifying at trial violated Petitioner's right to confrontation, as set
15 forth in Claim I; (4) Petitioner was mentally incompetent to stand trial, the trial court
16 should have conducted a competence hearing, and counsel was ineffective for failing to
17 raise the issue of Petitioner's competence to the trial court, as set forth in Claim K; and (5)
18 counsel was ineffective for failing to investigate and present a mental state defense that
19 Petitioner had OBD and other illnesses which prevented him from forming an intent to kill,
20 as set forth in Claim L, these claims are DENIED and Petitioner's request for an evidentiary
21 hearing and/or discovery on them is DENIED.

22 Petitioner shall submit his Opening Brief regarding the final merits of the remaining
23 guilt phase claims within 60 days of the entry of this Order; Respondent shall file his

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1 Opposition 45 days within the filing of Petitioner's Opening Brief; and Petitioner's Reply,
2 if any, shall be filed within 30 days following the filing of Respondent's Opposition.

3 IT IS SO ORDERED.

4 Dated: *February 11, 2014*

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9 United States District Judge
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RODNEY GENE BEELER,

Petitioner,

v.

RON DAVIS, Warden,
California State Prison at
San Quentin,

Respondent.

Case No. CV 96-0606 GW

DEATH PENALTY CASE

JUDGMENT

Pursuant to the Order Re: Petitioner's Briefs Addressing Application of 28 U.S.C.
§ 2254(d) to Remaining Guilt and Penalty Phase Claims,

IT IS HEREBY ORDERED AND ADJUDGED that the Amended Petition is denied
with prejudice and judgment is entered in favor of Respondent and against Petitioner.

The Clerk is ordered to enter this judgment.

IT IS SO ORDERED.

Dated: *December 1, 2020*



GEORGE WU
United States District Judge

1-ER-002

SUPREME COURT
FILED

NOV 10 2004

S065016

Frederick K. Chirich

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re RODNEY GENE BEELER on Habeas Corpus

The petition for writ of habeas corpus, filed October 10, 1997, is denied on the merits, except as to the part of Claim C that asserts petitioner is incompetent to be executed.

The following claims are procedurally barred because they are untimely (*In re Clark* (1993) 5 Cal.4th 750, 797-798) and because petitioner failed to raise them in the trial court (*In re Seaton* (2004) 34 Cal.4th 193, 197): claims C (to the extent it asserts that the trial court violated *Riggins v. Nevada* (1992) 504 U.S. 127) and D (except to the extent it asserts that petitioner was not advised of his constitutional rights before pleading guilty in 1971 and 1974).

Claim F (to the extent it challenges the trial court's failure to dismiss Juror Macoskey) is procedurally barred because it was raised and rejected on appeal (*In re Waltreus* (1965) 62 Cal.2d 218, 225; *In re Harris* (1993) 5 Cal.4th 813, 829-841) and is untimely.

Claim C (to the extent it asserts the trial court erred in failing to institute proceedings under Penal Code section 1367 et seq.) is procedurally barred because it could have been, but was not, raised on appeal (*In re Dixon* (1953) 41 Cal.2d 756, 759) and is untimely.

The following claims are procedurally barred as untimely: Claims D (to the extent it asserts that petitioner was not advised of his constitutional rights before pleading guilty in 1971 and 1974), E, F, and I.

Claim C (to the extent it asserts that petitioner is incompetent to be executed) is denied as premature because no execution date has been set.

Claim L is denied for failure to allege sufficient facts. (*In re Swain* (1949) 34 Cal.2d 300, 304; *In re Robbins* (1998) 18 Cal.4th 770, 810.)

Brown, J. would deny the petition solely on the merits.

Kennard, J. and Chin, J. would issue an order to show cause on the grounds alleged in Claims F.5.a. and F.5.b. of Petitioner's Reply to Respondent's Informal Response to the Petition for Writ of Habeas Corpus filed December 23, 1998.

GEORGE

Chief Justice

DECLARATION OF LORNA TERI JENKINS

I, Lorna Teri Jenkins, declare the following:

1. I am Rodney Beeler's step-mother and ex-wife of his father William "Bill" Beeler. Bill and I were married from 1962-1975, although we separated in 1973. We lived primarily in Salt Lake City, Utah.
2. When Bill and I were married, we both had children from previous marriages. I had my two girls, Shawna and Rebecka who were 6 and 4, respectively and he had Beverly, Tommy and Rodney, who were 15, 12 and 10, respectively. Bill worked as a truck driver most of the time so he was away from home for long periods of time. I was almost solely responsible for the five children.
3. It was very difficult for me to take care of Bill's children. Especially Rodney seemed like he had been emotionally and physically traumatized from living with his mother, Lilian Morris, who had neglected and abused him. Lilian was known to be very promiscuous and often took her children, particularly Rodney, on her sexual escapades. She also drank heavily and was known by many to have a problem with alcohol. In fact, during the day she worked as a waitress and it was commonly known that she filled a large malt container with hard alcohol and drank it throughout the day. Bill told me that she drank heavily during her pregnancy with Rodney and continued to drink as he was growing up. Rodney had been an unwanted pregnancy so neither Lilian nor Bill were happy about Rodney's birth.
4. Lilian was also physically abusive. Lilian's sister told me that once when Rodney's brother Tommy was a toddler, he got into some preserves that Lilian was cooling on

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the floor. Instead of recognizing that she should not have left them on the floor and expected her toddler not to get into them, she whipped him. She had a bad temper. Suddenly, one day in 1961, Lilian walked out of the house and left Bill and her children for another man. She abandoned her children, which left emotional scars on all of them, especially Rodney.

5. Even Bill was unfortunately very abusive towards Rodney. He hardly paid any attention to him and became irritated with him very easily. I remember once Rodney did something that annoyed Bill, so Bill twisted his arm and accidentally broke it. For some reason, he showed more affection for my daughters than he did to his own young son.

6. Rodney was the sweetest boy imaginable. He had this little round face that looked like the moon and freckles covering his nose and cheeks. When he smiled his grin went from ear to ear and his big buck teeth emerged. Unfortunately, he was a very vulnerable little boy. He was a small boy who was not very coordinated and had trouble learning the basics at school.

7. Most likely because he had been so neglected, Rodney was desperate for affection and attention. Sadly, because he was so desperate he did not discriminate between good attention and bad attention. For example, he loved making people happy. He would do anything to please people. He used to go around to the neighbors asking them if he could do anything for them: take their trash out, mow the lawn or rake leaves. He did not even expect to get paid, he just wanted to make them happy. He particularly got along well with older people and he loved to help them and talk to them.

8. On the other hand, it was this desperation for attention, that I believe led him to do silly things that got him into trouble. Rodney wanted to make friends so badly, that he would

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go along and do things that they wanted; including taking things to please his supposed friends.

Unfortunately, Rodney did not really have any true friends.

9. Rodney was so desperate to please that he often took blame for things he had not done. I remember one particular time the neighbor had been complaining that our kitty litter had been dumped in his yard. Since Rodney was responsible for the kitty litter, I assumed it was him. I punished him and he accepted the blame quietly. This happened repeatedly, but then one day I caught his brother dumping it. I was shocked and asked Tom why he had let his brother take the blame for his actions. I was even more shocked and saddened however, that Rodney had accepted the blame for his brother's mischief.

10. I kept very close watch over my children. They were not allowed to go on vacations without me and I did not let them stay away for me for long periods of time. I did not want anyone to hurt them, especially in the ways that I had been hurt as a child. I had a very difficult and unloving childhood. My mother and father divorced when I was very young. My mother, an immigrant from Sweden, must have felt very overwhelmed because she gave us up to the Department of Family Services. I remember standing there while she told the official that she did not care what happened to us, she just did not want us and she did not want our father to have us. This is a very painful memory for me. I was subsequently placed in a series of foster homes. Growing up in a foster home was very difficult for me, especially since I experienced many terrible things, including emotional and physical abuse. In one of the foster placements, I was molested which was a particularly devastating experience for me and ended up affecting me greatly. I have had to struggle through my life to understand why these things happened to me as a child. At times it has been very hard.

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11. Rodney particularly needed a great deal of supervision. I remember once when Rodney was about ten he called me from home and told me he wanted to make some cookies. I told him where the recipe was so he could start making them. When I came home everything was a mess. He had apparently misunderstood the instructions. When it said $\frac{1}{2}$ cup, he had put 1 cup and then 2 cups and when it said $\frac{1}{4}$ tablespoon, he had put 1 tablespoon and 4 tablespoons. Poor Rodney, had problems understanding simple concepts such as fractions and measurements.

12. Bill was an absent father and husband, basically leaving all the children to my care. Taking care of five children, all with so many demands, was exhausting and overwhelming. Rodney also had special needs that took up all of my time. He seemed hyper and always running around and getting into things. I tried to discipline him in the best I knew how, such as making him stay in the corner for hours to think about what he done. He needed constant help and was always demanding extra attention. I needed to conserve my energy for all the children. Rodney also had trouble in school and learning everything like normal children do. With no help from Bill, I was stretched thin. I was desperate after trying everything I knew that could help Rodney, and finally got to the point where I realized he needed some outside help.

13. In 1964, when Rodney was 12, I felt that I could not help him any longer so he was placed in an institution. I thought maybe the structure and treatment would help Rodney. I agreed to undergo psychological evaluation so that the mental health staff could decide the best way to help Rodney. I urged Bill and Lilian to undergo evaluation as well, but they refused. The psychiatrist told me that Rodney was being pulled in two directions, between us and Lilian. Lilian often called and harassed us and Rodney. Instead of trying to make things easier on him,

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she agitated him by insulting Bill and me. Rodney ended up spending two years at the institution. When he was released, I realized that Lilian would not give up, so for Rodney's sake we decided to let him live with her for a year to see if he got better. As soon as he moved there, she threw away all of his medications from the hospital that I thought had helped him a great deal. The following year after he arrived, she placed him in another institution. It was apparent to me that she had only wanted him because he was with us, but when he did return to her, she realized he was more responsibility than she wanted. Rodney spent the next several years in institutions.

14. When Rodney got married, I had hoped he could establish a happy life. I think, however, the pressures of having a wife and two children with medical problems was overwhelming for him. Rodney had never been equipped to handle a lot of responsibility and pressure. He was very fragile and needed a lot of care, probably in a hospital setting.

15. I was devastated to learn that Rodney was charged with a capital offense. I knew that Rodney could not hurt anyone or anything intentionally. He is the gentlest person I have

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ever known. Unfortunately, at the time I was suffering from the death of my current husband and was consumed with grief. I was so saddened I drank quite a bit to forget my sorrows.

16. If I had not been suffering such a personal tragedy at the time, I would have tried as best I could to assist in his defense at trial. Rodney had been through a difficult life, and I do not believe he deserves the death penalty.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Signed the 11th of December, 1998

L Leri Jenkins
LORNA TERI JENKINS

DECLARATION OF ROBERT A. LIPPOLD

I, Robert A. Lippold, declare the following:

1. I was a clinical psychologist licensed to practice in the State of Utah beginning in 1962. I performed a psychological evaluation of Lorna Beeler, the step-mother of Rodney Gene Beeler, on April 22, 1964.

2. I received a masters degree in psychology from the University of Utah in 1960. I completed my graduate work in clinical psychology, but did not receive my Ph.D. because I did not complete my language requirement. Following my graduation, I was a resident at the Utah State Hospital in Provo, Utah for about one year. I began working as a clinical psychologist at the Utah Psychological Center in Salt Lake City, Utah around 1960. The Utah Psychological Center was a partnership of three psychologists. The juvenile court in Salt Lake City occasionally referred custody cases to us for our evaluation of either the parents, child, or both.

3. In about 1970, I moved to Nevada to establish a psychological unit for state prison inmates who had been determined to be incompetent to stand trial. Around 1976, I established a psychological service delivery system for parolees

and probationers in Nevada. I was also serving as a consultant for the Nevada Board of Pardons during this time. Due to my expanding involvement in the Nevada Correctional Department, I was asked to take on a higher position within the prison system. Beginning in 1977, I accepted the position as superintendent of a Nevada women's prison for about six months. In 1978, I became the warden of the maximum security prison in Carson City, Nevada. I remained in this position for about two years. My duties as warden included hiring and training prison staff, coordinating the budget, and maintaining operational integrity. In 1981, I became Assistant Director at the Department of Corrections in Washington State, where I supervised the probation and work release programs. After taking some time off, I worked as senior psychologist at a medium security prison in Nevada from 1990 until 1996. Afterwards, I served as warden of a high/medium security prison in Lovelock, Nevada for about two years. I am now retired.

4. In April, 1964, the Salt Lake City juvenile court asked me to evaluate Rodney's step-mother after an incident in which she beat Rodney's brother, Tom, viciously with a belt. The police were called and the juvenile court intervened. The court was concerned about Mrs. Beeler's mental state and competency to

care for young children. There were concerns about whether the children in her care were in emotional or physical danger. I was asked to render an opinion about whether or not she should be allowed to maintain custody of Rodney, who was eleven years old, and his brother Tom, who was thirteen years old at the time.

5. From my evaluation of Mrs. Beeler, I determined that she was a very disturbed woman who suffered from a paranoid character disorder with psychotic episodes. I was struck by her lack of emotional stability or controls. I felt that since she was having so much trouble coping with her own serious mental health problems, it was highly unlikely that she would be able to effectively supervise and care for the children in her home.

6. Mrs. Beeler seemed to be obsessed with the idea that other people were trying to hurt her or damage her reputation. During my evaluation, I noticed that Mrs. Beeler tended to escape into verbal tirades about numerous ways that other people were trying to ruin her life. I felt that she was engaged in a grandiose effort to avoid assuming responsibility for those aspects of her personality she was aware of. I also determined that she was trying to avoid responsibility for her pathological behavior. I wrote in my report that: "Mrs. Beeler spends so much time being concerned about the motives and actions of others that

she has no time left to be concerned about what she does and why she is doing it." It seemed to me that she had become concerned about the fact that other people were taking her step-children away, but she did not think about how she might change her behavior so that she might be able keep them. Mrs. Beeler was able to control herself to some extent by blaming others for her problems, but she came apart when she was held accountable for her own actions.

7. Mrs. Beeler harbored tremendous hostility and resentment towards others. She had a very strong need to act in a hostile and aggressive manner. She made several statements during the testing which were motivated by anger and hostility towards her family. On the Sentence Completion Test, Mrs. Beeler said that her father was a "jerk," her mother "hated" her, and her greatest mistake was "marrying Bill" (Rodney's father). Even during times when Mrs. Beeler was acting as stable as possible, she was still shaky, and operated on the level of a person suffering from a serious personality disorder. Her ability to care for children was limited severely by her mental problems.

8. Mrs. Beeler was quite controlling during my interactions with her. She demanded that the test information not be released until she had reviewed it. She told me that she

would not release the test information to the court under any circumstances.

9. I also determined that Mrs. Beeler's condition deteriorated to the point where she experienced psychotic episodes. She was potentially explosive and had very little control over her actions when she lost her temper. During these times, she was capable of irrational or even bizarre behavior. Mrs. Beeler was delusional, paranoid, and possibly hallucinatory. She had brittle emotional control, and came unglued easily. She struck out at others, including her children, when she lost control of herself. In my report, I wrote: "Her lack of controls in frustrating situations makes her a poor risk in terms of her being able to use her judgement." I felt that she was most likely to lose her temper when she was confronted with responsibility for her feelings and actions. A young child like Rodney would have been especially vulnerable while in her care when she was experiencing a psychotic episode.

10. Mrs. Beeler acknowledged that she treated Rodney and his brother, Tom, cruelly. Mrs. Beeler tended to act out her feelings onto others, rather than handling them herself. She was coping with her own serious mental problems by beating Rodney and his brother. She said that the worst thing she had ever done was

to beat Rodney and his brother Tom too hard. Still, Mrs. Beeler showed no remorse or sorrow for her mistreatment of Rodney and his brother. She appeared to be more concerned that she had been caught beating her children than she was about the damaging effects her behavior had on them.

11. A child raised in a home in which the primary care giver is as disturbed as Mrs. Beeler was, would undoubtedly have trouble learning coping skills and could develop severe emotional difficulties. The environment in the Beeler home was quite unpredictable. Children who are raised in strict but predictable households are often able to learn to cope under the circumstances. On the other hand, Rodney was at the mercy of a woman who was completely unpredictable and prone to psychotic episodes. He had no idea what she would do next. Also, Mrs. Beeler was clearly not capable of teaching Rodney to cope with his feelings. Children -- and especially youngsters with mental impairments -- have a very hard time developing normally in such an abusive environment. The time Rodney spent under the supervision of Mrs. Beeler profoundly decreased the likelihood that he would be able to develop normal social skills.

12. I was convinced that Mrs. Beeler was not capable of providing a healthy home environment for Rodney and his brother.

I recommended that she be referred for psychiatric help. She was sufficiently disturbed to possibly merit treatment with psychotropic medication, combined with a program of psychotherapy. Medication might have helped to reduce the psychotic episodes and to calm Mrs. Beeler and instill some consistency in her life. I also recommended that the children be taken away from Mrs. Beeler while she received the psychiatric treatment she needed so desperately. I also thought that Mrs. Beeler needed to assume some responsibility for the way she felt and behaved. I wrote in my report that: "Until she does so, it is felt unlikely that she could realistically cope with herself, let alone with the added responsibility of raising a family."

13. Especially during the mid-1960's, it was very unusual for a psychologist to recommend to the court that a mother be denied custody of her children. The court took deprivation of custody cases very seriously, and reviewed them very closely. Even if a child was experiencing some abuse in the home, the court generally preferred to keep them in the home rather than order foster home placement. The fact that I recommended such a drastic step at the time indicates to me that I felt very strongly that Mrs. Beeler's deteriorating mental health was having severe negative effects on the children she was caring for

and that I had concerns about their safety in this extremely troubled home environment. By any standard, Rodney had an atrocious childhood while Lorna Beeler was his care giver, and I thought that he would be better off elsewhere -- even if it meant sending him to a foster home.

14. Without the psychiatric treatment that I recommended, it is highly unlikely that Mrs. Beeler would have been able to improve her mental condition and parenting skills on her own. Unfortunately, there is no sign in the records that Mrs. Beeler ever received the treatment I recommended. Since Mrs. Beeler could not assume responsibility for herself, it was highly unlikely that she would have sought treatment voluntarily.

15. After having evaluated Rodney's step-mother, I am convinced that Rodney did not have much of a chance to develop normally as a child. It is very unfortunate that Rodney had to be raised by a woman who suffered from such serious mental and emotional problems.

16. In 1988, I was contacted by an investigator representing Rodney Beeler at his capital trial. I traveled to Orange County, California to testify at Rodney's penalty trial. Rodney's trial attorney asked me to testify about my evaluation of Lorna Beeler, and about my experience as a warden in carrying

out an execution in Nevada. The prosecutor objected to my testimony concerning the effects of an execution on the prison staff and a prisoner's family, and the court ruled that portion of my testimony inadmissible. Had I been questioned further and been allowed to testify without interruption, I would have provided the information below.

17. One of my duties as warden of the maximum security prison in Carson City, Nevada was presiding over the execution of Jesse Bishop on October 22, 1979. The day I took over as warden, I received a letter from the United States Supreme Court informing me that an execution date was going to be set for Mr. Bishop. I was concerned about the possibility of having to carry out an execution, so I called the state Attorney General's office. I was informed that Mr. Bishop still had a number of appeals available to him, so his execution was not likely to occur until a number of years down the line. As it turned out, though, Mr. Bishop declined to pursue his appeals. An execution date was set, and I began to prepare for his approaching execution.

18. Because it had been more than ten years since the last execution in Nevada, there were no appropriate execution policies or procedures in place. I therefore prepared a thorough

execution protocol by visiting San Quentin State Prison in California and rewriting their procedures so that they were applicable under the circumstances in Nevada. Preparation for the execution was a consuming activity. Among the things we had to do were blowing out the glass around the gas chamber and resealing the chamber because the putty around the windows was old and dry. We also had to determine how much cyanide to mix with the acid to make the appropriate amount of lethal gas. I became absorbed in the preparation process.

19. In hindsight, my biggest mistake was to form a personal relationship with Mr. Bishop. I rotated the prison staff who had contact with Mr. Bishop regularly because I was concerned that they would form emotional attachments and become too personally involved with the process. I had learned from my research that executions could be very traumatic for staff if they were not sufficiently protected.

20. In my efforts to protect my staff, I unfortunately did not take my own well-being into consideration. I took it upon myself to keep in close contact with Mr. Bishop, and I later paid the price. Because he still had the option of pursuing his appeals, I took it upon myself to speak with Mr. Bishop daily to find out whether he had decided to retain counsel and resume his

appeals. I spoke with him for about fifteen to twenty minutes every day during the weeks approaching the execution. It was during these conversations that I came to recognize Mr. Bishop as an individual.

21. Jesse Bishop was sentenced to death for the murder of a young man during the robbery of a casino. Mr. Bishop accepted responsibility for the crime and appeared remorseful. He told me that the young man whom he had killed did not deserve to die. He was very cooperative and respectful towards me and my staff as the execution approached.

22. I was one of three members of the execution team. The other two were the director of prisons and the captain of security at the prison. The execution proceeded as we had planned. There were no delays or mishaps, partly because we were so well prepared. On the day of the execution, I remember Mr. Bishop called for me after we had strapped him in to the chair in the gas chamber. When I came to his side, Mr. Bishop thanked me for treating him fairly and with respect. I was taken aback. Under the circumstances, I would have had a much easier time carrying out the execution if he said something unpleasant to me. After Mr. Bishop had spoken his final words, we closed the gas chamber and he was executed.

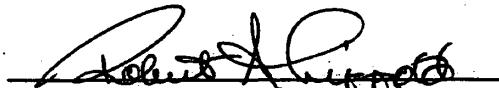
23. The execution was clearly extremely hard to endure for those who were close to Mr. Bishop. I remember that Mr. Bishop's brother, wife, and girlfriend attended the execution. Both his wife and his girlfriend cried in the witness room.

24. I remember I had a hard time coping day to day following the execution. It was difficult for me to come to terms with what had happened, and I began to engage in self-defeating behavior. Soon afterwards, my 25 year marriage ended in a divorce. I was not performing my job adequately, and so I decided to resign with the agreement of the prison director. Six months after Mr. Bishop's execution, I was divorced and unemployed. Realizing the significant impact the execution had had on me, I spoke at length with a friend who was also a psychologist. Even though I am trained in psychology, it took quite a while for me to make sense of the reaction I was experiencing to the execution. I finally decided I had to move out of Nevada and start anew in the state of Washington. To this day, I still remember Mr. Bishop's execution.

25. Participating in or witnessing the execution of a prisoner can have profound psychological effects upon the warden who is in charge, his staff, and the family witnesses. I support the death penalty in murder cases with special circumstances.

Still, the actual process of putting to death a human being can be emotionally devastating. It is difficult to prepare oneself or anyone else for such an experience, because it is unlike any other task one would ever be called to do. I believe that execution is an appropriate punishment under certain circumstances. I was called upon to accept the responsibility of executing one prisoner in Nevada. I took my job very seriously and prepared the execution procedures and my staff as thoroughly as possible. Unfortunately, I was not able to prepare myself for the deep emotional impact the execution would have on me.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and was executed this 11th day of June, 1998.


ROBERT A. LIPPOLD

DATE		NEW INTERNAL MEDICINE		UCSF MEDICAL CENTER OUTPATIENT CLINIC RECORD	
APR 27 1978		Wt 295g		80/120/75	
ID: 25 Y.O. CO					
CC: HA x 6 wks					
HPI: 25 Y.O. CO had concussion 1/78 2° minor head injury = lac over @ forehead in fight. Skull base @. Beginning 6 wks later got head aches @ temporal HA = radiations to @ temple, then thro' entire head. Pain at @ = ASA. Occurs intermittently, last varying amt time (due to many lapses), often awakes at night. Pt denies shuffling. Vague hx HTN yrs ago, no tx. c/d 3 wks transient blurring vis on @. & hearing OS since 1971 2° Nervous states, tx @ myringotomy. Since concussion has tingling @ lower face and @ lower side of lips.					
PMH: appt, hernia, @ myringotomy. @ diabetes @ PPD, tx = MHT x 15 mos. Shoulder burn as meds: ASA Denton 2° last time. child. allerg: NKA					
Physician making note sign and identify as follows: S = Intern; R = Resident; S = Hospital Staff; A = Attending Staff					

OUTPATIENT
CLINIC RECORDEXHIBIT 19
2-ER-364

Case 2:96-cv-00606-GW Document 247-2 Filed 12/21/12 Page 29 of 88 Page ID #: 2011

COUNTY OF ORANGE HEALTH CARE AGENCY
MENTAL HEALTH SERVICES

INTERDISCIPLINARY PROGRESS NOTES

THERAPY ZONE

IDENTIFICATION IMPRINT

DATE	SVC	PROB NO.	NOTES
7/3/16	M		<u>Reyk Note</u> - Eony Fu = problem. Henry for murder comp. 34 YOWS - OC Jail - 6 mo - 1 De Body B.L. MRF → Bodily Assault - 1st on Filmed 100% non - 200% HC → Joints after he saw SAU - the psychologist "last note 2° to Henry (2) vocal - (1) non toxic = man's voice - mostly clear - outside the head - whispering on my shoulder. "I don't see you" the voice - it talks to all day - I listen to it more. the only way human voice told me - I'll watch out for you - I'll make sure nothing will happen to you. I'm thinking - rational - then get really high - I'm feeling just powerful - I'm the only one After it's over - I'm feeling like I'm in my mind + I feel like I'm took over I did it. #2 - Woman's voice - I recognized that as my step mom - I actually heard her last night - that's the time the voice started. - Now - would be in listening more to this time (10) + feeling of going up to a higher level hears for me + trouble. [3 voice] - "just pop up on you just catch the guy + get him off your back" ④ Henry - Team Lopez - 20 min - 1 hr ⑤ Sleep on 2 hrs/night for - 6 mo: then - note state w/ Mollie as + forgetful + also fell off bed. so it was clear. Hacked Thompson, Stiles, Kibb, Thelma, Little (over) J. Q. ...

EXHIBIT 20

2-ER-432

1 KAYE, SCHOLER, FIERMAN,
2 HAYS & HANDLER
3 PIERCE O'DONNELL
4 KENNETH FREELING
5 JOHN SHAEFFER
6 1999 Avenue of the Stars
7 Suite 1600
8 Los Angeles, California 90067
9 (310) 788-1000

Attorneys for Petitioner Rodney Gene Beeler

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IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

In re RODNEY GENE BEELER,) CASE NO.
Petitioner,) CASE NO. S010164
On Habeas Corpus.) (Related Appeal Pending)
Orange County Superior Court
Case No. C-60966
DECLARATION OF STEPHEN H. WELLS,
J.D., Ph.D. FILED IN CONJUNCTION
WITH PETITION FOR WRIT OF HABEAS
CORPUS

I, Stephen H. Wells, J.D., Ph.D., declare:

1. I am currently a member of the Orange County and Los Angeles County Superior Court panels of psychiatrists and psychologists and adjunct clinical professor at the California School of Professional Psychology. I have a private forensic practice in which I perform clinical evaluations, consult and offer expert testimony in criminal cases in areas such as competency to stand trial, criminal responsibility, dangerousness, et al. I know the facts stated herein of my own personal knowledge and, if called as a witness, would competently testify to them.

2. A true and correct copy of my curriculum vitae is attached to this declaration as Exhibit A.

1 3. As part of my private forensic practice, I was retained
2 by John D. Barnett, Esq., principal trial counsel in People v.
3 Beeler to consult in that case. On July 26, 1986, I was appointed
4 by the Superior Court in Orange County to examine Mr. Beeler. I
5 interviewed Mr. Beeler on numerous occasions and reviewed relevant
6 records and documents, including but not limited to psychiatric
7 records, social service records, investigation reports, crime scene
8 reports.

9 4. On October 16, 1986, I met with Barnett and Tom Gleim, a
10 private investigator engaged by Barnett to work on People v.
11 Beeler. I told them that Mr. Beeler had reported to me that he was
12 experiencing auditory and visual hallucinations.

13 5. In January 1987, I recommended to Barnett that Beeler
14 undergo a highly sophisticated mental health evaluation to
15 alleviate his distress.

16 I declare under penalty of perjury that the foregoing is true
17 and correct.

18 Executed this 27th day of May, 1993 in Santa Ana,
19 California.

20
21 
22 Stephen H. Wells, J.D., Ph.D.

1 KAYE, SCHOLER, FIERMAN,
2 HAYS & HANDLER
3 PIERCE O'DONNELL
4 KENNETH FREELING
5 JOHN SHAEFFER
6 1999 Avenue of the Stars
7 Suite 1600
8 Los Angeles, California 90067
9 (310) 788-1000

Attorneys for Petitioner Rodney Gene Beeler

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IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

In re RODNEY GENE BEELER,) CASE NO.
Petitioner,) CASE NO. S010164
On Habeas Corpus.) (Related Appeal Pending)
Orange County Superior Court
Case No. C-60966
DECLARATION OF LENORE E. WALKER,
Ed.D., FILED IN CONJUNCTION WITH
PETITION FOR WRIT OF HABEAS
CORPUS

I, Lenore E. Walker, Ed.D. declare:

1. I am a clinical and forensic psychologist who is licensed to practice psychology in the states of Colorado and New Jersey, where I have resided. I have been awarded a Diplomate in Clinical Psychology from the American Board of Professional Psychology that makes me license-eligible in most other states, voted a Fellow of the American Psychological Association and elected to the National Academics of Practice in Psychology. I am President and a psychologist at Walker & Associates in Denver, Colorado. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, would competently testify to them.

2. My full credentials, including my educational background,

1 clinical experience and publications are set forth in my resume, a
2 true and correct copy of which is attached to this declaration as
3 Exhibit A.

4 3. On or about September 10, 1987, I was contacted and
5 retained by Otha Standifer, attorney with John Barnett, Esq.,
6 Rodney Beeler's trial counsel, to provide a psychological
7 evaluation of Beeler. My associate, Dr. Lon Kopit, and I spent
8 numerous hours during the next year interviewing and testing Mr.
9 Beeler and various members of his family. Mr. Barnett provided me
10 various documents to use in formulating my expert opinion,
11 including, but not limited to, medical reports, results of and
12 reports on psychological tests throughout Mr. Beeler's childhood
13 and adult years prior to this arrest, other arrest records, records
14 of prior institutionalization during childhood and adult years, and
15 interviews with individuals who were in a position to observe Mr.
16 Beeler's behavior and the abuse he suffered.

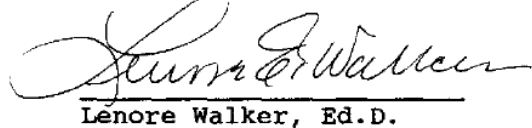
17 4. Prior to the commencement of the guilt phase trial, I
18 recorded and corroborated the severe physical, psychological and
19 sexual abuse inflicted on Mr. Beeler. These events significantly
20 stunted and distorted his cognitive capacities. I noted that
21 throughout his life, Mr. Beeler had suffered from memory lapses or
22 blackouts. I told counsel that Beeler had no recollection of the
23 charged rape and that the memory of the murder was only partial and
24 confused.

25 5. Based upon my review of the documents and interviews with
26 Mr. Beeler, I was concerned that the severe abuse inflicted upon
27

1 Beeler may have caused him neurological damage. It was, however,
2 outside my area of expertise to opinion on whether in fact Beeler
3 suffered from such an injury. Prior to the commencement of
4 Beeler's guilt phase trial, I advised Beeler's counsel that
5 Beeler's blackouts and mental condition may have a neurological
6 basis, and I strongly suggested that counsel retain a neurologist
7 and neuropsychologist to evaluate Beeler's neurological condition.
8 Trial counsel represented to me that they had already petitioned
9 the court for funds for the appointment of a neurologist, but their
10 request was denied.

11 I declare under penalty of perjury under the laws of the state
12 of California that the foregoing is true and correct.

13 Executed this 25 day of May, 1993 at ^{Montgomery, Alabama} ~~Denver, Colorado~~.

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Lenore Walker, Ed.D.

EXHIBIT 24
2-ER-486

☒ Medical	ORANGE COUNTY JAIL	Received by Deputy
☐ Dental	Santa Ana, California	Initials
☐ Psychiatric	INMATE MEDICAL MESSAGE	Date/Time

TO: MEDICAL DISPENSARY

Medical/physical complaint(s): I HAVE BEEN GETTING HEAD ACHES THAT HURTS BADLY PLEASE HELP

THANK YOU

I understand that by submitting this request for medical attention, I am consenting to and authorizing procedures necessary for my health and well being.

INMATE: RODNEY BEECHER Booking Number: 865-295

Housing Location: B-10 Date: 3-16-87

J-154 (Rev. 12/83)

☒ Medical	ORANGE COUNTY JAIL	Received by Deputy
☐ Dental	Santa Ana, California	Initials
☐ Psychiatric	INMATE MEDICAL MESSAGE	Date/Time

TO: MEDICAL DISPENSARY

Medical/physical complaint(s): HAVE BEEN HAVING HEAD ACHES SINCE I WAS INMATE DOES NOT HELP

I understand that by submitting this request for medical attention, I am consenting to and authorizing procedures necessary for my health and well being.

INMATE: RODNEY BEECHER Booking Number: 865-295

Housing Location: B-10 Date: 3-16-87

J-154 (Rev. 12/83)

EXHIBIT 24
2-ER-487

☒ Medical	ORANGE COUNTY JAIL	Rec'd by Deputy
☐ Dental	Santa Ana, California	Initials
☐ Psychiatric	INMATE MEDICAL MESSAGE	Date/Time

TO: MEDICAL DISPENSARY

Medical/physical complaint(s): I HAVE BAD STOMACH & HEAD ACH PLEASE HELP

THANK

I understand that by submitting this request for medical attention, I am consenting to and authorizing procedures necessary for my health and well being.

INMATE: RODNEY BECKER Booking Number: 865-295

Housing Location: B-10 Date: 3-21-87

J-154 (Rev. 12/83)

☒ Medical	ORANGE COUNTY JAIL	Rec'd by Deputy
☐ Dental	Santa Ana, California	Initials
☐ Psychiatric	INMATE MEDICAL MESSAGE	Date/Time

TO: MEDICAL DISPENSARY

Medical/physical complaint(s): I AM HAVING BAD HEADACHES AND I AM HAVING STOMACH ACHES. BAD COLD PLEASE HELP

I understand that by submitting this request for medical attention, I am consenting to and authorizing procedures necessary for my health and well being.

INMATE: RODNEY BECKER Booking Number: 865-295

Housing Location: B-10 Date: 3-21-87

J-154 (Rev. 12/83)

EXHIBIT 24

2-ER-488

☒ Medical ☐ Dental ☐ Psychiatric	ORANGE COUNTY JAIL Santa Ana, California INMATE MEDICAL MESSAGE	Received by Deputy Initials Date/Time
TO: MEDICAL DISPENSARY		
Medical/physical complaint(s): <u>my left eye is still red</u> <u>by the way my num 80 have 4D set stom</u>		
I understand that by submitting this request for medical attention, I am consenting to a authorizing procedures necessary for my health and well being		
INMATE: <u>Reiner, Robert</u>		Booking Number: <u>3-3-85</u>
Housing Location: <u>J-154 (Rev. 12/83)</u>		Date: <u>3-3-85</u>

☒ Medical ☐ Dental ☐ Psychiatric	ORANGE COUNTY JAIL Santa Ana, California INMATE MEDICAL MESSAGE	Received by Deputy Initials Date/Time
TO: MEDICAL DISPENSARY		
Medical/physical complaint(s): <u>I HAVE BEEN HAVING CHEST PAIN</u> <u>ALL DAY</u>		
I understand that by submitting this request for medical attention, I am consenting to a authorizing procedures necessary for my health and well being		
INMATE: <u>Ernest DeLoe</u>		Booking Number: <u>865-295</u>
Housing Location: <u>B-8-1</u>		Date: <u>1-14-86</u>

ORANGE COUNTY HEALTH CARE AGENCY
Public Health and Medical Services
Correctional Medical Services

CLINICAL RECORD --- PROGRESS NOTES

Name BEELE, Rodney G. Booking Number 865-275 Date of Birth 1/10/86

Date	Time	ALLERGIES:
1/10/86	1300	Pt. appears depressed/weeping. Reveals history of hospitalizations + imprisonments. Has been off Lithium for several years also had taken Wellbutrin + Prozac. Pt. displays O thought Dis. He describes manic episodes in past for example once "pulling out all his toe nails" alternating with depression. Admits to visual FSPs in past when he "thought about his own death" feet cross at present. Observation through emotional lability + irritability evident. Plan: ① 4 weeks of Prozac ② 4 weeks of Wellbutrin ③ 4 weeks of Lithium. B. Johnston M.D.
1/10/86	1430	PR = G.O. except
1-10-86	1630	PR = G.O. except

Public Health and Medical Services
Correctional Medical Services

CLINICAL RECORD --- PROGRESS NOTES

Name Beder, Rodney Booking Number 865-295 Date of Birth ██████52

Date	Time	ALLERGIES:
2/3/86	0900	clt Aches & Pains & Head Congestion T 98.9. Throat clear. No Rhinorrhea cold symptoms. Advised Tylenol q 4 PRN & ↑ Fluid Intake. Pt's tongue is dry & coated M. H. B. B.
2/3/86		Seen to reassess housing. Pt. still insists "he doesn't want to live... and if "something" were available he might try suicide." However, his mood is more elevated with no marked clinical depression. Told Pt. a decision will be made next wk - and to move to less restrictive housing. [He is complaining of throat congestion] M. H. B. B.
2-3-86	2155	clt "Bad headache" feels bad all over. Temp 99.4 Given tylenol tabs per request B. J. B. B.
2-4-86	1130	clt of headache & cold. PE. 98.6. Throat Reg. Tylenol tabs per request B. J. B. B.
2-4-86	1450	Reading in Book in Bed. B. J. B. B.
2/4/86	2010	Tylenol tabs per request for clt cold. B. J. B. B.
2-5-86	0800	In Court B. J. B. B.

CLINICAL RECORD

PROGRESS NOTES

Date	Time	ALLERGIES:
1-13-86	1935	Tylenol tabs in request for 4. headache L. Throat. E
1/14	1330	Tylenol in request. Allergic
1/14	0520	BP 120/98. Going to Court. Allergic
1/14/86	0800	In Court - Break
1/14/86	1100	Court Deputy called Clerk saying inmate was having chest pain in Court. Inmate sent back to jail but died by nurse. Appears in no better state and appears anxious - BP 110/80 P 88 R 18 - 60 labored Tylenol tabs in request. Make 1/14/86 1645 go private to upper Delecta with chest pain at heart worse with chest pain and/or take a rest in Court. E
1/15/86	0200	2015 Tylenol tabs in request. Allergic
		1/15/86 0520 BP 120/98. Going to Court. Allergic
		1/15/86 0530 BP 120/98. Going to Court. Allergic
1/15/86	0800	1/15/86 1615 Tylenol tabs in request. Allergic
1/16/86	0520	BP 120/98. Going to Court. Allergic
1/16/86	0900	1/16/86 0900 This R. Throat. E of chest pain. No labored problems. He appears in no medical distress. He presents as rhythmic

EXHIBIT 24

2-ER-493

Public Health and Medical Services
Correctional Medical Services

CLINICAL RECORD --- PROGRESS NOTES

Name BEELER, RODNEY Booking Number 865-295 Date of Birth ██████-██-52

Date	Time	ALLERGIES: (cont)
2/6/86		separated mood. Mixed Reason to be on so to improve mood & maintain the control anxiety.
2/6/86	1850	Days he doesn't feel well. Temp 99.4° R. Breath
2/6/86	2135	Temp. 101.2. Given tylenol tabs, adv ↑ water intake. R. Breath. Given pitcher of juice Reduces R. Breath.
2/7/86	0730	Arrived. Temp 99.4. State he prepared refusely. State he was shirtless.
2/7/86	0800	Temp 99.4. State he was shirtless.
2/7/86	0515	Temp 99.4. State he was shirtless.
2/7/86	0800	Temp 99.4. State he was shirtless.
2/7/86	1200	Temp 99.4. State he was shirtless.
2/7/86	1600	Temp 99.4. State he was shirtless.

P272-26,1702 (12/79)

EXHIBIT 24

2-ER-494

CLINICAL REVIEW		PHYSICIAN NOTES
Date	Time	ALLERGIES:
2-7-86	1730	c/o numbness & pain @ arm up @ side of neck & back of head, especially back of head. it hurts if moves head side-to-side & to chest Temp. 100°. Given Tylenol tabs. R. Strouth
2/7/86	2020	T. 99° R. Strouth
2/7/86	2110	Tylenol tabs 11 (6) per request. R. Strouth
2/8/86	0570	11/6/86 R. Strouth
2/8/86	1000	Tylenol Ti tabs per request R. Strouth
2/8/86	1600	c/o ear ache. T=99.2° Tylenol tabs 11 given
2-8-86	1740	Liquid BM yellow-brown in color-noted. States diarrhea x 3 today. c/o abdominal discomfort & ear ache. R. Strouth
2/8/86	1800	Kaspectate 30 cc's given for diarrhea. Care checked; (R) TM bulging slightly. Well. Low MHR in morning.
2/8/86	2000	T. 99.2° Tylenol tabs 11 given. R. Strouth
2/9/86	0500	BP - 150/90 Tylenol tabs 11 per request R. Strouth
2/9/86		P.B. 150/90 T 98.1
		TMs slightly full
		Temp: Serous stria media
		Plan: decongestant
		C. J. Strouth

ORANGE COUNTY HEALTH CARE AGENCY
Public Health and Medical Services
Correctional Medical Services

CLINICAL RECORD --- PROGRESS NOTES

Name Bieder, Rodney Booking Number 52 Date of Birth 8-5-85

Date	Time	ALLERGIES:
4-18-86	2:05 PM	Subject c/o. v. v. In almost granular state - but no BP 120/60 - But to not to get a read and 4-16-86 8:00 AM had some pt. N/D 4-18-86 0025 Subject came down because he had chest pain - described as dull ache in chest radiating down R arm. Also states has had an upset stomach since Friday 4-11. Ate only milk & rice for dinner tonight Had chest pain while he slept on Friday 4-11. Is currently on 10 mg of Thorazine, 50 mg of and 10 mg of Valium, Elavil 150 mg, B.S. 20 mg of Zolam. Also 40 mg of but does not seem to be disturbed. Also self states he has anxiety disorder. Also states he has been on 10 mg of and 10 mg of Valium for 5 days. LMA 4-18-86 Vomited food's eaten & took. No blood. Had (+) huc. New Tumor Masses Assessment Gastrointestinal Please see per urinal

PROGRESS NOTES

[illegible]

Ref to Dr Fisher/ Baker

2-ER-497

PROGRESS NOTES

Date	Time	ALLERGIES: NKA
10/17/86	1430	Psych Note: pt alert, well-oriented, responsive, euthymic. He is diagnosed with no complaints. Stable conts Elavil
10/20/86	10 00	See Dental Chart C. J. Salas B. Hutchinson
10/21	0700	Subject c/o increasing chest pain - states pain occurs infrequently. BP 104/60 - AP. 92 RR. & diaphoresis noted, & resp. distress. Instructed to return to clinic if 30s continue or worse & RR. & RR.
10/21/86	2345	Again c/o chest pain - states it's a sharp pain that radiates to (L) shoulder & cannot (L) arm to ach. Lasts about 20-30 min. Has had 2-3 episodes a day past week. Also has left forearm pain day - BP 100/60 AP - 72 RR. Skin warm & dry. Due to multiple chest pain this week will refer to MD in AM. (B. J. Salas MD)
10/22/86		Subject c/o chest pain - 5 red/Bu - severe O: BP 100/60 Chest - clear Cv - normal A: chest pain - pos ischemia & angina P: Nitroglycerin 100 + 2 p chest pain, repeat of 5" x 3 Return from chest

[Signature]

2-ER-498

Public Health and Medical Services
Correctional Medical Services

CLINICAL RECORD --- PROGRESS NOTES

Name BELLEN, Rodney Booking Number 865-295 Date of Birth _____

Date	Time	ALLERGIES:
9/30	0830	Rx 1c - 90 Diarrhea. Given Risperidone 3 x 1. Admitted to ER light today. To bed on _____ Sh. left
9/30	1520	S. states slipped & fell today @ 1445 & hit (D) back of head on a wooden bench. States lost consciousness "for a few minutes" - doesn't know how long he was passed out. C/o severe HA "throbbing" to (D) temporal area. Denies any vision or voice incident. C/o "dizziness". Also c/o pain to (D) TMJ area. CANT unpersuadable. CONT, peria, Pong, C/o (D) temporal area & moderate swelling & redness extending behind ear - also noted (C/o) over very tender to touch. (D) TMJ tender to touch. A. R/O Pt (D) temporal area. P. Skull varies today. <i>[Signature]</i> del Mino ANP
9/30	162310	Physical Re-exam. Ray done. Numbness on left temple. Neg for fracture - Awake. OX4 - No nausea or vomiting - Head Injury instruction from ER Dept. UCD - T989 P96. R20 - 120/70 - Some bruising behind left ear with tenderness to touch - Pt c/o having a headache. Dr. at UCD - told pt that was to be expected. Will have Dr. evaluate in Am Hospital. person who Refused to be seen. (D) Fell on

P272-38.1702 (12/79)

EXHIBIT 24
2-ER-499

CLINICAL RECORD		PROGRESS NOTES
Date	Time	ALLERGIES:
9/30/86	2345	Admitted to Ward A Labstix all negative. pH 5. No rashes on temple injury. Swelling present. P Tagir
10/1/86	0010	Ch. Headache. Tylenol II given. Ice pack to temple given. P Tagir
10/1	0400	Tylenol II per request P Tagir
10/1	0500	BP 100/64 T 99.3 P 55 RR 18. PEXLA, good hand grip. O/V. visual abnormality. P Tagir
10/1/86	0900	Tylenol 2 tab per request. P Tagir
10/4/86		pt & scalp checked no red left frontal scalp no bruising - good Nail: no bruising - BP 110/70 P 80 R 18 H eat - normal Jaw - clear Bk of H & N: on V-Proctor - 50 m Pain - Painless H & S Head Injury injuries at V & N on T-10, V & N & S T-10, V & N & S V-S. stable. Dr. Head Regular Hourly Resolved. Slight

EXHIBIT 24

2-ER-500

PROGRESS NOTES

[illegible]

2-ER-501

11 10 77

06596514 OUTPATIENT

561710 52R

BEELE, RODNEY GENE

M 52 11/31/88

550 N FLOWER ST

SANTA ANA CA 92701

714 734-2000

UCI MEDICAL CENTER

OUTPATIENT CLINIC RECORD

77 DERMATOLOGY

CLINIC EX-2

NOV 10 1987

CARDIOLOGY CLINIC

APPOINTMENT TIME 12:15

ARRIVAL TIME 1:15

Pt still no clear pain suggestive of angina
relieved by 51 nitroglycerine

87 kg taking about 6 nitroglycerine per day

11/8/88 TMST ⊖ digestive evidence for ischemic

PD R04

Total T4 - 6.4 - NL 11/3/87

VE VSS afebrile ⊖ JVD.

