S289365

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DEONDRE STATEN,
Petitioner
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY; JAMES HILL, Warden of the Richard J. Donovan Correctional Facility,
Respondents
PEOPLE OF THE STATE OF CALIFORIA,
Real Parties in Interest

CAPITAL CASE

EMERGENCY PETITION FOR WRIT OF MANDATE

After an Order Denying a Motion for DNA Testing

Superior Court Case No. KA006698-01
S025122/S107302/S025122
Dept. 100, Foltz Criminal Justice Center
The Hon. William C. Ryan, Presiding (213) 628-7400

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

The lower Court's refusal to grant DNA testing is abuse of discretion. Our justice system cannot afford to ignore untested evidence—especially when it could prove innocence. The duty of the courts is clear: convict the guilty and exonerate the innocent. Yet, wrongful convictions persist, eroding public confidence in our legal system.

For 34 years, Petitioner has sat on death row for allegedly killing his parents—yet he has never wavered in asserting his innocence. Despite groundbreaking advances in DNA technology, critical evidence from the crime scene remains untested. This Court must correct this injustice. DNA testing is not an inconvenience; it is a necessity. The stakes could not be higher—a human life hangs in the balance.

Petitioner has twice sought DNA testing of inconclusive and unexamined evidence, yet the Superior Court has refused to act. After the Superior Court's initial denial, Petitioner retained a forensic expert to assess the untested evidence under the standards of Penal Code §1405. Petitioner narrowed the motion to only include the specific items that were **never tested in the original investigation**: two bullets, one set of fingerprints and two blood samples that could point to another perpetrator. Nevertheless, the Court denied this motion wrongly concluding that DNA testing would not support Petitioner's claims. The Court stated, "No amount of DNA evidence would refute

defendant's own words in tape conversations where he explicitly states that he would 'blame [the crimes] on the Dukes.'" But such a statement is not a confession. It simply reflected his uncertainty about the true perpetrator, not an admission of his own guilt. To assume otherwise is to distort the meaning of his words and ignore the fundamental purpose of DNA testing- to uncover the truth. In its second motion, the trial court erred by relying on an outdated version of Penal Code 1405, failing to acknowledge the critical language added in 2014:

> **"The convicted person is only required to demonstrate that the DNA testing he or she seeks would be relevant to, rather than dispositive of, the issue of identity. The convicted person is not required to show that a favorable result would conclusively establish his or her innocence."** (1405(g)(4).)

This updated provision makes it clear: DNA testing does not need to provide absolute proof of innocence—only that it is relevant to the question of identity. Ignoring this crucial distinction was an abuse of discretion. Moreover, the People admit "DNA testing "may potentially result in a more favorable verdict or sentence in this case." Ken Moses, Petitioner's forensic expert, confirms that modern DNA testing could fundamentally change the outcome of this case. He states: *"Biometric testing today, using new technologies unavailable in 1990, presents a compelling case for re-testing the serologic and fingerprint evidence in the Staten case to obtain more definitive and potentially exculpatory*

answers, as it has in many other cases." Untested evidence cannot be ignored. If DNA from a third party is discovered at the crime scene, it would create a reasonable probability that Petitioner would have received a more favorable verdict. Such a revelation would not only cast substantial doubt on his guilt but also reinforce the reasonable doubt that is essential to a fair and just trial. By testing the DNA, the legal system upholds its responsibility to pursue truth and fairness, ensuring that no individual is unjustly punished for a crime they did not commit.

EMERGENCY PETITION FOR A WRIT OF MANDATE

A. Interests Of Petitioners and Capacities Of Respondents and Real Parties In Interest.

1. The Petitioner is Deondre Arthur Staten.
2. Petitioner is currently incarcerated by the California Department of Corrections and Rehabilitation (CDCR) at the Richard J. Donovan Correctional Facility, located at 480 Alta Road, San Diego, CA 92179.
3. The Respondent Superior Court Judge is the Hon. William C. Ryan, who sits in Department 100 of the Clara Shortridge Foltz Criminal Justice Center, located at 210 W. Temple St., Los Angeles, CA 90012. The telephone number for Department 100 is (213) 628-7400.
4. The People of the State of California are the real parties in interest and are represented in this matter by the Office of the District Attorney of Los Angeles County (District Attorney).