WS: S1/S2 S940 c

lung: clear

abdo - soft cat - NL

Assessment ① chest pain & features suggestive of
angina

② TMST

③ h2 NTD

Plan ① card Procardia 20mg TID

cont depressor 50mg TID

add Isordil 10mg TID

② RTC x 1/12

Physician making note sign and identify as follows:
R - Resident; S - Hospital Staff; A - Attending Staff

OUTPATIENT CLINIC REC

EXHIBIT 24
2-ER-502

☐ CONSENT NOT OBTAINED (See Reverse)

**EMERGENCY DEPARTMENT
TREATMENT RECORD**

2-ER-503

UCI MEDICAL CENTER

065965-14

BEELER; LEO NE

TIME STAMP OUT

TIME 21 AMR 10



County of Orange

MEMO

F850-123.2

DATE January 23, 1987

TO: Judge Leonard McBride DEPT/DIST: Superior Court
FROM: Christopher Lundquist, M.D., Medical Director, CMS PHONE NO.: 834-7441
SUBJECT: Rodney Beeler

This memo is in response to our recent conversation regarding your court order dated January 14, 1987, for a full cardiac evaluation of inmate Rodney Beeler at UCIMC.

I appreciate your concern for the welfare of Mr. Beeler. Unfortunately, there are several inaccuracies and misleading statements in the recently submitted report by Mr. Beeler's psychologist, Dr. Steven Walls. In fact, Mr. Beeler has received complete cardiac evaluations on several occasions by our correctional medical officers, who are board-certified internists, and to this date, there has not been any objective evidence of cardiac disease.

I assure you that Mr. Beeler will continue to receive all the necessary medical attention that he may require.

CL:pmf

EXHIBIT 24
2-ER-505

Stephen H. Wells, J.D., Ph.D., F.A.C.F.P.
Forensic and Clinical Psychologist

28701 Quail Creek, Suite 238
Laguna Beach, CA 92656
(714) 843-2584

FILED

JAN 10 1987

CLERK
DEPUTY
By _____
Notarized in California (PI 8717)
and New York (800 127)

January 7, 1986

John D. Barnett, Esq.
1502 North Broadway
Santa Ana, CA 92706

Dear Mr. Barnett:

I am writing to you with regard to Rodney Bealer's request to have a full cardiac evaluation at UCIHC.

As you know, I have been examining Mr. Bealer as your consultant and pursuant to court order and have seen him at least monthly at the Orange County Jail since last September in the course of my extensive evaluation.

On each occasion, Mr. Bealer has reported to me symptoms of Angina pectoris including severe chest pains, radiating pains in the arms and feelings of impending suffocation during episodes that last 15 to 20 minutes. He has shown me his prescribed medication, Nitroglycerin tablets, which he takes when experiencing symptoms; this medication is typically prescribed for its ability to relax the vascular smooth muscles affected.

→ Mr. Bealer indicates that he was diagnosed several years ago as suffering from "intermittent heart beat," that he has repeatedly had abnormal EKGs, → that he has long suffered from significantly elevated blood pressure (he is presently taking the medication Iopressor for this as well), that he → suffers occasional speeding-up of his pulse rate and that physicians have expressed concern over the level of his blood cholesterol.

I want to emphasize that Mr. Bealer is not complaining (at least not more than what is routine from most inmates everywhere) about his medical care at OCJ, but rather he believes that he requires at least one opportunity for evaluation with the obviously more sophisticated diagnostic techniques available at UCIHC.

Mr. Bealer is also being treated for severe depression at this time with the anti-depressant medication Elavil, in a needed dosage of 250 mg. at hour of sleep. This is an extraordinarily high dosage (even hospitalized patients rarely require more than 200mg. per day), indicative of his level of depression and clinical symptoms such as insomnia. While he requires this medication and is being well-monitored as to superficial signs (regular blood pressure and the like), possibly a bit more may be required because of the cardiac effects that Elavil can have. Quoting from the latest PDR product information, "Patients with cardiovascular disorders should be watched closely. Tricyclic anti-depressant drugs including Elavil, particularly when given in high doses, have been reported to produce arrhythmias, sinus tachycardia and prolongation of the conduction time. Myocardial

EXHIBIT 24
2-ER-506

2.

infarction has been reported with drugs of this class."

Finally, from a psychological standpoint, I would point out that Mr. Beeler is, in my opinion and as confirmed by the MMPI findings, an individual in whom stress, tension and anxiety are converted quite readily into somatic distress of the sort that can impact and weaken the functioning of organ systems such as the heart and its surrounding vessels. Obviously Mr. Beeler cannot be spared the stresses inherent in his present incarceration and impending capital trial. But it is quite possible that a highly sophisticated evaluation would reveal approaches to alleviating some of his distress, whether through medication, change in diet or other possibilities, and I cannot help believe that such examination would be helpful to his state of mind and pressing concerns even if it provided him only with the reassurance that his condition had remained stable.

Please let me know if I can be helpful in any further regard.

Thank you.

Sincerely yours,



Stephen H. Wells, J.D., Ph.D.

SEW/kj

MEDICATION RECORD FORM

[illegible]

****When medication is given directly to the inmate, initial appropriate box corresponding with the date in the left column. If not pre-dated, be sure to date. Make sure inmate takes the medication in your presence. Indicate in initial box if subject refused medicine.**

F272-26.1714 (10/79) 

CLINICAL RECORD

PROGRESS NOTES

Date	Time	ALLERGIES:
6-28	0415	U.C.I. clinic appt. will be cancelled due to court date. / per Dennis nurse. H. Marked
6-28	0910	Made new appt at UCI Cardiology @ 1315 - Tar - no signed - appt. Calendar. Court advised of new date. H. D. Sunday, Clk.
6-28		UCI Cardiology appt was rescheduled from 6-28 to 7-12 @ 1315 hours. appt Calendar, Tar done, D. Sunday, Clk.
7-1-88		Pericarditis Tremor mildly anxious about sentence. Able to ventilate freely. No S.I. Chest
7-4-88	1300	Sent by AMH for appt. of Johnson Rd
7-4-88	1800	Sent to Dispensary by Deputy S. States he hit wall @ R hand O R hand swelling & edema A. Poss. Fr Metacarpal Phalanx P. T.A.R. UCI Radiology N/A and then
7-4-88	2100	Went med vet reading. No fx - H. H. H. H.
7-5-88		Sent to CMH for appt. Dennis reports of pulmonary med. which was to check out. Apparent COPD. Taken to conf. with H. H. H. H. Not needed much of the time. (Can discuss SE / per) J. H. H. H.

CLINICAL RECORD - PROGRESS NOTES

Date:	Time:	ALLERGIES:
-------	-------	------------

9/12/88 Psychomotor:
Tumultuous sack from
- cat. E+ present
overappointment of
results of final
same diagnosis
line SS alt

870 in 2d
Add 10 days to
society / 100

[Handwritten signature]

7/11/88 Rec'd C.M.H. PS copy - R.H., despite recent court proceedings. Dean St., where on p. 1. Does not appear severely depressed or suicidal, although reports upset in reported. Warden's personal knowledge.

EXHIBIT 24
2-ER-512

100

CLINICAL RECORD -- - PROGRESS NOTES

Name Becker, Rodney

Booking
Number 865-295

Date of Birth

Date	Time	ALLERGIES:
8/8/88	1845	See Dental Chart S. Rudolph
8/9/88	2050	Rec'd Hospital paperwork from UCI for return clinic appt. for 9-6-88 at 1300 HRS. at UCI/Parkway. Cancelled appt. A. Dethman TCT
8/12/88		Painkiller claiming not being able to sleep. wanted like \$ on medical Euthyronic Clothing
8/12/88	1145	See Dental Chart S. Rudolph

CORRECTIONAL MEDICAL SERVICES

Rebooked 10/26/88
1066701

CLINICAL RECORD PROGRESS NOTES

Name BEELEN, ROBERT Booking Number 865-285 Date of Birth 10/26/52

Date	Time	ALLERGIES:
8/18/88		Typhoid from Mex - shivered in garden with on 1/15/88 TDR done C/P
8/19/88		Drug null C/P Continue under TDR from 8/30/88
8/30/88		28 years old Immune is complete See. Feces he doesn't need Demand No 5 & out A - origin off neuroleptic
9-6-88	1625 hrs	Rec'd Hosp. paperwork for return to C.D. Pardner app't for November for us to call for app't date & time. Calendar info. Also returned with C.D. Echo app't in Diagnostic Center in October. Hosp. will contact us with date & time of app't. L.H. Cady (C.D.)

P272-26.1702 (12/79)

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2-ER-515

Date	Time	ALLERGIES:
9/15/88		Pigmentation Irritable AD to conductive hearing stable
9/18/88		for only ear Matur RH JLB
9/18		chart review I made followed in conductive noise & presumed it of stable hearing His stress was was not an issue his stress much less. He needs a thallium stress test to document disease, very unlikely that a young 35 has CAD.
9-15-88		ST Dental Chart
9/16/88		for by CNH Matur RH. JLB
9/23/88		for by CNH Matur present JLB
9/29/88	1430	BR 1007 Pr 80 Matur

ORANGE COUNTY HEALTH CARE AGENCY
Correctional Medical Services

10/29/88
Rebooked under
1006701

CLINICAL RECORD - PROGRESS NOTES

Name: Beeler, Rodney Booking Number: 865-295 Date of Birth: [REDACTED]

Date	Time	ALLERGIES:
7/17/88		Day with Chait Raul Lortan uder TAM done by Elio
9/29/88	1540	appt. made for VLT Dependent on 10-12-88 @ 1000 appt. calendar for to be signed. S. Spruay CH
9/30/88		Psychiatry Tumult is done on proud in food. content at 12 noon. When 140 [REDACTED]
10/19/88		Am for AM. Meeting OK. [REDACTED]
11/24/88		Spinal is done OK. At work in food content on 10/24/88 [REDACTED]

P273-26.1702 (12/78)

EXHIBIT 24
2-ER-517

EXHIBIT 24
2-ER-518

EXHIBIT 24
2-ER-519

Correctional Medical Services

PROGRESS: NOTES

Name Beeler, Rodney Booking Number 1066-701 Date of Birth [REDACTED] = 52

Date	Time	ALLERGIES:
6/17/81		Y'all W. Jackson D/C Y Now pt has patent vs selection at least food; still 7 wt. (10 lbs) but nasal congestion clear - clear nose nose N/A & rise A new lower glands D/D Jural VIT P file order
11/18/88	0920	Blood drawn for Chem 103 - sent to Lab - Helen Brown Barbara P
11/24/88	1330	Serum routine case not by CM4. no spec injection med D. L. Johnson PH
6/10/91		Doe D. R. Bloodwork from liver improved Good

ORANGE COUNTY HEALTH CARE AGENCY

Correctional Medical Services

CLINICAL RECORD --- PROGRESS NOTES ---

Name _____ Booking Number _____ Date of Birth _____

Date	Time	ALLERGIES:
		✓ Thus allow us to be all cardiac meds ✓ to increase our confidence level that chest pain does not indicate unstable MI. (thus preventing hospitalizations for USA 110 MB) Because the pretest probability for CAD is extremely low & because a positive test result (ie myocardial infarction) would not change management I feel cardiac catheterization should not be pursued at this time. Chest ✓ to Dr. Nguyen to review above & I will discuss with him. (Ch)
4/2/21	1330	See for entrance, copy will L. John MD

P272-26.1702 (12/78)

EXHIBIT 24

2-ER-521

DECLARATION OF ROBERT PADUANO

I, Robert Paduano, declare the following:

1. I met Rodney Beeler in the summer of 1988 when we were both incarcerated at the Orange County Jail in Santa Ana, California. I remember the jury had recently returned a death verdict in Rodney's case and he was awaiting formal sentencing. I was awaiting trial in my own case. About three years later, I eventually pled guilty to numerous counts of residential robbery, burglary, extortion, conspiracy to sell cocaine and false imprisonment, and received an eight-year sentence.

2. Around August of 1988, Rodney and I were both housed in the pro per section of the Orange County Jail. At first I was housed on a different tier than Rodney. I was then moved to the same level he was on and I saw him more often. Even when we were housed on different levels, I saw him almost daily because he was allowed to walk the tiers. I lived near Rodney for over nine months before he was sentenced to death and sent to San Quentin in May of 1989.

3. My first impression of Rodney was that he seemed like a person who had taken too much LSD in the 1960's. This was because Rodney seemed so out of touch with reality. From my observations, he did not seem to function in a normal manner.

4. I first realized that something was wrong with Rodney when I asked him to bring me something while he was out on the tier hallway. Rodney said he would, but then he did not deliver what he promised to bring me. When I asked him if he had brought it to me, he acted very confused. He said he did not remember me asking him at all, even though I had asked him just a couple

minutes beforehand. Rodney then told me that he often noticed that there were lengthy periods of time that he could not remember.

5. Rodney had a habit of blanking out sometimes to the point where you could not talk to him. There were many times when I saw Rodney staring at the wall with a blank look on his face. Sometimes he would respond when I called his name, but there were times when he would not snap out of it even when I shook him and called his name. Other times, I asked him about something he had done only a couple of hours earlier, and he had no recollection of it.

6. Often it was hard to tell whether or not Rodney was aware of what I was saying when I talked to him. He appeared to be paying attention outwardly, but later I wondered if he had really been conscious of what I was saying. Often, he was staring directly at me, but I would find out later that he did not take in what I was saying. Several times I asked him about a previous conversation we had, and he looked at me in a puzzled fashion and told me that he did not remember it.

7. When Rodney actively participated in a conversation, it was often nearly impossible to understand what he was trying to say. I remember that on several occasions I had to ask Rodney two or three times to repeat himself before I could determine what he was saying. Sometimes he did not pronounce words clearly. Other times, the things he said were so far out in left field that it took me a while to figure out what he meant.

8. Rodney had trouble completing simple tasks. I think the jail staff on the tier learned that they should not ask Rodney to do anything that required memory or even routine

thought processes because Rodney would not be able to do it. Rodney brought food to other inmates, but food delivery was easy because he just had to bring a tray to every cell. He could not distribute the mail, because he ended up delivering the mail to the wrong people. Mail delivery involved matching addresses on envelopes to cells on the tier, and Rodney could not do that.

9. Physically, Rodney did not look normal. Rodney drooled regularly. As he spoke to me, drool often came out of the side of his mouth uncontrollably. He was not conscious that he was drooling, and he only wiped it off when I told him that he was drooling. Rodney also did not take very good care of himself. He did not seem to care about how he looked. He rarely showered or shaved and was disheveled most of the time.

10. Rodney was also physically uncoordinated. I remember watching him try to play ping pong with other inmates. He kept missing the ball or hitting it off the table. Another time, he tried to play basketball, but gave up because he could not score any points. He could not get the ball to go into the hoop. Rodney rarely participated in sports or exercised, I guess because he was so uncoordinated.

11. I thought that it was strange that Rodney, who was supposed to be a vicious killer who had been condemned to death, was so pleasant and harmless. The jail staff seemed to allow him a lot of freedom and did not seem to act tense or nervous around him. He was kind of a joke to them because he was so goofy.

12. Some of the guards used to make fun of Rodney because he was slow. They called him "Retardo" and "Airhead." Most people I knew on the tier knew that Rodney did not function mentally like the rest of us.

13. Some of the other inmates took advantage of Rodney at the Orange County Jail. Inmates used to try to convince him to give them some of his medications or some of his food. Rodney usually just gave them what they asked for because he did not seem to understand that they were taking advantage of him. He thought they were his friends.

14. Rodney had very few friends in the jail. I spent time with him, but I would not have considered Rodney a real friend because he was not normal. With other guys, you could talk about sports or women or current events. Rodney's mind was so absent mentally that he was not capable of having any interests in normal topics. It was impossible to have a regular conversation with him. He was either not conscious of your efforts to talk with him, or he had nothing to add to a conversation. I tried to talk to him about the criminal charges he was facing or his trial proceedings, but he did not seem to understand anything about either topic.

15. After talking with Rodney, it seemed like he understood very little of what went on at his trial. I was concerned, so I asked him who had testified and what had happened. He told me that he could not answer the question because he just did not know. He did not seem capable of discussing the evidence against him or the performance of his attorneys. Rodney showed me some transcripts and records he had in his cell, and I learned a bit about his case by reading those materials.

16. Rodney frequently sought help from the mental health staff at the Orange County Jail. I remember that Rodney often told me that he was going to see the jail psychologist. He

seemed very depressed, and I think that he needed treatment. Rodney used to come back from his appointments and tell me that his psychologist had given him advice about his case. Most inmates knew not to discuss their case with anyone but their lawyers. Rodney did not seem to understand the difference between his lawyers and people who were potentially hostile to his defense.

17. Rodney was taking a large number of medications when I knew him. I remember seeing him with an entire handful of pills, which he took as many as three times per day. It seemed as if he had a large variety of pills because they were all different colors. Rodney occasionally forgot to take his pills. Sometimes when he forgot to take them, he did not come out of his cell for hours or days at a time. Rodney generally slept much more than most people. When he was not out on the tier, Rodney was usually in his cell sleeping, even during the middle of the day.

18. Rodney often suffered from painful headaches. He told me that he had headaches all the time. I remember Rodney squinting his eyes in pain because his headaches were so bad. That squinting look is one of the main things I remember about Rodney because he looked that way so often. Rodney often lay down in his bed for as many as two days because his headaches were so painful. He had trouble getting out of bed because his head hurt when he stood up.

19. Rodney also told me that he was having chest pains regularly. I know that some of the medications that he was taking were for his chest pains.

20. While I was in the pro per section of the jail, I read an article in the newspaper about some doctors who were

conducting computerized brain scans to evaluate people who may have suffered from brain damage. It sounded as if this test was a good way of showing the level of activity in a person's brain. Considering the way I had seen Rodney acting, it seemed that it would be important for his case to determine whether or not his brain was functioning normally.

21. I spoke with Rodney about the brain scan tests and told him to speak with his attorneys, John Barnett and Otha Standifer, about them. Rodney did not seem to understand what I was talking about. No matter how many times I tried to explain what the tests were for and what they would do, it just did not sink in. I think that he eventually managed to bring up the tests with his attorneys.

22. John Barnett was also representing me at this same time, so I decided to speak with him about Rodney's case when I saw him. I told Barnett about the fact that Rodney could not remember long periods of time and seemed to be very mentally impaired. When I told Barnett about all this, he seemed surprised. It seemed as if he had not taken the time to look into the mental difficulties Rodney was facing. He also did not seem interested in learning about Rodney's mental health. I told him about the brain scan, and Barnett brushed it off by saying that the case was now Otha Standifer's responsibility since the trial was over. He said Otha would have to write some sort of motion to allow the test to occur.

23. After this conversation, I was very concerned because I had been disappointed in the work Barnett and Standifer were doing on my case. Barnett took a long time to file a discovery motion in my case that I thought was extremely important.

Standifer visited me once at the Orange County Jail and promised to work on some motions on my case, but I never saw anything come out of it. I eventually fired Barnett from my case because he was not doing the work I expected of him.

24. As I understood it, John Barnett's firm had a contract with Orange County to work on conflict cases. It seemed as if he was working on too many cases at the same time to be able to put in the amount of work necessary on each case. Several of the inmates I knew in the County Jail were also represented by Barnett. From my conversations with these other inmates, it seemed like they were not satisfied with his work on their cases, either.

25. I asked Rodney after a couple of weeks whether his attorneys had made an effort to have a brain scan conducted on him. As usual, Rodney's answer was: "I don't know." It seemed Rodney was just not able to help his attorneys, and was not capable of understanding what a brain scan was or how it would help his case. I spoke with Barnett again, and he told me that Otha Standifer was supposed to be working on it.

26. When it seemed like Rodney's attorneys were not going to have any testing done, I told Rodney to ask the court for new counsel. No matter how much I tried to explain, Rodney did not seem able to understand my advice. I agreed to write it down on a piece of paper, so he would remember to tell the judge that his attorneys were ineffective because they failed to get him a brain scan. When there was a court hearing, it was my understanding that Barnett told the judge that he would try to have testing done and the judge kept him on the case.

27. After the brain tests were done, I learned that they revealed that Rodney's brain was extremely abnormal. I was not surprised, because Rodney's behavior had indicated to me that something was seriously wrong.

28. I was very surprised to hear that Rodney had been formally sentenced to death. I thought that the tests would help to show the judge that Rodney's brain was abnormal. However, later I found out that Barnett and Standifer never found an expert to testify about the tests. It seems very unfair that Rodney was sentenced to death because his attorneys failed to do their job. If they had noticed Rodney's mental health problems from the beginning and followed up with the right experts, the jury would have heard evidence of a much different man.

29. Obviously I am not an expert, but even I noticed that something was abnormal about Rodney's behavior. Rodney was a mentally deficient, confused individual when I knew him at the jail. He needed treatment and help to understand his trial and sentence.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and was executed this 22 day of NOVEMBER, 1997.



ROBERT PADUANO

Tom TFM 3/24/98

DECLARATION OF THOMAS F. MANISCALCO

Tom TFM 3/24/98

I, ~~Thomas~~ ^{Tom} F. Maniscalco, declare the following:

1. I was an inmate at the Orange County Jail for about ten years from 1984 until 1994. Rodney Gene Beeler was also an inmate at the jail from 1986 until 1989. He lived near me in the pro per area of the jail during his trial and the period before the judge in his case sentenced him to death. Inmates in the pro per area were allowed some freedom to walk out of their cells during that time, so I became familiar with Rodney. I was a practicing attorney prior to my arrest, and I advised many inmates on their cases. After two trials, I was sentenced to 48 years to life in state prison on three counts of second degree murder in 1994.

2. I remember noticing from the first time I saw him that Rodney shared some characteristics with mentally retarded or disabled people I had observed. Rodney stood and walked in a slouched fashion. He usually looked down at his feet, and only rarely picked up his head when he spoke to me. Rodney's face was sort of slack and relaxed, and did not have the animation you would see in most people. I also noticed that Rodney was not well coordinated when he horsed around with the guys on the tier.

3. I remember speaking with Rodney and soon realizing that my suspicions were pretty accurate. Rodney appeared to have the

mental capacity of a six year old. He was very naive and easily manipulated. One of my clearest memories of Rodney is a time when a number of the men on the tier convinced Rodney that he should hit a solid wall with his bare fist as hard as he could. For some reason, Rodney just went ahead and did it without thinking. As one would expect, Rodney seriously injured his hand when he hit the wall. I could not believe that he would do something so illogical as to hit a wall simply because he had been dared to do it. If I was looking for a fall-guy, Rodney would have been the first person I would think of.

4. Conversations with Rodney were difficult. He became unable to contribute to the discussion when words became too big or concepts too difficult for him to understand. I had to use simple words when I spoke to Rodney, and I recall having to repeat things to him often. Most of our conversations tended to be about simple things like Rodney's daily needs and wants. I learned not to talk about more abstract concepts with him. Sometimes, Rodney brought up things completely off the subject. For example, I might have been talking about a car I owned, and Rodney would bring up something which had happened when he was walking down the tier. Conversations with Rodney lacked any real continuity, so I just tried to keep our communication down to the basics. In addition, Rodney had to be reminded often of things which happened hours or days beforehand. It appeared that there

were spells of time which he completely forgot.

5. Rodney was sweet in a simple, childlike way. In the county jail, where most prisoners were fairly tough, Rodney stuck out. Rodney figured out that some guys on the tier liked sweets, so he made a snack out of toast, butter, and sugar. Rodney saved up his bread, butter, and sugar, and once in a while cooked up these little toast snacks at night. He then came out on the tier during the day and handed them out to other inmates. It was as if he was doing anything he could to make friends since he could not do so in a normal, adult way. Rodney was very well behaved in jail, and I do not recall ever seeing him act in a violent manner.

6. Other inmates at the Orange County Jail liked Rodney because he was so harmless, polite, and dim-witted, but they sometimes had some laughs at his expense. I remember that there were some standing jokes about Rodney being slow, but I really doubt that Rodney understood that people were making fun of him.

7. Rodney asked me many questions about what was going on during his trial. His questions were much more elementary than those of other inmates, which led me to believe that Rodney was having a very hard time comprehending the trial. I had the impression that he was understanding the process like a child would. He seemed very confused. In my opinion, Rodney certainly would not have been able to assist his attorneys, especially

given that they did not seem to be concerned enough to explain the process to him.

8. I remember that Rodney used to spend many minutes at a time in trance-like states. On several occasions, I had to either shake Rodney or call out his name repeatedly to get his attention. Rodney also had memory problems. He seemed to forget things we had talked about or things we had done often.

9. It was clear to me from my interactions with Rodney that there was something very wrong with him mentally, and I was alarmed that his attorneys did not seem to be presenting evidence of his mental deficits to the jury. When I asked Rodney what his attorneys were doing, he very rarely had an answer. I read about a new brain scan which was being used to measure the amount of activity occurring in the brain. I thought that if there was anyone whose test would indicate a serious lack of brain activity, it would be Rodney.

10. As I expected, though, Rodney had a hard time understanding what I was saying when I tried to explain to him that I thought it would be a good idea for his attorneys to have the brain scan performed on him. Trying to get Rodney to comprehend the concept was a nightmare and it took time. I remember that Rodney seemed to withdraw into himself when he could not understand. I could tell that he was embarrassed that he needed things explained to him so much. After a number of

conversations, I think that Rodney finally brought up the idea of the tests, but his attorneys still did not initiate the testing. I, along with another inmate named Robert Paduano, also took time to explain to Rodney that he needed to ask for a Marsden hearing. As usual, this was a long process involving talking to Rodney as if he was a child, but I believe that he finally succeeded with our help in raising the issue in court. I really think that we had to coach Rodney, because he would not have otherwise realized that his counsel were failing him.

11. As I had expected, I heard that the brain scan showed that Rodney's brain had much less activity than usual. For reasons which I could not understand, though, his attorneys failed to present this evidence to the court, and I learned that he was sentenced to death. I could not believe that Rodney was condemned when such powerful evidence of his mental impairments was in the hands of his attorneys. I also think it is extremely unfortunate that Rodney was not capable of noticing and objecting to the problems with the apparent ineffective representation he was receiving during his trial. His situation would probably have been even worse if a few of us on the tier had not raised concerns about his case.

12. I sincerely believe that Rodney does not belong on death row, and that he would not be there today had his attorneys presented evidence of his serious mental impairments at his

trial. In the jail, Rodney was a childish, good-natured guy who loved his family. I believe that any competent attorney would have raised a question about his mental state if they had taken time to speak with him and obtained appropriate evaluations. From my observations in the jail, I think there was a serious question as to whether Rodney was capable of helping his attorneys or comprehending his trial.

13. I was never contacted by attorneys or investigators representing Rodney Beeler at his capital trial. Had I been contacted, I would have been willing to provide them with all of the above information.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and was executed on this 24 day of March, 1998.


THOMAS F. MANISCALCO

DECLARATION OF DANIEL DUFFY

I, Daniel Duffy, declare the following:

1. I met Rodney Gene Beeler at the Orange County Jail in early 1988. We were both housed in the pro per tank together for many months. We lived on the same tier, and saw each other daily during that time. We also saw each other often at meals when we were on different tiers within the county jail. There were a dozen or so one-man cells on each tier in the pro per area, and our cell doors were often open all day, allowing us to walk around and talk with one another. I was at Orange County Jail for about eight years until I was finally sentenced to life in prison without possibility of parole on murder charges.

2. From the first time I met him, Rodney struck me as a man who was severely mentally impaired. Rodney was a simple, childish kind of guy who really seemed to be operating on the level of a young child. I liked Rodney because he appeared to have a good heart. However, I did not consider Rodney a close friend, because he was not like a peer to me. I sometimes acted like more of a parent than a friend to Rodney even though we were about the same age. I remember being concerned that Rodney might be targeted to become an informant, because he seemed to be so easily manipulated.

3. Conversations with Rodney had to be light and simple.

I enjoy discussing philosophical issues with other people. However, I quickly found out that Rodney became frustrated and withdrawn when I tried to discuss anything other than things like the menu at the mess hall. I realized that I could not hold normal conversations with him like I did with people with average intelligence. I worried that I was confusing him when I used long words or spoke in lengthy sentences. I also caught myself not paying attention to Rodney because conversations with him were so simple and unstimulating.

4. I still remember the look that developed on Rodney's face when he could not understand what was being said. I could tell in his eyes that he was extremely frustrated and discouraged. Other times, I think that Rodney just pretended that he understood what was being said to him as a defense mechanism. I think that he was embarrassed about the fact that he was unable to interact normally with us. He used to just nod blankly. I think that Rodney lacked an understanding of even the most simple principals.

5. Conversations with Rodney were made even more difficult because he spoke slowly and deliberately. This struck me as strange because Rodney's body was often very jumpy. I remember him rocking back and forth and bouncing his leg often while he was seated. It was strange to observe his body as so active, when his speech, in contrast, was abnormally slow. I was also

surprised to see him drool from his mouth often.

6. Rodney had memory lapses that covered long periods of time while he was at Orange County Jail. I had to repeat things to Rodney often because he did not remember what I had said the first time. I remember telling Rodney that we had had the same conversation a day or two earlier. Rodney acted dumbfounded, because he had no recollection of our previous talk. This situation happened several times.

7. I do not think that Rodney was able to comprehend many of the proceedings at his trial. During his trial, I remember that Rodney used to regularly come back from court and ask me a lot of basic questions about what his lawyers were doing and what might happen in his case. Most of the answers to the questions that he asked were fairly obvious. Also, I was concerned that his attorneys were not doing a good job of keeping him informed and consulting with him about their defense strategy. I did not make a big effort to try to explain things to Rodney because I did not think that it was my place. Also, Rodney often became even more confused when I tried to explain things to him. Rodney seemed frustrated and discouraged because he really could not comprehend what was going on.

8. I think that many of the guys on the tier realized that Rodney was mentally impaired. In fact, some inmates used to poke fun at him because he was slow. I had the impression that Rodney

rarely realized that he was being made fun of. Their jokes just went over his head. I could also tell from the way the guards treated Rodney that they thought that he was dumb and slow.

9. Rodney complained about having painful headaches regularly at the county jail. He also seemed to be very depressed. I recall trying to comfort him when he told me that he was thinking about committing suicide. Rodney had chest pains which I thought may have been a symptom of some sort of anxiety attack, as well.

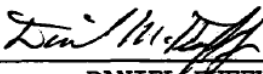
10. Despite all of his problems, Rodney was clearly a polite, friendly guy while at the jail. While Rodney did not have real friends at the jail, I think that most of the guys liked him and felt sorry for him. I did not ever see Rodney act violent or threatening. He spoke fondly of his wife and children frequently, and seemed to be very sad to be separated from them. Rodney used to excuse himself every time he had a question to ask and thank me when I helped him out. Rodney also seemed to be concerned about what other inmates thought of him. I remember him asking me what other guys said about him, almost like a young boy would. I think that jail officials recognized that Rodney was not a real threat to anyone. I remember that Rodney was designated a low security threat.

11. From the contact I had with Rodney, I think that it was very obvious that he was not functioning normally. Given my

daily observations of Rodney, I do not know how he could have understood many of the proceedings at his trial, and I cannot imagine how he could have been capable of providing assistance to his attorneys to prepare his defense. I think that any reasonable person who spent some time with Rodney at the time would have raised concerns about his mental health. Rodney's head was spinning while he was at the jail, and I can only imagine how much more confused he must have been in the formality of the courtroom.

12. I was never contacted by attorneys or investigators representing Rodney Beeler at his capital trial. Had I been contacted, I would have been willing to provide them with all of the above information.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and was executed on this 29 day of MARCH, 1998.


DANIEL DUFFY

DECLARATION OF LOIS LYON

I, Lois Lyon, declare as follows:

1. I served as a juror in the capital case against Rodney Gene Beeler. The trial was held in Orange County, California from May 1988 to July 1988.

2. I remember the jury was comprised of people of all ages. One juror was around twenty years old while another was in her seventies. I was in my late fifties when I served on Mr. Beeler's jury.

3. As we listened to the evidence in the guilt phase of the trial, it seemed to me as though the prosecutor left room for doubt as to Mr. Beeler's guilt. Most of the evidence was circumstantial. I remember the evidence showed that two shots were fired, but no murder weapon turned up. The prosecutor really had only one piece of hard evidence and that was Mr. Beeler's fingerprint in the victim's house. But it certainly did not prove to me that Mr. Beeler had committed the murder.

4. From my perspective, Mr. Beeler was convicted by his

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own lawyer. Since the prosecutor did not make his case, I, as a juror, would have had to find Mr. Beeler not guilty. But, because Mr. Barnett basically told us that Mr. Beeler was at the scene of the murder, we had no problem finding Mr. Beeler guilty.*

5. During Mr. Beeler's penalty trial one of our jurors, a woman in her forties, did not report for jury duty one morning. Apparently someone in her family was sick or had passed away. So, she had to be replaced by an alternate.

6. I remember one of the alternate jurors told us, right at the beginning, that in the country where he grew up (in the Middle East), there was no justice of this kind available. If someone killed someone there was no trial -- the guilty person was just taken out and shot.

7. Mr. Beeler never testified. I guess some people just cannot handle testifying. He may not have been mentally stable enough to testify. He had some psychological problems. He was subjected to so much hate and hostility when he was growing up. He rarely said a word. He seldom talked to his attorneys. He did not show any emotion during the trial.

8. We were never given any information about whether Mr. Beeler had problems other than his psychological ones from his

* The implication, to me, of the Attorney's remarks was that his client, Mr. Beeler, was most certainly involved.

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troubled childhood. For instance, if I had been told that he had suffered from organic brain damage I most likely would have voted differently for the penalty verdict. Evidence of brain damage is important to know, because a brain-damaged person cannot always tell right from wrong or use good judgment especially if something like the facts in this case has happened to them.

9. When we began to deliberate on the sentence, I remember one woman did not know which way to vote. We all gave her our opinions. We heard her out, over and over. There were two men who said they would write up something on the pros and cons of the death penalty in this case. We had secret vote after secret vote. It went on for days. Then on the last morning one of the jurors had a death in the family and he had to leave unexpectedly. We then had our very first ballot of the morning, and it was unanimous. I was surprised that we all agreed so quickly. Because this had come about so suddenly I thought it would be a good idea to take some time to think over what we had done. I told everyone we should stop right there and reflect on how we had voted because we had never come to an agreement before. We did not however take another vote, and we returned to the court with the verdict. *AB.*

10. As a jury we talked at length about what we saw as a big problem. Our only options for the sentence were the Death Penalty or Life Without the Possibility of Parole. Many of us stated during deliberations that Life Without the Possibility of Parole did not really mean that Mr. Beeler would never get out of prison. We discussed that if we could rely on the fact that he would most likely never get out, then it was a realistic option for us not to give him the Death Penalty. But, we discussed our conclusion that our court system, as we understood it to operate, would allow Mr. Beeler to be paroled some time in the future, just like Charles Manson could be paroled.

11. One juror took notes of our deliberations and acted as sort of a secretary to the jury. She was one of the jurors who pointed out to us that some of the Manson Family had gotten out on parole. We all talked about the many cases we had seen where there was only one murder, and how eventually the person was paroled. The juror said to us if Life Without Possibility of Parole meant that then O.K. let us give him Life, but then she said we had to compare Mr. Beeler's situation to Charles Manson's situation. She told us that Mr. Manson goes up for parole every year, and so would Mr. Beeler. Our group of jurors discussed ^{this} and

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was intelligent enough to realize that the courts would most likely not carry out our verdict of life without possibility of parole. It was a big decision, but we discussed and concluded that most likely Mr. Beeler would eventually be paroled. We stated that we just could not vote for Life Without Possibility of Parole when it actually meant Life With Parole.

12. And, too, we all talked about the realization that our decision, after all, was not the final decision. Our decision was not the sentence. We could not just go in to court and say that is it, that is what is going to happen. We discussed how the Judge had the last word, and that our decision was just a recommendation. Also, we talked about how Mr. Beeler's case would be appealed automatically. There was discussion by the jurors on that. During our discussion, we agreed we could only do so much, the rest is up to the judicial system and the way it works. I also mentioned that during the trial I could see that Mr. Beeler's lawyer was already setting things up for the appeal. We discussed that since Mr. Beeler would have the benefit of an appeal, it was easier for us to agree to the Death Penalty. I know it was in my case. *fel.*

13. I have never before spoken with Mr. Beeler's defense team about my experiences as a juror in the Rodney Beeler trial. Had I been approached, I would have provided the above information.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the *PL* foregoing is true and correct.

10-19-98
DATE

Lois B. Lyon
LOIS LYON

CT

DECLARATION OF CATHERINE ALSUP

I, Catherine Alsup, declare as follows:

1. I served as a juror in the capital trial of Rodney Gene Beeler. The trial took place in Orange County, California, in the summer of 1988. My name at the time was Catherine Bradley.

2. I remember the first time I saw Mr. Beeler was during jury selection. I was very intimidated by the process because I was alone in the courtroom while these men asked me questions and Mr. Beeler just sat there. He looked very strange to me. When the trial started, though, I did not remember Mr. Beeler much because he did not testify or participate much in the proceedings.

3. We listened to a great deal of testimony about the abuse Mr. Beeler endured as a child. Though I took that into consideration, evidence of brain damage that may have affected his decision making and memory would have explained a lot more about him than stories about his childhood experiences.

4. Our guilt deliberations did not take long, but our penalty deliberations were considerably more difficult. In the beginning of the deliberations, it seemed that many jurors were undecided and expressed ambivalent feelings about which sentence to vote for. I told my fellow jurors that my opinion was that life without the possibility of the parole was an extreme and appropriate punishment, because Mr. Beeler would have to live the rest of his life in uncomfortable and isolating captivity and think about what he

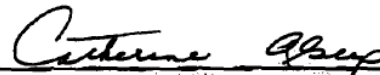
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had done to get him there.

5. During deliberations, there was one juror who expressed the opinion that we should make an example out of Mr. Beeler by giving him the death penalty. This, he said, would send the message to others that the justice system was going to be tough on crime and that we were not going to let people off for serious crimes. He stated that penalties were too lenient for criminals and this would send a message that crimes would end in severe punishment. Eventually this juror convinced some jurors that making an example out of Mr. Beeler was a good idea.

6. On the last day of our deliberations, a juror came in and told the rest of us that his father had passed away and that he had to leave that afternoon for the funeral. He stated that we should get this done and urged us to reach a verdict that day because if we did not, we would have to introduce an alternate to our deliberations and everything would get more complicated. Everyone was pretty exhausted by then, as we had deliberated at length and taken many votes. We then voted and returned to court with a death verdict.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed on the 9th day of December, 1998.


CATHERINE ALSUP

DECLARATION OF HAROLD WALKER

I, Harold Walker, declare as follows:

1. I served as a juror in the capital trial of Rodney Beeler. The trial took place in Orange County, California, from May to July of 1988.

2. I watched Mr. Beeler throughout the trial. My first impression was that he seemed normal. Later on, after the evidence came out, I came to believe he may not be normal. Still, it was hard to develop an opinion when Mr. Beeler never said anything. He was just like a lump sitting there. Once in a while he would whisper to his attorney, but not much. I would have preferred it if he had testified, but I figured he probably worried that he would get rattled if he tried to speak.

3. We listened to a lot of testimony about his upbringing. He was abused by his family when he was growing up. It was terrible what happened to him. However, I certainly would have been interested in hearing evidence from an expert that he had brain damage. It would have explained more to me about Mr. Beeler's actions at the time of the crimes than those stories we heard about his family life.

4. When we began our deliberations, we decided to take secret ballots. I remember our first ballot on the sentence was divided three ways. Four jurors were for the death penalty, four were for life without possibility of parole, and four were undecided. I told the jurors who voted for the death penalty that it just did not fit in this case. I said that Mr. Beeler was a burglar who was surprised and caught off-guard. I then told the jury stories about my own personal experiences and my reluctance to condemn anyone whose behavior I could well understand.

5. I had had a personal experience that was very similar to that of Mr. Beeler. I drew on this experience, using my own reactions and behavior to explain Mr. Beeler's conduct to my fellow jurors, when we were deliberating about the penalty.

6. My experience took place many years before Mr. Beeler's trial, but my memory of the incident was and is clear. One night, without any warning, the door to my home was thrown open and my wife's former 260 pound husband rushed in. He saw me sitting at the table and he lunged at me, grabbing me by the collar. He struck me and was soon on top of me. As we struggled, I became increasingly angry, first losing my rationality and ultimately losing my self control. I was only

defending myself, but I sort of went crazy and began hitting him as hard as I could. I felt I was in danger and I just snapped. I could not stop myself. I beat him very badly. I learned that you can become temporarily insane when you are fearing for your life.

7. It seems to me that something like this could have happened with Mr. Beeler. The evidence suggested that when he entered the victim's home unarmed, he thought he would be alone during the burglary. When the angry householder came home unexpectedly and confronted him, he could have felt himself in danger the way I did and reacted in a similar way. Perhaps, like me, Mr. Beeler just snapped.

8. As we talked about Mr. Beeler's actions, I told the other jurors I understood how Mr. Beeler felt. I believe I could have killed my wife's former husband just out of fear for myself and my safety. Anything can happen when you are confronted with a dangerous situation.

9. I also remembered another incident which I later shared with the jurors during our deliberations over penalty. One evening, several years before Mr. Beeler's trial, I looked out my window and saw two young men around my parked car. I thought they had stolen my hubcaps. I ran outside to stop them, then

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chased them as they fled. I continued to chase them even after they had jumped into someone's waiting car and began driving away. It was such a crazy thing to do, but that is how you react when you are confronted with a situation where you or even your property are in jeopardy. I told both of these stories to the other jurors during our deliberations on penalty.

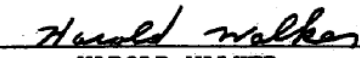
10. We talked back and forth about the sentence for days. For a long time there were three of us in favor of life without possibility of parole. I worried day and night about those in favor of the death penalty convincing the others. I was very upset and each night I had a lot of trouble trying to sleep. Early in the day of what turned out to be the last full day of deliberations, I know that one juror was still voting with me for life without parole. That night when I went home I did not sleep at all. It was among the worst nights of my life.

11. The next morning when we came in, I was exhausted. I heard that the father of one of the jurors had died suddenly. When we sat down to deliberate, I was surprised the juror with the deceased father had joined us. I think if it had been me I would have left already. We expressed our sympathy for him. I did not want to hold everything up if I could not convince others of my position. I asked each juror if they could live with life

without parole. Again, I told my fellow jurors that I just did not feel it was right to give Mr. Beeler the death penalty. But everyone knew I was the one holding up the verdict, and given the situation, I did not feel like I could take any more of the jurors' time.

12. When we went back to the courtroom, the court personnel seemed surprised we had reached a verdict so quickly that morning. I heard the clerk telling someone on the telephone that we had come back with our verdict. When the judge heard the verdict, he looked surprised. But I thought that the judge would reverse us if there was error. I thought of the jurors as amateurs in the system. The judge and the lawyers were the professionals. They would see the obvious mistakes. I also knew Mr. Beeler would have an automatic appeal. That lessened the burden somewhat.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and was executed this 15TH day of DECEMBER, 1998.


HAROLD WALKER

1 KAYE, SCHOLER, FIERMAN,
2 HAYS & HANDLER
3 PIERCE O'DONNELL
4 KENNETH FREELING
5 JOHN SHAEFFER
6 1999 Avenue of the Stars
7 Suite 1600
8 Los Angeles, California 90067
9 (310) 788-1000

Attorneys for Petitioner Rodney Gene Beeler

10 IN THE SUPREME COURT OF
11 THE STATE OF CALIFORNIA

12 In re RODNEY GENE BEELER,) CASE NO.
13)
14) Petitioner,) CASE NO. S010164
15) (Related Appeal Pending)
16) On Habeas Corpus.)
17) Orange County Superior Court
18) Case No. C-60966
19)
20) DECLARATION OF ARNOLD STARR,
21) M.D., FILED IN CONJUNCTION WITH
22) PETITION FOR WRIT OF HABEAS
23) CORPUS

24 I , Arnold Starr, M.D., declare and state as follows:

25 1. I am currently a professor in and the founding chair of
26 the Department of Neurology at the University of California at
27 Irvine. I know the facts stated herein of my own personal
28 knowledge and, if called as a witness, would testify competently to
them.

2. A true and correct copy of my current curriculum vitae is
attached hereto as Exhibit A.

3. In late 1988, I was retained by Mr. John Barnett, Esq. to
conduct a neurological examination of his client Rodney Gene
Beeler. I examined Beeler and memorialized my observations and

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1 conclusions in a report dated December 29, 1988, which I forwarded
2 to Otha Standifer, a colleague of Barnett's, on January 5, 1989. A
3 true and correct copy of my report and the cover letter to
4 Standifer are attached to this declaration as Exhibit B.

5 4. Based on my examination of Beeler, I concluded that
6 Beeler suffers from neurological damage that dates from infancy or
7 childhood. I noted that has had auditory hallucinations since
8 childhood, and was put on Thorazine and Trilafon at age 10 for
9 hearing voices. He continued to hear voices as an adult. Two days
10 before I examined Mr. Beeler, he heard voices telling him to tear
11 out his toenails. My examination revealed that he, in fact, had
12 torn out his toenails. In addition, Mr. Beeler has marked mood
13 swings going from calm to agitated.

14 5. On the basis of this examination, I diagnosed Mr. Beeler
15 as suffering from mental retardation with schizophrenia. I
16 recommended to his counsel that they obtain an magnetic resonance
17 imaging scan and a positron emission tomography scan in order to
18 discover any structural defect in the brain and to define the
19 metabolic state of his brain.

20 I declare under penalty of perjury that the foregoing is true
21 and correct.

22 Executed this 1 day of June, 1993 in IRVINE,
23 California.

24 
25

26 Arnold Starr, M.D.
27
28

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2

1 KAYE, SCHOLER, FIERMAN,
2 HAYS & HANDLER
3 PIERCE O'DONNELL
4 KENNETH FREELING
5 JOHN SHAEFFER
6 1999 Avenue of the Stars
7 Suite 1600
8 Los Angeles, California 90067
9 (310) 788-1000

10 Attorneys for Petitioner Rodney Gene Beeler

11
12 IN THE SUPREME COURT OF
13
14 THE STATE OF CALIFORNIA
15

16 In re RODNEY GENE BEELER,) CASE NO.
17)
18 Petitioner,) CASE NO. S010164
19) (Related Appeal Pending)
20 On Habeas Corpus.)
21) Orange County Superior Court
22) Case No. C-60966
23)
24) DECLARATION OF MONTE S.
25) BUCHSBAUM, M.D. FILED IN
26) CONJUNCTION WITH PETITION FOR
27) WRIT OF HABEAS CORPUS
28

I, Monte S. Buchsbaum, M.D., declare:

1. I am currently a professor of psychiatry at the Cedars
Sinai School of Medicine in New York, New York. From 1982 until
1992 I was a professor of psychiatry at the University of
California at Irvine ("UCI"). I know the facts stated herein of my
own personal knowledge and, if called as a witness, would
competently testify to them.

2. A true and correct copy of my current curriculum vitae is
attached to this declaration as Exhibit A.

3. On or around February 15, 1989, Rodney Gene Beeler was
transported to the UCI medical center for various neurological
testing. Under my direction and supervision Beeler underwent a

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KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

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EXHIBIT 36

4-ER-798

1 electroencephalogram ("EEG") and a positron emission tomography
2 ("PET") scan. True and correct copies of the results of these
3 tests are attached to this declaration as Exhibits B and C,
4 respectively.

5 4. The results of these tests show that Beeler has marked
6 abnormalities in his right temporal and bilateral frontal lobes --
7 areas of the brain generally associated with planning and judgment.
8 There is notable abnormal activity in the basal ganglia. The test
9 results are also consistent with head injury.

10 5. During my career, I have completed and evaluated PET
11 scans on approximately 13 defendants in capital cases. The results
12 of Beeler's PET scan are among the most abnormal I have ever seen
13 in this situation, and are similar to those often found in people
14 diagnosed as schizophrenics.

15 6. On March 22, 1989, I spoke with Mr. Beeler's counsel,
16 John Barnett, in my office for approximately one hour. I told
17 Barnett that Mr. Beeler's PET scan was very abnormal and indicated
18 that Beeler suffered from brain damage or dysfunction. I told
19 Barnett that the results of the neurological testing we had
20 completed on Beeler were consistent with head injury,
21 schizophrenia, mental retardation, diminished capacity and poor
22 judgment. I added that Beeler's results were not dissimilar to
23 those of known schizophrenics.

24 7. A few weeks after my conversation with Barnett, I
25 received a call from Barnett and was told that I was not going to
26 testify because the judge did not care about medical evidence. I
27 was very surprised because Mr. Beeler's PET scan was clearly
28 abnormal and relevant to the proceedings.

1 I declare under penalty of perjury under the laws of the state
2 of California that the foregoing is true and correct.

3 Executed this 8 day of June, 1993 in New York, New York.

4
5 
6 Monte S. Buchsbaum, M.D.
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1 KAYE, SCHOLER, FIERMAN,
2 HAYS & HANDLER
3 PIERCE O'DONNELL
4 KENNETH FREELING
5 JOHN SHAEFFER
6 1999 Avenue of the Stars
7 Suite 1600
8 Los Angeles, California 90067
9 (310) 788-1000

Attorneys for Petitioner Rodney Gene Beeler

10 IN THE SUPREME COURT OF
11 THE STATE OF CALIFORNIA

12 In re RODNEY GENE BEELER,) CASE NO.
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
On Habeas Corpus.)
Petitioner,)
CASE NO. S010164
(Related Appeal Pending)
Orange County Superior Court
Case No. C-60966
DECLARATION OF JONATHAN PINCUS,
M.D. FILED IN CONJUNCTION WITH
PETITION FOR WRIT OF HABEAS
CORPUS

I, Jonathan Pincus, M.D., declare:

1. I am a licensed physician specializing in neurology, and am currently Chief of Neurology at Georgetown University Hospital as well as Professor and Chairman of the Neurology Department at the Georgetown University School of Medicine, positions which I have held since 1987.

2. A true and correct copy of my current curriculum vitae is attached to this declaration as Exhibit A.

3. At the request of Kaye, Scholer, Fierman, Hayes & Handler, counsel for Rodney Beeler, I reviewed a number of medical and psychological records related to Mr. Beeler. These records include the results of various brain imaging tests completed on Mr.

22105238

1 Beeler in February 1989, including magnetic resonance imaging
2 ("MRI"), an electroencephalogram ("EEG") and a positron emission
3 tomography ("PET") scan. The MRI scan on Mr. Beeler suggested
4 atrophy of the right temporal lobe. The EEG on Mr. Beeler showed a
5 pattern of slowing in the right frontal and temporal areas, and a
6 PET scan from the same day also showed decreased frontal and right
7 temporal metabolic rates.

8 4. I have reviewed the results of psychological tests taken
9 by Mr. Beeler throughout his life, and these results are compatible
10 with a dysfunction in the right hemisphere of his brain.

11 5. While Beeler's records are incomplete, they document
12 several factors that are relevant to Mr. Beeler's mental state and
13 that have neurologic and psychiatric consequences for his behavior
14 and functioning at the time of the offense. His history is replete
15 with events that could cause brain damage. He suffered unrelenting
16 physical and sexual abuse at the hands of his stepmother that
17 extended from the first decade of his life midway through the
18 second decade. There is a long history of incarceration in mental
19 hospitals that dates from the age of ten, and he has been treated
20 with major antipsychotic drugs and mood elevators. There are many
21 instances of memory lapse and blackouts, including Mr. Beeler's
22 inability to remember the rape of Roxanne Doyle and the homicide
23 for which he has been incarcerated. He has been noted to have
24 tremendous mood swings, ranging from calm and cooperative to
25 agitated and extremely excitable. He has suffered "out of body"
26 sensations and occasionally hears voices that order him to do
27 things such as "tear out your toenails". He has in fact obeyed
28 such orders.

1 6. Before rendering an opinion on Beeler neurological
2 health, I sought to examine him myself and have him examined by a
3 psychiatrist familiar with multiple personality disorder,
4 dissassociative states and brain damage.

5 7. I traveled to San Quentin Prison in California to examine
6 Mr. Beeler on July 15, 1992. The results of this physical
7 examination are consistent with the bifrontal and right temporal
8 damage seen on the EEG and PET scans.

9 8. Now that I have reviewed records of Mr. Beeler's medical,
10 neurological, psychological and social history and conducted a
11 physical examination of him, I am convinced that Mr. Beeler has
12 brain damage. Abnormalities of brain structure and function, which
13 are well documented here, are mitigating or even exculpatory in
14 some cases because they affect the individual's capacity to conform
15 his conduct to the law's requirements. Brain damage can reduce the
16 inhibiting controls that are normally utilized to dampen anti-
17 social impulses.

18 9. Additionally, the differential diagnosis of his blank
19 episodes is extremely relevant to his legal status because the
20 murder and the rape, if he committed these crimes, are something he
21 does not remember. His blank episodes could be dissociative
22 episodes or seizures. In order to render an opinion as to whether
23 Beeler suffers from a seizure disorder it is necessary to perform a
24 regular EEG for a prolonged period of time (eight hours). The EEG
25 must be done in the sleep deprived state with hyperventilation,
26 photic stimulation and sleep.

27 10. In my opinion, dissociative episodes are the most likely
28 explanation for the blank spells. This makes it very difficult to

1 assess his neurological history. For this reason the EEG is very
2 important. The diagnosis of epilepsy cannot be made on the basis
3 of a single, computerized EEG as the computerization process cannot
4 distinguish normal fast activity from spiking epileptic activity.
5 The computerized EEG does distinguish slow waves which reflect
6 brain damage quite well, but does not indicate whether this damage
7 has given rise to epileptic activity. As the history is hard to
8 assess, the EEG is critically important in making this distinction.
9 There is no doubt, however, about brain damage.

10 11. Additional evidence that Beeler may in fact suffer from a
11 seizure disorder is found in the records of his son, Robert Beeler.
12 When Robert was six years old, he had an abnormal EEG due to spike
13 and wave of three to four cycles per second occurring synchronously
14 on both sides of the brain with polyspike activity compatible with
15 a seizure disorder. This particular kind of EEG reflects a
16 familial tendency which could have been inherited either from the
17 mother or the father. This emphasizes the necessity of obtaining a
18 regular EEG in Mr. Beeler.

19 I declare under penalty of perjury under the laws of the State
20 of California that the foregoing is true and correct. Executed
21 this 11th day of June, 1993 at Washington, D.C.

22 
23

24 Jonathan H. Pincus, M.D.
25
26
27
28

COPY

No. <u>CRIM</u>	
COURT OF APPEAL — FOURTH DISTRICT DIVISION THREE STATE OF CALIFORNIA	
 THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff vs. NO. <u>C60966</u> RODNEY GENE BEELER, Defendant	
APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY THE HONORABLE ROBERT F. FITZGERALD JUDGE COMMISSIONER	
CLERK'S TRANSCRIPT	
<u>APPEARANCES</u>	
For Plaintiff & Respondent:	ATTORNEY GENERAL 110 West "A" Street, Ste. 700 San Diego, Ca. 92101
 For Defendant & Appellant:	
 VOL. I OF V Pages 1-348	

1 it and went into the details of how he did it
2 thoroughly.

3 "Question: And then you believed him?

4 "Answer: You are damned right."

5 So I mean there's no question about that that
6 you believed that he did it a few days afterwards, right?

7 A Yes, sir.

8 Q Now, did he show you the ring that he stole?

9 A Yes, sir.

10 Q And did you then sell that ring?

11 A Not immediately but I did, yes.

12 Q About a week later?

13 A A week to two weeks, yes.

14 Q So one to two weeks sells; is that right?

15 A Yes.

16 Q Now we come to 12/30 and he tells you that
17 he's killed somebody, right?

18 A Uh-huh.

19 Q Is that right?

20 A Yes, sir.

21 Q And then the next day, you read about it in
22 the newspaper, right?

23 A Yes.

24 Q There's a lot of details in the newspaper,
25 isn't there?

26 A Yes, sir.

238

61

HAHN AND BOWERSOCK (714) 752-7400 (213) 935-8413

6-ER-1247

No. S010164

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA

vs.

NO. C-60966

BEEELER, RODNEY GENE

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD
JUDGE/COMMISSIONER

CLERK'S TRANSCRIPT

APPEARANCES

For Defendant and Appellant:
BEEELER, RODNEY GENE

KAYE, SCHOLER, FIERMAN, HAYS
& HANDLER
PIERCE O'DONNELL
2121 Avenue of the Stars
Los Angeles CA 90067

For Plaintiff and Respondent:
PEOPLE OF THE STATE OF
CALIFORNIA

ATTORNEY GENERAL
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
110 West "A" Street
San Diego CA 92101

VOL. V OF V Pg(s) 1533-1811

◆ F0182=927

6-ER-1248

FILED

JUN 14 1988

GARY L. GARNVILLE, Court Clerk
By sk DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff)
vs.)
RODNEY GENE BEELER)
Defendant(s))

No. C-60966

FINDING

We the Jury in the above-entitled action, FIND IT TO BE TRUE that the SPECIAL CIRCUMSTANCE exists, to-wit: Murder in the Commission of Burglary, as alleged in the Amended Information.

Dated: 6/14, 1988.

Phil Wilcox
Foreman

1582

6-ER-1249

FILED

JUN 14 1988

GARY L. GRANVILLE, County Clerk

By *sk* DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff)
)
vs.)
)
RODNEY GENE BEELER)
)
Defendant(s))
_____)

No. C-60966

FINDING

We the Jury in the above-entitled action, FIND IT TO BE TRUE that the defendant, RODNEY GENE BEELER, personally used a firearm, to-wit: a handgun, during the commission of the offense alleged in Count II of the Amended Information.

Dated: 6/14, 19 88.

Phil Wilcox

Foreman

1583

6-ER-1250

FILED

JUN 14 1988

GARY L. SHANVILLE, County Clerk

By sk DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA)
Plaintiff)
vs.)
RODNEY GENE BEELER)
Defendant(s))

No. C-60966

VERDICT

We the Jury in the above-entitled action find the Defendant, RODNEY GENE BEELER,
GUILTY of the crime of felony, to-wit: Violation of Section 459 of the Penal Code
of the State of California (BURGLARY), as charged in Count **II** of the Amended
Information.

Dated: 6/14, 19 88.

Phil Wilcox

Foreman

1584

6-ER-1251

FILED

JUN 14 1988

GARY L. GRANVILLE, County Clerk

By sk DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff)
vs.)
RODNEY GENE BEELER)
Defendant(s))

No. C-60966

FINDING

We the Jury in the above-entitled action, FIND IT TO BE TRUE that the defendant, RODNEY GENE BEELER, personally used a firearm, to-wit: a handgun, during the commission of the offense alleged in Count I of the Amended Information.

Dated: 6/14, 1988.

Phil Wilson

1585

6-ER-1252

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

FILED

JUN 14, 1988

GAF

Clerk

By *sh* DEPUTY

THE PEOPLE OF THE STATE OF CALIFORNIA)

Plaintiff)

vs.)

RODNEY GENE BEELER)

Defendant(s))

No. C-60966

VERDICT

We the Jury in the above-entitled action find the Defendant, RODNEY GENE BEELER, GUILTY of the crime of felony, to-wit: Violation of Section 187 of the Penal Code of the State of California (MURDER), in the First Degree, as charged in Count I of the Amended Information.

Dated: 6/14, 1988.

Phil Wilson

Foreman

1586

6-ER-1253

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Dept. 39

Court convened at 10:05 A. M. June 20, 1988 present

Hon. ROBERT R. FITZGERALD Judge: Sharon Kupka Deputy Clerk;

Mario Chavez Deputy Sheriff; Armella Martin/Jean Randall Reporter;

and the following proceedings were had:

C-60966 PEOPLE VS. BEELER, RODNEY GENE

In open court at 10:05 a.m. Defendant present with counsel, Otha Standifer. Charles Middleton, Deputy District Attorney, representing the People. Court heard argument from defense counsel regarding their motion to dismiss the death penalty due to destruction of defendant's juvenile records from Spring Mountain Youth Camp in Nevada. Court heard opposition to defendant's motion from counsel for People. A letter dated 7-13-87 re case file of Rodney Beeler and Affidavit were received from counsel for People and marked for identification as Court's #II. A collection of documents and psychological reports, marked as A, B & C, were received from counsel for defendant and marked for identification as Court's #III. Court's II and III were both ordered to be placed in a sealed envelope. Court took defendant's motion under submission. However, Court's tentative ruling is that defendant's motion to dismiss the penalty phase will not be granted, and that defendant should be prepared to go forward with witnesses on the penalty phase. People to go forward with its case commencing 6-21-88. Court and counsel also discussed defendant's three prior convictions. Defendant's counsel stipulated as to the 1976 prior. Court declared a recess until 6-21-88 at 9:30 a.m. Defendant remanded to the custody of the Sheriff. ENTERED: 6-20-88

1592

Statistical
Code Use
Only

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Dept. 39

Court convened at 10:35 A. M. July 12, 1988 19..... present

Hon. ROBERT R. FITZGERALD Judge: Sharon Kupka Deputy Clerk:

Mario Chavez Deputy Sheriff: Armella Martin Reporter:

and the following proceedings were had:

C-60966

PEOPLE VS. BEELER, RODNEY GENE

The clerk having received a telephone call from Juror #8, Michael Coley, indicating that there had been a death in his family and he was flying out of state this afternoon, the Court instructed the clerk to notify counsel and ask Mr. Coley to come into court briefly to confer with Court and counsel. At 9:55 a.m. Michael Coley, juror #8 appeared. Counsel not yet having appeared, Court and Michael Coley conferred in chambers with the reporter present. Mr. Coley having indicated he could continue deliberating with the jury for the morning, he joined the other jurors, and deliberations resumed at 10:00 a.m. In open court at 10:35 a.m. Defendant present with counsel, John Barnett and Otha Standifer. People represented by Charles Middleton, Deputy District Attorney. Counsel were given a copy of the transcript of the morning's conference in chambers between Court and Mr. Coley. Court indicated to counsel that the jury was now deliberating and the Court was inclined to recess the jury at 11:00 a.m. until 7-18-88 when Michael Coley would be able to re-join the jury, rather than to excuse Mr. Coley and call the alternate juror in to deliberate with the jury. Defense counsel requested that Mr. Coley be excused and the alternate juror be called in. Court denied defense counsel's request. Objection by defense counsel that the Court had indicated to Mr. Coley in the chambers conference that counsel had exceeded their 20-minute response time in arriving at Court. Court responded that the jury would be told that counsel had called the Court before their arrival. Court declared a recess until 11:00 a.m. The jury foreman having informed the bailiff that the jury had reached a verdict, the defendant present in court at 11:00 a.m. with his counsel, John Barnett and Otha Standifer. People represented by Charles Middleton, Deputy District Attorney. Defense counsel opposed reading of the verdict due to time pressures having been put on the jury arising out of the personal emergency of juror, Michael Coley. Objection overruled by Court.

(Continued on page 2)

Statistical Code Use Only	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
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6-ER-1255

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Dept. 39

Court convened at M. July 12, 1988 19..... present

Hon. Judge: Deputy Clerk:

..... Deputy Sheriff: Reporter:

and the following proceedings were had: Page 2

C-60966 PEOPLE VS. BEELER, RODNEY GENE

The jury returned to the courtroom at 11:05 a.m. with its verdict. The Court ascertained of the jury foreman if the jury had reached a verdict, and the jury foreman answered "yes". The Court then asked the jury if they had felt pressured to arrive at a verdict quickly due to Mr. Coley's family emergency or if they think they would have reached a different verdict if they had deliberated for a longer time. The jury answered "no" to those questions. The Court also informed the jury counsel had called the Court that morning since they both had appearances to make in other courthouses. The clerk then read the following verdict:

"IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE. THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. RODNEY GENE BEELER, Defendant. Case No. C-60966. DETERMINATION OF PENALTY. We the Jury in the above-entitled action, find that the penalty to be imposed upon the defendant, RODNEY GENE BEELER, is death. Dated: July 12, 1988. Signed: Philip Wilcox, Foreman." To the question, "Ladies and gentlemen of the jury, is this your verdict?, all 12 jurors answered in the affirmative. The Court then requested polling of the jury. Counsel waived re-reading of the verdict. The clerk asked each juror, individually, if this was his/her verdict, at which time each juror responded in the affirmative. The Court thanked and excused the jury and invited them to confer with Court and counsel in chambers if they wished. Still in open court, out of the presence of the jury, pronouncement and sentencing set for 9-2-88 at 9:00 a.m. in this department. Defendant waived time. Defendant also waived time for trial on his two pending cases. Probation Report ordered for P&S on 9-2-88. Defendant remanded to the custody of the Sheriff. Court and counsel conferred in chambers with the jury. The clerk notified the alternate juror of the verdict in this case and that she was now excused. ENTERED: 7-12-88

Statistical
Code Use
Only

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6-ER-1256

FILED

JUL 12 1988

GARY L. GRANVILLE, County Clerk
By *[Signature]* DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff)
vs.)
RODNEY GENE BEELER)
Defendant(s))

No. C-60966

DETERMINATION OF PENALTY

We the Jury in the above-entitled action, find that the penalty to be imposed upon
the defendant, RODNEY GENE BEELER, is death.

Dated: July 12, 1988.

Philip Wilcox
Foreman

1642

6-ER-1257

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES OF
STEWART AND BARNETT
1502 NORTH BROADWAY
SANTA ANA, CALIFORNIA 92706
(714) 844-4132
(714) 953-5133

FILED**FEB 7 1989**

GARY L. GRANVILLE, County Clerk

By DEPUTY

Attorneys for

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,) Case No. C-60966

vs.) ORDER

RODNEY BEELER,)

Defendant.)

TO: BRAD GATES, SHERIFF/CORONER OF ORANGE COUNTY

TRANSPORTATION DEPARTMENT, ORANGE COUNTY SHERIFF'S

DEPT.

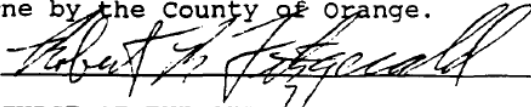
IT IS HEREBY ORDERED that the above-named defendant, who is presently incarcerated at the Orange County Men's Jail, be transported on Wednesday, the 15th day of February, 1989, to arrive no later than 9:30 a.m. for a scheduled PET scan test to be performed by Dr. Stephen Lottenberg at Dr. Lottenberg's office located at University of California, 1001 Health Sciences Road West, Nelson Research Center, Brain Imaging Center, Irvine, California, 92717 phone no. 856-4245 or 856-8085.

IT IS FURTHER ORDERED that upon completion of said test defendant be returned to the Orange County Jail.

1769**6-ER-1258**

1 IT IS FURTHER ORDERED that any and all costs for
2 transportation are to be borne by the County of Orange.

3 Dated: 2-7-89


4 JUDGE OF THE SUPERIOR COURT
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LAW OFFICES OF
STEWART / GARNETT
1502 NOI
ADWAY
SANTA ANA, CA 92706
(714) 544-4132
(714) 953-8133

1770

6-ER-1259

LAW OFFICE OF
STEWART ANI BARNETT
1502 NORTH L
SANTA ANA, CALIF. 92706
(714) 544-4132
(714) 993-5133

1 testing itself. That testing included three procedures, each of
2 which was completed at the earliest possible time.

3 3. One of the procedures was completed and analyzed by the
4 doctor who performed it prior to March 23.

5 4. The results of the second procedure were first available
6 on April 27. The preliminary analysis of this procedure by the
7 testing doctor is complete and reveals significant evidence of
8 dysfunction in the right temporal and bilateral frontal lobes of Mr.
9 BEELER's brain. These physical areas of the brain are associated
10 with memory for non-verbal material, foresight, planning, judgement,
11 inhibition, ability to control behavior, and other vital brain func-
12 tions. The referring doctor believes that the data from this
13 procedure confirms data from the third procedure, which is discussed
14 below.

15 5. The third procedure, by far the most significant, required
16 extensive computer analysis by the medical facility which performed
17 it, which analysis could not be completed until approximately March
18 20, due, in part, to a period of computer down-time. The first
19 opportunity to meet with the doctors who performed this test was the
20 evening of March 23 (the day before this case was last continued by
21 this court). During that evening, I first learned that the test
22 showed strong evidence of significant organic impairment and atrophy
23 of the brain, most notably in the right temporal and bilateral
24 frontal lobes of Mr. BEELER's brain.¹ However, the testing physicians
25 are not experts in the physical, mental, and forensic ramifications
26

27
28 ¹ Co-counsel John Barnett attended the meeting, as I was in
trial on another case and unable to recess in time to attend the
meeting. I discussed the matter with Mr. Barnett that evening.

LAW OFFICE OF
STEWART ANTHONY NETT
1502 NORTH L
SANTA ANA, CALIFORNIA 92706
(714) 544-4132
(714) 953-5133

1 to discuss the matter further with me if I would call him at his
2 office the next day. Although I called him at his office at least
3 once a day, I next spoke with him on Monday, May 1, when he called
4 me from Manhattan, New York. During that five minute conversation,
5 he agreed to examine the various test results when he returned to his
6 office on Wednesday, May 3. I had the various documents, photos,
7 films, etc, collected and taken to his office on Tuesday, May 3, but
8 when I called him Wednesday, his secretary informed me that he would
9 not be in until Thursday, May 4.

10 6. I was next able to talk with this doctor on Thursday, May
11 4. He has reviewed the data I provided, and preliminarily concluded
12 that Mr. BEELER's brain is functioning extremely abnormally in the
13 physical areas discussed above. Taking into account this doctor's
14 schedule (including the necessity of being out of the country for
15 professional reasons for about three and one-half weeks beginning in
16 late May) and the need for extensive consultation with other doctors
17 with similarly full calendars, this doctor believes that he can
18 conclude the medical work needed by early August of this year.

19 7. The tests discussed above, taken together, suggest the
20 existence of organic (physical) evidence unavailable at the time of
21 the guilt, special circumstances, and penalty phases of Mr. BEELER's
22 trial, and, absent a continuance, unavailable to this court in ruling
23 on a motion for a new trial and on Mr. BEELER's application under
24 section 190.4. I have been diligent to the point of frequently
25 extreme and repeated daily frustration, and am only now in a position
26 to have this inchoate mass of ideas and data examined and interpreted
27 in a manner meaningful to the defense and to this court. Allowing
28 time for consultation with the various doctors and preparation for

1810

CRIM NO. _____

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF & RESPONDENT,

-VS-

RODNEY GENE BEELER,

DEFENDANT & APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

JOHN VAN DE KAMP
ATTORNEY GENERAL
110 WEST "A" STREET
SUITE 700
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

RODNEY GENE BEELER
DEFENDANT IN PRO PER
SAN QUENTIN STATE PRISON
SAN QUENTIN, CALIFORNIA 94964

M. ARMELLA MARTIN, CSR #2115
D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

VOLUME: 5 OF 16

PAGES: 832 - 1114

DATE: MAY 12, 16, 1988

6-ER-1262

1 SHOULD HAVE GOTTEN.

2 Q COULD YOU DESCRIBE WHAT YOU -- I THINK YOU
3 USED THE WORD "STRONGLY," CAN YOU DESCRIBE WHAT YOU
4 MEAN BY THAT?

5 A I GUESS WHAT I MEAN IS THAT A LOT OF
6 PEOPLE ARE GIVEN IT BUT NEVER GET TO THAT POINT, OR A
7 LOT OF PEOPLE I FELT SHOULD HAVE GOTTEN IT HAVE BEEN
8 RELEASED AND HAVE GONE THROUGH THE SAME CRIME ON
9 VARIOUS CASES.

10 I'VE NEVER SEEN A CASE WHERE SOMEONE GOT
11 IT AND SHOULDN'T HAVE GOTTEN IT. I'VE ALWAYS SEEN THE
12 SIDE WHERE I THOUGHT SOMEONE SHOULD HAVE.

13 Q FOR PURPOSES OF THIS CASE, DO YOU
14 UNDERSTAND THAT LIFE WITHOUT PAROLE MEANS THAT THE
15 PERSON WILL NEVER GET OUT OF PRISON? DO YOU BELIEVE
16 THAT?

17 A YEAH, I BELIEVE IT. IT'S KIND OF -- I
18 MEAN, IT -- I DON'T KNOW.

19 Q IT DOESN'T SEEM LIKE IT HAPPENS THAT WAY,
20 RIGHT?

21 A YEAH.

22 Q THERE ARE TWO TYPES OF LIFE SENTENCES IN
23 CALIFORNIA. ONE IS A LIFE SENTENCE WHERE THE PERSON
24 MIGHT BE PAROLED, AND THE OTHER IS A LIFE SENTENCE IN
25 WHICH THEY WILL NOT BE PAROLED, EVER, AND THEY WILL DIE
26 IN PRISON. IF YOU DECIDE PENALTY, IT'S THE SECOND TYPE

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1 THAT YOU WOULD BE CONSIDERING.

2 DOES THAT MAKE IT A LITTLE CLEARER --

3 A NO, I'M SORRY --

4 Q -- OR LESS CLEAR.

5 THERE ARE TWO TYPES OF LIFE SENTENCES THAT
6 A PERSON CONVICTED OF MURDER CAN RECEIVE. ONE IS A
7 LIFE SENTENCE IN WHICH HE OR SHE MAY AT SOME POINT IN
8 THE DISTANT FUTURE BE RELEASED ON PAROLE. THE SECOND
9 TYPE IS LIFE WITHOUT POSSIBILITY OF PAROLE, AND THAT'S
10 WHAT IT MEANS. IF A PERSON IS GIVEN LIFE WITHOUT
11 POSSIBILITY OF PAROLE, THEY WILL NEVER GET OUT AND THEY
12 WILL DIE THERE.

13 A OKAY.

14 Q IT SEEMS THAT YOU MIGHT BE A LITTLE
15 CONCERNED THAT IF DEATH IS PRONOUNCED, THE PERSON MIGHT
16 NOT GET DEATH, IS THAT --

17 A YES, I -- YES.

18 Q I THINK THAT MAY BE SOMETHING THAT A LOT
19 OF PEOPLE FEEL. BUT THE COURT WILL INSTRUCT YOU, AND I
20 THINK THAT IT WILL BE THE LAW OF THE CASE, THAT IF YOU
21 VOTE FOR DEATH, THEN THAT'S WHAT IT MEANS, DEATH.

22 IF THE COURT SO INSTRUCTS YOU WILL YOU
23 BELIEVE THAT AND MAKE YOUR DECISION ACCORDINGLY?

24 A YES.

25 Q DO YOU UNDERSTAND HOW IT MIGHT -- IT
26 WOULDN'T BE RIGHT FOR PEOPLE TO BE MAKING LIFE AND

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1 DEATH DECISIONS BELIEVING THAT THEIR DECISION WASN'T --

2 A WASN'T GOING TO BE FOLLOWED OUT?

3 Q RIGHT. DON'T YOU THINK IT WOULD BE
4 EASIER?

5 A OH, YEAH, GO AHEAD AND GIVE IT TO HIM
6 BECAUSE HE'S NOT GOING TO, REALLY.

7 Q EXACTLY.

8 A YEAH.

9 Q DO YOU UNDERSTAND IN THIS CASE DEATH MEANS
10 DEATH?

11 A I UNDERSTAND IF YOU SAY SO.

12 Q WELL, IT'S NOT IF I SAY SO. I THINK THE
13 COURT WILL TELL YOU THAT AND --

14 THE COURT: THE COURT WILL TELL YOU THAT FOR
15 PURPOSES OF YOUR DETERMINATION AS A JUROR YOU MUST
16 ACCEPT THE PROPOSITION THAT WHEN YOU VOTE FOR LIFE
17 WITHOUT PAROLE, IF THAT'S YOUR VERDICT, YOU MUST ASSUME
18 THAT HE'LL SPEND HIS ENTIRE NATURAL LIFE IN PRISON AND
19 DIE THERE.

20 AND IF YOU VOTE FOR THE DEATH PENALTY, FOR
21 PURPOSES OF YOUR DETERMINATION AS A JUROR, YOU MUST
22 ASSUME THAT AFTER THE PROCESS OF THE APPELLATE REVIEW
23 IS CONCLUDED, THEREAFTER A DATE WILL BE SET FOR HIS
24 EXECUTION AND HE'LL BE EXECUTED IN SAN QUENTIN.

25 CAN YOU ASSURE US YOU'LL ACCEPT THAT
26 PROPOSITION?

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6-ER-1265

COPY

CRIM NO. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF & RESPONDENT,

-VS-

RODNEY GENE BEELER,

DEFENDANT & APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

JOHN VAN DE KAMP
ATTORNEY GENERAL
110 WEST "A" STREET
SUITE 700
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

RODNEY GENE BEELER
DEFENDANT IN PRO PER
SAN QUENTIN STATE PRISON
SAN QUENTIN, CALIFORNIA 94964

M. ARMELLA MARTIN, CSR #2115
D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

VOLUME: 9 OF 16

PAGES: 1770 - 1927

DATE: MAY 31, 1988

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VOLUME 9

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE
STATE OF CALIFORNIA,

PLAINTIFF,

VS.

RODNEY GENE BEELER,

DEFENDANT.

NO. C-60966

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' DAILY TRANSCRIPT

TUESDAY, MAY 31, 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE:

CECIL NICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT:

BY: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

VOLUME IX
PAGES 1770 THRU 1927

M. ARMELLA MARTIN, CSR 02115
D. JEAN RANDALL, CSR 02498
OFFICIAL COURT REPORTERS

M. ARMELLA MARTIN / D. JEAN RANDALL, OFFICIAL COURT REPORTERS

6-ER-1267

1820

1 A I ALWAYS ARRIVED AROUND 9:30.

2 MR. BARNETT: OBJECTION, NONRESPONSIVE.

3 THE COURT: SUSTAINED. STRICKEN. START AGAIN.

4 BY MR. MIDDLETON:

5 Q WHAT TIME DID YOU ARRIVE ON EVERETT STREET
6 THAT MORNING?

7 A ABOUT 9:30.

8 Q AND SO IS THAT THE APPROXIMATE TIME YOU
9 PARKED YOUR CAR, ABOUT 9:30?

10 A YES, IT WAS.

11 Q WHERE DID YOU PARK YOUR CAR THAT MORNING?

12 A WHERE DID I PARK IT?

13 Q YES.

14 A DIRECTLY IN FRONT OF THE HOUSE WHERE THE
15 EVENT TOOK PLACE.

16 MR. BARNETT: OBJECTION. MOVE TO STRIKE --

17 THE WITNESS: WHERE I WORK IS DIRECTLY ACROSS
18 THE STREET FROM THERE --

19 THE COURT: OBJECTION SUSTAINED; STRICKEN.

20 ASSUMES FACTS IN NOT IN EVIDENCE. START AGAIN.

21 BY MR. MIDDLETON:

22 Q THAT MORNING WAS THERE A NUMBER OF POLICE
23 THAT CAME TO THE LOCATION WHERE YOUR CAR WAS?

24 A YES.

25 Q AND DID THEY GO IN AND OUT OF A CERTAIN
26 HOUSE ON THAT STREET?

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1821

1 A YES, THEY DID.

2 Q WHAT HOUSE WAS THAT?

3 A IT WAS THE HOUSE DIRECTLY ACROSS FROM 1143
4 WHERE I WORKED. I'M NOT SURE OF THE ADDRESS.

5 Q IS THAT WHERE YOU HAD YOUR CAR PARKED?

6 A THAT'S WHERE I HAD MY CAR PARKED.

7 Q SHOWING YOU WHAT I'LL MARK PEOPLE'S 10, DO
8 YOU RECOGNIZE THE CAR IN THAT PHOTOGRAPH?

9 (PEOPLE'S 10 - MARKED FOR I.D.)

10 A YES, THAT'S MY CAR.

11 Q WAS THAT A PHOTOGRAPH TAKEN OF YOUR CAR AT
12 THE LOCATION WHERE IT WAS PARKED THAT MORNING?

13 A YES, IT IS.

14 Q SHOWING YOU WHAT I'M MARKING PEOPLE'S 11,
15 IS THAT ANOTHER ANGLE SHOT OF THAT SAME CAR ON THAT
16 MORNING?

17 (PEOPLE'S 11 - MARKED FOR I.D.)

18 A YES, IT IS.

19 Q AND DO YOU SEE A LITTLE BLACK SPECK, AT
20 LEAST FROM THIS PHOTOGRAPH, A LITTLE BLACK SPECK ON THE
21 PASSENGER SIDE OF THE CAR DOOR?

22 A YES, I DO.

23 Q SHOWING YOU PEOPLE'S 12, IS THAT A
24 CLOSE-UP OF THAT LITTLE BLACK SPECK IN PEOPLE'S 11?

25 A THAT IS.

26 (PEOPLE'S 12 - MARKED FOR I.D.)

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1822

1 Q AND THAT OBVIOUS HOLE IN THE FRONT
2 PASSENGER DOOR, WAS THAT THERE WHEN YOU PARKED YOUR CAR
3 THAT MORNING?

4 A NO, IT WAS NOT.

5 Q SHOWING YOU PEOPLE'S 13, IS THAT A CLOSER
6 VIEW OF THAT WHAT WAS A LITTLE BLACK SPECK IN NUMBER
7 11?

8 A YES, IT IS.

9 (PEOPLE'S 13 = MARKED FOR I.D.)

10 Q DID YOU LOOK AT THAT THAT MORNING WHEN THE
11 POLICE WERE TALKING TO YOU, DID YOU GO AND LOOK AT THAT
12 LITTLE HOLE?

13 A YES, I DID.

14 Q AND IS THAT A CLOSE-UP, IN PEOPLE'S 14, OF
15 THAT SAME HOLE?

16 A THAT IS.

17 (PEOPLE'S 14 = MARKED FOR I.D.)

18 Q NOW, PEOPLE'S 15, IS THAT ANOTHER SHOT OF
19 YOUR CAR OUT ON THE CURB LINE?

20 A YES, IT IS.

21 (PEOPLE'S 15 = MARKED FOR I.D.)

22 MR. MIDDLETON: THANK YOU.

23 NO FURTHER QUESTIONS.

24 THE COURT: YOU MAY INQUIRE.

25 MR. BARNETT: NO QUESTIONS.

26 THE COURT: YOU MAY STEP DOWN. YOU'RE EXCUSED.

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6-ER-1270

1827

1 (PEOPLE'S 17 - MARKED FOR I.D.)

2 Q NOW, AT THE TIME THAT -- DID YOU HEAR,
3 WHEN YOU WERE IN YOUR GARAGE JUST PRIOR TO SEEING THE
4 DEFENDANT APPROACH, DID YOU HEAR A NOISE?

5 A YEAH, I HEARD A MOTOR RUNNING, AND I
6 THOUGHT IT WAS SOMEONE COMING IN MY DRIVEWAY TO TURN
7 AROUND. I WAS BEHIND THE OFFSET OF THE DOOR THERE, AND
8 I STEPPED OUT INTO THE -- IN THE DRIVEWAY, AND THAT'S
9 WHEN I SEEN HIM COME WALKING ACROSS THE STREET.

10 Q DID YOU NOTICE AN AUTOMOBILE FROM THE
11 LOCATION WHERE HE WAS WALKING FROM PARKED?

12 A YEAH, A PICKUP.

13 Q A PICKUP?

14 A YEAH.

15 Q ALL RIGHT. SHOWING YOU WHAT I'VE MARKED
16 PEOPLE'S 18, HERE'S A PHOTOGRAPH -- IS THAT A SHOT FROM
17 THE BACK OF YOUR YARD GOING TOWARD MAPLEWOOD?

18 A YEAH.

19 (PEOPLE'S 18 - MARKED FOR I.D.)

20 Q AND DOES THAT HAVE YOUR DRIVEWAY APRON IN
21 IT AND ALSO ACROSS THE STREET ON MAPLEWOOD?

22 A YEAH, THIS IS MY APRON HERE, AND THIS IS
23 THE ONE ACROSS THE STREET ON THE OTHER CORNER.

24 Q IS THE APPROXIMATE LOCATION WHERE YOU SAW
25 THAT PERSON WALK, IS THAT IN THAT PHOTOGRAPH?

26 A YEAH, I'D LIKE TO SAY IT'S RIGHT ALONG

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1928

1 WHERE THIS CROSS IS AT.

2 Q THE GREEN X?

3 A YES.

4 Q AND IS THE LOCATION WHERE THE DEFENDANT
5 APPROACHED YOUR GARAGE AND STOPPED, IS THAT IN THERE?

6 A WELL, HE COME UP MORE IN THE CENTER OF THE
7 APPROACH HERE. HE DIDN'T COME ACROSS HERE.

8 Q YOU'RE POINTING TO THE APRON PART OF THE
9 ENTRY OF YOUR GARAGE DOOR?

10 A YEAH, YEAH.

11 Q DO YOU SEE A GREEN Y THERE?

12 A YEAH.

13 Q IS THAT THE APPROXIMATE LOCATION OF WHERE
14 HE STOOD?

15 A YEAH, ON DOWN THIS WAY A LITTLE MORE TO
16 THE CENTER OF THE DRIVENWAY.

17 Q A LITTLE MORE TO THE RIGHT OF THE Y?

18 A YEAH.

19 Q NOW, SHOWING YOU PEOPLE'S 19, DOES THAT
20 APPEAR -- WHAT DOES THAT APPEAR TO BE IN THAT
21 PHOTOGRAPH?

22 (PEOPLE'S 19 = MARKED FOR I.D.)

23 A IT APPEARS TO BE A PICKUP.

24 Q AND DOES THAT APPEAR TO BE A PICKUP
25 SIMILAR IN NATURE TO THE ONE YOU SAW ON MAPLEWOOD THAT
26 MORNING?

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1829

1 A YES, BUT I NEVER NOTICED THE REAR END,
2 JUST A SIDE VIEW WAS ALL I NOTICED BECAUSE IT WAS
3 SITTING JUST STRAIGHT ACROSS THE STREET FROM ME, YOU
4 KNOW.

5 Q WELL, THE COLOR AND TYPE OF TRUCK IT IS,
6 AS FAR AS THE CAMPER SHELL, DOES IT APPEAR TO BE THE
7 SAME?

8 A YEAH.

9 Q YOU DIDN'T NOTICE THE WORD "FORD" ON THE
10 BACK OR ANYTHING?

11 A NO. NO.

12 Q NOW, THAT MORNING WHEN YOU WERE IN YOUR
13 GARAGE, DID YOU HAVE YOUR CARS IN THERE?

14 A YEAH.

15 Q AND DO YOU HAVE A -- WHAT KIND OF CARS DO
16 YOU HAVE, OR BACK THEN?

17 A WELL, THEN I HAD A CHEVY AND A DATSUN
18 PICKUP.

19 Q AND SHOWING YOU PEOPLE'S 20. ARE THOSE
20 CARS IN THE GARAGE IN THAT PHOTOGRAPH?

21 (People's 20 = MARKED FOR I.D.)

22 A YEAH.

23 Q IS THAT THE WAY THEY WERE THAT MORNING
24 WHEN THE MAN APPROACHED YOUR GARAGE?

25 A YEAH.

26 Q NOW, WHEREABOUTS IN THE GARAGE WERE YOU

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1830

1 WHEN YOU FIRST CAUGHT A GLIMPSE OF HIM? COULD YOU PUT
2 A LITTLE X WHERE YOU WERE?

3 A WELL, I WAS BACK IN BETWEEN THIS OFFSET
4 HERE. SEE, THERE'S A SIX FOOT OFFSET FROM THE GARAGE
5 DOOR OVER TO THE SIDE, SO IT WOULD BE BACK IN BEHIND
6 THIS.

7 Q OH, ALL RIGHT. COULD YOU PLACE AN ARROW
8 POINTING TO WHERE YOU WERE?

9 A (WITNESS COMPLIES.)

10 Q AND IF YOU COULD SEE THROUGH THIS FAR
11 LEFT-HAND CORNER --

12 A WELL --

13 Q -- OF THE GARAGE, COULD YOU PUT A -- LET'S
14 STRIKE THAT.

15 PUT AN X TO THE APPROXIMATE LOCATION ON
16 THE WALL TO WHERE YOU ARE BEHIND THE WALL, YOU KNOW
17 WHAT I MEAN? YOU CALLED THIS ABOUT A SIX FOOT OFFSET?

18 A I'D SAY JUST ABOUT DIRECT BEHIND THAT
19 BRICK WALL THAT COMES ON THERE.

20 Q OKAY. COULD YOU PUT AN X JUST ON THE
21 BRICK WALL ON THE OUTSIDE APPROXIMATELY WHERE YOU WERE
22 IN THE GARAGE?

23 A (WITNESS COMPLIES.)

24 Q SO YOU WERE DIRECTLY BEHIND THE WALL AT
25 THAT POINT?

26 A I WAS BEHIND THIS OFFSET AND THIS GARAGE

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6-ER-1274

1831

1 WALL TOO, I WAS IN BEHIND THAT TOO, SEE.

2 Q DID YOU WALK OUT OF YOUR GARAGE?

3 A YEAH, I WALKED OUT AROUND HERE.

4 Q WAS IT THE NOISE OF THE ENGINE THAT FIRST
5 GOT YOUR ATTENTION?

6 A YEAH.

7 Q THEN DID YOU GO DOWN AND MEET THE
8 DEFENDANT AS HE APPROACHED?

9 A NO, I JUST WALKED OUT ABOUT FOUR FOOT OUT
10 PAST THE OPENING AND THE OVERHEAD GARAGE DOOR WITH A
11 BOOT IN MY HAND AND BRUSH IN MY HAND POLISHING THE
12 BOOT.

13 Q WHAT KIND OF CONVERSATION DID YOU HAVE AT
14 THAT TIME WITH THE DEFENDANT?

15 A HE ASKED ME IF I'D SEEN A STRAY CAT, AND I
16 SAID NO. HE SAID, "MY CAT JUMPED THE WALL IN YOUR
17 BACKYARD. WOULD YOU LOOK BACK THERE, PLEASE, AND SEE
18 IF MY CAT IS BACK THERE?"

19 A AND I SAID, "WELL, I JUST COME THROUGH THE
20 YARD, BUT I'LL LOOK AGAIN." SO I WALKED IN THERE, WENT
21 OUT BACK, LOOKED AROUND AND WALKED BACK. AND WHEN I
22 COME BACK, HE WAS TAKIN' OFF ACROSS THE STREET IN THE
23 TRUCK.

24 Q OKAY. DID YOU SEE ANY OTHER PERSON THAT
25 MORNING OTHER THAN THAT SINGLE PERSON, THE DEFENDANT,
26 THAT APPROACHED YOUR GARAGE?

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1832

1 A NO.

2 Q DID YOU SEE ANYBODY ELSE THAT DIDN'T
3 BELONG IN THE AREA?

4 A NO.

5 Q OR THAT YOU DIDN'T RECOGNIZE?

6 A (SHAKES HEAD FROM SIDE TO SIDE.)

7 MR. MIDDLETON: NO FURTHER QUESTIONS.

8 THE COURT: YOU MAY INQUIRE.

9

10 CROSS EXAMINATION

11 BY MR. BARNETT:

12 Q FIRST OF ALL, MR. RANEY, DIRECTING YOUR
13 ATTENTION TO THE DIAGRAM THAT'S BEEN MARKED PEOPLE'S 1.
14 I WONDER IF YOU COULD INDICATE ON THE DIAGRAM WHERE THE
15 PICKUP TRUCK WAS AND WHICH DIRECTION IT WAS FACING?

16 A WELL, I'D SAY IT'S RIGHT ALONG WHERE THAT
17 BLACK ROUND CIRCLE IS THERE.

18 Q RIGHT HERE?

19 A RIGHT ALONG -- MAYBE BACK THE OTHER WAY
20 JUST A LITTLE.

21 Q THIS WAY?

22 A YEAH, JUST A SHADE. I'D SAY IT'S A-- IT
23 WAS PRETTY CLOSE TO WHERE THAT CIRCLE IS.

24 Q AND IT WAS FACING SOUTH?

25 A YEAH.

26 Q THIS DIRECTION, DOWN?

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6-ER-1276

1833

1 A YEAH.

2 Q NOW, LOOKING AT WHAT HAS BEEN MARKED 18,
3 PEOPLE'S 18, DO YOU REMEMBER WHAT THAT X REPRESENTS?

4 A I PRESUME IT'S THE PLACE WHERE THE TRUCK
5 WAS PARKED.

6 Q DO YOU REMEMBER TESTIFYING PREVIOUSLY AND
7 PUTTING AN X IN THAT SPOT (INDICATING)?

8 A YEAH.

9 Q NOW, THAT WOULD BE --

10 A I'D SAY IT WAS A LITTLE FURTHER DOWN THAT
11 WAY. THE PICKUP WAS PARKED A LITTLE FURTHER DOWN THAN
12 THAT X WAS MARKED.

13 Q JUST SO WE UNDERSTAND, YOUR DRIVEWAY IS
14 DOWN -- DOES THIS INDICATE YOUR DRIVEWAY?

15 A FURTHER UP.

16 Q THIS IS YOUR DRIVEWAY UP HERE?

17 A YEAH.

18 Q JUST BELOW THE F.R.?

19 A YEAH.

20 Q AND YOU WOULD SAY IT WAS RIGHT ABOUT HERE?

21 A YEAH.

22 Q AND THAT WOULD BE BETWEEN YOUR HOUSE AND
23 FERN AWALT'S; IS THAT RIGHT?

24 A NO, FERN AWALT'S IS ON THE SAME SIDE AS
25 I'M ON.

26 Q THAT'S WHAT I MEAN. I MEAN IN TERMS OF

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6-ER-1277

1834

1 DISTANCE?

2 A OH.

3 Q WOULD THAT BE BACK ABOUT RIGHT --

4 A IT'S BACK UP THIS SIDE OF FERN'S HOUSE.

5 Q IN ANY EVENT, IT'S TO THE SOUTH OF YOUR
6 DRIVEWAY; IS THAT CORRECT?

7 A YES, JUST A LITTLE SOUTH.

8 Q NOW, YOU WERE BEHIND THIS BRICK WALL WHEN
9 YOU FIRST NOTICED SOMETHING UNUSUAL?

10 A NO, I WAS BEHIND THE BRICK WALL WHEN I
11 HEARD THE MOTOR RUNNING, AND I WALKED OUT IN THE
12 DRIVEWAY.

13 Q SO YOU WALKED OUT HERE; IS THAT CORRECT?

14 A YEAH.

15 Q AND THAT WOULD BE JUST SOMEWHERE OFF THE
16 PHOTOGRAPH IN PEOPLE'S 18; IS THAT CORRECT, TO THE
17 RIGHT OF PEOPLE'S 18? IN OTHER WORDS, THIS PHOTOGRAPH
18 WOULD BE UP HERE --

19 A YEAH.

20 Q -- TO THE RIGHT OF IT; IS THAT CORRECT?

21 A YEAH. YEAH.

22 Q SOMETHING LIKE THIS? IN OTHER WORDS,
23 YOU'RE JUST COMING OUT HERE AND IT WOULDN'T QUITE BE ON
24 PEOPLE'S 18; IS THAT RIGHT?

25 A YOU'RE GETTING ME ALL CONFUSED NOW.

26 Q I DON'T WANT TO DO THAT. YOU'RE OUT OF

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6-ER-1278

1835

1 YOUR DRIVEWAY, OKAY? AND THE PERSON YOU HAVE HAD THE
2 CONVERSATION WITH, IS IT AT THE Y OR CLOSER TO THE
3 CENTER?

4 A IT'S CLOSER TO THE CENTER.

5 Q WOULD IT BE ON THIS PHOTOGRAPH OR WOULD IT
6 BE CLOSER TO WHERE YOUR CAR WAS PARKED?

7 A I'D SAY IT WOULD BE ABOUT MAYBE BETWEEN
8 THE CAR AND THE PICKUP. THAT WOULD BE PRETTY WELL
9 CENTERED.

10 Q WELL, THE Y HERE IS WHAT YOU PREVIOUSLY
11 TESTIFIED TO AS THE POSITION THAT THE MAN WAS IN THAT
12 YOU WERE TALKING TO, IS THAT RIGHT?

13 A I DON'T REMEMBER IT.

14 Q WHERE DO YOU THINK IT WAS, NOW? COULD YOU
15 JUST POINT ON THIS PHOTOGRAPH?

16 A WELL, IT WAS SOMEWHERE CLOSE TO THE
17 CENTER, BUT THE APPROACH, THE DRIVEWAY -- I'D SAY
18 SOMEWHERE CLOSE TO THE CENTER OF THIS DRIVEWAY HERE.

19 Q COULD YOU PUT A -- WITH MR. MIDDLETON'S
20 PERMISSION -- DO YOU MIND IF HE MARKS ON YOUR EXHIBIT?

21 MR. MIDDLETON: NOT AT ALL.

22 BY MR. BARNETT:

23 Q CAN YOU JUST PUT A --

24 A PUT IT RIGHT THERE.

25 Q I'LL PUT AN X-1. THAT'S THE POSITION THAT
26 THE MAN WAS IN WHEN YOU HAD THE CONVERSATION, IS THAT

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6-ER-1279

1836

1 CORRECT?

2 A I'D SAY IT'S CLOSE.

3 Q AND HOW CLOSE WERE YOU TO HIM?

4 A WELL, I DON'T KNOW HOW LONG THE DRIVEWAY
5 IS -- APPROXIMATELY 20 FEET.

6 Q BUT YOU COULD CLEARLY UNDERSTAND WHAT HE
7 WAS SAYING?

8 A OH, YEAH.

9 Q THERE WASN'T ANY PROBLEM IN SEEING HIM
10 EITHER, RIGHT?

11 A WHAT?

12 Q THERE WASN'T ANY PROBLEM IN SEEING HIM,
13 CORRECT?

14 A NO.

15 Q IT WAS JUST A NORMAL SORT OF CASUAL
16 CONVERSATION, CORRECT?

17 A YES.

18 Q HE JUST ASKED YOU IF YOU KNEW WHERE HIS
19 CAT WAS, HE'D LOST HIS CAT. AND YOU SAID YOU'D TAKE A
20 LOOK, RIGHT?

21 A YEAH.

22 Q AND YOU GOT A PRETTY GOOD LOOK AT HIM;
23 ISN'T THAT CORRECT?

24 A FAIR LOOK FOR THE TIME BEING.

25 Q AND YOU DIDN'T SEE ANYTHING IN HIS HANDS;
26 IS THAT CORRECT?

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6-ER-1280

1837

1 A NO.

2 Q HE WASN'T CARRYING A BAG OF ANY SORT, WAS
3 HE?

4 A NOT THAT I NOTICED.

5 Q YOU WERE LOOKING AT -- RIGHT AT HIM AND
6 YOU IDENTIFIED MR. BEELER?

7 A I DIDN'T NOTICE NO BAG.

8 Q AND YOU COULD SEE HIS HANDS, OF COURSE, HE
9 WAS STANDING THERE ASKING YOU ABOUT THE CAT, CORRECT?

10 A YEAH.

11 Q IN FACT, HE POINTED IN SOME DIRECTION
12 TOWARDS WHERE THE CAT MIGHT BE; ISN'T THAT CORRECT?

13 A I DON'T KNOW WHETHER HE POINTED OR NOT.
14 HE JUST ASKED ME WOULD I LOOK IN THE BACKYARD. HE WAS
15 BEING NICE ABOUT IT. HE SAID PLEASE, SO I WENT AND
16 LOOKED.

17 Q NOW, THE PICKUP TRUCK WAS THE FIRST THING
18 THAT YOU NOTICED AND THAT WAS RUNNING, CORRECT?

19 A YEAH, WHEN I --

20 Q AND WHEN YOU CAME OUT, THE INDIVIDUAL WAS
21 WALKING TOWARDS YOU; IS THAT RIGHT?

22 A YEAH.

23 Q AND HE WAS -- WAS HE IN POSITION Y WHEN
24 YOU FIRST SAW HIM -- EXCUSE ME -- WAS HE IN POSITION
25 Y-1 WHEN YOU FIRST SAW HIM OR WAS THAT WHERE THE
26 CONVERSATION WAS?

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6-ER-1281

1882

1 DAVID JENSEN,
2 CALLED AS A WITNESS BY THE PEOPLE WAS DULY SWORN,
3 EXAMINED, AND TESTIFIED AS FOLLOWS:

4 THE CLERK: DO YOU SOLEMNLY SWEAR THAT THE
5 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CASE NOW PENDING
6 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH,
7 AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

8 THE WITNESS: I DO.

9 THE CLERK: STATE YOUR NAME FOR THE RECORD AND
10 SPELL YOUR FIRST AND LAST NAMES.

11 THE WITNESS: DAVID JENSEN, J-E-N-S-E-N.

12 DIRECT EXAMINATION

13 BY MR. MIDDLETON:

14 Q. SIR, DECEMBER 30, 1985, WHO WERE YOU EMPLOYED
15 BY?

16 A. THE ORANGE POLICE DEPARTMENT.

17 Q. IN WHAT CAPACITY?

18 A. HOMICIDE DETECTIVE.

19 Q. HOW LONG HAD YOU WORKED FOR THE CITY OF
20 ORANGE POLICE DEPARTMENT?

21 A. AT THAT TIME, APPROXIMATELY SIX YEARS.

22 Q. DID YOU RESPOND ON THAT DATE, DECEMBER 30,
23 1985, TO 1144 EVERETT STREET?

24 A. YES, I DID.

25 Q. ABOUT WHAT TIME?

26 A. APPROXIMATELY 11 -- BETWEEN 11:00 AND 11:30,

D. JEAN RANDALL, C.S.R., OFFICIAL COURT REPORTER

6-ER-1282

1683

1 I BELIEVE.

2 Q. AND WERE YOU ULTIMATELY THE INVESTIGATING
3 OFFICER ON THE CASE REGARDING MR. BEELER?

4 A. YES, I WAS.

5 Q. NOW, UPON ARRIVING, WHAT DID YOU DO AT THE
6 SCENE?

7 A. I MADE CONTACT WITH DETECTIVE SERGEANT WALSH
8 WHO HAD ARRIVED PREVIOUS AND DISCUSSED THE CASE WITH HIM.

9 Q. AND DID YOU GO INSIDE THE RESIDENCE?

10 A. YES, I DID.

11 Q. BEFORE GOING INSIDE THE RESIDENCE -- WELL,
12 DESCRIBE WHAT YOU DID AS FAR AS -- FROM THE TIME YOU
13 ARRIVED TO JUST BEFORE YOU WENT INSIDE OF THE RESIDENCE.
14 I'M JUST ASKING YOU DID YOU GO AND LOOK AT THE OUTSIDE OF
15 THE RESIDENCE; WHAT DID YOU DO AT THAT POINT?

16 A. MADE THE CONTACT WITH THE PERSONNEL AT THE
17 SCENE. WENT OVER AND OBSERVED THE VICTIM LAYING ON THE
18 LAWN. AND THEN I CAME BACK AND MADE CONTACT WITH OTHER
19 PERSONNEL, AND AT ONE POINT IN TIME WE WENT INTO THE
20 RESIDENCE.

21 Q. WHEN YOU WENT AND SAW THE VICTIM ON THE
22 GRASS, WAS THERE OBVIOUS SIGNS THAT HE HAD BEEN WORKED ON
23 BY EMERGENCY PERSONNEL?

24 A. YES, THERE WAS.

25 Q. SHOWING YOU PEOPLE'S 3, DO YOU SEE OBVIOUS
26 SIGNS OF EMERGENCY PEOPLE WORKING ON HIM?

D. JEAN RANDALL, C.S.R., OFFICIAL COURT REPORTER

6-ER-1283

1889

1 A. APPROXIMATELY 20 FEET.

2 Q. IS THERE A HALLWAY OFF OF THAT HALLWAY?

3 A. YES.

4 Q. WHERE DOES THAT LEAD TO?

5 A. THAT LEADS TO TONY'S BEDROOM, MICHAEL'S
6 BEDROOM AND ALSO A BATHROOM.

7 Q. PEOPLE'S 38, WHAT DOES THAT DEPICT?

8 (PEOPLE'S 38 = MARKED FOR IDENTIFICATION.)

9 A. THAT DEPICTS THE LIVING ROOM HALLWAY THAT I
10 FIRST DESCRIBED, A BROKEN .22 RIFLE AND THE DOORWAY RIGHT
11 IN THE CENTER OF THE PICTURE IS THE -- LEADS TO THE
12 HALLWAY WHICH WOULD GO TO TONY, MICHAEL'S AND THE
13 BATHROOM.

14 Q. PEOPLE'S 39, IS THAT ANOTHER ANGLE?

15 (PEOPLE'S 39 = MARKED FOR IDENTIFICATION.)

16 A. YES, FROM THAT ANGLE THE PERSON WOULD BE
17 STANDING TAKING THE PICTURE RIGHT AT THE FRONT DOOR
18 GOING -- TAKING A PICTURE IN THE SOUTHERLY DIRECTION IN
19 THE HALLWAY AREA.

20 Q. OKAY. NOW, IN PEOPLE'S 39, THERE APPEARS TO
21 BE A DOOR TO THE LEFT OF THE PICTURE. WHERE IS THAT GOING
22 TO GO TO?

23 A. GOING TO GO TO TONY'S ROOM, MICHAEL'S ROOM
24 AND THE BATHROOM, ALSO THE HALLWAY BETWEEN THE THREE
25 ROOMS.

26 Q. AND THE RIFLE WAS FOUND JUST AS YOU FOUND IT

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6-ER-1284

1890

1 RIGHT THERE?

2 A. YES.

3 Q. DID YOU FIND ANOTHER PORTION OF THAT RIFLE?

4 A. YES, I DID.

5 Q. AND WHERE WAS THAT?

6 A. JUST TO THE ENTRANCE OF MICHAEL'S ROOM.

7 Q. SHOWING YOU PEOPLE'S 40, WHERE IS THAT?

8 (PEOPLE'S 40 = MARKED FOR IDENTIFICATION.)

9 A. THAT'S THE DOORWAY TO MICHAEL'S ROOM WHICH IS
10 THE SOUTHEAST BEDROOM.

11 Q. OKAY. AND THERE APPEARS TO BE DAMAGE TO THAT
12 DOOR?

13 A. YES.

14 Q. DID YOU FIND THAT THAT WAY?

15 A. YES.

16 Q. AND WAS THERE ANYTHING DIRECTLY BELOW THAT ON
17 THE FLOOR?

18 A. YES.

19 Q. WHAT WAS THAT?

20 A. THE OTHER HALF OF THE .22 RIFLE, THE BUTT
21 PORTION.

22 Q. SHOWING YOU PEOPLE'S 41, IS THAT -- WHAT IS
23 THAT?

24 (PEOPLE'S 41 = MARKED FOR IDENTIFICATION.)

25 A. THAT IS THE BUTT PORTION TO THE .22 RIFLE,
26 SPLINTERS FROM THE DOOR AND THE RIFLE ON THE CARPET.

D. JEAN RANDALL, C.S.R., OFFICIAL COURT REPORTER

6-ER-1285

1891

1 Q. PEOPLE'S 42, IS THAT A DIFFERENT ANGLE OF THE
2 SAME?

3 (PEOPLE'S 42 = MARKED FOR IDENTIFICATION.)

4 A. FROM THAT ANGLE THE PERSON TAKING THE PICTURE
5 WOULD BE INSIDE MICHAEL'S ROOM GOING TOWARDS THE HALLWAY
6 AREA.

7 Q. OKAY. AND 43, WHAT DOES THAT DEPICT?

8 (PEOPLE'S 43 = MARKED FOR IDENTIFICATION.)

9 A. THAT'S A PICTURE INSIDE MICHAEL'S ROOM WITH
10 THE DOOR SHUT SHOWING THE DAMAGE TO THE DOOR.

11 Q. PEOPLE'S 44?

12 (PEOPLE'S 44 = MARKED FOR IDENTIFICATION.)

13 A. THAT'S A PICTURE INSIDE MICHAEL'S ROOM.

14 Q. PEOPLE'S 45?

15 (PEOPLE'S 45 = MARKED FOR IDENTIFICATION.)

16 A. PICTURE OF MICHAEL'S BED WITH A HAMMER ON TOP
17 OF THE BED.

18 Q. AND PEOPLE'S 46?

19 (PEOPLE'S 46 = MARKED FOR IDENTIFICATION.)

20 A. THAT'S A PICTURE OF A DESK DRAWER THAT HAD
21 BEEN RANSACKED, IN MICHAEL'S ROOM.

22 MR. BARNETT: OBJECT, THAT'S A CONCLUSION,
23 SPECULATION.

24 THE COURT: THE OBJECTION IS OVERRULED, THE ANSWER
25 REMAINS.

26 BY MR. MIDDLETON:

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6-ER-1286

1893

1 (PEOPLE'S 52 = MARKED FOR IDENTIFICATION.)

2 A. THAT'S A PICTURE OF SEVERAL DISCARDED ITEMS
3 ON TOP OF THE VICTIM'S BED, SEVERAL BULLETS THAT WERE
4 FOUND IN THE CENTER OF THE BED.

5 Q. DID YOU NOTICE WHAT KIND OF BULLETS THOSE
6 WERE THAT YOU FOUND ON THE BED?

7 A. COPPER JACKET I BELIEVE BLAZER AMMUNITION.

8 Q. DO YOU RECALL WHAT CALIBER?

9 A. .22 CALIBER, LONG RIFLE.

10 Q. I WILL HAVE MARKED AS PEOPLE'S 53, DO YOU
11 RECOGNIZE WHAT I HAVE IN MY HAND?

12 (PEOPLE'S 53 = MARKED FOR IDENTIFICATION.)

13 A. YES, I DO.

14 Q. WHAT IS THAT THE?

15 A. THE UPPER PORTION OF THE .22 CALIBER RIFLE
16 FOUND IN THE ENTRYWAY.

17 Q. IS THAT WHAT APPEARS TO BE IN PEOPLE'S 39 AND
18 18?

19 A. YES, IT IS.

20 THE COURT: WE'LL AFFIX A TRIGGER GUARD IN THE
21 TRIGGER HOUSING.
22 BY MR. MIDDLETON.

23 Q. WHEN YOU FOUND THAT GUN, DID YOU LOOK AT IT
24 AND CHECK IF IT WAS LOADED?

25 A. I STOOD BY WHILE ONE OF THE SHERIFF'S
26 PERSONNEL DID AND IT WAS NOT.

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6-ER-1287

1897

1 Q. DID YOU TALK WITH MR. FLOYD RANEY?

2 A. YES.

3 Q. WHERE IS HIS RESIDENCE?

4 A. IT WOULD BE AT THE CORNER, SOUTHEAST CORNER
5 OF MAPLEWOOD AND EVERETT.

6 Q. NOW, WHILE YOU WERE AT THE HOUSE, DID YOU
7 CHECK THE FRONT SCREEN DOOR?

8 A. YES, I DID.

9 Q. DID YOU FIND ANYTHING PECULIAR WITH THE FRONT
10 SCREEN DOOR?

11 A. YES.

12 Q. WHAT IS THAT?

13 A. APPEARED TO BE A SMALL BULLET HOLE THROUGH
14 THE SCREEN.

15 Q. NOW, DURING THE TIME THAT YOU WERE AT THE
16 RESIDENCE, DID YOU MAKE ANY TEST TO DETERMINE OR ATTEMPT
17 TO DETERMINE TRAJECTORY?

18 A. YES.

19 MR. BARNETT: OBJECTION, NO FOUNDATION.

20 THE COURT: OVERRULED. THE QUESTION WAS
21 PRELIMINARY.

22 THE WITNESS: YES, I DID.

23 BY MR. MIDDLETON:

24 Q. AND WHAT DOES THE WORD "TRAJECTORY" MEAN?

25 A. THE LINE THAT A BULLET WOULD TRAVEL.

26 Q. OKAY. HAVE YOU, IN YOUR WORKINGS AS AN

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6-ER-1288

1898

1 INVESTIGATOR, HAVE YOU ATTEMPTED TO DETERMINE, IN THE
2 PAST, WHAT PATH A BULLET TAKES?

3 A. YES.

4 Q. AND HOW DO YOU DO THAT?

5 A. YOU COULD DO IT SEVERAL WAYS. WITH A
6 LASER -- WHAT WE DID IN THIS INCIDENT WAS WITH A STRING,
7 GOING FROM ONE POINT WHERE THE BULLET WAS LOCATED OR WHERE
8 IT MADE ENTRY INTO SOMETHING ELSE TO SEE IF THE TRAJECTORY
9 IS CONSISTENT WITH THOSE TWO POINTS.

10 Q. IS -- HOW MANY TIMES HAVE YOU USED THAT
11 METHOD BEFORE?

12 A. I'D SAY LESS THAN A HALF DOZEN, PROBABLY
13 FIVE.

14 Q. HOW DO YOU GO ABOUT SETTING SOMETHING LIKE
15 THAT UP?

16 A. USUALLY DONE WITH THE CRIME SCENE
17 INVESTIGATORS AT THE SCENE. IT'S NOT SCIENTIFIC. I WOULD
18 ARRANGE TO HAVE A STRING OR, LIKE I SAY, IN ONE INSTANCE
19 WE DID IT WITH A LASER FROM THE POINT WHERE YOU KNOW THE
20 BULLET PASSED FROM ITS BEGINNING TO ITS ENDING.

21 Q. HOW DO YOU SET UP THE STRING?

22 A. IF YOU KNOW THE TWO POINTS. LIKE I SAY, IN
23 THIS INCIDENT WE KNEW.

24 MR. BARNETT: OBJECTION, NONRESPONSIVE.

25 THE COURT: SUSTAINED.

26 BY MR. MIDDLETON:

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6-ER-1289

1899

1 Q. OKAY, HOW WOULD YOU SET IT UP?

2 A. I WOULD HAVE THE STRING GO FROM THE POINT
3 WHERE WE KNEW THE BULLET EITHER STARTED OR ENDED TO WHERE
4 IT STARTED OR ENDED.

5 IN THIS CASE IT WAS IN THE VEHICLE OUT IN
6 FRONT OF THE RESIDENCE.

7 Q. SO IF YOU HAVE TWO POINTS, TWO BULLET HOLES
8 IN TWO DIFFERENT OBJECTS, YOU WOULD STRING A STRING
9 THROUGH THERE TO RUN A STRAIGHT LINE?

10 A. YES.

11 Q. WHAT WOULD YOU BE DOING THAT FOR?

12 A. MAKING SURE THERE WAS NO SOLID OBJECTS IN
13 BETWEEN THE TWO WHICH WOULD MAKE YOU BELIEVE THAT IT
14 WASN'T A TRAJECTORY OF THE BULLET. OR MAKE SURE THERE WAS
15 NOTHING ELSE IN THE WAY OF THAT LINE.

16 Q. OKAY, DID YOU DO THAT IN THIS PARTICULAR
17 CASE?

18 A. YES, I DID.

19 Q. TELL ME -- WHAT DID YOU DO?

20 A. I HAD A STRING PUT THROUGH THE BULLET HOLE IN
21 THE SCREEN GOING TO WHERE A BULLET WAS LOCATED IN A
22 VEHICLE IN FRONT OF THE RESIDENCE AT 1144 EAST EVERETT.

23 Q. AND DID THE STRING STOP AT THE BULLET HOLE IN
24 THE SCREEN?

25 A. YES, IT DID.

26 Q. DID IT EXTEND INTO THE RESIDENCE?

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6-ER-1290

1904

1 ROOM?

2 A. YES.

3 Q. AND THIS -- THIS IRREGULAR MARKING IN THE
4 BACK YARD WITH THE THREE LINES THROUGH IT, IS THAT THE
5 SWIMMING POOL IN THE BACK YARD?

6 A. YES.

7 Q. NOW, WHEN YOU DID THAT -- THAT TRAJECTORY
8 EXPERIMENT OR WHATEVER YOU WANT TO CALL IT, THE THING
9 WHERE YOU LAID THE STRING FROM THE CAR DOOR AT THE CURB TO
10 THE SCREEN DOOR AND BEYOND THAT INSIDE THE HOUSE, DID YOU
11 WALK ALONG THAT LINE AND SEE WHERE THINGS WERE AS FAR AS
12 ANY OBSTRUCTIONS OR ANYTHING LIKE THAT IN THE YARD?

13 A. YES.

14 Q. SHOWING YOU PEOPLE'S 63, DESCRIBE WHERE THE
15 PERSON WOULD BE STANDING TO TAKE THAT PHOTOGRAPH?

16 (PEOPLE'S 63 = MARKED FOR IDENTIFICATION.)

17 A. THAT PERSON WOULD BE JUST ABOUT ON THE PUBLIC
18 SIDEWALK POINTING DIRECTLY AT THE FRONT DOOR OF THE
19 RESIDENCE.

20 Q. AND DID THE STRING GO THROUGH THE DOOR AT THE
21 TOP OF THE PICTURE THAT WE ARE LOOKING AT?

22 A. YES.

23 Q. ALL RIGHT. DID YOU FIND ANYTHING IRREGULAR
24 WITH THE LAWN WHEN YOU LAID THAT STRING IN THE LINE?

25 A. YES, I DID.

26 Q. WHAT DID YOU FIND?

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6-ER-1291

1911

1 Q. IF YOU HAD, YOU'D HAVE MADE A NOTE THAT YOU
2 FOUND SOME OTHER LOOSE ROUNDS, CORRECT?

3 A. YES.

4 Q. YOU DIDN'T MAKE SUCH A NOTE?

5 A. I DON'T BELIEVE SO, NO.

6 Q. THE ONLY ROUNDS THAT YOU FOUND WERE, AGAIN,
7 IN ANTHONY'S ROOM, CORRECT?

8 A. YES.

9 Q. YOU FOUND A SCREWDRIER DOWN HERE NEAR THE
10 FRONT DOOR; IS THAT RIGHT?

11 A. YES.

12 Q. NOW, THE ROUNDS THAT YOU FOUND, THE .22 LONG
13 RIFLE?

14 A. YES.

15 Q. NOW, CAN THEY BE FIRED OUT OF A PISTOL OR A
16 RIFLE?

17 A. YES.

18 Q. COULD THEY BE FIRED -- ARE THEY CAPABLE OF
19 BEING FIRED OUT OF THIS GUN, FOR INSTANCE, THIS RIFLE?

20 A. YES.

21 Q. SHOWING YOU PEOPLE'S 45, THIS IS FROM TONY'S
22 ROOM; IS THAT RIGHT?

23 A. YES.

24 Q. AND THIS IS WHAT YOU INDICATED WAS THE
25 RANSACKING?

26 A. YES.

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6-ER-1292

1916

1 FROM THE SCREEN DOOR TO THE CAR, WAS THE SCREEN DOOR OPEN
2 OR CLOSED?

3 A. CLOSED.

4 Q. FLUSH AGAINST THE DOOR?

5 A. YES.

6 Q. AND THAT'S SPRING LOADED?

7 A. YES.

8 Q. WOULD YOU HAVE A STRAIGHT LINE IF YOU MOVED
9 THE SCREEN AT ALL, STRAIGHT LINE WITH YOUR STRING TO THE
10 HOLE?

11 A. YES AND NO.

12 Q. DEPENDING ON HOW FAR OPEN THE DOOR WAS?

13 A. YES.

14 Q. DID YOU TRY IT AT DIFFERENT POSITIONS WITH
15 THE DOOR OPEN?

16 A. YES.

17 Q. SOME YOU COULD MAKE THE STRING GO STRAIGHT,
18 SOME YOU COULDN'T?

19 A. RIGHT.

20 Q. DID YOU TAKE PICTURES OF THOSE?

21 A. NO.

22 Q. IT WOULD BE DIFFERENT ANGLES WITHIN THE HOUSE
23 THEN OR OUTSIDE THE HOUSE WHERE YOU COULD MAKE -- MOVE THE
24 DOOR AND STILL HAVE THE STRING IN A STRAIGHT LINE?

25 A. I DON'T BELIEVE SO.

26 Q. DID YOU GET -- TRY THE STRING IN SOME

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6-ER-1293

1917

1 POSITIONS WHERE YOU DIDN'T GET A STRAIGHT STRING?

2 A. IF THE DOOR WAS MAYBE A COUPLE INCHES OPEN,
3 IT WOULDN'T HAVE THE SAME ANGLE. IT WASN'T A
4 SCIENTIFIC -- ONLY FOR MY BENEFIT TO TRY TO SEE IF IT WAS
5 CONSISTENT.

6 Q. WHAT DO YOU MEAN BY "THE SAME ANGLE"?

7 A. YOU ARE SAYING IF THE DOOR WAS OPEN ONE OR
8 TWO INCHES. LIKE I SAY YOU DEFINITELY WOULD BE PUTTING
9 PRESSURE ON THE SCREEN WHERE YOU WOULDN'T HAVE A CLEAN
10 HOLE LIKE YOU HAVE.

11 Q. YOU ARE NOT AN EXPERT IN BULLET HOLES THROUGH
12 SCREENS, ARE YOU?

13 A. WELL, IT'S PRETTY OBVIOUS IF SOMETHING IS
14 GOING THROUGH THE SCREEN YOU ARE DEALING WITH A NYLON TYPE
15 MESH, IT'S GOING TO GO THROUGH WHATEVER IT'S GOING THROUGH
16 THE SAME SIZE AS WHAT IT'S GOING THROUGH. IF YOU HAVE
17 SOMETHING ON AN ANGLE, IT'S GOING TO TEAR MORE OF WHATEVER
18 IT'S GOING THROUGH.

19 Q. THAT WOULD CHANGE THE POSITION OF THE
20 ULTIMATE LOCATION OF THE BULLET, RIGHT?

21 A. CORRECT.

22 Q. SO IF -- FOR YOUR THEORY TO BE CORRECT, IT
23 WOULD -- THE DOOR WOULD BE SHUT?

24 A. YES.

25 Q. IF THE DOOR WAS OPEN AT ALL, THEN IT WOULDN'T
26 BE CORRECT, CORRECT?

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6-ER-1294

1918

1 A. YOU ARE POINTING AT THE WRONG DOOR.

2 Q. I'M SORRY, DOWN HERE?

3 A. YES.

4 Q. IS THAT CORRECT?

5 A. YES.

6 Q. SO FOR YOUR -- YOU RAN A STRING WITH THE DOOR
7 SHUT IT WENT IN A STRAIGHT LINE TO THE CAR DOOR, CORRECT?

8 A. CORRECT.

9 Q. IF YOU OPENED THE SCREEN AT ALL, THAT
10 WOULDN'T WORK, WOULD IT?

11 A. NO.

12 MR. BARNETT: NOTHING FURTHER.

13 REDIRECT EXAMINATION

14 BY MR. MIDDLETON:

15 Q. I'M GOING TO PHRASE A QUESTION HERE. THE
16 DEFENSE SAID, "IF THE SCREEN DOOR WAS OPEN AT ALL, IT
17 WOULD CHANGE EVERYTHING FOR YOU"; IS THAT RIGHT?

18 A. YES.

19 Q. WELL, WHAT DOES IT ALL MEAN, WHAT IF THE
20 SCREEN DOOR WAS ON ITS WAY CLOSED AND JUST SAY AN INCH OR
21 A HALF AN INCH OR A QUARTER OF AN INCH FROM THE JAMB
22 BEFORE IT HIT, WOULD THAT CHANGE THINGS?

23 A. POSSIBLE, BUT I'M NOT FOR SURE.

24 Q. YOU CAN'T REALLY SAY FOR SURE HOW MUCH IT
25 WOULD CHANGE, IF ANYTHING, USING THE STRING?

26 A. FOR SOMETHING TO DRASTICALLY CHANGE, IT WOULD

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6-ER-1295

COPY

CRIM NO. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF & RESPONDENT,

-VS-

RODNEY GENE BEELER,

DEFENDANT & APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

JOHN VAN DE KAMP
ATTORNEY GENERAL
110 WEST "A" STREET
SUITE 700
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

RODNEY GENE BEELER
DEFENDANT IN PRO PER
SAN QUENTIN STATE PRISON
SAN QUENTIN, CALIFORNIA 94964

M. ARMELLA MARTIN, CSR #2115
D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

VOLUME: 10 OF 16

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DATE: JUNE 1, 2, 1988

6-ER-1296

V O L U M E 10

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE	)	
STATE OF CALIFORNIA,	)	
	)	
	)	
VS.	)	NO. C-60966
	)	
RODNEY GENE BEELER,	)	
	)	
	)	
DEFENDANT.	)	

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, JUNE 1, 1988
THURSDAY, JUNE 2, 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE: CECIL HICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT: BY: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

VOLUME X
PAGES 1928 THRU 2136

M. ARMELLA MARTIN, CSR #2115
D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

M. ARMELLA MARTIN / D. JEAN RANDALL, OFFICIAL COURT REPORTERS

6-ER-1297

1934

1 CAUSE OF DEATH OF ANTHONY STEVENSON?

2 A MR. STEVENSON DIED AS A RESULT OF A
3 GUNSHOT WOUND WITH THE BULLET ENTERING HIS LEFT BACK
4 AND INJURING HIS LEFT LUNG AND HEART.

5 Q AND WHAT WAS THE -- IS THERE A WAY TO
6 DETERMINE THE ANGLE OF TRAJECTORY A BULLET TAKES ON
7 ENTERING THE BODY?

8 A YES.

9 Q HOW DO YOU DETERMINE THAT?

10 A THAT IS DETERMINED BY THE EXAMINATION OF
11 THE INTERNAL ORGANS THROUGH THE INJURIES WHICH ARE
12 NOTED INTERNALLY, COULD CREATE -- YOU COULD DETERMINE A
13 PATH THAT THE BULLET HAS TAKEN AFTER IT HAS ENTERED THE
14 BODY.

15 Q WHAT THE ANGLE NOTED BY DR. BOLDUC IN HIS
16 EXAMINATION?

17 A YES.

18 MR. BARNETT: OBJECTION; HEARSAY.

19 THE COURT: OVERRULED. YOU MAY ANSWER.

20 THE WITNESS: IT WAS HIS OPINION THAT THE BULLET
21 ENTERED THE BODY AT AN ANGLE OF 45 DEGREES WITH A
22 SLIGHT, ALMOST, ABOUT 10 DEGREE DEVIATION FROM LEFT TO
23 RIGHT.

24 BY MR. MIDDLETON:

25 Q AND DID YOU SAY AN UPWARD?

26 A I DIDN'T SAY UPWARD. IT IS AN UPWARD

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1298

1935

1 ANGLE ABOUT 45 DEGREES.

2 Q OKAY. NOW, DID YOU REVIEW YOURSELF ALL
3 THE PHOTOGRAPHS -- WELL, LET ME ASK YOU THIS: SHOWING
4 YOU -- AND I'LL MARK IT PEOPLE'S 68 -- 69, I'M SORRY --
5 DID YOU REVIEW THIS PHOTOGRAPH, WHAT DOES THIS
6 PHOTOGRAPH SHOW?

7 A THIS PHOTOGRAPH SHOWS THE BODY WITH A
8 PROBE BEING HELD BY THE -- BY -- I CAN'T TELL WHO'S
9 HOLDING IT BECAUSE THE FACES AREN'T AVAILABLE, BUT
10 THERE'S A PROBE BEING HELD SHOWING THE ANGLING OF THE
11 BULLET.

12 PEOPLE'S 69 = MARKED FOR I.D.)

13 Q AND IS THERE A DEFECT IN THIS PHOTOGRAPH?

14 A YES, THERE IS.

15 Q WHAT IS IT, CAN YOU TELL WHAT THE DEFECT
16 IS?

17 A LOOKED LIKE DURING THE DEVELOPMENT OF THIS
18 FILM, PART OF IT APPEARS TO HAVE BEEN DEFECTIVELY
19 DEVELOPED.

20 Q AND IS THIS PHOTOGRAPH IDENTIFIABLE AS FAR
21 AS THE VICTIM IN THE CASE?

22 A YES, IT IS.

23 Q IT HAS ANTHONY STEVENSON'S NAME ON IT?

24 MR. BARNETT: OBJECTION; HEARSAY.

25 THE COURT: OVERRULED.

26 THE WITNESS: THE PHOTOGRAPH CLEARLY SHOWS THE

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6-ER-1299

1955

1 MR. MIDDLETON: OBJECTION; VAGUE.

2 THE COURT: OVERRULED.

3 YOU MAY ANSWER.

4 THE WITNESS: YES. IN OTHER WORDS, YOU KNOW,
5 THERE ARE MULTIPLE WOUNDS AND YOU HAPPEN TO EXCISE THE
6 WRONG WOUND, YOU CAN'T EXCISE EVERY WOUND.

7 BY MR. BARNETT:

8 Q RIGHT. IN FACT, YOU YOURSELF TESTIFIED
9 RECENTLY THAT YOU EXCISED A WOUND THAT YOU HADN'T
10 EXCISED; IS THAT CORRECT?

11 A I DIDN'T UNDERSTAND.

12 Q YOU TESTIFIED RECENTLY, INACCURATELY, THAT
13 YOU EXCISED A WOUND THAT YOU HADN'T EXCISED?

14 A THAT'S CORRECT.

15 MR. BARNETT: I WILL, WITH THE COURT'S
16 PERMISSION, MARK TWO PHOTOGRAPHS B AND C.

17 THE COURT: WE ALREADY HAVE A B. NEXT IN ORDER
18 IS C AND D.

19 (DEPENDANT'S C & D = MARKED FOR I.D.)

20 BY MR. BARNETT:

21 Q NOW, CAN YOU SEE -- IT'S IN SMALL PRINT
22 BECAUSE IT'S A SMALL PHOTOGRAPH -- BUT DO YOU SEE
23 STEVENSON ON THIS LABEL?

24 A YES.

25 Q THIS APPEARS TO BE MR. STEVENSON'S RIGHT
26 HAND; IS THAT CORRECT?

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1300

1956

1 A YES.

2 Q NOW, I OBSERVE SOME, WHAT APPEAR TO BE,
3 DARKENED AREAS JUST BELOW THE FINGERS ON THE BASE OF
4 THE HAND; DO YOU OBSERVE THOSE?

5 A YES.

6 Q DO YOU OBSERVE SOME DARKENING AREA ON THE
7 THUMB AND JUST BELOW THE INDEX FINGER?

8 A YES.

9 Q AND ON THE -- THAT'S ON IT, CORRECT?

10 A YES.

11 Q AND THIS APPEARS TO BE A PHOTOGRAPH OF
12 MR. STEVENSON'S LEFT HAND; IS THAT CORRECT?

13 A YES.

14 Q I OBSERVE WHAT APPEARS TO BE DARKENING
15 AREAS IN THE LEFT HAND AS WELL; IS THAT CORRECT?

16 A YES.

17 Q NOW, WITHOUT HAVING EXAMINED THE BODY
18 PERSONALLY, THERE'S NO WAY YOU CAN TELL US WHAT THOSE
19 MARKS ARE; ISN'T THAT CORRECT?

20 A THAT'S CORRECT, I CANNOT TELL YOU.

21 Q YOU CANNOT TELL US IF IT'S A BRUISE; IS
22 THAT CORRECT?

23 A I CANNOT TELL YOU THAT.

24 Q SINCE THERE'S NO INDICATION OF A WOUND
25 BEING EXCISED; IS THAT CORRECT?

26 A THAT'S CORRECT.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1301

1957

1 Q SO THERE'S NO WAY OF TELLING, BASED ON
2 WHAT DR. BOLDOC DID, WHETHER OR NOT THESE WERE WOUNDS
3 WHICH OCCURRED CLOSE IN TIME TO THE TIME OF DEATH;
4 ISN'T THAT CORRECT?

5 A THAT'S CORRECT.

6 Q SO WE JUST DON'T KNOW BECAUSE THE WOUNDS
7 WEREN'T EXCISED; IS THAT CORRECT?

8 A IF THEY'RE WOUNDS, THAT'S CORRECT; THAT'S
9 CORRECT.

10 Q NOW, IN TERMS OF YOUR TESTIMONY ABOUT THE
11 DISTANCE THAT THE BARREL MUST HAVE BEEN FROM THE ENTRY
12 SITE, DO YOU HAVE SOME PARTICULAR EXPERTISE IN THE
13 OPERATION OF FIREARMS?

14 A WELL, MY EXPERTISE IS INTERPRETATION OF
15 BULLET WOUNDS.

16 Q DO YOU HAVE -- HAVE YOU CONDUCTED TESTS ON
17 HOW FAR PARTICLES OR SMOKE WILL PASS FROM THE BARREL OF
18 A PARTICULAR TYPE OF WEAPON?

19 A NO, MY EXPERTISE WOULD BE JUST IN A
20 GENERAL AREA. THE ACTUAL DISTANCE HAS TO BE DONE BY
21 ACTUAL FIRING OF THE WEAPON.

22 Q I SEE.

23 SO WHAT YOU'RE -- IF I UNDERSTAND YOUR
24 TESTIMONY CORRECTLY, YOU'RE SAYING THAT THIS WAS NOT A
25 CONTACT WOUND. THERE'S NO EVIDENCE THIS WAS A CONTACT
26 WOUND, THAT IS, THAT THE BARREL WAS PRESSED AGAINST THE

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6-ER-1302

1962

1 DECEASED WAS IN WHEN THE GUN WAS FIRED, WITHOUT KNOWING
2 ONE OF THOSE AS A CONSTANT, YOU'RE JUST GUESSING AS TO
3 THE LOCATION OF EITHER; ISN'T THAT CORRECT.

4 MR. MIDDLETON: THAT'S BEYOND THE EXPERTISE OF
5 THIS WITNESS SINCE THERE'S OTHER -- LACK OF FOUNDATION.

6 THE COURT: OVERRULED. YOU MAY ANSWER. PROPER
7 CROSS EXAMINATION.

8 THE WITNESS: YEAH. THAT'S CORRECT. ALL I CAN
9 SAY IS THE ANGLE THE BULLET ENTERED. JUST WHAT
10 POSITION THE BODY IS IN AT THE TIME THE BULLET ENTERED
11 THE BODY OR THE LOCATION OF THE BARREL OF THE WEAPON IN
12 RELATION TO THE BODY EXCEPT FOR DISTANCE, YOU KNOW -- I
13 CAN GIVE YOU A GENERAL IDEA WHAT THE DISTANCE IS BUT
14 WHAT POSITION IS IT BELOW OR ABOVE, I CAN'T TELL YOU.
15 BY MR. BARNETT:

16 Q WELL, THE GENERAL IDEA ON DISTANCE IS,
17 WELL, NOT CLOSER THAN FIVE INCHES AND COULD BE ANY
18 DISTANCE BEYOND THAT, CORRECT?

19 A THAT'S CORRECT. FROM THE EXAMINATION OF
20 THE SKIN SURFACE, THAT'S CORRECT.

21 MR. BARNETT: CAN I JUST HAVE ONE MOMENT?

22 THE COURT: SURE.

23 (DISCUSSION OFF THE RECORD BETWEEN DEFENSE
24 COUNSEL, THEREAFTER DEFENSE COUNSEL MANIPULATING THE
25 MANNEQUIN ASSISTED BY SECOND DEFENSE COUNSEL.)

26 THE COURT: ARTHRITIC CONDITION, NO DOUBT.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1303

2002

1 Q. IS THAT SOMETHING THAT YOU NOTICED WHEN YOU
2 GOT BACK?

3 A. YEAH.

4 Q. SHOWING YOU PEOPLE'S 50 WHOSE BEDROOM DOES
5 THAT APPEAR TO BE IN?

6 A. IT'S MY BROTHER TONY'S BEDROOM.

7 Q. AND IS THAT HIS CLOSET DOOR?

8 A. YES.

9 Q. NOW, THERE APPEARS TO BE AN INDENTION INTO
10 THE INSIDE SIDE OF THE CLOSET DOOR ABOUT THE SIZE OF A
11 FIST IT LOOKS LIKE, WAS THAT THERE BEFORE THAT MORNING
12 THAT YOU LEFT?

13 A. YEAH.

14 Q. HAD THAT BEEN THERE FOR QUITE SOME TIME?

15 A. YEAH.

16 Q. NOW, AFTER REVIEWING THE INTERIOR OF YOUR
17 HOUSE AFTER RETURNING TO YOUR HOUSE THAT DAY, DID YOU
18 NOTICE ANY ITEMS MISSING FROM THE BEDROOM?

19 A. YEAH, THERE WAS A FEW ITEMS MISSING.

20 Q. CAN YOU NAME THEM?

21 A. SOME JEWELRY, GOLD CHAIN, AN ITALIAN HORN, 35
22 MILLIMETER CAMERA, SOME CASH.

23 Q. ABOUT HOW MUCH CASH?

24 A. I THINK IT WAS \$1200.

25 Q. OKAY. YOU SAID AN ITALIAN HORN, IS THAT LIKE
26 A CHARM, A PENDANT?

D. JEAN RANDALL, C.S.R., OFFICIAL COURT REPORTER

6-ER-1304

2014

1 A. NO, THEY WOULDN'T LET ME IN THE HOUSE.

2 Q. DID YOU EVENTUALLY GO IN THOUGH?

3 A. I WENT IN TO GET MY CLOTHES, THEY LET ME IN
4 FOR A FEW MINUTES TO GET MY CLOTHES.

5 Q. SHOWING YOU PEOPLE'S 40, WHAT IS THAT A
6 PICTURE OF?

7 A. THAT'S MY BEDROOM DOOR.

8 Q. AND WAS THAT INDENTATION IN THE DOOR THERE
9 BEFORE YOU LEFT FOR WORK?

10 A. HUH-UH.

11 Q. IT WAS THERE AFTER YOU GOT BACK?

12 A. (WITNESS NODS YES.)

13 YEAH, YES.

14 Q. IT'S FOR HER, SHE TYPES EVERYTHING DOWN.

15 THE COURT: I LIKE TO HEAR NOISE, TOO, BUT IT'S NOT
16 THAT IMPORTANT.

17 BY MR. MIDDLETON:

18 Q. SHOWING YOU PEOPLE'S 41, IS THAT A PHOTOGRAPH
19 OF YOUR BEDROOM LOOKING FROM THE HALLWAY?

20 A. YES.

21 Q. WAS THE BUTT OF THAT RIFLE LAYING LIKE THAT
22 WHEN YOU WENT IN?

23 A. YEAH.

24 Q. PEOPLE'S 42, IS THAT JUST THE REVERSE ANGLE
25 OF THE SAME SHOT?

26 A. YEAH.

D. JEAN RANDALL, C.S.R., OFFICIAL COURT REPORTER

6-ER-1305

2019

1 A. YOU HAVE TO COCK THE LEVER BEFORE YOU SHOOT
2 IT.

3 Q. I'M SORRY, I LOSE TRACK, WHICH NUMBER IS
4 THIS?

5 THE CLERK: 79.

6 BY MR. MIDDLETON:

7 Q. SHOWING YOU PEOPLE'S 79, IS THIS AN ACCURATE
8 PHOTOGRAPH OF A GUN RESEMBLING THE ONE YOU ARE TALKING
9 ABOUT?

10 (People's 79 = MARKED FOR IDENTIFICATION.)

11 A. YEAH, RESEMBLING, THAT'S NOT MY GUN, THAT'S
12 JUST LIKE MY GUN.

13 Q. WAS YOUR GUN -- IS YOUR GUN STILL AT HOME?

14 A. NO.

15 Q. WAS IT TAKEN?

16 A. YEAH, IT WAS TAKEN.

17 Q. WHERE DID YOU KEEP YOUR GUN?

18 A. THAT DAY IT WAS UNDER MY BED.

19 Q. IS THAT WHERE YOU -- ALL RIGHT. AND WHERE
20 ABOUTS UNDER YOUR BED DO YOU KEEP IT?

21 A. WELL, IF -- IF YOU ARE LAYING ON THE BACK OF
22 MY BED, IT WOULD BE ON THE RIGHT-HAND SIDE.

23 Q. IS IT RIGHT NEXT TO YOUR BED OR DOWN BELOW OR
24 WHAT?

25 A. DOWN BELOW AND KIND OF UNDERNEATH.

26 Q. 43, IS THAT YOUR BED?

D. JEAN RANDALL, C.S.R., OFFICIAL COURT REPORTER

6-ER-1306

2108

1 A I HAVE THREE TEST FIRED BULLETS AND THREE
2 TEST FIRED CASINGS.

3 Q AND -- ALL RIGHT. HOW MANY ARE THERE?
4 I'M SORRY, THREE?

5 THE COURT: NO, THERE'S SIX, BUT WHO'S COUNTING.

6 MR. MIDDLETON: THAT'S RIGHT. OKAY, GO AHEAD,
7 PUT THEM BACK IN.

8 ARE YOU TRYING TO EMBARRASS ME?

9 THE COURT: NO, I DON'T HAVE TO TRY.
10 BY MR. MIDDLETON:

11 Q DID YOU TAKE FOR COMPARISON A SLUG THAT
12 WAS RECEIVED FROM THE BODY OF THE VICTIM IN THIS CASE?

13 A I RECEIVED THAT PARTICULAR ITEM FROM THE
14 SHERIFF'S PROPERTY ROOM.

15 MR. BARNETT: COULD WE APPROACH THE BENCH JUST
16 BRIEFLY?

17 THE COURT: DO YOU WANT TO BE EMBARRASSED ALSO?

18 MR. BARNETT: I DON'T THINK I CAN AVOID IT.

19 THE COURT: COME UP.

20 (THE FOLLOWING PROCEEDINGS WERE HAD AMONG
21 COUNSEL AND THE COURT AT THE BENCH:)

22 THE COURT: YOU WANT EQUAL TIME, RIGHT?

23 MR. BARNETT: YOUR HONOR, I ASSUME THAT BROWN IS
24 COMING BACK TO LAY A FOUNDATION FOR BOTH THE SLUG FROM
25 THE DECEASED AND FOR THE SLUG FROM THE CAR, BUT I DON'T
26 WANT TO HAVE WAIVED THE FOUNDATION OBJECTION, AND

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1307

2125

1 MR. MIDDLETON: YES, FOR RIGHT NOW.

2 BY MR. MIDDLETON:

3 Q WHAT IS THIS THAT I'VE JUST MARKED
4 PEOPLE'S 91?

5 A THIS IS A LATENT FINGERPRINT THAT I
6 DEVELOPED AND COLLECTED FROM THE TOP DRAWER OF A
7 TWO-DRAWER METAL FILE CABINET THAT WAS FOUND IN THE
8 SOUTHWEST BEDROOM OF THE HOUSE AT THE EVERETT LOCATION.

9 Q NOW, DID YOU COMPARE THAT TO ANY OTHER
10 FINGERPRINT?

11 A YES, I DID.

12 Q DID YOU COMPARE IT TO A ROLLED FINGERPRINT
13 OF MR. BEELER?

14 A YES, I DID.

15 Q AND DID YOU BRING THAT WITH YOU, THAT
16 ROLLED PRINT?

17 A I BROUGHT A CERTIFIED COPY OF THE CARD
18 THAT WAS USED.

19 Q CAN I SEE IT?

20 (WITNESS REMOVES ITEM AND DELIVERS TO
21 PROSECUTOR.)

22 MR. MIDDLETON: I'LL MARK THIS PEOPLE'S 92.

23 (PEOPLE'S 92 = MARKED FOR I.D.)

24 BY MR. MIDDLETON:

25 Q NOW, DID YOU PREPARE A DIAGRAM FOR COURT,
26 BASED ON THE ROLLED FINGERPRINT AND THE INKED

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6-ER-1308

COPY

CRIM NO. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF & RESPONDENT,

-VS-

RODNEY GENE BEELER,

DEFENDANT & APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

JOHN VAN DE KAMP
ATTORNEY GENERAL
110 WEST "A" STREET
SUITE 700
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

RODNEY GENE BEELER
DEFENDANT IN PRO PER
SAN QUENTIN STATE PRISON
SAN QUENTIN, CALIFORNIA 94964

M. ARMELLA MARTIN, CSR #2115
D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

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DATE: JUNE 7, 8, 9, 1988

6-ER-1309

VOLUME 11

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE
STATE OF CALIFORNIA,

PLAINTIFF,

VS.

RODNEY GENE BEELER,

DEFENDANT.

NO. C-60966

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' DAILY TRANSCRIPT

TUESDAY, JUNE 7, 1988
WEDNESDAY, JUNE 8, 1988
THURSDAY, JUNE 9, 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE:

CECIL HICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT:

BY: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

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D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

M. ARMELLA MARTIN / D. JEAN RANDALL, OFFICIAL COURT REPORTERS

6-ER-1310

2146

1 Q NOW, DURING THE AUTOPSY, DID YOU RECEIVE A
2 SLUG THAT WAS RECOVERED FROM THE DECEASED?

3 A YES.

4 Q SHOWING YOU PEOPLE'S 86, IT'S ALREADY BEEN
5 MARKED, CAN YOU TELL ME WHAT THAT IS?

6 A OKAY. 86 IS THE ENVELOPE I PLACED THE
7 PROJECTILE IN WITH THE EVIDENCE TAG I MADE OUT ON
8 DECEMBER 31, 1985.

9 Q IS THAT YOUR NAME ON IT?

10 A YES, IT IS.

11 Q CAN YOU OPEN IT?

12 A INSIDE THE ENVELOPE MARKED 86, IS A FOLDED
13 PIECE OF PAPER CONTAINING A SMALL CALIBER PROJECTILE.

14 Q AND IS THAT THE PROJECTILE THAT YOU
15 RECOVERED?

16 A YES, IT IS.

17 Q NOW, LOOKING AT -- LET'S GO BACK, IF YOU
18 COULD PUT THAT AWAY FOR A MINUTE -- GO BACK TO PEOPLE'S
19 95, THE PIECE OF SCREEN THAT WAS EXCISED?

20 A YES, OKAY.

21 Q DID YOU PERFORM ANY TESTS ON THAT?

22 A YES.

23 Q WHAT KIND OF TESTS DID YOU PERFORM ON
24 THAT?

25 A I LOOKED AT IT UNDER MAGNIFICATION, JUST
26 LOOKING AT THE HOLE, TRYING TO GET AN IDEA OF WHAT MAY

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6-ER-1311

2175

1 THE PROJECTILE, BUT THEY WERE NOT WHAT THE SHIRT WAS
2 COMPOSED OF, THEY WERE ADHERING TO IT.

3 Q SO YOU ARE TELLING US THAT FIBERS FOREIGN
4 TO THE SHIRT WERE AFFIXED ON THE SHIRT?

5 A YES.

6 Q AND DID YOU CONCLUDE THAT THOSE FIBERS
7 WERE FROM, OR THE SAME TYPE OF FIBER THAT YOU FOUND ON
8 THE BULLET?

9 A SIMILAR TO.

10 Q BUT YOU --

11 A IN ONE CASE THERE WAS ONE FIBER WHICH I
12 HAD NO ORIGIN FOR.

13 Q THAT'S WHAT I MEANT, A FIBER ON THE BULLET
14 YOU HAD NO ORIGIN FOR, CORRECT?

15 A CORRECT.

16 Q A BLUE SYNTHETIC FIBER FOUND ON THE BULLET
17 THAT WAS RECOVERED FROM THE DECEASED, CORRECT?

18 A CORRECT.

19 Q SO THAT WOULD MEAN THAT IN YOUR CAREFUL
20 EXAMINATION OF THE DECEASED'S SHIRT AND THE FIBERS
21 AFFIXED THERETO WERE NOT FROM THE DECEASED'S SHIRT, YOU
22 COULD NOT FIND A SOURCE FOR THAT BLUE NYLON OR BLUE
23 SYNTHETIC FIBER, CORRECT?

24 A CORRECT.

25 Q NOW, YOU DID FIND OTHER EVIDENCE OF OTHER
26 SHIRT FIBERS ON THE DECEASED'S SHIRT THAT WEREN'T FROM

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1312

2176

1 THE DECEASED'S SHIRT, CORRECT?

2 A THAT WEREN'T THE SAME MATERIAL AS THE
3 SHIRT WAS MADE OUT OF, CORRECT.

4 Q SO THEY CAME FROM A SOURCE OTHER THAN THE
5 SHIRT?

6 A YES.

7 Q YOU HAD SHIRT FIBERS ON THE SHIRT THAT
8 DIDN'T COME FROM THE DECEASED'S SHIRT; IS THAT RIGHT?

9 A RIGHT.

10 Q HOW ABOUT ON THE DECEASED'S HANDS, DID YOU
11 FIND ANY FIBERS ON THEM?

12 A I DON'T RECALL.

13 Q I MAYBE CAN HELP YOU, MR. BROWN.

14 DO YOU RECOGNIZE THIS AS A REPORT THAT YOU
15 PREPARED FROM THE AUTOPSY?

16 A YES.

17 Q THIS WOULD BE DATED 12/31/85?

18 A CORRECT.

19 Q COULD YOU JUST LOOK AT THIS AND SEE IF IT
20 REFRESHES YOUR RECOLLECTION AND TELL US IF YOU FOUND
21 ANY FIBERS ON THE DECEASED'S HANDS?

22 A YES.

23 Q DID YOU?

24 A YES, I DID.

25 Q WHAT WAS THE SOURCE OF THOSE FIBERS?

26 A I DON'T KNOW.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1313

2177

1 Q WELL, DID YOU -- WELL, WHAT COLOR WERE
2 THEY?

3 A I DON'T RECALL.

4 Q WELL, WHAT DID YOU COMPARE THEM AGAINST IN
5 ORDER TO ELIMINATE THE ORIGIN?

6 A I NEVER COMPARED THEM AGAINST ANYTHING, TO
7 THE BEST OF MY RECOLLECTION.

8 Q HOW MANY FIBERS DID YOU FIND?

9 A I DON'T KNOW.

10 Q DID YOU FIND THEM ON BOTH HANDS?

11 A I BELIEVE THE REPORT SAID I DID, YES.

12 Q WHERE WERE THEY ON THE HANDS?

13 A I DON'T RECALL.

14 Q COULD YOU TAKE OUT THE DECEASED'S SHIRT,
15 PLEASE?

16 A (WITNESS COMPLIES.)

17 Q JUST HOLDING IT UP HERE. IS THIS THE BACK
18 OF THE SHIRT THAT HAS THE OUTER -- THE PIECE OF TAPE OR
19 SOMETHING THAT SAYS OUTER SHIRT?

20 A YES.

21 Q IS THAT THE BACK OF THE SHIRT?

22 A YES.

23 Q IS THAT RIGHT NEXT TO THE BULLET HOLE?

24 A YES, IT IS.

25 Q THERE DOESN'T SEEM TO BE ANY BLOOD IN THE
26 AREA OF THE BULLET HOLE; IS THAT CORRECT?

M. ARNELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1314

CORRECTED PAGE

2236

1 THE COURT: IF THEY AREN'T GOING TO ASK IT, I
2 DON'T SEE IT AS BEING RELEVANT ANYWAY, OR A BIG DEAL.
3 READY TO GO?

4 MR. MIDDLETON: ONE OTHER ISSUE IS THE WITNESS
5 MITCHELL JACKLEY WAS GIVEN IMMUNITY BY THE COURT AND IT
6 WAS REQUESTED BY THE DISTRICT ATTORNEY, AND I BELIEVE
7 THAT JOHN BARNETT, OR THE DEFENSE, WOULD PROBABLY WANT
8 TO PUT IN EVIDENCE, THE IMMUNITY PAPERS.

9 AND I'M INDICATING NOW THAT THAT IS NOT AN
10 ISSUE. WE ARE NOT CONTESTING THAT HE WAS GIVEN
11 IMMUNITY AND THAT WOULD BE IRRELEVANT. SO I DON'T
12 BELIEVE THAT THAT HAS ANY BEARING ON THE FACT THAT HE
13 WAS GIVEN IMMUNITY, JUST THE PAPERS GOING INTO
14 EVIDENCE.

15 MR. BARNETT: COULD I JUST SEE THEM?

16 THE COURT: SURE. MR. MIDDLETON?

17 MR. MIDDLETON: WELL, I GAVE A COPY TO THEM BACK
18 IN PRELIM.

19 MR. BARNETT: THIS WAS TOO LONG AGO.

20 THE COURT: WELL, APPARENTLY THEY DON'T PLAN TO
21 INTRODUCE ANYTHING. ONCE AGAIN, YOU'RE WORRIED OVER
22 NOTHING. THEY DON'T HAVE THEM SO THEY DON'T --

23 MR. BARNETT: I DON'T HAVE THEM WITH ME.

24 THE COURT: -- HAVE A PLAN.

25 MR. BARNETT: WE CAN STIPULATE TO.

26 MR. MIDDLETON: OKAY.

M ARMELLA MARTIN

6-ER-1315

2246

1 Q AND THAT WAS A PETITION BY THE DISTRICT
2 ATTORNEY THAT THE COURT IMMUNIZE YOU FROM PROSECUTION;
3 ISN'T THAT CORRECT?

4 A YES, SIR.

5 Q AND THAT'S WHAT YOUR UNDERSTANDING IS,
6 CORRECT?

7 A YES.

8 Q THAT YOU'RE NOT GOING TO GET PROSECUTED
9 FOR THE MURDER OF MR. STEVENSON; ISN'T THAT CORRECT?

10 A YES, SIR.

11 Q NOW, DID YOU KILL MR. STEVENSON?

12 A NO, SIR.

13 Q DO YOU RECALL BEING IN THE MARINE CORPS
14 BACK IN 1974?

15 A YES, SIR.

16 Q AND IN THAT CASE WERE YOU A PEOPLE'S
17 WITNESS?

18 A YES, SIR.

19 Q AND DID THAT INVOLVE A ROBBERY-MURDER?

20 A YES, SIR.

21 Q JUST LIKE THIS CASE.

22 MR. MIDDLETON: WELL --

23 THE WITNESS: YES.

24 BY MR. BARNETT:

25 Q WELL, ROBBERY AND MURDER WERE THE CHARGES
26 THERE, AND YOU WERE THE PEOPLE'S WITNESS THERE,

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1316

2264

1 A YES.

2 Q YOU WERE HIS SUPERIOR?

3 A YES.

4 Q WHAT WORK DID HE DO?

5 A HE RAN A BLACK OXIDE LINE.

6 Q WERE YOU THE ONE WHO AUTHORIZED HIS
7 ABSENCES FROM QUINTEC?

8 A NOT NECESSARILY.

9 Q WOULD YOU BE THE PERSON THAT AUTHORIZED
10 THEM?

11 A NO, SIR, NOT THE FINAL ONE.

12 Q DID YOU AUTHORIZE IT ON DECEMBER 30TH?

13 A NO, SIR.

14 Q DIRECTING YOUR ATTENTION TO PAGE 107 OF
15 THE JULY 15, 1986 HEARING WHERE YOU TESTIFIED UNDER
16 OATH, WOULD YOU JUST READ THE BOTTOM FEW LINES AND OVER
17 TO THE NEXT PAGE AND WHATEVER YOU NEED FOR CONTEXT TO
18 SEE IF THAT CHANGES YOUR RECOLLECTION AS TO WHETHER OR
19 NOT YOU SPECIFICALLY AUTHORIZED MR. BEELER TO BE
20 ABSENT?

21 A NOT ABSENT, I GIVE HIM PERMISSION TO GO TO
22 A LAWYER'S OFFICE. I DIDN'T GIVE HIM PERMISSION TO BE
23 OFF. WE HAVE TO MAKE THESE THINGS CLEAR. HE HAD A
24 SCHEDULED APPOINTMENT TO SEE A LAWYER.

25 Q AND HE GOT SPECIFIC PERMISSION TO LEAVE
26 FROM YOU; IS THAT CORRECT?

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1317

2265

1 A FOR THAT TIME PERIOD, YES.

2 Q NOW, YOU GAVE HIM PERMISSION TO LEAVE AT
3 THAT TIME. YOU HAD BREAKFAST WITH HIM THAT MORNING.
4 WAS HE A GUEST AT YOUR WEDDING?

5 A HE WAS THERE, YES.

6 Q WAS THIS A WEDDING BETWEEN YOU AND LINDA?

7 A YES.

8 Q DID YOU HAVE A CONVERSATION WITH A
9 MR. ANDERSON, JIM ANDERSON, ABOUT A HYPOTHETICAL
10 STATEMENT THAT MR. BEELER HAD POSED TO HIM?

11 A YES, SIR.

12 Q DID MR. ANDERSON MENTION SOMETHING TO YOU
13 ABOUT A HOMICIDE?

14 MR. MIDDLETON: OBJECTION; LEADING.

15 THE COURT: THE OBJECTION IS SUSTAINED.

16 BY MR. BARNETT:

17 Q DID MR. -- DID YOU HAVE A CONVERSATION
18 WITH MR. ANDERSON ABOUT A HOMICIDE?

19 A YES, SIR.

20 Q AND THIS WAS BEFORE JANUARY 9, 1986; IS
21 THAT CORRECT?

22 A I'M NOT SURE, SIR.

23 Q DO YOU RECALL THAT THIS WAS BEFORE YOU
24 CALLED THE -- DID YOU CALL THE POLICE AND INFORM THEM
25 THAT MR. BEELER HAD COMMITTED A CRIME?

26 A YES, SIR, I DID.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1318

2271

1 Q WELL, WHERE DID YOU GET THE INFORMATION
2 THAT MR. BEELER HAD USED THE RIFLE AS A CLUB TO BEAT
3 DOWN THE DOOR?

4 A MR. BEELER.

5 Q WHAT DID HE TELL YOU ABOUT THAT?

6 A HE TOLD ME HE WAS TRYING TO GET INTO THE
7 BATHROOM.

8 Q AND THAT WHO WAS TRYING TO GET INTO THE
9 BATHROOM?

10 A RODNEY BEELER WAS.

11 Q AND HE USED A CLUB?

12 A HE USED THE RIFLE.

13 Q WHAT DID HE DO WITH IT?

14 A BEATIN' AT THE DOOR WITH IT.

15 Q BEAT THE BATHROOM DOOR?

16 A YES, SIR.

17 Q THEN WHAT HAPPENED?

18 A APPARENTLY HE BUSTED DOWN THE DOOR.

19 Q I'LL REFER YOU TO PAGE 2 OF YOUR INTERVIEW
20 ON THE 9TH.

21 A OKAY.

22 Q DIDN'T YOU TELL THE POLICE THAT -- DOES
23 THAT REFRESH YOUR RECOLLECTION --

24 A NO.

25 Q -- THAT IT WAS THE VICTIM THAT HAD THE
26 RIFLE?

M. ARNELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1319

2272

1 A NO, SIR.

2 Q DID YOU TELL THE POLICE THAT HE HAD A DOG,
3 TONY IS APPARENTLY IS HIS NAME, AND HE HAD A DOG?

4 A NO, SIR.

5 Q WOULD YOU JUST READ THIS AND SEE IF IT
6 REFRESHES YOUR RECOLLECTION?

7 A (WITNESS VIEWS DOCUMENT.) IT DOESN'T
8 BRING BACK MEMORY.

9 Q ARE YOU DENYING THAT YOU SAID --
10 MR. MIDDLETON: I'LL STIPULATE THAT WHATEVER IS
11 SAID IN THAT TRANSCRIPT IS SAID.

12 THE COURT: AS A PRIOR RECOLLECTION RECORDED?

13 MR. MIDDLETON: SURE.

14 THE COURT: READ IT INTO THE RECORD, BY
15 STIPULATION, IF YOU WISH.

16 MR. MIDDLETON: JUST AS FAR AS THAT ONE
17 QUESTION.

18 THE COURT: YES, I SEE HE'S HEADED FOR OTHER
19 MATERIAL.

20 MR. MIDDLETON: YES, OTHER PAGES.

21 THE COURT: IN OTHER WORDS, YOU DON'T GET A
22 FREEBIE, MR. BARNETT.

23 MR. BARNETT: WE'LL GET THERE.

24 "AND HE SAID SOMETHIN' TO
25 THE EFFECT THAT THEY GOT INTO AN
26 ALTERCATION IN THE HALLWAY, AND THAT THE

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6-ER-1320

1 GUY CAME AT HIM WITH A RIFLE, USED IT
2 LIKE A CLUB --

3 MR. MIDDLETON: VAGUE. DETECTIVE JENSEN IS
4 SAYING TO YOU -- TO HIM?

5 MR. BARNETT: DETECTIVE JENSEN IS SAYING THIS TO
6 HIM, AND THEN I'LL READ YOUR RESPONSE.

7 THE WITNESS: NO --

8 BY MR. BARNETT:

9 Q DO YOU RECALL SAYING --

10 THE COURT: THE PROSECUTOR HAS STIPULATED AND
11 YOU ACCEPTED THE STIPULATION THAT IT'S A PRIOR
12 RECOLLECTION RECORDED. THERE'S NO NEED TO ASK HIM IF
13 HE NOW RECALLS BECAUSE WE'VE ELIMINATED ALL OF THAT
14 FOUNDATION STUFF. IF YOU WANT TO READ IT INTO THE
15 RECORD, GO AHEAD.

16 MR. BARNETT: (READING:)

17 "THE WAY THAT HE EXPLAINED
18 IT TO ME IS THAT WHILE HE WAS IN THE
19 HOUSE, THAT IS, AH, AH, TONY APPARENTLY'S
20 HIS NAME, CAME IN AND BROUGHT HIS --
21 BROUGHT HIS DOG IN? YA, CALLED HIS DOG.
22 HIS DOG WAS WITH HIM. RODNEY WAS SAYING
23 HIS DOG WAS WITH HIM AND HE THOUGHT HE
24 WAS CALLING SOME FRIENDS OR SOMETHIN' AND
25 THEN -- WHAT THE FUCK ELSE DID HE SAY? --
26 HE SAID RIGHT AFTER THAT TOOK PLACE,

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1321

1 RODNEY APPARENTLY WAS IN ONE OF THE
2 BEDROOMS, HE SAID OR SOMETHIN', AND WENT
3 BEHIND THE CORNER OR SOMETHIN' LIKE
4 THAT" --

5

6 BY MR. BARNETT:

7 Q AND THEN DETECTIVE JENSEN SAID --
8 MR. MIDDLETON: INSTEAD OF ASKING HIM
9 QUESTIONS --

10 MR. BARNETT: WELL, I'LL READ THE WHOLE --

11 MR. MIDDLETON: IF HE COULD READ NOT THE
12 QUESTIONS OF "WHAT THE FUCK HAPPENED" BY OFFICER
13 JENSEN, JUST --

14 THE COURT: THE ANSWER WON'T HAVE ANY MEANING IF
15 THE QUESTION DOESN'T PRECEDE IT AND EVERYBODY'S HEARD
16 THE WORD "FUCK" BEFORE SO IT DOESN'T BOTHER ANYBODY,
17 RIGHT?

18 MR. MIDDLETON: ALL RIGHT.

19 MR. BARNETT: (READING:)

20 "QUESTION BY DETECTIVE JENSEN: HE
21 HID BEHIND THE CORNER?

22 "JACKLEY: YEAH, I GUESS. AND THE
23 GUY WENT INTO HIS ROOM. HE TOLD ME HE
24 CAME OUT WITH A GODDAMN AR RIFLE AND TOLD
25 HIM HE WAS GONNA BEAT THE SHIT OUT OF
26 HIM WITH IT, AND HE'S GONNA TO DO BODILY

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1322

2275

1 DAMAGE.

2 "JENSEN: OKAY. AND HE USED THE
3 RIFLE LIKE AS A A CLUB TO SCARE THE GUY?

4 "JACKLEY: APPARENTLY THE GUY
5 DID."

6 BY MR. BARNETT:

7 Q DID YOU TELL THE POLICE THEY WERE HOLLOW
8 POINTS?

9 A YES, SIR, I DID.

10 Q DID YOU TELL THE POLICE THAT A .22
11 REVOLVER WAS TAKEN?

12 A YES, SIR, I DID.

13 Q AND THAT THE DECEASED WAS SHOT WHILE
14 RUNNING AWAY?

15 A YES, SIR, I DID.

16 Q DID YOU TELL THE POLICE THAT THE --
17 MR. MIDDLETON: OBJECTION; LEADING.

18 THE COURT: OVERRULED.

19 BY MR. BARNETT:

20 Q DID YOU TELL THE POLICE THAT YOU SAW --
21 WELL, THAT THE DECEASED FELL ON THE LAWN IN FRONT?

22 A YES, SIR, I DID.

23 Q DID YOU TELL THE POLICE THAT THERE WAS A
24 TELEPHONE TRUCK IN THE AREA?

25 A I DON'T RECALL, SIR.

26 Q PAGE 6.

H. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

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2277

1 A YES, SIR, I THOUGHT I WAS.

2 Q YOU CALLED THE POLICE, RIGHT?

3 A YES, SIR.

4 Q YOU MAKE THIS ANONYMOUS CALL, RIGHT?

5 A YES.

6 Q NOW, BEFORE YOU MAKE THIS ANONYMOUS CALL
7 TO THE POLICE, THERE'S BEEN AN ARTICLE IN THE PAPER,
8 RIGHT?

9 A YES, SIR.

10 Q AND YOU HAD THAT ARTICLE, CORRECT?

11 A YES, SIR, I DID.

12 Q AND LINDA SHOWED YOU THAT ARTICLE, DIDN'T
13 SHE, YOUR WIFE?

14 A NO, SIR.

15 Q WHERE DID YOU GET IT?

16 A I WENT TO EAT BREAKFAST ONE MORNING. I
17 WAS SITTING THERE READING THE PAPER, THAT'S WHEN
18 MR. BEELER WALKED IN.

19 MR. BARNETT: MAY I HAVE JUST ONE MOMENT, YOUR
20 HONOR?

21 THE COURT: SURE.

22 BY MR. BARNETT:

23 Q IS THIS THE ARTICLE THAT YOU HAD, I MEAN
24 IT'S BLOWN UP, BUT THIS IS THE ARTICLE THAT YOU READ?

25 A THAT I HAD? AFTER, YES.

26 Q AND THAT CAME OUT ON JANUARY 4TH?

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6-ER-1324

2281

1 A WITH MY PAST HISTORY.

2 Q WELL, WHAT DO YOU MEAN?

3 A BEING A SUSPECT IN BEAUFORT, SOUTH
4 CAROLINA, SAME INCIDENT THERE, ALMOST.

5 Q ALMOST EXACTLY THE SAME, ISN'T IT?

6 A NOT QUITE.

7 Q YOU MUST BE THE MOST UNLUCKY GUY --

8 MR. MIDDLETON: OBJECTION; ARGUMENTATIVE.

9 THE COURT: SUSTAINED.

10 BY MR. BARNETT:

11 Q WHAT ELSE BESIDES YOUR HISTORY, WHAT PART
12 OF YOUR HISTORY MADE YOU THINK YOU'D BE A SUSPECT?

13 A YOU WOULD KNOW THAT BETTER THAN ME.

14 Q MR. JACKLEY, I KNOW A LOT ABOUT YOU, BUT I
15 DON'T KNOW EVERYTHING.

16 TELL US WHAT YOU MEANT WHEN YOU SAID THE
17 REST OF YOUR HISTORY?

18 A JUST MY RECORD.

19 Q WHAT ARE YOU TALKING ABOUT?

20 A AS FAR AS WHAT I'VE BEEN ARRESTED FOR.

21 Q WHAT DO YOU MEAN?

22 MR. MIDDLETON: OBJECTION; IRRELEVANT.

23 THE COURT: SUSTAINED.

24 BY MR. BARNETT:

25 Q SO YOU THOUGHT THAT BECAUSE OF THE
26 CLOSENESS WITH WHICH THIS INCIDENT -- OH, YOU THOUGHT

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6-ER-1325

1 YOU MIGHT BE A SUSPECT BECAUSE OF THE BEAUFORT THING
2 BECAUSE IT WAS THE SAME SORT OF THING, RIGHT?

3 A YES.

4 Q AND ALSO YOU THOUGHT THAT YOUR PRINTS
5 WOULD BE IN THE HOUSE, RIGHT?

6 A NO, SIR.

7 Q NO?

8 A WELL, YES, SIR, I DID.

9 Q WELL, LET'S SEE, WHEN YOU WERE TALKING TO
10 THE POLICE ON JANUARY 9TH, THEY ASKED YOU IF YOU'D EVER
11 BEEN IN THE HOUSE, AND YOU SAID I'VE NEVER BEEN IN
12 THERE, DIDN'T YOU?

13 A NO, SIR.

14 Q THAT WOULD HAVE BEEN A LIE IF YOU SAID IT,
15 RIGHT?

16 A BECAUSE I WAS.

17 Q PAGE 13.

18 THE COURT: IDENTIFY THE --

19 MR. BARNETT: I'M SORRY, THE 1/9/86 INTERVIEW.

20 BY MR. BARNETT:

21 Q "HAVE YOU EVER BEEN TO THE HOUSE BEFORE?"

22 DO YOU REMEMBER WHAT YOU ANSWERED?

23 A OKAY. JUST LIKE IT SAYS THERE, "NO," AND
24 THEN "OH, SHIT, I HAVE BEEN."

25 Q FIRST YOU SAY "NO," CORRECT? AND THEN YOU
26 SAY "OH, SHIT, I HAVE BEEN;" IS THAT CORRECT?

H. ARNELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1326

2299

1 A. NOT TO MY KNOWLEDGE, NO.

2 Q. REFERRING YOU TO PAGE 74 OF THE JULY 17
3 PRELIMINARY, WOULD YOU READ AT LINES 10 AND 11; DOES THAT
4 REFRESH YOUR RECOLLECTION?

5 A. YES, IT DOES.

6 Q. YOU PREVIOUSLY TESTIFIED THAT YOU DIDN'T HAVE
7 ACCESS TO THE TOP LOCKER; IS THAT CORRECT?

8 A. THAT IS TRUE.

9 Q. THAT WAS INCORRECT AT THE TIME YOU MADE THE
10 STATEMENT?

11 A. NO, I STILL DO NOT. THAT IS TRUE, I DO NOT
12 HAVE THE KEY.

13 MR. MIDDLETON: IN VIEW -- LOOKING AT THE
14 TRANSCRIPT, I WOULD OBJECT TO WHAT THE WORD "ACCESS"
15 MEANS, VAGUE.

16 BY MR. BARNETT:

17 Q. YOU DID NOT HAVE A KEY TO THE TOP LOCKER?

18 A. THERE WAS TWO LOCKERS THAT RODNEY OWNED, I
19 DID HAVE ONE.

20 Q. THE CAMERA WAS IN THE TOP LOCKER?

21 A. THEY WERE BOTH ON THE TOP.

22 Q. THE ONE THAT HAD THE CAMERA, YOU DIDN'T HAVE
23 A KEY TO?

24 A. THAT'S TRUE.

25 Q. THAT'S WHAT YOU TESTIFIED TO; IS THAT RIGHT?

26 A. YES.

D. JEAN RANDALL, C.S.R., OFFICIAL COURT REPORTER

6-ER-1327

2300

1 Q. BUT YOU DID GET INTO THAT LOCKER AND EXAMINE
2 THE CAMERA?

3 A. YES.

4 Q. BY STEALING RODNEY'S KEYS?

5 A. YES.

6 THE COURT: WE HAVE ALREADY DONE THIS ONCE. DO WE
7 HAVE TO DO IT ANOTHER TIME?

8 MR. BARNETT: NO, YOUR HONOR, I'M JUST ABOUT
9 FINISHED IN THAT AREA.
10 BY MR. BARNETT:

11 Q. DID YOU, WHEN YOU EXAMINED THE CAMERA WITH
12 THE USE OF THE STOLEN KEY, DID YOU USE SOME SORT OF DEVICE
13 TO PREVENT YOUR FINGERPRINTS FROM BEING ON THE --

14 A. YES, I DID.

15 Q. WHAT WAS THAT?

16 A. A PAIR OF SILK GLOVES.

17 Q. A PAIR OF SILK GLOVES?

18 A. YES.

19 Q. DO YOU REMEMBER BEING ASKED AT THE
20 PRELIMINARY HEARING JUNE 23RD, 1986 AT PAGE 153?

21 A. NO.

22 Q. COULD YOU JUST READ THAT?

23 THE COURT: WHAT?

24 MR. BARNETT: LINES 13 THROUGH 20. AND SEE IF IT
25 REFRESHES YOUR RECOLLECTION.

26 MR. MIDDLETON: WHAT DATE WAS THAT?

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2332

1 MR. MIDDLETON: I WASN'T PLANNING ON DOING THAT, I
2 WON'T.

3 THE COURT: THAT'S THE ORDER.

4 JURY IN.

5 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN
6 COURT IN THE PRESENCE OF THE JURY:)

7 THE COURT: YOU MAY INQUIRE, MR. MIDDLETON.

8 CROSS-EXAMINATION

9 BY MR. MIDDLETON:

10 Q. IS IT YOUR UNDERSTANDING, MR. JACKLEY, THAT
11 YOU HAD BEEN IMMUNIZED AT A PRELIMINARY BECAUSE OF
12 RECEIVING STOLEN PROPERTY FROM MR. BEELER AT QUINTEC?

13 A. YES, SIR.

14 MR. BARNETT: OBJECTION, IMPROPER.

15 THE COURT: OVERRULED, THE ANSWER MAY REMAIN.

16 BY MR. MIDDLETON:

17 Q. NOW, SHOWING YOU PEOPLE'S 76, YOU RECOGNIZE
18 THIS WATCH AS A WATCH THAT YOU GAVE THE POLICE?

19 A. YES.

20 Q. THE ROLEX WATCH?

21 A. YES.

22 Q. WHERE DID YOU GET THAT FROM?

23 A. I FOUND IT IN A COMPARTMENT IN ONE OF THE
24 MACHINERIES AT WORK.

25 Q. HOW DID YOU KNOW TO GO LOOK AT THAT
26 COMPARTMENT?

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6-ER-1329

2333

1 A. RODNEY HAD A PAST HISTORY OF STASHING
2 THINGS.

3 Q. IS THAT ONE OF RODNEY'S STASH PLACES?

4 A. YES, IT IS.

5 Q. NOW, ON MORE THAN ONE OCCASION YOU HAD
6 TALKED TO MR. BEELER ABOUT YOUR PAST BACKGROUND, YOUR
7 RECORD REGARDING BURGLARIES, HADN'T YOU?

8 A. YES, SIR.

9 Q. AND THAT WAS WHILE YOU WORKED THERE AT
10 QUINTEC?

11 A. YES.

12 Q. NOW, THE DEFENSE ASKED YOU ABOUT A NUMBER OF
13 THINGS THAT OCCURRED AT THE STEVENSON RESIDENCE. ARE ALL
14 THOSE THINGS THAT THE DEFENSE ASKED AND THAT YOU TOLD THE
15 POLICE, ARE THOSE THINGS MR. BEELER TOLD YOU?

16 A. YES, SIR.

17 Q. NOW, THIS INCIDENT IN BEAUFORT, SOUTH
18 CAROLINA, WHERE YOU BURGLARIZED A HARDWARE STORE AND
19 STOLE SOME GUNS, HOW MUCH LATER WAS IT THAT -- THOSE WERE
20 MARINE BUDDIES?

21 A. ONE WAS.

22 Q. THAT HOMICIDE TOOK PLACE?

23 A. I SAY CLOSE TO A MONTH, MAYBE A LITTLE
24 LONGER.

25 Q. OKAY.

26 A. TO MY KNOWLEDGE.

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6-ER-1330

2334

1 Q. YOU INDICATED BY A QUESTION ASKED BY THE
2 DEFENSE WHETHER AN ANONYMOUS CALL WAS MADE TO THE POLICE,
3 YOU SAID YES. DID YOU MAKE THAT ANONYMOUS CALL?

4 A. NO, SIR.

5 Q. DID YOUR WIFE LINDA MAKE THE CALL?

6 A. NO, SIR.

7 MR. BARNETT: OBJECTION, MOVE TO STRIKE.

8 THE COURT: STRICKEN.

9 BY MR. MIDDLETON:

10 Q. YOU DIDN'T MAKE THAT ANONYMOUS CALL?

11 A. NO, SIR.

12 Q. DO YOU KNOW WHO DID?

13 A. I DO NOT KNOW HER PHYSICALLY; I KNOW WHO IT
14 WAS, YES.

15 Q. NOW, YOU WERE ASKED ABOUT SOME TWO MONTHS
16 PRIOR TO THE HOMICIDE, THIS HOMICIDE IN ORANGE, THAT YOU
17 HAD BEEN EATING BREAKFAST AT SOME ESTABLISHMENT?

18 A. YES, SIR.

19 Q. WHERE WAS THAT?

20 A. THERE WAS TWO OF THEM, NORM'S RESTAURANT ON
21 TUSTIN AND KATELLA.

22 ANOTHER RESTAURANT RIGHT ON SANTIAGO AND
23 LINCOLN, THE NAME HAS CHANGED.

24 Q. HAD IT BEEN LONGER THAN TWO MONTHS THAT YOU
25 HAD BEEN EATING BREAKFAST AT THOSE PLACES?

26 A. YES.

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6-ER-1331

2335

1 Q. HAD IT BEEN LONGER THAN TWO MONTHS THAT
2 OCCASIONALLY MR. BEELER WOULD JOIN YOU?

3 A. YES.

4 Q. DURING THOSE TIMES THAT MR. BEELER WOULD
5 JOIN YOU, DID HE DISCUSS ANY PREVIOUS CRIMINAL
6 ENTERPRISES?

7 A. YES, SIR.

8 Q. NOW, SO WORK WASN'T THE ONLY THING YOU
9 DISCUSSED AT THOSE BREAKFASTS?

10 A. THAT'S TRUE.

11 Q. ONE TIME YOU INDICATED THAT HE CAME AND
12 TALKED TO YOU AND ADMITTED TO YOU THAT HE HAD DONE A
13 SHOOTING, WHICH YOU HAD HEARD FROM HIM?

14 A. YES, SIR.

15 Q. WHAT WAS YOUR -- YOU ARE LAID OFF RIGHT NOW?

16 A. YES, SIR.

17 Q. WHAT WAS YOUR JOB IN 1985 AT QUINTEC?

18 A. SUPERVISOR OF THE PRINT NEC AREA.

19 Q. WHAT DO YOU DO?

20 A. MAKE CIRCUIT BOARDS.

21 Q. JIM ANDERSON WORKED THERE?

22 A. YES, SIR.

23 Q. MR. BEELER WORKED THERE?

24 A. YES.

25 Q. WHAT DID YOU DO THERE?

26 A. I SUPERVISED THE MEN.

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6-ER-1332

2336

1 Q. CAN YOU DESCRIBE WHAT YOU DID?

2 A. MY KNOWLEDGE OF THE AREAS AND EVERYTHING,
3 WHICH I KNEW VERY WELL, I WOULD HELP THEM THROUGH. THEY
4 HAD A PROCESS TO FOLLOW, I WOULD HELP IF NEEDED.

5 Q. NOW, AT THE END OF 1985, BETWEEN CHRISTMAS
6 AND NEW YEARS, YOU WERE WORKING ON SKELETON CREW?

7 A. YES, SIR.

8 Q. IT WAS A SPECIAL JOB, DICEON JOB?

9 A. D-I-C-E-O-N.

10 Q. WAS THAT ONE OF THE MAJOR BUYERS FOR YOUR
11 COMPANY BACK AT THAT TIME?

12 A. YES, SIR.

13 Q. AND WITH THE SKELETON CREW, HOW MANY DID YOU
14 HAVE WORKING UNDER YOU?

15 A. ALTOGETHER 47 EMPLOYEES.

16 Q. WAS THAT THE SKELETON CREW?

17 A. I'M SORRY. THAT WOULD HAVE BEEN ROUGHLY 12
18 TO 15.

19 Q. OKAY. AND ON DECEMBER 30, 1985, MR. BEELER
20 LEFT HIS JOB?

21 A. YES, SIR.

22 Q. AND JIM ANDERSON, HE WORKED WITH MR. BEELER?

23 A. YES, SIR.

24 Q. DID JIM ANDERSON HAVE TO ASK YOU QUESTIONS
25 ABOUT THE OPERATION DURING THE TIME MR. BEELER WAS GONE?

26 A. THEY ALWAYS DID. YES, SIR, HE DID.

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6-ER-1333

2337

1 MR. BARNETT: OBJECTION, NONRESPONSIVE, WHETHER HE
2 HAS TO ASK.

3 THE COURT: OBJECTION SUSTAINED. BEGIN AGAIN.
4 BY MR. MIDDLETON:

5 Q. WAS IT HIS NORMAL PRACTICE TO REGULARLY ASK
6 YOU QUESTIONS ABOUT THE PROCESS?

7 A. YES.

8 MR. BARNETT: OBJECTION, IRRELEVANT.

9 THE COURT: OVERRULED, THE ANSWER WILL REMAIN.
10 BY MR. MIDDLETON:

11 Q. WAS MR. BEELER -- DID HE HELP JIM ANDERSON
12 IN THE PROCESSES THAT WERE GOING ON IN YOUR AREA?

13 A. YES, SIR.

14 Q. WHO DID YOU -- DID YOU REPORT TO CAL
15 BRUNSTING THAT DAY?

16 A. YES, SIR.

17 Q. WHAT DO YOU HAVE TO REPORT TO HIM ABOUT
18 DURING THE DAY?

19 A. PROGRESS, PROBLEMS, OVERALL GENERAL
20 EVERYTHING, THE BUSINESS ITSELF.

21 Q. AND IS IT AN ONGOING REPORTING?

22 A. OH, YES, SIR.

23 Q. WHAT --

24 A. I'M CONSTANTLY DOING BOARDS IN MY AREA THAT
25 FULFILLS HIS DAILY REQUIREMENTS OF WHAT HE NEEDS TO PRESS
26 IN THERE TO GET OUT THE DOOR FOR SALES.

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2338

1 Q. DOES IT GO THROUGH THE THREE DIFFERENT AREAS
2 AS FAR AS PROCESSING?

3 A. YES, SIR.

4 Q. SO DO YOU HAVE TO KEEP CONSTANT SUPERVISION
5 OVER THE PRODUCTS THAT ARE USED AND THE PROCESS IN YOUR
6 DEPARTMENT BEFORE IT GOES ON TO THE NEXT DEPARTMENT?

7 A. YES, SIR.

8 Q. SIR, DID YOU LEAVE YOUR JOB THAT DAY AND GO
9 TO ORANGE AT ANY TIME THAT DAY?

10 A. NO, SIR.

11 Q. DID YOU -- DID YOU HAVE ANY KNOWLEDGE BEFORE
12 MR. BEELER TOLD YOU ABOUT THE HOMICIDE AT -- ON EVERETT
13 STREET IN ORANGE, HAVE ANY KNOWLEDGE OF IT?

14 A. NO, SIR.

15 MR. MIDDLETON: NO FURTHER QUESTIONS.

16 THE COURT: YOU MAY INQUIRE.

17 REDIRECT EXAMINATION

18 BY MR. BARNETT:

19 Q. YOU RECEIVED STOLEN PROPERTY FROM
20 MR. BEELER, IS THAT WHAT YOU TESTIFIED YOUR IMMUNITY WAS
21 ABOUT?

22 A. YES, SIR.

23 Q. SO YOU WERE COMMITTING THAT CRIME?

24 A. YES, SIR.

25 Q. YOU WERE HIS CRIME PARTNER, YOU WERE --
26 ISN'T THAT CORRECT?

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6-ER-1335

2339

1 MR. MIDDLETON: WELL, VAGUE.

2 THE COURT: SUSTAINED.

3 BY MR. BARNETT:

4 Q. WELL, YOU WERE MAKING MONEY?

5 A. YES, SIR.

6 Q. DEALING IN STOLEN GOODS WITH MR. BEELER,

7 CORRECT?

8 A. MYSELF, YES.

9 Q. WELL, YOU AND MR. BEELER, RIGHT?

10 A. YES.

11 Q. TOGETHER?

12 A. NO.

13 Q. WELL, YOU WERE MAKING MONEY IN DEALING WITH
14 MR. BEELER; IS THAT RIGHT?

15 A. I WOULD MAKE MY OWN MONEY. I BOUGHT
16 EVERYTHING FROM HIM.

17 Q. AND FOR FOUR MONTHS YOU MET ABOUT THREE OR
18 FOUR TIMES A WEEK FOR BREAKFAST WITH MR. BEELER?

19 A. FOR A COUPLE OF MONTHS, YES.

20 Q. WAS IT TWO MONTHS OR FOUR MONTHS?

21 A. I WAS GOING TO BREAKFAST FOR QUITE A WHILE,
22 A YEAR OR SO, HE USED TO SHOW UP THREE OR FOUR MONTHS.

23 Q. NOW, WERE YOU REPORTING YOUR -- THE PROFIT
24 THAT YOU MADE ON THIS ON YOUR INCOME TAX?

25 A. NO, SIR.

26 Q. SO YOU WERE, ALONG WITH PARTICIPATING IN

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2356

1 A. I BELIEVE SO.

2 Q. DID YOU HAVE A COMBINATION TO THE SAFE?

3 A. NO.

4 Q. DID YOU TELL A -- A SHERIFF'S OFFICER THAT,
5 FIRST TELL HIM THAT YOU DIDN'T HAVE A COMBINATION, THEN
6 TELL HIM THAT YOU DID?

7 A. I REALLY DON'T KNOW. IT'S BEEN SO LONG.
8 THERE IS A COMBINATION TO THE SAFE, NOT THAT I HAVE EVER
9 HAD PERSONAL ACCESS TO IT.

10 MR. BARNETT: IF I CAN HAVE JUST ONE MINUTE, YOUR
11 HONOR, I'M ALMOST FINISHED.

12 MR. BARNETT: NOTHING FURTHER.

13 THE COURT: YOU MAY INQUIRE.

14 THE WITNESS: THANK YOU.

15 MR. MIDDLETON: JUST BRIEFLY.

16 CROSS-EXAMINATION

17 BY MR. MIDDLETON:

18 Q. DID YOU KNOW DINO STEVENSON, SAY, BEFORE THE
19 HOMICIDE TOOK PLACE AT HIS HOUSE?

20 A. OH, YES.

21 Q. DID YOU GO TO SCHOOL WITH HIM?

22 A. NO.

23 Q. DID MITCH GO TO SCHOOL WITH HIM?

24 A. I'M NOT REALLY SURE.

25 Q. WHEN YOU SAY YOU WENT OUT WITH STEVENSON,
26 WITH DINO, WHAT ARE YOU TALKING ABOUT, DESCRIBE WHAT YOU

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2357

1 ARE TALKING ABOUT; WAS THIS A ROMANTIC DATE?

2 A. NO, SIR, NOT AT ALL. THERE WAS NO ROMANTIC,
3 IT'S OUT OF FRIENDSHIP. DINO IS A FRIEND OF MY
4 GIRLFRIEND'S BROTHER, THE FOUR OF US, WE HAVE FRIENDS,
5 SIX OR EIGHT OF US GO OUT TO NIGHTCLUBS, THAT WAS IT.

6 Q. HOW LONG WOULD THAT HAPPEN?

7 A. WHEN I WAS SEPARATED, ONCE A WEEK, ONCE
8 EVERY OTHER WEEK.

9 Q. IT WAS WITH A GROUP?

10 A. UH-HUH.

11 Q. YOU WENT OUT WITH THIS GROUP IN CONJUNCTION
12 WITH YOUR GIRLFRIEND GOING OUT?

13 A. YES, YES.

14 Q. IN FACT, YOU WENT OUT WITH -- YOU WENT OVER
15 TO A MUTUAL FRIEND'S HOUSE TO A WEDDING RECEPTION JUST
16 BEFORE THE HOMICIDE AND DINO WAS PRESENT?

17 A. ARE YOU TALKING ABOUT AN ANNIVERSARY PARTY?

18 Q. YES.

19 A. WEDDING RECEPTION...

20 Q. MITCH WENT WITH YOU ALSO ON THAT?

21 A. YES.

22 MR. MIDDLETON: NO FURTHER QUESTIONS.

23 THE COURT: MR. BARNETT?

24 MR. BARNETT: NOTHING FURTHER.

25 THE COURT: YOU CAN STEP DOWN; YOU ARE EXCUSED.

26 DO YOU HAVE ANOTHER WITNESS FOR TODAY?

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VOLUME 12

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE	)	
STATE OF CALIFORNIA,	)	
	)	
	)	
VS.	)	NO. C-60966
	)	
RODNEY GENE BEELER,	)	
	)	
	)	
DEFENDANT.	)	

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' DAILY TRANSCRIPT

MONDAY, JUNE 13, 1988
TUESDAY, JUNE 14, 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE:

CECIL HICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT:

BY: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

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OFFICIAL COURT REPORTERS

M. ARMELLA MARTIN / D. JEAN RANDALL, OFFICIAL COURT REPORTERS

6-ER-1339

2430

1 ATTORNEYS.

2 AND IN SUMMATION, JUST TO BEGIN WITH, ON
3 DECEMBER 30, 1965, THE DEFENDANT RODNEY BEELER LEFT HIS
4 JOB AT AROUND THE TEN O'CLOCK MORNING BREAK. HE GOES
5 TO ORANGE ON EVERETT STREET AT 1144 AND PARKS ON
6 MAPLEWOOD.

7 HE BREAKS INTO THE HOME OF THE STEVENSONS
8 BY PRYING OPEN THE SLIDING GLASS DOOR. YOU SAW THE
9 EVIDENCE. YOU SAW THE SCREWDRIER. HE RANSACKS THE
10 HOME -- YOU'LL HAVE ALL OF THAT EVIDENCE IN FRONT OF
11 YOU -- LEAVES A FINGERPRINT ON THE FILE CABINET HE
12 OPENS IN DINO'S ROOM.

13 IN MIKE'S BEDROOM, HE'S THERE WHEN TONY
14 COMES HOME. HE HEARS HIM PARK, HEARS HIM COME INSIDE
15 THE HOUSE, THE DOG COMES INSIDE THE HOUSE. TONY GRABS
16 THE GUN, THE RIFLE, HITS THE DOOR. HE SEES MR. BEELER
17 WITH THE GUN AND HE FLEES. TONY STEVENSON BECOMES AN
18 EYEWITNESS TO A BURGLARY.

19 HE FLEES BY RUNNING OUT THE FRONT DOOR,
20 AND THE DEFENDANT SHOOTS TWICE, ONCE HITTING HIM IN THE
21 BACK, THE SHOT THAT GOES INTO HIS HEART, AND THE SECOND
22 SHOT GOES AND HITS THE CAR OUT ON THE CURB; TWO SHOTS.
23 HE DIES ON THE FRONT LAWN OF A NEIGHBOR'S HOUSE.

24 THE DEFENDANT TAKES THE LOOT THAT HE'S
25 BEEN GATHERING, HE LEAVES, KNOWING THAT SHOTS WERE
26 FIRED, SHOTS WERE HEARD, THAT NEIGHBORS MAY CALL THE

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1340

2431

1 POLICE, AND THAT THERE'S A DEAD OR WOUNDED VICTIM OUT
2 THERE ON THE STREET.

3 NOW, WITH THIS HE GETS ON THE WALL AND
4 GOES DOWN, PROCEEDS DOWN TO MAPLEWOOD TO HIS TRUCK. HE
5 GETS TO HIS TRUCK BUT HE DOESN'T STOP THERE, OR HE
6 DOESN'T CONTINUE.

7 HE STOPS AND SEES AN OPEN GARAGE -- AN
8 OPEN GARAGE, AN EASY TARGET -- RIGHT ACROSS FROM HIS
9 TRUCK. SO WITH THE TRUCK IDLING, HE WALKS OVER TOWARD
10 IT, BUT CHECKS FIRST UP THE WALL TO SEE IF ANYBODY HAD
11 BEEN FOLLOWING HIM, GOES TO THE GARAGE WHERE HE'S MET
12 BY MR. RANEY WHO BECOMES THE EYE WITNESS IN THIS CASE,
13 THE EYE WITNESS WHO PLACES MR. BEELER, THE DEFENDANT,
14 RIGHT THERE, NOT TO MENTION THE FINGERPRINT AND ALL THE
15 OTHER EVIDENCE.

16 SO HE HAS TO THINK OF SOMETHING QUICK. SO
17 HE TELLS HIM HE LOST A STRAY CAT AND WOULD HE CHECK IN
18 THE BACKYARD AND THEN HE SPLITS.

19 NOW, WE DON'T KNOW AT THIS POINT -- AND
20 THERE'S NO EVIDENCE OF WHAT HAPPENED EXACTLY AFTER
21 THIS -- WHETHER HE WENT AND SAW AN ATTORNEY, A LAWYER,
22 LIKE HE SAID TO MR. JACKLEY THAT HIS APPOINTMENT WAS
23 WITH A LAWYER, OR WHETHER HE WENT BACK TO WORK OR
24 EXACTLY WHAT TIME HE WENT BACK TO WORK.

25 BUT THE NEXT DAY WE KNOW HE TALKS TO THE
26 BIG BOSS, CAL BRUNSTING, BECAUSE HE DIDN'T CHECK OUT,

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2454

1 NOW, YOU DON'T TAKE EACH AND EVERY ONE OF
2 THESE FACTS ALL BY ITSELF AND SAY, WELL, IS THAT A
3 REASONABLE INTERPRETATION OR IS THAT UNREASONABLE?
4 ACCORDING TO THE LAW YOU TAKE ALL OF THE CIRCUMSTANTIAL
5 EVIDENCE TOGETHER AND LOOK AT IT AS TO REASONABLENESS
6 OR IF THERE IS TWO INTERPRETATIONS OF IT.

7 NOW, LET'S GO DOWN TO THE CIRCUMSTANTIAL
8 EVIDENCE FOR THE SPECIAL CIRCUMSTANCE. WE HAVE THE
9 GSR, GUNSHOT RESIDUE TESTING. YOU SAW, OR YOU HEARD,
10 WHAT WAS DONE. YOU SAW PHOTOGRAPHS OF WHAT WAS DONE,
11 THAT THE VICTIM WOULD HAVE TO HAVE BEEN AT LEAST TWO
12 FEET AWAY. TWO FEET AWAY. AND THEN LOOK AT THE ARM
13 LENGTH AND THE LENGTH OF THE BARREL ON PEOPLE'S 87,
14 THAT'S QUITE A DISTANCE AWAY.

15 HE WAS FLEEING, THE VICTIM WAS FLEEING HIS
16 RESIDENCE. WE HAVE A TRAJECTORY. AND REMEMBER WHERE
17 WITH THE TRAJECTORY WE HAVE INVESTIGATOR JENSEN DOING A
18 STRING LINE TO DETERMINE IF IT'S POSSIBLE FOR SOMEBODY
19 TO BE LEVELING HIS ARM AND SHOOTING OUT THE SCREEN DOOR
20 AND HIT THE CAR DOOR. AND WE ALSO HAVE THE LASER. YOU
21 REMEMBER THE TESTIMONY ON THAT. AND YOU'LL SEE AGAIN
22 THE PHOTOGRAPHS OF THE LASER LIKE IN PEOPLE'S 125 AND
23 127.

24 THEN WE HAVE THE LOCATION OF THE WOUND,
25 LOCATION OF THE WOUND, LIKE SHOWN IN PEOPLE'S 72 IN THE
26 BACK, NOT IN THE FRONT, IN THE BACK. AND AS THE DOCTOR

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1 TESTIFIED, IN THE BACK SHOWING AN UPWARD TRAJECTORY.
2 AND AS IN PEOPLE'S 7-1, RIGHT IN THE HEART. GOOD SHOT.
3 THAT GOES TOWARD INTENT TO KILL. LOOK AT
4 THAT BY ITSELF. IT GOES TOWARD INTENT TO KILL, WHERE
5 THE WOUND IS.

6 THE TYPE OF WEAPON THAT'S USED, A GUN, A
7 GUN WITH A LONG BARREL, FOR ACCURACY.

8 STATEMENTS AGAIN TO THE COWORKERS, AND
9 THAT IS THE HYPOTHETICAL, WOULD YOU SHOOT HIM? THAT'S
10 AN ADMISSION. EVEN THOUGH HE SAYS NO, NO, NO, NO, I
11 DIDN'T, JUST ASKING THAT QUESTION IS AN ADMISSION. WHY
12 SHOOT HIM? MOTIVE? AN EYEWITNESS. AGAIN, WE HAVE
13 STATEMENTS ALSO TO JACKLEY.

14 NOW, I WOULD SAY YOU HEARD A LOT ABOUT
15 JACKLEY UP THERE. YOU HEARD ABOUT HIS PAST BACKGROUND,
16 BUT YOU HEARD NOTHING THAT PUTS HIM IN THAT HOUSE.

17 BUT I WOULD SAY THAT IN LOOKING AT HIS
18 STATEMENTS YOU WOULD NATURALLY BE CAUTIOUS IN LOOKING
19 AT THAT, WHAT HE SAYS. WHAT YOU DO IS LOOK AT HOW HIS
20 STATEMENTS ABOUT WHAT HAPPENED ARE SUPPORTED BY THE
21 FACTS, CORROBORATED BY THE FACTS, AND YOU'LL SEE IT
22 WILL BECOME CLEAR. THE WATCH FOUND BY JACKLEY IN THE
23 AREA WHERE BEELER NORMALLY STORES HIS STASH.

24 LADIES AND GENTLEMEN, THE SPECIAL
25 CIRCUMSTANCE, THE INTENT TO KILL, IS THERE. THE
26 EVIDENCE SUPPORTS IT.

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1 IN THIS CASE AND THE SPECIAL CIRCUMSTANCES, I DON'T
2 RECALL IF HE POINTED OUT THAT IF YOU DECIDE THAT THIS
3 IS NOT A FIRST DEGREE MURDER, THEN YOU DON'T GO TO THE
4 SPECIAL CIRCUMSTANCES.

5 IF YOU HAVE A REASONABLE DOUBT WHETHER
6 IT'S FIRST OR SECOND, IF YOU BELIEVE IT'S MURDER BUT
7 ARE NOT SURE WHETHER IT'S FIRST OR SECOND DEGREE, THEN
8 YOU HAVE TO VOTE SECOND DEGREE.

9 IF YOU'RE NOT SURE WHETHER IT'S A
10 MANSLAUGHTER OR MURDER, THEN YOU MUST TAKE THE LESSER.

11 IT'S GOING TO BE FOR YOU TO DECIDE WHETHER
12 MR. STEVENSON WAS KILLED AS THE RESULT OF SOME SUDDEN
13 QUARREL. IT'S FOR YOU TO DECIDE WHETHER MR. STEVENSON
14 WAS KILLED IN AN HONEST BUT UNREASONABLE BELIEF IN THE
15 NECESSITY OF SELF-DEFENSE.

16 WHATEVER YOUR DETERMINATIONS ARE IN THAT
17 REGARD, MR. BEELER IS NOT GUILTY OF THE SPECIAL
18 CIRCUMSTANCES, THAT IS THE SPECIAL CIRCUMSTANCES AS
19 THEY APPLY TO HIM ARE NOT TRUE; THAT IS, HE DID NOT
20 SPECIFICALLY, SPECIFICALLY, INTEND THAT TONY STEVENSON
21 BE KILLED.

22 NOW, TO FIND THE SPECIAL CIRCUMSTANCE TO
23 BE TRUE, THE PROSECUTION HAS TO PROVE BEYOND A
24 REASONABLE DOUBT AND TO A MORAL CERTAINTY THAT
25 MR. BEELER INTENDED, INTENDED THAT MR. STEVENSON BE
26 KILLED. GUILTY OF FIRST DEGREE MURDER IS INSUFFICIENT.

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2462

1 THE REQUIREMENT OF SPECIFIC INTENT TO KILL MUST BE
2 PROVED IN ORDER TO MAKE MR. BEELER DEATH ELIGIBLE.

3 IN THIS CONNECTION I'D LIKE TO EXAMINE THE
4 FOLLOWING QUESTIONS:

5 NUMBER ONE, WHOEVER THE SHOOTER WAS, HAS
6 THE PROSECUTION PROVED BEYOND A REASONABLE DOUBT AND TO
7 A MORAL CERTAINTY THAT THE KILLING WAS INTENTIONAL TO
8 THE EXCLUSION OF ALL OTHER REASONABLE INTERPRETATIONS;
9 THAT IS, THAT THE FATAL SHOT WAS INTENTIONALLY FIRED.
10 AND IF THE FATAL SHOT WAS INTENTIONALLY FIRED. AND IF
11 THE FATAL SHOT WAS INTENTIONALLY FIRED, WAS IT FIRED
12 WITH THE INTENT TO KILL?

13 SECOND, IS THERE ANY REASON, ARE THERE ANY
14 FACTS TO -- THAT YOU CAN POINT TO, NOT SOMETHING OUT OF
15 THE THIN AIR, BUT FACTS THAT YOU CAN POINT TO, THAT
16 SUGGEST THAT MR. BEELER WASN'T ALONE?

17 AND FINALLY, ANY FACTS TO SUGGEST WHO THAT
18 OTHER PERSON MIGHT HAVE BEEN?

19 ASSUMING FOR THE MOMENT THAT THERE WAS NO,
20 NO FACTS AT ALL WHICH SUGGEST THAT ANOTHER PERSON --
21 BECAUSE IF THERE'S ANOTHER PERSON, THEN THERE'S NO
22 POSSIBLE WAY TO FIND MR. BEELER -- FIND THE SPECIAL
23 CIRCUMSTANCES TO BE TRUE, THAT IS, THAT HE INTENDED THE
24 DEATH OF TONY STEVENSON.

25 OKAY. ASSUMING THERE WAS NO OTHER
26 EVIDENCE, THERE WAS NO EVIDENCE AT ALL THAT THERE WAS

M.

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2463

1 ANOTHER PERSON THERE, YOU HAVE TO ASK YOURSELF WHAT WAS
2 GOING THROUGH THE SHOOTER'S MIND? IN THAT MILLISECOND
3 BEFORE THE SHOT WAS FIRED, WHAT WAS GOING THROUGH HIS
4 MIND? AND THE COURT IS GOING TO INSTRUCT YOU, AND THIS
5 IS AS TO CIRCUMSTANTIAL EVIDENCE.

6 NOW, THE PROSECUTOR POINTED TO -- DO YOU
7 MIND? (COUNSEL USES PROSECUTOR'S CHART.)

8 MR. MIDDLETON: NOT AT ALL.

9 MR. BARNETT: THE PROSECUTOR POINTED TO ONE
10 INSTRUCTION WHICH IS CIRCUMSTANTIAL EVIDENCE, AND THIS
11 CERTAINLY IS THE LAW.

12 WHAT YOU'RE GOING TO BE INSTRUCTED
13 ADDITIONALLY, HOWEVER, IS THAT AS TO THE -- AND HE
14 POINTS OUT IN HIS ARGUMENT THAT THIS APPLIES TO THE
15 CHARGES, THE COUNTS.

16 THERE'S ANOTHER INSTRUCTION THAT THAT'S
17 ALMOST LIKE THIS BUT NOT QUITE, AND IT HAS TO DO WITH
18 CIRCUMSTANTIAL EVIDENCE AND THE SPECIAL CIRCUMSTANCES,
19 AND THE COURT IS GOING TO INSTRUCT YOU THAT THE ONLY
20 EVIDENCE OF WHETHER THE DEFENDANT SPECIFICALLY INTENDED
21 TO KILL MR. STEVENSON IS CIRCUMSTANTIAL EVIDENCE.

22 "YOU MAY ONLY FIND THAT THE
23 SPECIAL CIRCUMSTANCE ALLEGED IS TRUE IF
24 THE PROVED CIRCUMSTANCES ARE NOT ONLY
25 CONSISTENT WITH THE THEORY THAT" -- MR.
26 BEELER -- "THAT THE DEFENDANT HAD THE

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1 TAKES OFF.

2 REMEMBER, THIS IS FIVE MINUTES, 10 MINUTES
3 AT THE MOST, AFTER THE SHOOTING. HE'S IN THE CAR.
4 THINK ABOUT IT. THE CAR IS RUNNING. HE GETS OUT OF
5 THE CAR, HE GOES AND HE LOOKS AND HE WAITS?

6 MR. BEELER HAD NO REASON TO LOOK DOWN THE
7 WALL IF HE WAS THE SHOOTER, IF HE WAS THE KILLER, IF HE
8 EVEN KNEW ABOUT IT. NO REASON TO WAIT. IF HE WAS
9 ALONE, NONE AT ALL. BUT HE LOOKED DOWN THE WALL AND HE
10 WAITED, AND HE WAITED FOR HIS CRIME PARTNER.

11 REGARDLESS, REGARDLESS OF WHETHER THIS WAS
12 AN INTENTIONAL KILLING, WHICH IT WAS NOT -- AT LEAST
13 THE EVIDENCE HAS NOT SHOWN THAT -- REGARDLESS OF WHO
14 RODNEY IS LOOKING FOR, REGARDLESS OF WHO HE IS WAITING
15 FOR, A REASONABLE INTERPRETATION, REASONABLE
16 INTERPRETATION OF HIS ACTIONS, AS OBSERVED BY MR.
17 RANEY, ARE THAT THERE'S ANOTHER PERSON THERE, AND
18 THAT'S WHO HE'S WAITING FOR.

19 THERE'S NO SHOWING THAT HE WAS THE
20 SHOOTER, NO SHOWING THAT HE INTENDED A KILLING THAT HE
21 OBVIOUSLY COULDN'T EVEN HAVE KNOWN HAD OCCURRED,
22 OTHERWISE HE NEVER WOULD HAVE WAITED.

23 THE PROSECUTOR EARLY ON IN HIS CASE WAS
24 TRYING TO SHORT CIRCUIT OR DEFEAT THIS ANALYSIS WHICH
25 IS SO COMPELLING, BY ASKING THE NEIGHBORS, WELL, DID
26 YOU SEE ANYBODY ELSE IN THE NEIGHBORHOOD YOU DIDN'T

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2510

1 **RESPOND TO A NUMBER OF THINGS THE DEFENSE SAID:**
2 **MISSTATEMENTS OF TESTIMONY, MISSTATEMENTS OF THE LAW,**
3 **THINGS OF THAT NATURE.**

4 HE DIDN'T GO THERE WITH A GUN. WELL, BIG
5 DEAL, HE DIDN'T GO THERE WITH A GUN. HE -- THE DEFENSE
6 TALKED ABOUT NOT PLANNING, ACTUALLY, NOT GOING THERE WITH
7 A GUN, THAT'S PREMEDITATION AND DELIBERATION, NOTHING IN
8 THIS CASE WE ARE SAYING FOR THE THEORY OF THIS CASE THAT
9 THERE WAS PREMEDITATION OR DELIBERATION. FELONY-MURDER
10 DOES NOT REQUIRE THAT. THERE IS NO WAY, ALL YOU HAVE TO
11 DO IS READ IT WHEN YOU GET BACK THERE. THERE IS NO WAY IT
12 REQUIRES THAT.

13 THE DEFENSE GOT INTO SYMPATHY QUITE A BIT.
14 EVERY CHANCE, HE OPENED HIS MOUTH HE TALKED ABOUT
15 SYMPATHY, TALKING ABOUT THE PENALTY. THOSE AREN'T TO BE
16 CONCERNED IN THE GUILT PHASE, AS THE JUDGE INSTRUCTED YOU.
17 THOSE ARE JUST -- THOSE ARE STATEMENTS TRYING TO ELICIT
18 SYMPATHY, WHY?

19 THE ONLY WAY TO BEAT THIS CASE IS IF THE
20 JURORS LOOK AT SYMPATHY. HERE IS AN EX-CON THAT
21 TESTIFIED. I DON'T LIKE HIM. HE'S A CRIMINAL. WHY
22 SHOULD WE CONVICT THIS GUY WHEN THAT GUY IS AN EX-CON?
23 THAT'S NOT THE WAY IT IS. YOU ARE LOOKING AT THE FACTS OF
24 THIS CASE, THE ELEMENTS OF THE CRIME AS CHARGED AGAINST
25 MR. BEELER.

26 AND THEN -- IN THE NAME OF ALL THAT'S HOLY,

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1 UNLAWFUL KILLING, YOU MUST AGREE
2 UNANIMOUSLY AS TO WHETHER HE IS GUILTY OF
3 MURDER OF THE FIRST DEGREE, OR MURDER OF
4 THE SECOND DEGREE, OR VOLUNTARY OR
5 INVOLUNTARY MANSLAUGHTER.

6 "IF YOU FIND THE DEFENDANT
7 IN THIS CASE GUILTY OF MURDER OF THE
8 FIRST DEGREE, YOU MUST THEN DETERMINE IF
9 MURDER WAS COMMITTED UNDER THE FOLLOWING
10 SPECIAL CIRCUMSTANCE:

11 "INTENTIONAL MURDER DURING
12 BURGLARY.

13 "A SPECIAL CIRCUMSTANCE MUST
14 BE PROVED BEYOND A REASONABLE DOUBT.

15 "IF YOU HAVE A REASONABLE
16 DOUBT AS TO WHETHER A SPECIAL
17 CIRCUMSTANCE IS TRUE, IT IS YOUR DUTY TO
18 FIND THAT IT IS NOT TRUE.

19 "IF DEFENDANT WAS AN
20 ACCOMPLICE AIDER AND ABETTOR BUT NOT THE
21 ACTUAL KILLER, IT MUST BE PROVED BEYOND A
22 REASONABLE DOUBT THAT HE INTENDED TO AID
23 IN THE KILLING OF A HUMAN BEING BEFORE
24 YOU ARE PERMITTED TO FIND THE ALLEGED
25 SPECIAL CIRCUMSTANCE OF THAT FIRST DEGREE
26 MURDER TO BE TRUE AS TO DEFENDANT.

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1 "IN ORDER TO FIND THE
2 SPECIAL CIRCUMSTANCE CHARGED IN THIS CASE
3 TO BE TRUE OR UNTRUE, YOU MUST AGREE
4 UNANIMOUSLY.

5 "YOU WILL INCLUDE IN YOUR
6 VERDICT ON A FORM THAT WILL BE SUPPLIED
7 YOUR FINDING AS TO WHETHER THE SPECIAL
8 CIRCUMSTANCE IS OR IS NOT TRUE.

9 "TO FIND THAT THE SPECIAL
10 CIRCUMSTANCE, REFERRED TO IN THESE
11 INSTRUCTIONS AS MURDER IN THE COMMISSION
12 OF BURGLARY IS TRUE, IT MUST BE PROVED:

13 "ONE, THAT THE MURDER WAS
14 COMMITTED WHILE THE DEFENDANT WAS ENGAGED
15 IN WAS AN ACCOMPLICE IN THE COMMISSION OR
16 ATTEMPTED COMMISSION OF A BURGLARY.

17 "THAT THE MURDER WAS
18 COMMITTED DURING THE IMMEDIATE FLIGHT
19 AFTER THE COMMISSION ATTEMPTED COMMISSION
20 OF A BURGLARY BY THE DEFENDANT TO WHICH
21 THE DEFENDANT WAS AN ACCOMPLICE.

22 "TWO, THAT THE DEFENDANT
23 INTENDED TO KILL A HUMAN BEING OR
24 INTENDED TO AID ANOTHER IN THE KILLING OF
25 A HUMAN BEING.

26 "THREE, THAT THE MURDER WAS

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1 COMMITTED IN ORDER TO CARRY OUT OR
2 ADVANCE THE COMMISSION OF THE CRIME OF
3 BURGLARY OR TO FACILITATE THE ESCAPE
4 THEREFROM OR TO AVOID DETECTION. IN
5 OTHER WORDS, THE SPECIAL CIRCUMSTANCE
6 REFERRED TO IN THESE INSTRUCTIONS IS NOT
7 ESTABLISHED IF THE BURGLARY WAS MERELY
8 INCIDENTAL TO THE COMMISSION OF THE
9 MURDER.

10 "THE ONLY EVIDENCE OF
11 WHETHER DEFENDANT SPECIFICALLY INTENDED
12 TO KILL MR. STEVENSON IS CIRCUMSTANTIAL
13 EVIDENCE. YOU MAY ONLY FIND THAT THE
14 SPECIAL CIRCUMSTANCE ALLEGED IS TRUE IF
15 THE PROVED CIRCUMSTANCES ARE NOT ONLY
16 CONSISTENT WITH THE THEORY THAT MR.
17 BEELER HAD THE SPECIFIC INTENT TO KILL
18 MR. STEVENSON, BUT CANNOT BE RECONCILED
19 WITH ANY OTHER RATIONAL CONCLUSION.

20 "ALSO, IF THE EVIDENCE AS TO
21 WHETHER DEFENDANT HAD THE REQUIRED
22 SPECIFIC INTENT TO KILL MR. STEVENSON IS
23 SUSCEPTIBLE OF TWO REASONABLE
24 INTERPRETATIONS, ONE OF WHICH IS POINTS
25 TO THE EXISTENCE OF SPECIFIC INTENT AND
26 THE OTHER OF WHICH POINTS TO THE ABSENCE

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1 OF SPECIFIC INTENT, IT IS YOUR DUTY TO
2 ADOPT THAT INTERPRETATION WHICH POINTS TO
3 THE ABSENCE OF SPECIFIC INTENT. IF, ON
4 THE OTHER HAND, ONE INTERPRETATION OF THE
5 EVIDENCE AS TO SPECIFIC INTENT APPEARS TO
6 YOU TO BE REASONABLE, AND THE OTHER
7 INTERPRETATION TO UNREASONABLE, IT WOULD
8 BE YOUR DUTY TO ACCEPT THE REASONABLE
9 INTERPRETATION AND TO REJECT THE
10 UNREASONABLE.

11 GOOD TYPING, GUYS.

12 "THE MENTAL STATE WITH WHICH
13 AN ACT IS DONE MAY BE MANIFESTED BY THE
14 FACTS SURROUNDING ITS COMMISSION. YOU
15 MAY NOT FIND THE SPECIAL CIRCUMSTANCES
16 CHARGED IN THIS CASE TO BE TRUE UNLESS
17 THE PROVED FACTS NOT ONLY ARE CONSISTENT
18 WITH THE THEORY THAT THE DEFENDANT HAD
19 THE REQUIRED MENTAL STATE BUT CANNOT BE
20 RECONCILED WITH ANY OTHER RATIONAL
21 CONCLUSION.

22 "ALSO, IF THE EVIDENCE AS TO
23 THE REQUIRED MENTAL STATE IS SUSCEPTIBLE
24 OF TWO REASONABLE INTERPRETATIONS, ONE OF
25 WHICH POINTS TO THE EXISTENCE THEREOF AND
26 THE OTHER TO THE ABSENCE THEREOF, YOU MUST

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1 ADOPT THAT INTERPRETATION WHICH POINTS TO
2 ITS ABSENCE. IF, ON THE OTHER HAND, ONE
3 INTERPRETATION OF THE EVIDENCE AS TO THE
4 REQUIRED MENTAL STATE APPEARS TO YOU TO
5 BE REASONABLE AND THE OTHER
6 INTERPRETATION TO BE UNREASONABLE, IT
7 WOULD BE YOUR DUTY TO ACCEPT THE
8 REASONABLE INTERPRETATION AND TO REJECT
9 THE UNREASONABLE.

10 "IN YOUR DELIBERATIONS THE
11 SUBJECT OF PENALTY OR PUNISHMENT IS NOT
12 TO BE DISCUSSED OR CONSIDERED BY YOU.
13 THAT IS A MATTER WHICH MUST NOT IN ANY
14 WAY AFFECT YOUR VERDICT OR AFFECT YOUR
15 FINDING AS TO THE SPECIAL CIRCUMSTANCE
16 CHARGED IN THIS CASE.

17 "DEFENDANT IS CHARGED IN
18 COUNT II OF THE INFORMATION, WITH THE
19 COMMISSION OF THE CRIME OF BURGLARY, A
20 VIOLATION OF SECTION 459 OF THE PENAL
21 CODE.

22 "EVERY PERSON WHO ENTERS ANY
23 STRUCTURE OF THE TYPE SHOWN BY THE
24 EVIDENCE IN THIS CASE WITH THE SPECIFIC
25 INTENT TO STEAL, TAKE AND CARRY AWAY THE
26 PERSONAL PROPERTY OF ANOTHER OF ANY VALUE

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COPY

CRIM NO. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF & RESPONDENT,

-VS-

RODNEY GENE BEELER,

DEFENDANT & APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

JOHN VAN DE KAMP
ATTORNEY GENERAL
110 WEST "A" STREET
SUITE 700
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

RODNEY GENE BEELER
DEFENDANT IN PRO PER
SAN QUENTIN STATE PRISON
SAN QUENTIN, CALIFORNIA 94964

M. ARMELLA MARTIN, CSR #2115
D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

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DATE: JUNE 20, 21, 27, 28, 29, 30, 1988

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VOLUME 13

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE	)	
STATE OF CALIFORNIA,	)	
	)	
	)	PLAINTIFF,
VS.	)	
	)	NO. C-60966
RODNEY GENE BEELER,	)	
	)	
	)	
DEFENDANT.	)	

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' DAILY TRANSCRIPT

JUNE 20, 21, 27, 28, 29 & 30 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE:

CECIL HICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT:

BY: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

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2639

1 EXAMINED, AND TESTIFIED AS FOLLOWS:

2 THE CLERK: DO YOU SOLEMNLY SWEAR THAT THE
3 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CASE NOW PENDING
4 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH,
5 AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

6 THE WITNESS: I DO.

7 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD.

8 THE WITNESS: ROXANNE JOHANNA MC DONALD DOYLE.

9 THE CLERK: SPELL YOUR NAME FOR THE RECORD.

10 THE WITNESS: M-C-D-O-N-A-L-D, D-O-Y-L-E.

11 THE CLERK: YOU MAY TAKE THE STAND.

12 THE COURT: MAKE YOURSELF COMFORTABLE. SLIDE
13 YOUR CHAIR FORWARD. THE ITEM IN FRONT OF YOU IS A
14 MICROPHONE, SO KEEP YOUR VOICE UP.

15 DIRECT EXAMINATION

16 BY MR. MIDDLETON:

17 Q MRS. MC DONALD, HOW OLD ARE YOU?

18 A FIFTY-SIX.

19 Q ON JULY 5, 1985 IN THE EARLY MORNING
20 HOURS, WERE YOU IN THE AREA OF 2307 EAST SANTA CLARA
21 STREET IN THE CITY OF SANTA ANA IN ORANGE COUNTY?

22 A YES.

23 Q WHAT WERE YOU DOING THERE?

24 A DELIVERING MY HUSBAND'S NEWSPAPER ROUTE.

25 Q THAT'S THE REGISTER NEWSPAPER?

26 A YES, SIR.

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2640

1 Q WHAT TIME DID YOU START AT THAT LOCATION?

2 A FOUR-THIRTY.

3 Q THAT'S IN THE MORNING?

4 A YES, SIR.

5 Q WHEN YOU STARTED IN THAT LOCATION, DID YOU
6 HAVE ANY CONTACT WITH ANYBODY?

7 A WHEN I STARTED MY ROUTE?

8 Q YES.

9 A NO.

10 Q AND AT SOME POINT AFTER YOU STARTED AND
11 BEFORE YOU FINISHED, DID YOU HAVE CONTACT WITH ANY
12 MALE?

13 A YES, SIR.

14 Q CAN YOU DESCRIBE WHAT YOUR INITIAL CONTACT
15 WAS?

16 A I WAS PUSHING MY SHOPPING CART FULL OF
17 NEWSPAPERS ALONG, AND I THREW A PAPER. AND I LOOKED
18 UP, AND THERE WAS THE MAN STANDING IN FRONT OF ME.

19 Q IS THAT MAN IN THE COURTROOM TODAY?

20 A YES, HE IS.

21 Q CAN YOU POINT HIM OUT AND DESCRIBE WHAT
22 HE'S WEARING?

23 A HE'S WEARING A WHITE SHIRT -- A WHITE
24 SWEATER AND A BLUE SHIRT.

25 MR. MIDDLETON: MAY THE RECORD REFLECT SHE'S
26 IDENTIFIED THE DEFENDANT?

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1 **COULD SEE?**

2 **A YES, HE WAS.**

3 **Q DID YOU END UP LOCKING IT TO THE TREE?**

4 **A YES.**

5 **Q WHAT DID YOU DO AFTER THAT?**

6 **A I STARTED TO WALK OUT OF THE AREA.**

7 **Q WHERE THE BUSHES ARE?**

8 **A YES.**

9 **Q AND WHAT IF ANYTHING HAPPENED?**

10 **A HE WAS STANDING TO THE RIGHT OF ME,**
11 **HOLDING THE BUSHES BACK. AND AS I WALKED PAST HIM, HE**
12 **GRABBED ME.**

13 **Q AND DESCRIBE HOW HE GRABBED YOU?**

14 **A HE PUT ONE HAND OVER MY MOUTH, AND HE PUT**
15 **AN ARM AROUND MY BODY AND TRIED TO DRAG ME BACKWARDS.**

16 **Q WAS HE SUCCESSFUL IN THAT?**

17 **A I DON'T UNDERSTAND THE QUESTION.**

18 **Q DID HE DRAG YOU BACK INTO THE BUSHES?**

19 **A NO. HE STARTED TO FIGHT.**

20 **Q AND WHAT HAPPENED WHEN YOU STARTED TO**
21 **FIGHT?**

22 **A I GRABBED HIS HAND FROM OFF MY MOUTH AND**
23 **STARTED SCREAMING.**

24 **Q AND WHAT HAPPENED NEXT?**

25 **A HE WAS -- HE AND I WERE WRESTLING. HE WAS**
26 **TRYING TO GET A HAND OVER MY MOUTH. I KEPT PULLING IT**

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1 HIGH.

2 AND HE PULLED THEM ALL THE WAY DOWN TO HIS
3 KNEES.

4 Q THEN WHAT HAPPENED NEXT?

5 A I STARTED SUCKING ON HIM AND PLAYING WITH
6 HIS BALLS, AND HE PULLED AWAY FROM ME AND HE PUSHED ME
7 BACK DOWN ON THE GROUND AND HE GOT ON TOP OF ME.

8 Q THEN WHAT DID HE DO?

9 A HE PUT HIS PENIS IN MY BODY.

10 Q IN YOUR VAGINA?

11 A YES.

12 Q WHAT HAPPENED NEXT?

13 A (NO RESPONSE.)

14 Q HOW LONG DID HE REMAIN ON TOP OF YOU?

15 A A COUPLE OF MINUTES, I THINK.

16 Q WERE YOUR RINGS STILL ON YOUR FINGER AT
17 THIS TIME?

18 A YES, SIR.

19 Q AND DID YOUR RINGS COME OFF YOUR FINGER AT
20 SOME POINT?

21 A I HAD TO TAKE THEM OFF.

22 Q AND DID THE DEFENDANT SAY ANYTHING IN
23 REGARDS TO THAT?

24 A HE TOLD ME TO GIVE HIM THE RINGS.

25 Q DID YOU GIVE THEM TO HIM RIGHT AWAY?

26 A I SAID, "PLEASE DON'T TAKE MY RINGS, I

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1 WAS THE RESULT OF YOUR EVALUATION?

2 A WELL, MY EVALUATION ESSENTIALLY INDICATED
3 TO ME THAT HE WAS IN CONTACT WITH REALITY, HE WAS NOT
4 SHOWING ANY ABNORMAL BEHAVIORS WHEN I SAW HIM, I FELT
5 HE WAS SLIGHTLY DEPRESSED. I FELT HIS MAJOR PROBLEMS
6 WERE THAT OF INADEQUACY, KNOWING HOW TO DEAL WITH LIFE
7 SITUATIONS.

8 Q DID YOU HAVE AN OPINION AS TO WHAT HE WAS
9 A PRODUCT OF, THAT IS, HIS FAMILY HISTORY?

10 A WELL, THAT STRUCK ME RATHER STRONGLY. I
11 FELT THAT HE HAD BEEN BROUGHT UP IN A VERY HIGHLY
12 CHAOTIC HOME ENVIRONMENT. AND I FELT HIS STEPMOTHER
13 WAS EXTREMELY VICIOUS TO HIM. AND IN SOME WAYS --
14 WELL, THE THINGS THAT DO STAND OUT ARE THE FACT THAT
15 SHE WOULD PUT HIM IN A CLOSET, LOCK HIM UP FOR THINGS
16 HE WOULD DO AT HOME. LIKE ONE TIME SHE WOULD CHAIN HIM
17 AND BEAT HIM WITH A LAUNDRY STICK.

18 I FELT IN SOME WAYS THAT SHE HAD SET UP A
19 TEMPLATE IN HIS HEAD FOR PRISON OR INCARCERATION VERY
20 EARLY, THAT HE WOULD BE PUT IN SOMEPLACE FOR SOMETHING
21 HE DID AND HE WOULD BE PUNISHED, HE WOULD DO SOMETHING
22 ELSE AFTER THAT, WOULD BE SIMILARLY PUNISHED. SO I
23 FELT AT THAT POINT THAT THIS MAN HAD PSYCHIATRIC
24 PROBLEMS.

25 Q ALL RIGHT. DID YOU NOTICE, BY THE WAY,
26 ANY PHYSICAL EVIDENCE OF THE MALTREATMENT FROM HIS

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2697

1 STEPMOTHER, PARTICULARLY HIS THUMBS?

2 A WELL, I THOUGHT THEY WERE KIND OF
3 DISTORTED. LOOKED LIKE FROM THE HISTORY WITH THE
4 STEPMOTHER, AT LEAST THE WAY HE TOLD THAT TO ME, THEY
5 HAD BEEN PULLED OUT OF JOINT.

6 Q NOW, DID YOU ALSO FIND THAT MR. BEELEER WAS
7 LOOKING FOR SOME SORT OF AID OR HELP WITH HIS
8 PSYCHIATRIC PROBLEM THAT WAS THE RESULT OF THIS?

9 A I FELT IN A WAY HE WAS CRYING FOR HELP. I
10 MEAN, HE WAS IN PRISON, HE DIDN'T KNOW WHAT TO DO, AND
11 HE WANTED TO SEE WHY HE WAS DOING THIS. I THOUGHT HE
12 HAD VIRTUALLY NO INSIGHT INTO WHY HE WAS COMMITTING ALL
13 THESE BURGLARIES AND HE WANTED TO GET SOME MEASURE OF
14 UNDERSTANDING, WHEN I SAW HIM.

15 Q WOULD YOU CHARACTERIZE HIS BURGLARIES AS
16 COMPULSIVE, THAT IS, THINGS THAT HE WAS JUST DOING OR
17 THEFTS HE WAS DOING COMPULSIVELY?

18 A ALMOST ROUTINE, AUTOMATIC KIND OF
19 BEHAVIORS.

20 Q NOW, IN YOUR EVALUATION, DID YOU
21 RECOMMEND, OR DID YOU SEE HIM AT THAT POINT AS A
22 VIOLENT INDIVIDUAL?

23 A NO, I DID NOT.

24 Q DID YOU FEEL THAT IN ORDER TO AVOID
25 POTENTIAL VIOLENCE, THAT HE SHOULD RECEIVE INTENSE
26 PSYCHOTHERAPY?

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2705

1 A THE WORDS CAME FROM HIM.

2 Q SO, OKAY, THAT'S WHAT I'M ASKING. SO, THE
3 EXTREME VICIOUSNESS WERE THE THUMBS AND HE WAS CHAINED
4 AROUND THE LEGS?

5 A YES, THE ANKLES.

6 Q HE WAS HIT WITH WHAT?

7 A A BROOM -- WELL, A LAUNDRY STICK,
8 SOMETHING THAT'S USED IN THE LAUNDRY.

9 Q YOU'RE NOT SURE WHAT THAT THING IS?

10 A I CAN CONCEIVE OF A NUMBER OF OBJECTS.

11 Q BUT YOU DON'T KNOW ACTUALLY WHAT THAT WAS
12 THEN?

13 A NO, SIR.

14 Q HOW MANY TIMES DID THIS OCCUR THAT YOU
15 KNOW?

16 A WELL, APPARENTLY IT WASN'T JUST -- WELL,
17 YOU KNOW, HE WOULD BE PUNISHED QUITE FREQUENTLY. THOSE
18 ARE THE EVIDENCE, THOSE ARE THE TIMES IN WHICH THINGS
19 STOOD OUT RATHER DRAMATICALLY, WHAT HAPPENED TO HIM,
20 BUT PUNISHMENT WAS PART AND PARCEL OF THE RELATIONSHIP
21 HE HAD WITH HIS STEPMOTHER.

22 Q DO YOU KNOW HOW LONG HE STAYED WITH HIS
23 STEPMOTHER?

24 A THE WAY I REMEMBER IT WAS THAT AFTER HE
25 COMMITTED MORE BURGLARIES, HE WAS TAKEN AND PLACED, I
26 BELIEVE IT WAS, IN UTAH. HE WAS PLACED IN A FOSTER

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2727

1 WAS A LITTLE BIT HEAVIER THAN THIS.

2 Q HEAVIER THAN THIS?

3 A YES.

4 Q HOW DID SHE BEAT HIM? WHERE WAS HE?

5 A STANDING AGAINST THE WALL IN THE KITCHEN,
6 STANDING POSITION WITH HIS ARMS IN FRONT OF HIM LIKE
7 THIS (INDICATING) ON THE ...

8 Q DID SHE GRAB HOLD OF IT BY THE BELT BUCKLE
9 AND -- SHOW US HOW SHE DID IT?

10 A SHE JUST PICKED IT UP, JUST LIKE THIS
11 (INDICATING), JUST PICKED IT UP.

12 Q DID SHE HIT HIM WITH IT, WITH THE BUCKLE?

13 A WITH THE BUCKLE PART.

14 Q WELL, DID YOU SEE ANY INJURIES AS A RESULT
15 OF THAT?

16 A YES. WELTS AND SOME BLEEDING AND BRUISES.

17 Q WHAT HAD HE DONE?

18 A HIM AND MY OTHER BROTHER HAD THROWN SOME
19 SHINGLES, OLD SHINGLES THAT WAS COMING OFF OF OUR HOUSE
20 ONTO THE NEIGHBOR'S PROPERTY.

21 Q DID LORNA SWITCH SOME CHRISTMAS TAGS ON
22 PRESENTS THAT WERE SENT BY LILLIAN?

23 A I BELIEVE SO.

24 Q NOW, DO YOU HAVE A YOUNG CHILD?

25 A I HAVE TWO SONS.

26 Q NOW, IN APPROXIMATELY 1977 DID YOU FIND

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1 Q DID LORNA HAVE A PARTICULAR WAY TO -- TO
2 TO GET RODNEY TO COME TO HER?

3 A SHE WHISTLED LIKE A DOG AT HIM.

4 Q DID SHE HAVE A PHRASE THAT SHE WOULD USE
5 TO DESCRIBE HIM?

6 A SHE CALLED HIM A LITTLE BASTARD ALL THE
7 TIME.

8 Q IS THAT HOW SHE REFERRED TO HIM?

9 A YES.

10 Q DID LORNA APPEAR -- WAS LORNA KNOWN BY
11 ANOTHER NAME --

12 A YES, SHE WAS KNOWN BY TERRY.

13 Q -- DURING THIS PERIOD OF TIME?

14 A YES.

15 Q DID SHE SEEM TO REACT OR HAVE TWO
16 DIFFERENT TYPES OF PERSONALITY?

17 MR. MIDDLETON: OBJECTION --

18 THE WITNESS: YES.

19 MR. MIDDLETON: -- LACK OF FOUNDATION.

20 THE COURT: OBJECTION SUSTAINED.

21 BY MR. BARNETT:

22 Q DID SHE ACT DIFFERENTLY SOMETIMES?

23 A YES.

24 Q SOMETIMES SHE WOULD ACT FAIRLY NORMAL AND
25 OTHER TIMES SHE WOULD DO THE ACTS THAT YOU'VE
26 DESCRIBED?

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2759

1 BECAME PAROLE OFFICER, WORKED A FEW YEARS AS PAROLE
2 OFFICER, BECAME A SUPERVISOR.

3 Q HOW LONG HAVE YOU BEEN IN THE JUVENILE
4 JUSTICE SYSTEM?

5 A SINCE 1966.

6 Q NOW, YOU WERE A COUNSELOR AT SPRING
7 MOUNTAIN YOUTH CAMP, IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q DID YOU HAVE OCCASION TO HAVE CONTACT WITH
10 RODNEY BEELER, THE DEFENDANT IN THIS CASE?

11 A YES, I DID.

12 Q AND COULD YOU DESCRIBE HOW RODNEY WAS
13 TREATED BY THE OTHER CHILDREN AT THE CAMP?

14 A WELL, I'D SAY HE WAS PICKED ON BY THE
15 OTHER BOYS. HE WAS -- HE WAS KIND OF A PITIFUL
16 CHARACTER AND TENDED TO BE EASILY MANIPULATED AND
17 GENERALLY PICKED ON.

18 Q WELL, WOULD YOU SAY THAT HE WAS AGGRESSIVE
19 OR VIOLENT TOWARD ANY OF THE CHILDREN?

20 A NO.

21 Q WAS THERE AGGRESSION AND VIOLENCE DIRECTED
22 TOWARD HIM?

23 A I DON'T KNOW IF YOU'D CALL IT AGGRESSION
24 OR VIOLENCE. IN AN INSTITUTIONAL SETTING LIKE THAT,
25 IT'S NOT UNCOMMON FOR THE BOYS TO ESTABLISH A PECKING
26 ORDER AND KIND OF PICK ON EACH OTHER, BUT I WOULDN'T

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2795

1 WITH MR. BEELER THAT, DID YOU FIND HE SEEMED TO BE
2 CONCERNED ABOUT THE WELFARE OF HIS CHILDREN?

3 A YES, HE WAS VERY CONCERNED ABOUT THE
4 WELFARE OF HIS CHILDREN. HE SEEMED TO REALLY TAKE WHAT
5 I WAS TRYING TO GIVE THE FAMILY, IN TERMS OF CHILD
6 MANAGEMENT, IN TERMS OF EMOTIONAL SUPPORT, HE SEEMED TO
7 BE TAKING THAT IN, HE SEEMED TO BE LISTENING, HE SEEMED
8 TO BE APPLYING IT.

9 HE WAS VERY MUCH A PART OF THE TREATMENT.
10 HE CAME TO NEARLY ALL THE SESSIONS. YES. AND HE WAS
11 VERY CONCERNED ABOUT HIS CHILDREN.

12 Q DID YOU HAVE AN INDICATION FROM ROBERT HOW
13 HE FELT ABOUT HIS DAD? THIS IS THE SIX-YEAR-OLD.

14 A OH. OKAY. ROBERT WAS VERY ATTACHED TO
15 HIS FATHER. HE IDOLIZED HIM. HE LOVED TO TINKER
16 AROUND THE GARAGE WITH HIM. HE LOVED TO FOLLOW HIM
17 AROUND.

18 ALSO, MY FIRST BEHAVIORAL CONTRACT WITH
19 THE FAMILY, THE PRIMARY REINFORCERS FOR ROBERT'S
20 BEHAVIOR IN PRESCHOOL AND AT HOME WAS TO GET, AS I
21 RECALL, HE GOT FIVE MINUTES OF PRIVATE TIME WITH HIS
22 FATHER AFTER 7:00 P.M. FOR EVERY POINT EARNED DURING
23 THE DAY. AND THIS SEEMED TO BE A PRETTY STRONG
24 REINFORCER FOR HIS BEHAVIOR. AND ROBERT DID RESPOND
25 QUITE WELL TO THAT CONTRACT.

26 Q NOW, IN MAY AND JUNE AND JULY OF 1985, DID

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CRIM NO. _____

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF & RESPONDENT,

-VS-

RODNEY GENE BEELER,

DEFENDANT & APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

JOHN VAN DE KAMP
ATTORNEY GENERAL
110 WEST "A" STREET
SUITE 700
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

RODNEY GENE BEELER
DEFENDANT IN PRO PER
SAN QUENTIN STATE PRISON
SAN QUENTIN, CALIFORNIA 94964

M. ARMELLA MARTIN, CSR #2115
D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

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VOLUME 14

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE	)	
STATE OF CALIFORNIA,	)	
	)	
VS.	)	NO. C-60966
	)	
RODNEY GENE BEELER,	)	
	)	
DEFENDANT.	)	
	)	

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING
REPORTERS' DAILY TRANSCRIPT
TUESDAY, JULY 5, 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE: CECIL HICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT: BY: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

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M. ARMELLA MARTIN / D. JEAN RANDALL, OFFICIAL COURT REPORTERS

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2863

1 MR. MIDDLETON: OBJECTION; NO FOUNDATION.

2 THE COURT: SUSTAINED.

3 BY MR. BARNETT:

4 Q WAS SHE SICK?

5 A YES, SHE WAS.

6 Q WHAT WAS HER SLEEPING PATTERN?

7 A SHE DIDN'T SLEEP AT ALL.

8 Q WAS SHE ABLE TO TAKE MOTHER'S MILK?

9 A THEY TRIED MINE AND IT DIDN'T WORK. THEY
10 SENT US TO A CLINIC. THEY SOLD IT BY THE OUNCE FOR ONE
11 WEEK'S WORTH WAS \$589 WORTH.

12 Q NOW, WAS MR. BEELER A -- DID HE EVER ABUSE
13 THE CHILDREN?

14 A NO, HE LOVED HIS CHILDREN.

15 Q WAS HE A GOOD FATHER TO THEM?

16 A YES, HE IS.

17 MR. BARNETT: COULD I HAVE THE NEXT EXHIBIT
18 NUMBER, DEFENSE, PLEASE.

19 THE CLERK: P WILL BE THE NEXT ONE.

20 MR. BARNETT: YOUR HONOR, COULD I MARK THESE?

21 THE COURT: YES, GO AHEAD.

22 MR. BARNETT: THEY'RE PHOTOGRAPHS.

23 THE COURT: PUT YOUR MEMO ON THEM.

24 (DEFENSE P = MARKED FOR I.D.)

25 BY MR. BARNETT:

26 Q SHOWING YOU A PHOTOGRAPH WHICH I MARKED P

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2916

1 OLD HIS PARENTS SEPARATE AND GET DIVORCED AND THAT'S A
2 POINT AT WHICH, A VERY SIGNIFICANT POINT, AT WHICH
3 MR. BEELER HAS SOME EMOTIONAL REACTION TO IT.

4 AS HE GROWS OLDER, WE SEE ABOUT NINE, NINE
5 AND-A-HALF YEARS OLD, HIS FATHER REMARRIES. HE LIVES
6 WITH HIS FATHER AND INITIALLY WITH HIS BROTHER, HIS
7 OLDER BROTHER, AND HIS OLDER SISTER.

8 AND HE, AT THAT POINT, HAS A STEPMOTHER.
9 AND THERE WE SEE PSYCHOLOGICAL, PHYSICAL, AND LATER,
10 SEXUAL ABUSE, SEXUAL ABUSE BEGINNING FROM ABOUT THE AGE
11 OF 10 YEARS OLD AND LASTING UNTIL HE'S ABOUT 14 YEARS
12 OLD.

13 WHEN HE'S ABOUT 12 YEARS OLD HE IS SENT
14 INTO A SERIES OF -- A COUPLE OF FOSTER HOMES, AND THEN
15 TO UTAH STATE HOSPITAL, AND HE STAYS THERE UNTIL HE IS
16 14 YEARS OLD, WHEN HE IS THEN RELEASED TO THE CARE OF
17 HIS NATURAL MOTHER AND STEPFATHER, AND HE'S THERE FOR
18 ABOUT A YEAR OR YEAR AND-A-HALF. AND THEN GETS INTO
19 SOME TROUBLE BY STEALING SOME MOTORCYCLES AND IS SENT
20 OFF TO SPRING MOUNTAIN YOUTH CAMP, WHICH IS A YOUTH
21 CAMP IN NEVADA.

22 AND HE'S THERE FOR -- UNTIL HE'S ABOUT 16
23 YEARS OLD. COMES BACK, LIVES WITH HIS FAMILY FOR ABOUT
24 ANOTHER YEAR OR SO, AND THEN AGAIN IS STEALING SOME --
25 IS CAUGHT STEALING EITHER A CAR OR MOTORCYCLE, AND HE'S
26 SENT TO THE YOUTH CAMP IN ELKO, NEVADA WHERE HE STAYS

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2939

1 MAKES HIM WEAR THAT.

2 HE ALSO SAYS THAT HE'S LOCKED IN THE
3 CLOSET, AND HE REMEMBERS THAT LITTLE CLOSET.

4 AND HE SAYS THAT -- WE ALSO HAVE A REPORT
5 THAT HE WAS PUSHED DOWN THE STAIRS WITH HIS HANDS TIED.
6 HE DOES NOT REMEMBER THAT INCIDENT. SOMEBODY ELSE, WHO
7 WAS ALSO A CHILD IN THE HOME, A WOMAN NAMED JOLENE
8 HIGLEY, REMEMBERS SEEING THAT.

9 HE SAYS THAT HE WAS HIT WITH A BELT AND
10 WITH A BRUSH, A KIND OF A WIRE BRUSH THAT'S USED IN THE
11 LAUNDRY ROOM AREA, AS WELL.

12 HE REMEMBERS BEING CHAINED IN THE
13 BASEMENT. THERE WAS A COLUMN IN THE BASEMENT THAT HE
14 WOULD BE CHAINED TO, AND THAT WOULD GO ON ALL NIGHT OR
15 SEVERAL NIGHTS, THAT HE WOULD BE CHAINED THERE.

16 AND WHEN HE WAS CHAINED THERE, HE WOULD BE
17 FORCED TO BE ONLY IN HIS UNDERPANTS, AND THEN HE WOULD
18 WET AND SOIL HIS UNDERPANTS AND GET BEATEN FOR THAT AS
19 WELL, BUT HE WOULD NEVER HAVE THE OPPORTUNITY TO BE
20 RELEASED TO GO TO THE BATHROOM.

21 SOMETIMES WHEN HE WOULD ACTUALLY DEFECCATE
22 IN HIS UNDERWEAR, THE FECAL MATTER WOULD BE SMEARED ON
23 HIS FACE AS PUNISHMENT, DURING THAT PERIOD OF TIME.

24 ANOTHER INCIDENT THAT HE REMEMBERS ARE
25 THAT HIS HANDS WERE BURNED BECAUSE HE PLAYED WITH FIRE.
26 SO HIS HANDS WERE HELD OVER THE FIRE AND HE WAS NOT

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2940

1 PERMITTED TO TAKE HIS HANDS AWAY.

2 ANOTHER INCIDENT THAT RODNEY TALKS ABOUT
3 **IS AN INCIDENT WHERE HIS HANDS ARE ACTUALLY SPANKED**
4 **WITH THE WIRE BRUSH AND THEY ARE SO BADLY BRUISED THAT**
5 THE TEACHER NOTICES THEM IN SCHOOL AND SENDS HIM TO THE
6 NURSE. AT THAT TIME THEY CALL LORNA IN.

7 WE HAVE A SCHOOL REPORT FROM THE SOCIAL
8 WORKER THAT TALKS ABOUT THE BRUISES ON HIS HANDS. AT
9 THAT TIME, THE SCHOOL SUSPECTED CHILD ABUSE BECAUSE THE
10 BRUISES LOOKED AS THOUGH THEY MIGHT HAVE BEEN -- BUT
11 REMEMBER, THIS IS BACK IN 19 -- BETWEEN 1962 AND 1964,
12 WE DID NOT HAVE AS MUCH INFORMATION ABOUT CHILD ABUSE
13 AT THAT TIME AND WE DID NOT HAVE MANDATORY REPORTING
14 LAWS, SO THEY DIDN'T HAVE TO REPORT IT AT THAT TIME.
15 AND THAT INCIDENT WAS NOT REPORTED, ALTHOUGH WE HAVE A
16 LATER INCIDENT THAT WAS REPORTED.

17 SO RODNEY REMEMBERS THAT, IT IS IN THE
18 SCHOOL REPORTS. IN THE SCHOOL REPORTS LORNA ACTUALLY
19 ADMITS DOING IT, OR AT LEAST THE SCHOOL REPORT SAYS
20 **THAT SHE ADMITS DOING THAT.**

21 WE ALSO HAVE RODNEY'S -- ACTUALLY HIS
22 HANDS WERE HURT. THAT PARTICULAR INCIDENT WAS BECAUSE
23 HE DIDN'T DO THE HOUSEWORK HE WAS SUPPOSED TO DO, SOME
24 CHORES IN THE HOUSE, AND HE DIDN'T DO IT RIGHT, SO HE
25 GOT HIS HANDS HURT FOR THAT.

26 IN ADDITION WE HAVE -- I'M SORRY -- IN

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2941

1 THAT PARTICULAR INCIDENT LORNA DOES NOT SAY THAT SHE
2 DID THAT ONE. SHE SAID SHE DID ANOTHER ONE. SHE SAYS
3 IN THAT ONE THAT HE FELL AND THAT'S HOW HE HURT HIS
4 HANDS.

5 THEN WE HAVE ANOTHER INCIDENT WHERE
6 LORNA -- RODNEY REMEMBERS LORNA PULLING HIS THUMBS OUT
7 OF THE SOCKETS. AND WE HAVE A REPORT LATER ON FROM
8 ANOTHER DOCTOR WHO SEES THE THUMBS THAT LOOKED DEFORMED
9 FROM HAVING THAT DONE, AND RODNEY TELLS HIM AT THAT
10 TIME THAT HIS THUMBS WERE PULLED OUT OF THE SOCKETS.

11 ANOTHER INCIDENT THAT OCCURRED THEN WAS
12 THAT RODNEY HAD EATEN SOME CANDY AND HE WASN'T SUPPOSED
13 TO, AND LORNA MADE HIM EAT PRESERVES UNTIL HE WOULD
14 VOMIT FROM EATING SO MANY PRESERVES. AND THAT WAS USED
15 AS DISCIPLINE.

16 THERE WAS ALSO AN INCIDENT THAT WE KNOW
17 ABOUT THAT RODNEY WAS FOUND AT FOUR O'CLOCK IN THE
18 MORNING, WANDERING -- STANDING OUTSIDE IN FRONT OF THE
19 HOUSE AT THAT TIME OF THE MORNING AND HE SAYS THAT HE
20 WAS LOCKED IN A CLOSET, AND HE WAS OUTSIDE AT THAT
21 TIME.

22 IN 1964, WE HAVE THE FIRST OF A SERIES OF
23 REPORTS. THAT ONE IS FROM AN INCIDENT WHEN A NEXT
24 DOOR -- TOM IS BADLY BEATEN BY A BELT BUCKLE AND HE
25 RUNS NEXT DOOR TO A NEIGHBOR, THE SAME NEIGHBOR,
26 MRS. FELLOWS, WHO SAW RODNEY OUTSIDE AT FOUR O'CLOCK,

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2945

1 WELL.

2 SHE TOLD HIM SHE WANTED HIM TO LOOK LIKE A
3 GIRL AND WANTED HIM TO BE A GIRL. AND HE REMEMBERS HER
4 ACTUALLY TAKING A STRING AND TYING HIS PENIS BEHIND
5 HIM, PULLING IT IN BACK OF HIM SO YOU COULDN'T SEE THAT
6 HE HAD A PENIS IN THE FRONT OF HIM, AND TYING THE PENIS
7 TO HIS WAIST AND TELLING HIM HE LOOKED BETTER THAT WAY,
8 OBVIOUSLY A WAY TO CAUSE ALL KINDS OF GENDER CONFUSION
9 IN A CHILD OF THAT AGE. HE IS ABOUT TEN YEARS OLD WHEN
10 THIS WAS HAPPENING.

11 WHEN HE WAS TIED IN THE BASEMENT AND WOULD
12 URINATE OR DEFECCATE IN HIS PANTS, SHE WOULD TAKE THE
13 URINE OR FECAL MATTER, SMEAR IT ON HIS FACE. THEN SHE
14 MOVED INTO GIVING HIM ENEMAS, USING VASELINE AND TAKING
15 A TAMPON, AT FIRST JUST A CLEAN TAMPON, AND THEN SHE
16 WOULD USE HER OWN SOILED, BLOODY TAMPONS AND INSERT
17 THEM IN HIS ANUS. SO SHE WAS ACTUALLY SEXUALLY ABUSING
18 HIM BY PENETRATION AT THIS STAGE, SOMETIMES USING
19 VASELINE.

20 IN ADDITION, SHE WOULD MAKE HIM INSERT
21 TAMPONS IN HER VAGINA SO SHE WAS HAVING HIM TOUCH HER
22 AS WELL, AND SHE WOULD MAKE HIM FONDLE HER VAGINA AREA
23 AND HAVE HIM LICK HER VAGINA AREA SO SHE WOULD REACH A
24 CLIMAX. SO SHE IS USING HIM AND ABUSING HIM IN ALL THE
25 WAYS THAT YOU COULD SEXUALLY ABUSE A CHILD.

26 SHE WOULD ALSO MASTURBATE HIM AT THAT

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2946

1 AGE -- AS HE GOT OLDER, SOME OF IT IS PROGRESSING AS HE
2 GOT OLDER -- BETWEEN THE TWO-YEAR PERIOD OF TIME OF 10
3 AND 12, BUT NOT ALLOW HIM TO REACH AN ORGASM.

4 WHEN HE WAS A LITTLE OLDER AND HE WOULD
5 REACH AN ORGASM, SHE WOULD TAKE THE SEMEN AND SMEAR IT
6 ALL OVER HIS FACE AND HE WOULD BE PUNISHED FOR THAT.

7 IN ADDITION, IN ORDER TO PREVENT HIM FROM
8 REACHING A CLIMAX, SHE WOULD SQUEEZE HIS TESTICLES, AND
9 HE REMEMBERS THAT BEING DONE WITH GREAT PAIN TO HIM.

10 LATER ON, SHE WOULD HAVE INTERCOURSE WITH
11 HIM AND INSERT HIS PENIS IN HER VAGINA BUT NOT ALLOW
12 HIM TO REACH AN ORGASM.

13 WHAT RODNEY SAYS HE WOULD THEN DO WAS
14 AFTER SHE RELEASED HIM AND LET HIM GO TO HIS ROOM, HE
15 WOULD TAKE A PAIR OF HER PANTIES FROM THE HAMPER AND HE
16 WOULD MASTURBATE AND REACH AN ORGASM INTO THE PANTIES
17 AT THAT TIME.

18 NOW, THIS BEHAVIOR, ALL OF THIS SEXUAL
19 BEHAVIOR, STARTED FROM THE AGES OF 10 AND PROGRESSED
20 UNTIL HE WAS 12 YEARS OLD.

21 IN 1964, THE CHILD ABUSE REPORT -- AND
22 THEN SUBSEQUENTLY HE WAS PLACED IN A DETENTION HOME AND
23 THEN TO FOSTER HOMES, AND THEN UTAH STATE HOSPITAL,
24 RODNEY SAYS THAT THE SEXUAL ABUSE CONTINUED ALL THE WAY
25 THROUGH THE TIME HE WAS AT UTAH STATE HOSPITAL WHEN HE
26 WOULD COME HOME ON WEEKENDS OR VISITS, THAT SHE

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2958

1 FIRES. AND MR. ROWLEY, WHEN RODNEY COMES INTO UTAH
2 STATE HOSPITAL, ALSO STATES THIS INFORMATION.

3 IN ANOTHER REPORT FROM UTAH STATE HOSPITAL
4 BY DR. FAUX, WHO WAS THE PSYCHIATRIST AND THE DIRECTOR
5 OF THE PROGRAM, REPORTS THAT THERE IS A HISTORY OF
6 UNSUCCESSFUL FOSTER HOME PLACEMENT.

7 HE REPORTS THAT RODNEY HAS BEEN FOUND IN
8 SEX PLAY WITH VERY YOUNG CHILDREN, THAT HE IS DRESSING
9 IN WOMEN'S OR GIRLS' CLOTHES AND PANTIES WITH SANITARY
10 NAPKINS, AND THAT HE IS REPORTED BY DR. FAUX TO HAVE
11 BEEN A LIAR, A THIEF, AND A FIRE STARTER.

12 AND DR. FAUX TIES THAT TOGETHER, ALSO
13 REPORTING THAT THE DAD IS VERY DISTRESSED AND THAT
14 RODNEY IS -- THAT LORNA IS PSYCHOTIC, THAT SHE HAS
15 ACTUALLY BEEN A PROSTITUTE, AND THAT RODNEY HAS BEEN
16 VICTIMIZED BY THAT.

17 AND HE SAYS THAT HE'S GOING TO TREAT
18 RODNEY WITH STELAZINE, WHICH IS ONE OF THE MAJOR
19 CHEMICALS, DRUGS, TO TREAT PEOPLE WHO ARE SERIOUSLY
20 DISTURBED, AT THAT TIME. THIS IS IN SEPTEMBER OF 1964.

21 IN ADDITION, DR. FAUX SAYS THAT RODNEY
22 WANTS TO BE A GOOD BOY, THAT HE DENIES AND CRIES AT ANY
23 MENTION THAT HE MIGHT HAVE MOLESTED ANY CHILDREN. SO
24 HE DOESN'T HAVE ANY MEMORY OF THAT THERE.

25 THAT HE TRIES TO MINIMIZE THE BEATINGS
26 FROM LORNA. THAT HE WISHES THAT HIS PARENTS COULD GET

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2966

1 NOBODY REALLY KNEW ABOUT THAT AT THE TIME, AND SHE KNEW
2 ABOUT SOME OF THE PHYSICAL ABUSE.

3 RODNEY WAS DISCHARGED AT THAT TIME WITH A
4 PRESCRIPTION FOR MEDICATION AND SOME MEDICATION AND
5 MRS. MORRIS THREW IT AWAY. SHE DID NOT GIVE IT TO HIM.
6 AND WE SEE FROM THE RECORD SHE SAYS THAT, AND RODNEY
7 SAYS, HE DIDN'T WANT TO TAKE ANY MORE MEDICATION, AND
8 THERE'S A RECORD A LITTLE BIT LATER ON THAT SHE HAD NOT
9 HAD ANY INSTRUCTIONS AND HAD NOT FOLLOWED UP WITH ANY
10 OF THE CARE.

11 SO RODNEY THEN IS DISCHARGED AND WE'RE AT
12 THIS POINT NOW ON THE CHART, ON JUNE 10, 1966, AND HE
13 LIVES WITH HIS MOM AND STEPDAD UNTIL NOVEMBER 16TH OF
14 1967.

15 SO HE IS -- FROM 14 UNTIL ABOUT 15
16 AND-A-HALF YEARS OLD, HE LIVES ABOUT A YEAR AND-A-HALF,
17 HE LIVES IN LAS VEGAS, NEVADA. HE ATTENDS SCHOOL IN
18 LAS VEGAS, AND THERE ARE SOME RECORDS OF SCHOOL DURING
19 THAT PERIOD OF TIME, AND THERE'S EVIDENCE THAT HE'S NOT
20 LEARNING VERY MUCH, ALTHOUGH SOME, BUT NOT VERY MUCH
21 THEN.

22 THERE'S ALSO, DURING THIS PERIOD OF TIME
23 THERE'S A NOTE THAT RODNEY IS ACTUALLY SEEN WEARING AN
24 EYE PATCH TO SCHOOL THAT'S CUT OUT OF LADIES' PANTIES
25 AND THAT HE WEARS THAT OVER AN EYE. AND I'M NOT SURE
26 WHETHER IT WAS AT SCHOOL OR IN THE COMMUNITY, BUT HE IS

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1377

2974

1 OF 1970, RODNEY ENLISTS IN THE UNITED STATES MARINE
2 CORPS AND COMES TO CALIFORNIA. HE IS STATIONED IN SAN
3 DIEGO AND IS IN THE MARINES FOR, OH, ABOUT UNTIL
4 FEBRUARY 22ND OF 1971.

5 AND AT THAT TIME HE'S ARRESTED FOR ANOTHER
6 BURGLARY AND HE IS INCARCERATED AT THAT TIME. AND SO
7 HE DOES NOT GO BACK TO THE MARINE CORPS, AND HE IS
8 DISCHARGED FROM THE MARINE CORPS SHORTLY AFTER THAT.

9 RODNEY PLEADS GUILTY TO THAT BURGLARY AND
10 IS -- A MENTAL EVALUATION IS ORDERED AT THAT TIME AND
11 HE'S SENT TO CHINO WHERE THEY DO THOSE KINDS OF MENTAL
12 EVALUATIONS. AND AT THAT TIME HE SAID -- HE SAYS IT
13 HIMSELF, AND DR. NOBLE, WHO WAS THE PSYCHIATRIST, ALSO
14 SAYS IT, AND THE RECORDS SAY IT -- THAT HE IS A
15 COMPULSIVE BURGLAR AT THAT POINT, THAT HE CANNOT HELP
16 HIMSELF FROM STEALING.

17 AND THE RECORDS, AND RODNEY ALSO SAY, AT
18 THAT TIME, THIS IS IN 1971 WHEN HE IS 19 YEARS OLD,
19 THAT HE WANTS HELP, THAT HE IS LOOKING FOR HELP. HE
20 ASKS FOR HELP.

21 AND DR. NOBLE'S REPORT STATES THAT RODNEY
22 IS A PRODUCT OF AN EXTREMELY CHAOTIC HOME, THAT LORNA
23 WAS VICIOUS AND CRUEL. DR. NOBLE NOTES HIS DEFORMED
24 THUMBS. BUT ALSO DR. NOBLE STATES THAT RODNEY IS NOT
25 VIOLENT, BUT HE MUST HAVE PSYCHIATRIC HELP, AND
26 RECOMMENDS THAT HE GO TO ONE OF THE CALIFORNIA

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3011

1 HE'S AT SPRING MOUNTAIN HE ACTUALLY SAYS THAT HE WANTS
2 TO SEE THE COUNSELOR, THAT HE'S AFRAID THAT HE MIGHT
3 STEAL AGAIN IF HE GETS OUT, WHICH IS A VERY DIRECT
4 SPECIFIC WAY OF ASKING FOR HELP.

5 LATER ON, WHEN HE GOES FOR DIAGNOSTIC
6 EVALUATION AT CHINO, HE PLEADS FOR PSYCHOTHERAPY SAYING
7 THAT HE DOESN'T WANT TO STEAL, THAT HE REALLY WOULD
8 LIKE TO GET SOME THERAPY AND HELP FOR A BEHAVIOR HE
9 RECOGNIZES THAT HE COULDN'T CONTROL IT.

10 AGAIN IN 1974, WHEN HE IS ARRESTED AGAIN
11 FOR STEALING, HE PLEADS -- THE RECORD STATES THAT HE
12 PLEADS FOR PSYCHOTHERAPY.

13 IN 1976, AGAIN, HE PLEADS FOR
14 PSYCHOTHERAPY AT THAT TIME. AT THAT TIME THE RECORD
15 INDICATES HE'S GIVEN ANOTHER DRUG. THIS TIME HE'S
16 GIVEN LITHIUM CARBONATE, OFTEN GIVEN FOR PEOPLE WHO
17 HAVE MANIC DEPRESSION.

18 IN 1985 HE PLEADS, IN MAY OF 1985 HE --
19 THE CHILDREN ARE VERY ILL, THERE'S A LOT OF STRESS IN
20 THE FAMILY. HE GOES TO DR. SELDEN AND PLEADS FOR HELP
21 AGAIN, AND SPECIFICALLY TALKS ABOUT HAVING BEEN ABUSED
22 AS A CHILD AND HOW HE DOESN'T WANT TO REPEAT THAT KIND
23 OF ABUSE.

24 SO THOSE ARE SOME OF THE AREAS WHERE HE
25 DOES ASK VERY DIRECTLY MORE FOR HELP AND DOES NOT GET
26 ANY OF THE KIND OF HELP THAT WOULD HAVE MADE A

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COPY

CRIM NO. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF & RESPONDENT,

-VS-

RODNEY GENE BEELER,

DEFENDANT & APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

JOHN VAN DE KAMP
ATTORNEY GENERAL
110 WEST "A" STREET
SUITE 700
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

RODNEY GENE BEELER
DEFENDANT IN PRO PER
SAN QUENTIN STATE PRISON
SAN QUENTIN, CALIFORNIA 94964

M. ARMELLA MARTIN, CSR #2115
D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

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DATE: JULY 6, 1988

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VOLUME 15

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE	)	
STATE OF CALIFORNIA,	)	
	)	
VS.	)	NO. C-60966
	)	
RODNEY GENE BEELER,	)	
	)	
DEFENDANT.	)	

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING
REPORTERS' DAILY TRANSCRIPT
WEDNESDAY, JULY 6, 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE: CECIL HICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

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M. ARMELLA MARTIN, CSR #2115
OFFICIAL COURT REPORTER

M. ARMELLA MARTIN / D. JEAN RANDALL, OFFICIAL COURT REPORTERS

6-ER-1381

3072

1 OF THEMSELVES ARE NOT SIGNIFICANT. THEY ONLY BECOME
2 SIGNIFICANT IF SOMEBODY GOES ON TO STEALING MAJOR KINDS
3 OF THINGS LATER.

4 Q IF SOMEBODY NEEDED A PIECE OF CHALK, SAY
5 THEY NEEDED ONE, OR AN ERASER OR CANDY BAR AT A YOUNG
6 AGE, AND THEY STOLE IT, JUST THE VALUE OF IT DOESN'T
7 HAVE SIGNIFICANCE, DOES IT, JUST THE FACT THAT THE
8 VALUE OF IT IS LITTLE, IS MINIMAL, THAT IN AND OF
9 ITSELF DOESN'T HAVE AS SIGNIFICANCE, DOES IT?

10 A IT COULD.

11 Q WOULD YOU WANT TO KNOW WHAT A PERSON DOES
12 WITH THE ITEMS THAT THEY STEAL TO DETERMINE WHAT THE
13 MOTIVATION IS BEHIND IT?

14 A THAT WOULD BE PART OF WHAT I'D WANT TO
15 KNOW.

16 Q DID YOU HAPPEN TO ASK MR. BEELER WHAT HE
17 DID WITH THE LOOT THAT HE WOULD STEAL IN HIS
18 BURGLARIES?

19 A AS A CHILD?

20 Q FROM A CHILD UP TO HIS ADULT -- TO NOW?

21 A WE TALKED ABOUT SOME OF THEM.

22 Q AND DID YOU COME TO -- WELL, HOW ABOUT,
23 DID YOU TALK TO HIM ABOUT THE TYPE OF LOOT THAT HE
24 WOULD STEAL?

25 A SOME OF THAT.

26 Q OKAY. AND DID YOU COME TO A CONCLUSION

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3073

1 THAT IT WAS NOT GREED, HIS STEALING?

2 A THE PRIMARY MOTIVE, IN MY OPINION, WAS NOT
3 GREED.

4 Q AND THAT WAS BASED ON SOME OF THE THINGS
5 THAT HE TOLD YOU ABOUT THE SEXUAL ABUSE THAT HE WENT --
6 THAT WAS PERPETRATED UPON HIM BY LORNA; IS THAT RIGHT?

7 A NO, IT WAS BASED ON THE COMPULSIVE NATURE
8 OF THE BURGLARIES, THE FACT THAT HE COULD NOT CONTROL
9 HIMSELF.

10 AND THE FACT THAT HE WOULD -- HE TOLD ME
11 THAT HE WOULD OFTEN WAKE UP IN A MIDDLE OF A BURGLARY
12 AND NOT KNOW HOW HE GOT THERE OR NOT KNOW WHAT HE WAS
13 DOING THERE.

14 SO THAT HE HAD MEMORY LOSSES FOR PARTS OF
15 THE TIME HE WOULD BE DISSOCIATING.

16 Q DIDN'T YOU WRITE IN YOUR NOTES THAT
17 MR. BEELER TOLD YOU THAT HE GOT HIGH OFF OF BURGLARIES?

18 A I MAY HAVE.

19 Q DO YOU RECALL WRITING IN YOUR NOTES ON
20 PAGE 512 THAT HE ENJOYED THE FEELING OF DANGER IN THOSE
21 BURGLARIES?

22 A (WITNESS VIEWS DOCUMENT.) FIVE THIRTEEN?

23 Q YES. IT'S IN THE ONE LITTLE SECTION RIGHT
24 THERE.

25 A IT'S 5.3.

26 Q IT SAYS --

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3115

1 A YES, I HAVE.

2 Q AND HAVE YOU TALKED TO MR. BEELER ABOUT
3 SEXUAL ABUSE?

4 A YES, I HAVE.

5 Q AND CAN YOU DESCRIBE BRIEFLY -- WELL,
6 STRIKE THAT.

7 DID YOU REVIEW THE CHRONOLOGY OF FOSTER
8 HOME PLACEMENTS, UTAH STATE HOSPITAL, AND THE OTHER
9 COMMITMENTS?

10 A YES, I DID.

11 Q AND CAN YOU TELL US WHAT EFFECT YOU WOULD
12 EXPECT FROM THE TYPES OF PHYSICAL, MENTAL, AND SEXUAL
13 ABUSE THAT YOU'VE OBSERVED?

14 A GIVEN THE NATURE, THE PROLONGED
15 ADMINISTRATION AND THE SEVERITY OF THE MENTAL, THE
16 PHYSICAL, AND THE SEXUAL ABUSE, I WOULD SAY THAT TAKEN
17 ALL TOGETHER, IT WAS ALMOST AN IMPOSSIBLE GROUP OF
18 EXPERIENCES TO RECOVER FROM.

19 THE PHYSICAL ABUSE ALONE, WHICH HIS
20 STEPMOTHER ADMITTED TO ME WHEN I SAW HER IN UTAH
21 ITSELF, WAS PROFOUND AND EXTREME, BEING TIED TO POLES
22 AND WHIPPED WITH BRUSHES AND A VARIETY OF OTHER THINGS,
23 BEING LOCKED UP IN THE CLOSET IN THE CELLAR FOR
24 PROLONGED PERIODS, PROFOUND PHYSICAL ABUSE WHICH WAS
25 VERY MUCH KNOWN TO THE COURTS.

26 HE WAS FOUND ORIGINALLY WITH BRUISES IN

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CRIM NO. _____

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF & RESPONDENT,

-VS-

RODNEY GENE BEELER,

DEFENDANT & APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

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D. JEAN RANDALL, CSR #2498
JENEE STAPLETON, CSR # 5446
OFFICIAL COURT REPORTERS

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VOLUME 16

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE
STATE OF CALIFORNIA,

VS.

ROONEY GENE BEELER,

PLAINTIFF,

DEFENDANT.

NO. C-60966

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTERS' DAILY TRANSCRIPT

THURSDAY, JULY 7, 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE:

CECIL HICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT:

BY: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

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D. JEAN RANDALL, CSR #2498
OFFICIAL COURT REPORTERS

M. ARMELLA MARTIN / D. JEAN RANDALL, OFFICIAL COURT REPORTERS

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3242

1 DISCUSS THE CASE WHEN THEY ARE NOT ACTIVELY IN THE JURY
2 ROOM, ALL TWELVE TOGETHER. BE CAREFUL THAT YOU TAKE A
3 RECESS DURING THE TIME YOU ARE ON DELIBERATION THAT YOU DO
4 NOT CALL ONE ANOTHER UP AND TALK INDEPENDENTLY.

5 YOU ARE NOW IN DELIBERATION. WE WILL WORK
6 UNTIL 4:00 OR 4:30. IF YOU DO NOT REACH A VERDICT TODAY,
7 WE WILL BEGIN MONDAY MORNING AND CONCLUDE WHEN YOU HAVE
8 REACHED YOUR VERDICT.

9 COURT'S NOW IN RECESS.

10 20-MINUTE CALL TO COUNSEL.

11 COUNSEL ARE NOW REQUIRED TO GO OVER ALL THE
12 EVIDENCE TO MAKE SURE ONLY EVIDENCE PROPERLY ADMITTED GOES
13 TO THE JURY ROOM. YOU CAN DO THAT NOW.

14 MR. BARNETT: THE --

15 THE COURT: WE'RE OFF THE RECORD.

16 (EVENING ADJOURNMENT.)
17
18
19
20
21
22
23
24
25
26

D. JEAN RANDALL, C.S.R., OFFICIAL COURT REPORTER

6-ER-1387

3243

SANTA ANA, CALIFIORNIA - TUESDAY, JULY 12, 1988

MORNING SESSION

(THE FOLLOWING PROCEEDINGS WERE HAD IN
CHAMBERS:

THE COURT: WE'RE ON RECORD OUT OF THE PRESENCE
OF ALL THE OTHER JURORS. JUROR NUMBER 8 IS PRESENT.
GIVE ME YOUR NAME, PLEASE.

JUROR COLEY: MICHAEL P. COLEY.

THE COURT: JUROR COLEY CALLED IN THIS MORNING,
INDICATED THERE WAS A DEATH IN THE FAMILY. OTHER THAN
THAT, NO OTHER FORMAL MESSAGE OTHER THAN HE EXPECTED TO
FLY OUT OF STATE AT TWO O'CLOCK IN THE AFTERNOON TODAY.

I ASKED THE CLERK TO GET HOLD OF HIM AND
FIND OUT THE PARTICULARS OF IT. COURT CALLED BOTH
COUNSEL. NEITHER HAVE HONORED THEIR 20-MINUTE CALL.
THEY'VE GONE TO WESTMINSTER COURT. THE COURT HAS BEEN
ABLE TO CONTACT ONE OF THE PARTIES, I BELIEVE, AND THEY
WERE BEYOND AN HOUR LIMIT.

THE COURT IS GOING TO CAUSE THE JURY TO
BEGIN DELIBERATIONS AGAIN. I'M SIMPLY MAKING A RECORD
OF THE INFORMATION THAT I'VE RECEIVED FROM THIS JUROR,
AND THAT IS THAT THE FAMILY MEMBER THAT IS DECEASED IS
HIS FATHER, THEY HAVE A CLOSE RELATIONSHIP, HE NEEDS TO
BE THERE, AND HE WILL BE BACK -- MONDAY?

JUROR COLEY: MONDAY.

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3249

1 PREDICT THE IMPACT OF THE DEATH OF A FAMILY MEMBER, NO
2 MAY FOR COUNSEL, THE COURT, OR THE JUROR HIMSELF, THE
3 EFFECT THAT MAY HAVE ON HIM IN THE PENALTY PHASE OF A
4 DEATH CASE.

5 THE COURT: DOES THE DEFENSE REQUEST THE COURT
6 TO TELL ALL THE JURORS, OR JUST MR. COLEY, THAT THE
7 COURT WAS IN ERROR, THAT THE ATTORNEYS HAD NOT
8 DISHONORED THEIR 20-MINUTE CALL?

9 MR. BARNETT: WELL, YOUR HONOR, I THINK THAT THE
10 COURT COULD INQUIRE OF MR. COLEY IF HE'S MENTIONED IT,
11 BECAUSE THEN THE COURT IS --

12 THE COURT: OKAY. ANYTHING ELSE?

13 MR. BARNETT: NO, YOUR HONOR.

14 THE COURT: PEOPLE?

15 MR. MIDDLETON: NOTHING YOUR HONOR.

16 THE COURT: OKAY. WE WILL RECONVENE AT 11:00
17 WITH THE JURY IN OPEN COURT.

18 (RECESS TAKEN.)

19 THE COURT: WE'RE BACK ON THE RECORD OUT OF THE
20 PRESENCE OF THE JURY. THE DEFENDANT IS PRESENT. THE
21 COURT HAS JUST BEEN INFORMED BY THE BAILIFF THAT THE
22 JURY HAS REACHED A VERDICT.

23 MR. BARNETT.

24 MR. BARNETT: TWO POINTS, YOUR HONOR. ONE, I
25 OBJECT TO THIS VERDICT, I THINK IT'S COERCED, FOR THE
26 REASONS I STATED EARLIER.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

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3253

1 SUBSEQUENTLY TO THE CLERK.

2 THE COURT: THE COURT IS GOING TO CAUSE THIS
3 JURY TO BE POLLED UPON A READING OF THE VERDICT. THE
4 DEFENDANT MAY REMAIN SEATED WHILE THE VERDICT IS READ.

5 WE'LL GO THROUGH THE SAME PROCEDURE AS WE
6 DID IN THE GUILT PHASE; AFTER THE VERDICT IS READ, WE
7 WILL THEN POLL THE JURY IN THE SAME MANNER THAT WE DID.
8 IF IT IS YOUR VERDICT, EACH INDIVIDUAL JUROR, ON BEING
9 ASKED INDIVIDUALLY IF IT IS YOUR VERDICT, WILL ANSWER
10 YES. IF IT IS NOT YOUR VERDICT IN ANY WAY, YOU WILL
11 ANSWER NO.

12 THE CLERK WILL NOW READ THE VERDICT IN ITS
13 ENTIRETY.

14 THE CLERK: (READING:)

15 "IN THE SUPERIOR COURT
16 OF THE STATE OF CALIFORNIA, IN AND
17 FOR THE COUNTY OF ORANGE. THE PEOPLE
18 OF THE STATE OF THE CALIFORNIA,
19 PLAINTIFF VERSUS RODNEY GENE BEELER,
20 DEFENDANT.

21 "NUMBER C-60966.
22 DETERMINATION OF PENALTY.

23 "WE THE JURY IN THE
24 ABOVE-ENTITLED ACTION, FIND THAT THE
25 PENALTY TO BE IMPOSED UPON THE
26 DEFENDANT, RODNEY GENE BEELER, IS

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

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3254

1 DEATH.

2 "DATED JULY 12, 1988.

3 SIGNED PHILIP WILCOX, FOREMAN.

4 THE COURT: INQUIRE OF THE JURY.

5 THE CLERK: LADIES AND GENTLEMEN OF THE JURY, IS
6 THIS YOUR VERDICT?

7 THE JURY: (IN UNISON) YES.

8 THE COURT: POLL THE JURY. HANG ON JUST A
9 MINUTE.

10 WILL COUNSEL STIPULATE THAT THE POLLING IS
11 APPROPRIATE BY THE CLERK SIMPLY ASKING EACH INDIVIDUAL
12 JUROR BY NAME IF THIS IS THEIR VERDICT AS TO PENALTY?

13 MR. MIDDLETON: YES.

14 MR. BARNETT: YES.

15 THE COURT: STIPULATION IS ENTERED. AND NOW WE
16 WILL BEGIN THE POLLING PROCESS.

17 POLL THE JURY.

18 THE CLERK: ROBERT BELL, IS THIS YOUR VERDICT?

19 JUROR BELL: YES.

20 THE CLERK: LOIS LYON, IS THIS YOUR VERDICT?

21 JUROR LYON: YES.

22 THE CLERK: DEBORAH SPERBERG, IS THIS YOUR
23 VERDICT?

24 JUROR SPERBERG: YES.

25 THE CLERK: WALTER PULIS, IS THIS YOUR VERDICT?

26 JUROR PULIS: YES.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1391

3264

1 SANTA ANA, CALIFORNIA, FRIDAY SEPTEMBER 2, 1988

2 MORNING SESSION

3
4 (THE FOLLOWING PROCEEDINGS WERE HAD IN
5 OPEN COURT:)

6 THE COURT: PEOPLE VS. BEELER. APPEARANCES,
7 PLEASE.

8 MR. STANDIFER: OTHA STANDIFER FOR MR. BEELER.

9 THE COURT: THIS IS THE DATE SET FOR SENTENCING.
10 GO AHEAD.

11 MR. STANDIFER: YOUR HONOR, WE HAD PLANNED TO
12 PRESENT TWO MOTIONS TODAY; TO MODIFY THE VERDICT AND
13 FOR A NEW TRIAL, THE REASONS HAVE TO DO WITH
14 ACQUISITION OF DOCUMENTS. WE'RE NOT PREPARED TO
15 PROCEED.

16 I MENTIONED THIS TO THE PROSECUTOR WHO'S
17 AGREED TO CONTINUE THE CASE FOR APPROXIMATELY TWO
18 MONTHS, IF THAT'S AGREEABLE WITH THE COURT.

19 THE COURT: I DON'T HAVE A PROBLEM WITH THAT.
20 WHAT DATE DO YOU WANT?

21 MR. STANDIFER: FRIDAY, THE 4TH OF NOVEMBER,
22 YOUR HONOR.

23 THE COURT: SO ORDERED. TAKE YOUR TIME WAIVER.

24 MR. STANDIFER: MR. BEELER, YOU HAVE A RIGHT TO
25 BE SENTENCED WITHIN 18 DAYS OF THE JURY'S VERDICT. DO
26 YOU GIVE UP THAT RIGHT AND AGREE THAT YOUR SENTENCING

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3265

1 CAN BE CONTINUED TO NOVEMBER 4?

2 THE DEFENDANT: YES.

3 THE COURT: TIME IS WAIVED BY THE DEFENDANT.

4 MATTER IS SET NOVEMBER 4. PARTIES ARE ORDERED PRESENT
5 THAT DATE.

6 MR. MIDDLETON: YOUR HONOR, THERE IS ONE OTHER
7 MATTER. THE PEOPLE ARE REQUESTING TO TAKE OUT OF
8 EVIDENCE THE CAMERA AND THE CASE IN PEOPLE'S 65 AND
9 REPLACE IT WITH A PHOTOGRAPH I'VE TAKEN, WITH ALSO A
10 STIPULATION AS TO THE SERIAL NUMBERS. I THINK DEFENSE
11 IS GOING TO STIPULATE TO THAT, AND THAT THE SERIAL
12 NUMBER THAT IS ON THE CAMERA REPRESENTED IN THE
13 PICTURES BEING PLACED IN EVIDENCE AS PEOPLE'S 65 IS
14 113203 AND THE SERIAL NUMBER FOR THE LENS IS A90192355.

15 THE COURT: THE MAKE OF THE CAMERA IS WHAT?
16 WHAT KIND OF CAMERA IS IT?

17 MR. MIDDLETON: IT'S A YOSHICA CAMERA.

18 MR. STANDIFER: AND LENS.

19 MR. MIDDLETON: AND LENS.

20 THE COURT: SO STIPULATED?

21 MR. STANDIFER: YES.

22 THE COURT: UPON STIPULATION BY COUNSEL, THE
23 DEFENDANT BEING PRESENT, IT IS SO ORDERED. HAVE A GOOD
24 DAY.

25 (MATTER CONTINUED TO NOVEMBER 4, 1989.)
26

M. ARNELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

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3266

1 SANTA ANA, CALIFORNIA - FRIDAY, NOVEMBER 4, 1988
2 MORNING SESSION

3
4 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN
5 COURT:)

6 THE BAILIFF: REMAIN SEATED, COME TO ORDER. COURT
7 IS AGAIN IN SESSION.

8 THE COURT: PEOPLE VERSUS RODNEY GENE BEELER.

9 MR. MIDDLETON: CHARLES MIDDLETON FOR THE PEOPLE.

10 MR. STANDIFER: OTHA STANDIFER FOR THE DEFENDANT
11 WHO IS PRESENT HERE IN CUSTODY.

12 THE COURT: THIS IS THE DATE SET FOR MOTION FOR NEW
13 TRIAL, MODIFICATION OF JUDGMENT AND FOR SENTENCING.
14 MR. STANDIFER.

15 MR. STANDIFER: YES, SIR. AS I PREVIOUSLY INFORMED
16 YOUR HONOR AND PROSECUTOR I AM MOVING FOR A CONTINUANCE OF
17 THOSE HEARINGS.

18 THE COURT: STATE YOUR GROUNDS.

19 MR. STANDIFER: THANK YOU.

20 THIS CASE WAS CONTINUED TO THIS DATE FOR THE
21 PURPOSE -- FROM SEPTEMBER THE 2ND. THE THING WHICH HAS
22 HAPPENED WHICH HAS CAUSED ME NOT TO BE PREPARED FOR THIS
23 SENTENCING AND THESE MOTIONS TODAY, PRINCIPAL REASON FOR
24 THAT IS A CASE CALLED PEOPLE VERSUS ROBERT PADUANO,
25 P-A-D-U-A-N-O, THAT CASE BECAUSE OF A SERIES OF PROCEDURAL
26 IRREGULARITIES OR DIFFICULTIES WAS SET FOR TRIAL ON A DATE

6-ER-1394

3271

1 HONOR?

2 THE COURT: YES.

3 MR. STANDIFER: MY REQUEST IS THAT I FILE THE
4 MOTIONS ON THAT DAY. I AM ASSUMING THE PROSECUTOR WILL
5 WANT SOME TIME, AT LEAST, TO READ THEM AND PERHAPS
6 RESPOND, I WILL LEAVE THAT UP TO HIM BUT THAT'S THE DAY
7 THAT I WOULD LIKE TO FILE THE MOTIONS AND SET THE HEARING
8 ACCORDING TO --

9 THE COURT: SAY THE DAY AGAIN, PLEASE.

10 MR. STANDIFER: DECEMBER THE 16TH, IT'S A FRIDAY.

11 THE COURT: NO REASON WHY WE COULDN'T DO IT ON THE
12 23RD OF DECEMBER.

13 MR. STANDIFER: AS OF THE 16TH, YOUR HONOR, I WILL
14 BE PREPARED, I JUST QUESTION WHETHER THE PROSECUTOR WILL
15 WANT TO DO IT THAT SOON.

16 THE COURT: WHY DON'T WE SET IT ON THE 16TH AND WE
17 WILL LET MR. MIDDLETON WING IT IF HE WANTS AND IF HE
18 DEMANDS A CONTINUANCE THE COURT WILL BE MINDFUL OF THE
19 FACT THAT HE MAY HAVE SOME PROBLEMS AND NEED TO RESPOND IN
20 WRITING.

21 MR. MIDDLETON: OKAY.

22 THE COURT: THE MATTER WILL BE SET ON THE 16TH OF
23 DECEMBER, 9:00 IN THE MORNING, THIS DEPARTMENT. TIME
24 WAIVER BY THE DEFENDANT.

25 MR. STANDIFER: THANK YOU, YOUR HONOR.

26 MR. BEELER, YOUR SENTENCING IS SET TODAY, YOU

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3290

1 BUT AS FAR AS SHOTGUNNING IT, THAT'S ALL I
2 HAVE FOR THIS.

3 THE COURT: WHAT IS THE SPECIFIC DEFENSE
4 REQUEST, MR. BARNETT?

5 MR. BARNETT: THAT WE BE PERMITTED A CONTINUANCE
6 TO JANUARY 20TH TO EXPLORE THE INFORMATION THAT WE JUST
7 RECEIVED.

8 THE COURT: MR. MIDDLETON, YOU MAY BE HEARD.

9 MR. MIDDLETON: YOUR HONOR, I OBJECT -- WELL,
10 NOT KNOWING WHAT INFORMATION HE'S JUST RECEIVED, UNLESS
11 IT'S DEALING WITH THE MEDICAL RECORDS, THE DEFENDANT
12 HAS HAD THAT INFORMATION THE WHOLE TIME BECAUSE HE
13 HIMSELF IS THE ONE THAT HAS TO DO WITH THIS. BUT I
14 WOULD OBJECT TO A CONTINUANCE.

15 THE COURT: IS THERE A REASON THAT -- WELL, I
16 PRESUME THE REASON THAT THERE WAS NOT FILED A WRITTEN
17 MOTION FOR MODIFICATION OF JUDGMENT AND FOR NEW TRIAL
18 WAS BECAUSE OF THE TACTICAL DECISION NOT TO ALERT THE
19 PROSECUTION OF WHAT IT WAS THE DEFENSE INTENDED TO
20 OFFER IN THOSE NOTIONS ORALLY.

21 SO WITH THAT STATEMENT AND BENEVOLENT
22 UNDERSTANDING OF THE DEFENSE POSITION, THE COURT, OVER
23 OBJECTION OF THE PROSECUTION, WILL SET THIS CASE DOWN
24 FOR JANUARY 20TH, HOPEFULLY, THE LAST CONTINUANCE FOR
25 THE DEFENDANT.

IT'S THE COURTS EXPECTATION THAT WE WILL

H. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

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3291

1 CONCLUDE ALL MATTERS ON THAT DATE. IN OTHER WORDS,
2 DON'T ASK FOR ANOTHER CONTINUANCE UNLESS YOU'VE GOT
3 SOME REAL DYNAMITE REASONS.

4 MR. MIDDLETON: YOUR HONOR, I HAVE --

5 THE COURT: YOU NEED ANOTHER DATE? THEY'LL BE
6 HAPPY TO GO ANOTHER DATE.

7 MR. MIDDLETON: I HAVE A PRELIMINARY HEARING AND
8 ALSO ANOTHER SENTENCING IN THE COURT NEXT DOOR ON THAT
9 DATE.

10 THE COURT: JANUARY 27TH?

11 MR. MIDDLETON: THAT WOULD BE BETTER.

12 THE COURT: DEFENSE?

13 MR. BARNETT: THAT'S FINE.

14 THE COURT: TAKE YOUR TIME WAIVER.

15 MR. BARNETT: MR. DEELERE, YOU UNDERSTAND YOU
16 HAVE A RIGHT TO BE SENTENCED TODAY?

17 THE DEFENDANT: YES, I DO

18 MR. BARNETT: ARE YOU WILLING TO GIVE UP THAT
19 RIGHT AND AGREE TO HAVE YOUR MATTER HEARD, MOTION FOR
20 NEW TRIAL, MODIFICATION OF JUDGMENT, AND SENTENCING, TO
21 JANUARY TWENTY--

22 THE COURT: --SEVENTH.

23 MR. BARNETT: --SEVENTH?

24 THE DEFENDANT: YES.

25 THE COURT: TIME IS WAIVED. WAIVER IS NOTED FOR
26 THE RECORD.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1397

3293

SANTA ANA, CALIFORNIA - FRIDAY, JANUARY 27 1996

MORNING SESSION

(THE FOLLOWING PROCEEDING

OPEN COURT:)

THE COURT: PEOPLE VS. BEELER. APPEARANCES,
PLEASE.

MR. BARNETT: JOHN BARNETT FOR MR. BEELER. HE'S
PRESENT, IN CUSTODY.

MR. MIDDLETON: CHARLES MIDDLETON FOR THE
PEOPLE.

MR. BARNETT: YOUR HONOR, TODAY IS SET FOR
SENTENCING; HOWEVER, WE ARE IN THE PROCESS OF OBTAINING
ADDITIONAL EXPERT INFORMATION BASED ON TESTS YET TO BE
COMPLETED, AND I ANTICIPATE THAT THE TESTS WILL BE
COMPLETED BY THE END OF FEBRUARY AND I'M ASKING FOR
MARCH 24TH FOR SENTENCING.

THE COURT: WHAT WAS THE DATE OF THE VERDICT,
APRIL 1ST? DO YOU KNOW?

MR. BARNETT: I DON'T HAVE THE DATE OF VERDICT.

THE COURT: I MEAN IT WOULD BE KIND OF POETIC TO
MAKE IT ACTUALLY A YEAR, WOULDN'T IT.

MR. BARNETT: WELL, CERTAINLY, YOUR HONOR; THAT
WOULD BE A SATURDAY BUT --

THE COURT: I COULD COME IN FOR THIS. THIS IS
AN IMPORTANT DAY.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1398

CORRECTED PAGE

3295

CALIFORNIA - FRIDAY, MARCH 24, 1989

MORNING SESSION

(THE FOLLOWING PROCEEDINGS WERE HAD IN
OPEN COURT:)

THE COURT: PEOPLE VS. RODNEY GENE BEELER.
APPEARANCES, PLEASE.

MR. MIDDLETON: CHARLES MIDDLETON FOR THE
PEOPLE.

MR. BARNETT: JOHN BARNETT FOR MR. BEELER. HE'S
PRESENT, IN CUSTODY. YOUR HONOR, I RECEIVED WEDNESDAY
NIGHT A REPORT FROM A PHYSICIAN INDICATING THAT MR.
BEELER MAY HAVE ORGANIC BRAIN DAMAGE AND I'M ASKING
THAT THE MOTION FOR NEW TRIAL AND SENTENCING BE
CONTINUED TO MAY 5.

THE COURT: AND WHY DO YOU NEED THAT MUCH TIME?

MR. BARNETT: BECAUSE, YOUR HONOR, THE POSITRON
EMISSION TOMOGRAPHY RESULTS, OR A PORTION OF THOSE
RESULTS, WERE JUST GIVEN TO ME WEDNESDAY NIGHT BY
DR. BUSCHBAUM AND HE NEEDS ADDITIONAL TIME TO ANALYZE
AND PERFORM SOME ADDITIONAL CALCULATIONS ON THE
RESULTS.

HE HAS GIVEN ME A REPORT, AN ORAL REPORT,
AND SOME DOCUMENTS WHICH INDICATE HIS CONCLUSIONS
REGARDING BRAIN DAMAGE AND I NEED TO HAVE HIM FINALIZE
THOSE CONCLUSIONS AND RESULTS AND I NEED TO HAVE THOSE

6-ER-1399

3295

1 SANTA ANA, CALIFORNIA - FRIDAY, MARCH 24, 1989

2 MORNING SESSION

3
4 (THE FOLLOWING PROCEEDINGS WERE HAD IN
5 OPEN COURT:)

6 THE COURT: PEOPLE VS. RODNEY GENE BEELER.
7 APPEARANCES, PLEASE.

8 MR. MIDDLETON: CHARLES MIDDLETON FOR THE
9 PEOPLE.

10 MR. BARNETT: JOHN BARNETT FOR MR. BEELER. HE'S
11 PRESENT, IN CUSTODY. YOUR HONOR, I RECEIVED WEDNESDAY
12 NIGHT A REPORT FROM A PHYSICIAN INDICATING THAT MR.
13 BEELER MAY HAVE ORGANIC BRAIN DAMAGE AND I'M ASKING
14 THAT THE MOTION FOR NEW TRIAL AND SENTENCING BE
15 CONTINUED TO MAY 5.

16 THE COURT: AND WHY DO YOU NEED THAT MUCH TIME?

17 MR. BARNETT: BECAUSE, YOUR HONOR, THE POSITRON
18 EMISSION TOMOGRAPHY RESULTS, OR A PORTION OF THOSE
19 RESULTS, WERE JUST GIVEN TO ME WEDNESDAY NIGHT BY DR.
20 BUSHBAUM (PHONETIC SPELLING) AND HE NEEDS ADDITIONAL
21 TIME TO ANALYZE AND PERFORM SOME ADDITIONAL
22 CALCULATIONS ON THE RESULTS.

23 HE HAS GIVEN ME A REPORT, AN ORAL REPORT,
24 AND SOME DOCUMENTS WHICH INDICATE HIS CONCLUSIONS
25 REGARDING BRAIN DAMAGE AND I NEED TO HAVE HIM FINALIZE
26 THOSE CONCLUSIONS AND RESULTS AND I NEED TO HAVE THOSE

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1400

3297

1 HAVE YOUR MOTION FOR NEW TRIAL TO BE HEARD TODAY AND TO
2 BE SENTENCED TODAY?

3 THE DEFENDANT: YES.

4 MR. BARNETT: ARE YOU WILLING TO GIVE UP THAT
5 RIGHT AND HAVE THOSE MATTERS CONTINUED TO MAY 5?

6 THE DEFENDANT: YES.

7 MR. BARNETT: YOU UNDERSTAND THAT YOU PREVIOUSLY
8 WAIVED TIME OR YOUR RIGHT TO BE SENTENCED UP UNTIL
9 TODAY AND THIS IS AN ADDITIONAL TIME WAIVER WITHOUT
10 WHICH THE CASE WOULD PROCEED TODAY?

11 THE DEFENDANT: YES, SIR.

12 MR. BARNETT: I JOIN.

13 THE COURT: I'M GOING TO SUGGEST THAT THE
14 PROSECUTOR NOTIFY THE VICTIMS THAT WE WILL PROBABLY GO
15 ON THE 5TH. IN OTHER WORDS, I ALLOW THE CONTINUANCE TO
16 THIS DATE WITH THE EXPECTATION THAT WE WILL GO FORWARD
17 THAT DAY. SO LET'S NOT COME TO THE COURTROOM AGAIN
18 WITH THE COURTROOM FILLED WITH VICTIMS AND ASK FOR A
19 CONTINUANCE AGAIN.

20 TIME WAIVER NOTED FOR THE RECORD.

21 (CASE CONTINUED TO MAY 5, 1989.)
22
23
24
25
26

M. ARHELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1401

3298

1 SANTA ANA, CALIFORNIA - FRIDAY, MAY 3, 1989
2 MORNING SESSION

3
4 (THE FOLLOWING PROCEEDINGS WERE HAD IN
5 OPEN COURT:)

6 THE COURT: GOOD MORNING PEOPLE VS. RODNEY GENE
7 BEELER. APPEARANCES, PLEASE.

8 MR. MIDDLETON: CHARLES MIDDLETON FOR THE
9 PEOPLE.

10 MR. STANDIFER: OTHA STANDIFER AND JOHN BARNETT
11 FOR THE MR. BEELER, WHO IS PRESENT IN COURT IN CUSTODY.

12 THE COURT: GOOD MORNING, GENTLEMEN. THIS IS
13 THE DATE SET FOR THE MOTION FOR NEW TRIAL, MODIFICATION
14 OF JUDGMENT, AND SENTENCING SHOULD THOSE MOTIONS BE
15 DENIED. AND I UNDERSTAND THE DEFENSE ONCE AGAIN WISHES
16 TO TO APPLY FOR CONTINUANCE.

17 YOU MAY BE HEARD.

18 MR. STANDIFER: YES, YOUR HONOR. I STATED MY
19 GROUNDS IN THE DECLARATION I FILED TODAY. AS THE COURT
20 IS AWARE, I GAVE THE COURT AND THE PROSECUTOR A DRAFT
21 OF THAT MOTION, OF THAT DECLARATION YESTERDAY
22 AFTERNOON.

23 THE COURT: I DIDN'T KNOW WHAT THAT WAS, BUT NOW
24 THAT I'VE SEEN THE MOTION, I REALIZE IT WAS A DRAFT. I
25 THOUGHT IT WAS SERRATED PAPER PERHAPS.

26 MR. STANDIFER: THE GROUNDS FOR THE CONTINUANCE

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1402

3299

1 I'VE STATED, I BELIEVE, AS FULLY AS I CAN IN THE
2 DECLARATION. I WOULD JUST SUMMARIZE FOR THE COURT THAT
3 THE MATTER WAS ORIGINALLY CONTINUED FOR THE PURPOSES OF
4 CERTAIN TESTING IN JANUARY. WE DID EVERYTHING WE COULD
5 TO GET THOSE TESTS DONE AS QUICKLY AS THEY COULD BE
6 DONE -- THERE WAS SOME MIX-UP AT THE JAIL GETTING HIM
7 TO HIS FIRST APPOINTMENT, IT WAS RESCHEDULED, AS
8 QUICKLY AS POSSIBLE AFTER THAT.

9 THE TESTS WERE EVALUATED AS QUICKLY AS WE
10 COULD PERSUADE THE DOCTORS TO DO THAT. WHEN WE LEARNED
11 THE BROAD DATA OF THE MAJOR OF THE BATTERY OF THREE
12 TESTS, THAT MADE IT CLEAR THAT THERE WAS SOMETHING
13 TERRIBLY WRONG, ORGANICALLY, PHYSICALLY, WITH MR.
14 BEELER'S BRAIN THAT HAD NOT, COULD NOT HAVE BEEN
15 DISCOVERED EARLIER.

16 I HAVE, MYSELF, DONE EVERYTHING THAT I CAN
17 SINCE THEN, SINCE WE FIRST LEARNED ABOUT THE RAW DATA,
18 TO GET THAT DATA INTO THE HANDS OF SOMEONE WHO WAS
19 COMPETENT TO EVALUATE IT, WHO'S AN EXPERT IN THE
20 APPROPRIATE FIELDS. I'VE ONLY IN THE LAST TWO DAYS
21 BEEN ABLE TO DO THAT.

22 I'M NOT TELLING THE COURT THAT I'VE WORKED
23 FULL TIME ON IT, BUT IT'S TRUE THAT EVERY DAY I HAVE
24 DONE EVERYTHING I COULD, WHICH IS USUALLY MADE ABOUT
25 FIVE OR SIX PHONE CALLS AND NOT REACH THE PEOPLE I'VE
26 TRIED TO CALL.

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1403

3300

1 AND SO, TO SUM IT UP, WE'VE DONE
2 EVERYTHING WE CAN TO GET THE TESTS, GET THE DATA, AND
3 HAVE IT ANALYZED. WE'VE BEEN UNSUCCESSFUL SO FAR.

4 WE NOW HAVE A DOCTOR WHO IS COMPETENT IN
5 THE VARIOUS AREAS OF EXPERTISE TO DO THIS ANALYSIS.
6 AND IT APPEARS CLEAR FROM ALL THE DOCTORS I'VE TALKED
7 TO, THE ANALYSIS WILL BEAR OUT THE ORIGINAL PRELIMINARY
8 INTERPRETATIONS OF THE DATA, WHICH IS THAT THERE IS
9 SOMETHING TERRIBLY WRONG WITH MR. SEELER'S BRAIN AND
10 SOMETHING TERRIBLY WRONG THAT WOULD BE RELEVANT
11 EVIDENCE IN THE GUILT OR INNOCENCE DETERMINATION AND
12 THE SPECIAL CIRCUMSTANCES DETERMINATION, AND THE
13 PENALTY PHASE.

14 THE COURT: WELL, YOU'VE KNOWN THAT FOR SOME
15 TIME, THOUGH, THAT THERE WAS SOMETHING WRONG, AND
16 YOU'VE HAD CONSULTATIONS WITH NUMEROUS DOCTORS THAT
17 ESPOUSES THE PROPOSITION THAT YOU SUGGESTED TO THE
18 COURT THAT IS ACCURATE AND YOU DON'T NEED A RENOWNED
19 FORENSIC SCIENTIST THAT WOULD MAKE THOSE
20 INTERPRETATIONS.

21 AND THE QUESTION I'VE GOT IS WHY DIDN'T
22 YOU BRING SOMEONE WITH YOU TODAY TO MAKE THAT
23 INTERPRETATION, KNOWING THE COURT'S INCLINATION NOT TO
24 CONTINUE FROM THE STATEMENTS I MADE THE LAST TIME WE
25 WERE IN COURT.

26 MR. STANDIFER: YOUR HONOR, ALL THAT I KNOW AND

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1404

3301

1 ALL OF THE DOCTORS THAT I HAVE CONSULTED WITH HAVE BEEN
2 ABLE TO TELL ME IS PRETTY MUCH THE GENERAL STATEMENT
3 THAT I'VE TOLD YOU. WE HAVE A MASS OF DATA THAT
4 INDICATES AS A GENERAL PRINCIPLE, THAT THE BRAIN IS NOT
5 WORKING RIGHT. AND I COULD BE MORE SPECIFIC IF THE
6 COURT REQUIRES, BUT THAT'S ABOUT -- ACTUALLY I COULDN'T
7 BE VERY MUCH MORE SPECIFIC. THAT'S ABOUT AS MUCH AS I
8 KNOW. IT'S A TEST THAT HAS ONLY RECENTLY BECOME
9 POPULAR. AND THERE AREN'T VERY MANY DOCTORS WHO KNOW
10 ABOUT IT AS A --

11 THE COURT: "POPULAR" IS A GOOD CHOICE OF WORDS.

12 MR. STANDIFER: PARDON ME?

13 THE COURT: "POPULAR" IS A GOOD CHOICE OF WORDS.

14 MR. STANDIFER: AND IT'S A TEST THAT IS, YOU
15 KNOW, NEEDS EXPERT INTERPRETATION.

16 I HAVE BEEN SEEKING AN EXPERT TO INTERPRET
17 IT FOR ME, DILIGENTLY AND STEADILY, SINCE I GOT THE RAW
18 DATA. BASICALLY, ALL I HAVE IS THE RAW DATA AND THE
19 GENERAL CONCLUSIONS OF THE PEOPLE WHO GAVE THE TEST,
20 WHO AREN'T REALLY QUALIFIED TO INTERPRET THE DATA. AND
21 I'VE ONLY RECENTLY FOUND SOMEONE WHO HAS AGREED TO DO
22 THE JOB WHO IS QUALIFIED. AND BY "RECENTLY" I MEAN HE
23 JUST AGREED TO DO IT TWO DAYS AGO BECAUSE HE JUST GOT
24 THE DATA YESTERDAY.

25 THE COURT: MR. MIDDLETON, ON THE MOTION BY THE
26 DEFENSE TO CONTINUE --

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1405

3303

1 EVIDENCE, CLEAR EVIDENCE, OF ORGANIC PHYSICAL
2 DYSFUNCTIONING IN THIS MAN'S BRAIN, DYSFUNCTIONING
3 WHICH CAN BE PROVED AS A MATTER OF PHYSICAL REALITY AS
4 OPPOSED TO PSYCHOLOGICAL THEORY OR EVALUATION. AND
5 DYSFUNCTION WHICH APPEARS TO HAVE BEEN PRESENT,
6 CERTAINLY, LONG BEFORE THE TIME OF THESE CRIMES.

7 THE COURT: SEEMS TO ME THAT WE HAD, DURING THE
8 COURSE OF THE TRIAL ITSELF, OR MOTIONS OR SOMETHING
9 LIKE THAT, SOME EVIDENCE FROM SOME MEDICAL
10 PROFESSIONALS THAT HE WAS FUNCTIONING IN THE NORMAL
11 RANGE OF INTELLIGENCE. ISN'T THAT CORRECT, MR.
12 STANDIFER?

13 MR. STANDIFER: YES, YOUR HONOR. THAT'S ONE OF
14 THE REASONS THAT WE WERE UNABLE, UNTIL AFTER THE JURY
15 RENDERED ITS VARIOUS VERDICTS TO DETERMINE THAT THESE
16 PHYSICAL TESTS NEEDED TO BE DONE.

17 HAVING HAD THEM DONE, WE NOW SEEK TIME TO
18 HAVE THEM EVALUATED SO WE CAN PRESENT WHATEVER EVIDENCE
19 THERE IS THERE, TO YOU.

20 THE COURT: SINCE WE KNOW THAT DURING THE PERIOD
21 OF TIME HE WAS FUNCTIONING NORMALLY, AND WE WERE ALL
22 PRIVY TO THE FACTS OF HIS CONDUCT AND KNOW HOW HE
23 FUNCTIONED AT THE TIME SURROUNDING THE EVENT, IT BRINGS
24 TO MIND MY RECOLLECTION OF A PHENOMENON IN SCIENCE, I
25 FORGET THE NAME OF, THAT HAS TO DO WITH WHAT A BRAIN
26 THAT ONLY ENCOMPASSES A FEW CENTIMETERS PARALLEL TO THE

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6-ER-1406

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT 39

THE PEOPLE OF THE	)	
STATE OF CALIFORNIA,	)	
	)	
	)	
	)	
PLAINTIFF,	)	
VS.	)	NO. C-50066
	)	
RODNEY GENE BEELER,	)	IN CAMERA
	)	PROCEEDINGS
	)	
DEFENDANT.	)	
	)	

HONORABLE ROBERT R. FITZGERALD, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

DECEMBER 16, 1988

APPEARANCES OF COUNSEL:

FOR THE PEOPLE: CECIL HICKS, DISTRICT ATTORNEY
BY: CHARLES MIDDLETON, DEPUTY

FOR THE DEFENDANT: JOHN D. BARNETT
OTHA STANDIFER, III
ATTORNEYS AT LAW

M. ARMELLA MARTIN, CSR #2115
OFFICIAL COURT REPORTER

PAGES IN CAM-32 THRU IN CAM-41

6-ER-1407

PAGE IN CAM-32

0277)

1 SANTA ANA, CALIFORNIA - FRIDAY, DECEMBER 16, 1988

2 MORNING SESSION

3
4 (THE FOLLOWING PROCEEDINGS WERE HAD IN
5 OPEN COURT, IN CAMERA.)

6 THE COURT: THE COURT IS NOW CLOSED.
7 INVESTIGATORS OUT TOO. MR. GLEIM, HAVE A NICE DAY.

8 (TOM GLEIM, DEFENSE INVESTIGATOR, EXITS
9 THE COURTROOM.)

10 THE COURT: MR. STANDIFER IS THE ISSUE OF SUCH
11 SENSITIVITY THAT I SHOULD CONDUCT IT OUT OF THE
12 PRESENCE OF HIS ATTORNEYS?

13 MR. STANDIFER: NO, YOUR HONOR. LET ME TELL YOU
14 WHAT MR. BEELER HAS ARTICULATED TO ME AND THEN I THINK,
15 OF COURSE, YOU SHOULD ASK HIM TO MAKE SURE THAT'S
16 CORRECT, IF HE HAS ANYTHING ELSE TO SAY.

17 THE COURT: GO AHEAD.

18 MR. STANDIFER: MR. BEELER BELIEVES THAT A CAT
19 SCAN AND AN EKG SHOULD BE DONE. HE BASES THIS BELIEF
20 ON INFORMATION WHICH HE REVEALED TO MR. BARNETT AND
21 MYSELF FOR THE FIRST TIME THIS MORNING, IN PART.

22 MR. BEELER HAD EARLIER TOLD US ABOUT TWO
23 OR THREE BLACKOUTS IN HIS LIFE, WHICH WE INVESTIGATED.
24 WE RECENTLY AND ASKED AND RECEIVED, ASKED FOR AND
25 RECEIVED, A CONTINUANCE TO INVESTIGATE THE POSSIBLE
26 ORGANICITY OF CERTAIN OF MR. BEELER'S SYMPTOMS ARE DUE

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6-ER-1408

IN CAM-33

(3273)

1 TO BLOWS ON THE HEAD. WE HAVE INVESTIGATED THAT.

2 MR. DEELER HAS TODAY INFORMED US, FOR THE
3 FIRST TIME, THAT THESE BLACKOUTS, SUCH AS THE TWO OR
4 THREE THAT WE WERE PREVIOUSLY AWARE OF, CONTINUE AND
5 PERHAPS EVEN ON A DAILY BASIS NOW.

6 SO FOR THOSE REASONS, MR. DEELER BELIEVES
7 THAT AN EKG AND A CAT SCAN SHOULD BE DONE. AND HE IS
8 REQUESTING THAT THE COURT RELIEVE US OR APPOINT AN
9 ATTORNEY TO -- EITHER RELIEVE US ENTIRELY OR APPOINT AN
10 ATTORNEY TO INVESTIGATE THAT MATTER.

11 AND I SHOULD JUST INDICATE THAT IN EITHER
12 EVENT, WE WOULD BE MOVING FOR A CONTINUANCE TO
13 INVESTIGATE THIS NEWLY ACQUIRED INFORMATION ABOUT THE
14 CONTINUING AND FREQUENT AND REGULAR NATURE OF THESE
15 BLACKOUTS. THAT'S NOT A MATTER THAT I HAD INVESTIGATED
16 BY THE TWO DOCTORS WHICH YOU APPOINTED PURSUANT TO MY
17 REQUEST A COUPLE OF WEEKS AGO. I ASKED THOSE DOCTORS
18 THE SPECIFIC QUESTION COULD THEY FIND ANY BASIS FOR ANY
19 ORGANICITY IN HIS BEHAVIOR, IN MR. DEELER'S BEHAVIOR,
20 BASED ON REPORTS OF BLOWS TO THE HEAD, OR A PARTICULAR
21 BLOW TO THE HEAD.

22 THE COURT: HOW HAVE YOU DOCUMENTED THE
23 INFORMATION THE DEFENDANT HAS GIVEN YOU ABOUT
24 BLACKOUTS?

25

26 THE COURT: HOW HAVE YOU DOCUMENTED THE

6-ER-1409

IN CAM-34

(3279)

1 INFORMATION THE DEFENDANT HAS GIVEN YOU ABOUT
2 BLACKOUTS?

3 MR. STANDIFER: WELL, WITH REGARD TO TWO OF THEM
4 WE HAVE -- WELL, I DON'T BELIEVE WE HAVE ANY
5 INDEPENDENT INFORMATION.

6 WHEN I SAY BLACKOUTS I REFER TO MEMORY
7 LOSSES AND LOST PERIODS OF TIME SO THAT MR. BEELER
8 REPORTS THAT HE WOULD FIND HIMSELF FURTHER ALONG IN
9 TIME THAN HE WOULD HAVE BEEN AWARE OF. HE HAS A PERIOD
10 IN WHICH HE DOESN'T REMEMBER WHAT HE WAS DOING,
11 ALTHOUGH HE LATER GETS REPORTS OF WHAT HE WAS DOING.

12 THE COURT: HAVE YOU REFUSED TO INVESTIGATE THIS
13 THING?

14 MR. STANDIFER: WELL, THIS IS INFORMATION THAT
15 WE RECEIVED PRIOR TO TODAY ONLY ABOUT EITHER TWO OR
16 THREE, MY MEMORY FAILS ME, ONLY TWO OR THREE INSTANCES
17 WE HAD HEARD OF PRIOR TO TODAY, ALL SEVERAL YEARS AGO.
18 IT'S ONLY TODAY THAT WE'VE LEARNED THAT THESE LAPSES OF
19 MEMORY, THESE PERIODS IN WHICH MR. BEELER HAS NO MEMORY
20 OF EVENTS, CONTINUE --

21 THE COURT: IT'S HARD FOR ME TO --

22 MR. STANDIFER: -- FROM THEN UNTIL TODAY.

23 THE COURT: IT'S HARD FOR ME TO UNDERSTAND HOW I
24 COULD DETERMINE THAT YOU'RE INCOMPETENT AS COUNSEL TO
25 REPRESENT THIS DEFENDANT UNDER THE MARS DEN CASE IF YOU
26 DIDN'T HAVE ANY INFORMATION DURING THE TRIAL ON WHICH

6-ER-1410

IN CAM-35

(3280)

1 YOU COULD OPERATE. SO NO MATTER WHAT MR. BEELER TELLS
2 ME, I DON'T SEE HOW I CAN MAKE SUCH A FINDING.

3 MR. STANDIFER: YOUR HONOR, NOT WHILE NOT
4 REQUESTING SUCH A FINDING --

5 MR. BARNETT: THE POINT OF IT --

6 THE COURT: WHAT ARE YOU REQUESTING THEN?

7 MR. BARNETT: THE POINT OF IT IS THAT THIS
8 MORNING MR. BEELER RAISED AN ISSUE OF INEFFECTIVE
9 ASSISTANCE OF COUNSEL THIS WISHED TO HAVE ANOTHER
10 LAWYER APPOINTED BECAUSE HE HAD NOT RECEIVED AN EKG AND
11 A CAT SCAN.

12 OUR INVESTIGATION UP TO THIS POINT,
13 ALTHOUGH THAT ISSUE WAS -- ALTHOUGH WE HAD DOCTORS
14 ADDRESS ISSUES BASED ON THE INFORMATION WE HAD, IT WAS
15 OUR JUDGMENT TO THIS POINT THAT THOSE TESTS WERE NOT
16 REQUIRED. AND SO MR. BEELER ADVISES THAT HE WANTED,
17 THAT HE FELT HE WAS BEING SUPPLIED WITH INEFFECTIVE
18 ASSISTANCE OF COUNSEL BECAUSE THOSE TESTS WERE NOT RUN.
19 THAT WAS A SEPARATE ISSUE FROM THE NEWLY DISCOVERED
20 INFORMATION THAT HE'S PRESENTLY NOW SUFFERING A SERIES
21 IS OF FAILED MEMORY AND BLACKOUTS WHICH WE HAVE BEEN
22 MADE AWARE OF TODAY.

23 SO I VIEW IT AS TWO SEPARATE ISSUES. ONE,
24 WE HAVE DIFFERENT INFORMATION THAN WE HAD BEFORE, BUT I
25 FEEL IT'S MY OBLIGATION TO AT LEAST ADVISE THE COURT
26 THAT A CLAIM OF, THAT AMOUNTS TO INEFFECTIVE ASSISTANCE

6-ER-1411

IN CAM-36

(3231)

1 OF COUNSEL AND WAS SO PHRASED BY MR. BEELER AND HAVE
2 THE COURT MAKE INQUIRY.

3 THE COURT: THANK YOU.

4 ALL RIGHT, MR. BEELER, TELL ME WHAT YOU
5 WISH TO ADDRESS THE COURT ON.

6 THE DEFENDANT: WELL, I JUST WANTED TO HAVE THE
7 TWO ISSUES ON MY CAT SCAN AND EEG BECAUSE I FEEL THERE
8 IS SOMETHING WRONG.

9 THE COURT: IS THERE ANYTHING ELSE YOU NEED TO
10 ADD TO A STATEMENT ON THE RECORD OTHER THAN WHAT YOUR
11 ATTORNEYS HAVE TOLD US?

12 THE DEFENDANT: NO, SIR.

13 THE COURT: IS THERE ANY OTHER DISENCHANTMENT AT
14 ALL THAT YOU HAVE WITH YOUR ATTORNEYS?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: THESE ARE TOP NOTCH LAWYERS; YOU
17 KNOW THAT.

18 MR. BEELER: THEY ARE. I JUST FEEL THAT --

19 THE COURT: THEY'RE AS GOOD AS YOU GET AROUND
20 THIS PART OF THE COUNTRY AS FAR AS TRYING CAPITAL CASES
21 GO.

22 MR. BEELER: I UNDERSTAND THAT, YOUR HONOR.

23 THE COURT: WELL, I COULD GIVE YOU -- I COULD
24 JUST SAY I'M GOING TO GIVE BEELER ANOTHER LAWYER, THAT
25 WOULD PERHAPS THAT WOULD PUT OFF THE INEVITABLE, BUT
26 YOU CAN'T TELL WHAT KIND OF LAWYER YOU MIGHT END UP

6-ER-1412

IN CAM-37

(3292)

1 WITH.

2 THE DEFENDANT: I UNDERSTAND THAT. IT'S JUST
3 THAT I FEEL THAT I SHOULD HAVE THOSE TWO
4 INCIDENTS(SIC), THOSE TWO PARTICULAR CATEGORIES...

5 THE COURT: TELL ME WHAT KIND OF SYMPTOMS YOU
6 HAVE WHEN YOU HAVE THESE BLACKOUTS AND HOW LONG THEY
7 LAST.

8 THE DEFENDANT: THEY LAST FOR A FEW MINUTES BUT
9 I'M HAVING THEM SO OFTEN THAT HOURS GO BY THAT I DON'T
10 EVEN REMEMBER WHAT'S GOING ON.

11 THE COURT: HAVE YOU RELATED THIS TO THE MEDICAL
12 AUTHORITIES AT THE JAIL FACILITY?

13 THE DEFENDANT: NO, SIR.

14 THE COURT: WHY NOT?

15 THE DEFENDANT: BECAUSE THEY DON'T DO ANYTHING
16 ABOUT THAT.

17 THE COURT: HOW DO YOU KNOW IF YOU DON'T TELL
18 THEM?

19 THE DEFENDANT: WELL, I'VE BROUGHT IT UP,
20 SEVERAL ISSUES, BEFORE ON DIFFERENT THINGS AND THEY
21 HAVE NOT DONE ANYTHING. ONE IS MY HEART, THEY'RE
22 FINALLY DOING SOMETHING ABOUT THAT, AFTER DOING ALL
23 THESE TESTS AND THE TESTS COMING BACK NEGATIVE, SO
24 THEY'RE FINALLY GETTING DOWN TO RUNNING A -- TRY A
25 CATH-- A CATHETER FOR FINDING OUT IF I HAVE ANY HEART
26 BLOCKAGE THAT'S CAUSING ME THE PROBLEMS OF CHEST PAINS.

M. ARMILLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1413

IN CAM-38

(3233)

1 THAT'S JUST ONE INCIDENT.

2 I HAD A -- I HAVE HAD PROB-- I HAD A BLOW
3 TO THE HEAD WHEN I WAS IN THE JAIL WHERE I FELL OFF THE
4 TOP BUNK AND I HAVE EYE DAMAGE IN THE LEFT EYE, SINCE
5 I'VE BEEN HERE. AND I DON'T REMEMBER FALLING, BUT I
6 REMEMBER WAKING UP ON THE FLOOR.

7 THE COURT: OKAY. ANYTHING ELSE YOU CAN THINK
8 OF, ANY OTHER COMPLAINTS?

9 THE DEFENDANT: NO, SIR.

10 THE COURT: SO THERE'S NOTHING ELSE ABOUT THE
11 LAWYERS THAT YOU WANT TO ADDRESS?

12 THE DEFENDANT: NO, SIR.

13 THE COURT: COURT CANNOT FIND THERE'S BEEN
14 INEFFECTIVE ASSISTANCE OF COUNSEL.

15 MR. STANDIFER: YOUR HONOR, PRIOR TO THE
16 CONCLUSION OF THE CASE, I JUST WANT TO SAY I WILL BE
17 MOVING TO CONTINUE WHEN THE PROSECUTOR RETURNS, I'LL BE
18 MOVING TO CONTINUE TO INVESTIGATE THESE COMPLAINTS
19 WHICH WE JUST HEARD AS THEY RELATE TO THE NEW TRIAL
20 MOTION AND YOUR DETERMINATION UNDER 190.4.

21 I WILL BE ASKING YOU THEN TO RELY ON
22 PORTIONS OF THE INFORMATION YOU HAVE RECEIVED IN
23 CONNECTION WITH THE MARSDEN HEARING. THAT DOESN'T NEED
24 TO BE NECESSARILY REVEALED TO THE PROSECUTOR.

25 THE COURT: WHY DO YOU THINK IT'S NECESSARY TO
26 GO THROUGH AN EEG AND CAT SCAN?

6-ER-1414

IN CAM-39

(3294)

1 MR. BARNETT: YOUR HONOR, WE WANT TO EXAMINE THE
2 MOST RECENT -- WE WANT A DOCTOR, WE WANT TO CONSULT
3 WITH A DOCTOR BASED ON THE NEW INFORMATION WE JUST
4 RECEIVED, IN ORDER TO DETERMINE IF THAT DOCTOR BELIEVES
5 THAT THIS INFORMATION WILL -- REQUIRES A FURTHER
6 TESTING OR WHETHER FURTHER TESTING WOULD BE
7 NONPRODUCTIVE.

8 THIS IS INFORMATION THAT WE DIDN'T HAVE
9 PREVIOUSLY AND THE DOCTORS WHO WERE APPOINTED LAST --
10 WITHIN THE LAST MONTH OR TWO, WE'RE NOT ASKING -- WERE
11 NOT GIVEN THAT INFORMATION BECAUSE WE DIDN'T HAVE IT,
12 AND WERE NOT ASKED TO ADDRESS THAT, AND SO I WANT TO --

13 THE COURT: THE REASON I BROUGHT IT UP IS THAT
14 IT MAY BE SOMETHING THAT YOU DO NOT WANT TO REVEAL TO
15 THE PROSECUTOR, THAT YOU'RE DOING IT, IN YOUR EFFORTS
16 TO PRODUCE A MOTION FOR NEW TRIAL.

17 MR. BARNETT: WELL, I DON'T WANT HIM TO KNOW
18 WHAT WE'RE DOING BECAUSE HE MAY TAKE STEPS TO THWART
19 THAT. HE'S BEEN TRYING TO PREJUDICE MY CASE FOR THREE
20 YEARS.

21 THE COURT: AMPUL, ISN'T IT.

22 MR. BARNETT: IT'S TERRIBLE -- AND I JUST DON'T
23 BELIEVE HE'S ENTITLED TO KNOW THAT. I THINK THAT THE
24 COURT IS ENTITLED TO KNOW THAT WE HAVE THIS INFORMATION
25 THAT WE JUST RECEIVED THIS MORNING, AND I WANT TO

6-ER-1415

IN CAM-40

(3285)

1 WILL BE ABLE TO CONFIRM MR. BEELER'S COMPLAINTS. AND
2 IF SO, WHETHER THOSE TESTS WILL LEAD US ANYPLACE ELSE.
3 I DON'T KNOW WHETHER THAT -- WHAT THE MEDICAL OPINION
4 IS GOING TO BE ON THAT.

5 THE COURT: YOU KNOW, WE'VE CONTINUED THIS CASE
6 A COUPLE OF DAYS FROM THE DATE OF THE JURY FINDING THAT
7 HE SHOULD DIE, AND IT MAY BE THAT WE SHOULD, SOMETIME
8 IN THE FUTURE, ACTUALLY BRING THIS THING TO FRUITION --

9 MR. BARNETT: YOUR HONOR, I --

10 THE COURT: -- CAN YOU SEE A FUTURE POSSIBILITY
11 OF EVER FINALIZING THE CASE, MR. BARNETT?

12 MR. BARNETT: YES, YOUR HONOR. MY FEELING IS
13 THAT I'M OBLIGATED TO EXPLORE WHATEVER DEFENSES OR
14 WHATEVER INFORMATION IS PROVIDED TO ME.

15 I JUST THIS MORNING READ IN THE PAPER
16 ABOUT A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL
17 WHICH WAS SUSTAINED.

18 AND I FEEL THAT MR. BEELER IS ENTITLED TO
19 HAVE US EXHAUST EVERY AVENUE IN ORDER TO SAVE HIS LIFE.

20 THIS IS INFORMATION WE DIDN'T HAVE. WHEN
21 WE HAD INFORMATION WE HAVE RUN IT DOWN. WE HAVE HAD
22 EXPERTS APPOINTED. AND I CAN'T IMAGINE ANY OTHER
23 INFORMATION COMING TO US THAT HASN'T BEEN, OR WON'T
24 HAVE BEEN EXAMINED, WHEN NEXT WE COME BACK. AND I
25 DON'T THINK IT'S GOING TO TAKE VERY LONG.

26 THE COURT: HOW LONG DO YOU THINK?

M. ARMELLA MARTIN, C.S.R., OFFICIAL COURT REPORTER

6-ER-1416

IN CAM-41

(3236)

1 MR. MIDDLETON: IT'S THE HOLIDAYS, I WOULD THINK
2 THREE WEEKS I CAN GET SOMEBODY OVER THE -- EXCUSE ME.

3 (DISCUSSION OFF THE RECORD BETWEEN DEFENSE
4 COUNSEL.)

5 MR. BARNETT: WELL, I DON'T KNOW IF THEY NEED A
6 TEST BUT I'M INFORMED THAT IT MAY TAKE THREE WEEKS TO
7 SCHEDULE A TEST AFTER THEY DETERMINE IT. I'D ASK FOR
8 FOUR WEEKS, BUT I WILL ADVISE THE COURT IN TWO WEEKS IF
9 THE COURT --

10 THE COURT: DON'T WORRY ABOUT THAT.

11 MR. BARNETT: I'D ASK FOR FOUR WEEKS.

12 THE COURT: THERE'S NOTHING ELSE WE NEED TO DO
13 IN CAMERA --

14 MR. BARNETT: NO.

15 THE COURT: -- IS THAT CORRECT? LET'S HAVE THE
16 PUBLIC AND PROSECUTOR IN AGAIN.

17 (IN CAMERA PROCEEDINGS CONCLUDED.)
18 COURTROOM.)

19

20

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26

6-ER-1417

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, M. ARMELLA MARTIN, OFFICIAL COURT REPORTER, CSR #2115, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING TRANSCRIPT OF IN CAMERA PROCEEDINGS, PAGES IN CAM-2 THRU IN CAM-6, IN CAM-11 THRU IN CAM-24, AND IN CAM-32 THRU IN CAM-41 ARE FULL, TRUE AND CORRECT TRANSCRIPTS OF MY SHORTHAND NOTES THEREOF, AND A FULL, TRUE AND CORRECT STATEMENT OF THE IN CAMERA PROCEEDINGS HAD IN SAID CAUSE.

DATED: DECEMBER 16, 1988.


M. ARMELLA MARTIN, CSR #2115
OFFICIAL COURT REPORTER

6-ER-1418