B. The Basis For The Relief Sought.

1. Petitioner was charged with the murder of Arthur Staten, Petitioner's father, in violation of California Penal Code, section 187(a). Count one additionally charged that Petitioner personally used a firearm during the commission of the murder, in violation of California Penal Code, Sections 1203.06(a)(1) and 12022.5. Count two charged Petitioner with the murder of Faye Staten, Petitioner's mother, in violation of California Penal Code, Section 187(a). Count two additionally charged that Petitioner personally used a deadly and dangerous weapon, to wit, a knife, during the commission of the murder, in violation of California Penal Code, Section 12022(b). Both counts charged the murders were carried out for financial gain and that the offense involved multiple murder victims, both special circumstances pursuant to California Penal Code, Sections 190.2(a)(1) and 190.2(a)(3).
2. Petitioner was tried by jury and found guilty on all counts. The jury found Petitioner committed both murders in the first degree, personally used a firearm as alleged in count one, personally used a knife as alleged in count two, and committed multiple murders for financial gain as to both special circumstances charged. On December 6, 1991, the same jury determined the punishment for both counts as death.
3. Petitioner testified during the guilt phase of the trial and denied guilt of all charges. Petitioner did not testify during the penalty phase of the trial.

4. Petitioner appealed his convictions and death sentence.
5. The California Supreme Court unanimously affirmed Petitioner's convictions and sentence on November 9, 2000, in *People v. Staten* (2000) 24 Cal.4th 434. On January 24, 2001, Petitioner's petition for rehearing was denied and the remittitur was issued to the Los Angeles Superior Court.
6. On May 24, 2001, Petitioner filed a petition for writ of certiorari in the Supreme Court of the United States. On October 1, 2001, the Supreme Court of the United States issued an order denying the petition.
7. On October 24, 2001, an order was entered by the United States District Court for the Central District of California staying execution of the sentence of death until final disposition of a federal habeas corpus petition to be filed on behalf of Petitioner.
8. On May 20, 2002, Petitioner filed with this Court his first petition for writ of habeas corpus, *In re Deondre Arthur State,* Case No. S107302. The petition was denied on September 10, 2003.
9. On December 19, 2003, Petitioner filed a petition for writ of habeas corpus in the United States District Court in *Deondre Arthur Staten v. Jeanne Woodford, Warden of the California State Prison At San Quentin,* Case No. CV 01-9178-GHK.
10. On January 8, 2004, a second habeas petition, S121789, was filed in the Court due to the failure of the direct appeal and first habeas petition to present federal constitutional claims. The federal proceeding was stayed pending this Court's disposition of the second petition, which was denied on July 13, 2005.

11. On July 25, 2005, Petitioner filed in the federal proceeding an amended petition containing claims newly exhausted as a result of this Court's denial of his second state habeas petition.

12. In 2023, InnocenceOC, a non-profit innocence project associated with UCI Law School, agreed to represent Petitioner on the grounds of actual innocence.

13. On July 5, 2023, Petitioner filed a Motion for DNA testing pursuant to *California Penal Code* section 1405. A copy of the Petition and Opposition is attached as Exhibit 1 and incorporated by reference. The motion was denied on January 26, 2024. A copy of the order is attached as Exhibit 2 and incorporated by reference.

14. In light of the Court's denial, Petitioner hired Ken Moses, a forensic scientist and on September 5, 2024, Petitioner filed a second Motion for DNA testing addressing the elements of *California Penal Code* section 1405 and limiting the motion to only testing of inconclusive blood samples and a fingerprint. A copy of the Motion and Opposition is attached as Exhibit 3 and incorporated by reference. The motion was denied on January 16, 2025. A copy of the order is attached as Exhibit 4 and incorporated by reference.

C. Supreme Court Has Proper Jurisdiction When DNA Motions Are Denied.

1. *California Code Of Civil Procedure* section 1085(a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act

which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.

(b) The appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of mandate directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

2. Article 5, section 10 of the California Constitution vests the Supreme Court with original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. Cal. Const. art. VI, section 10; *see also* Cal. Civ. Proc. Code section 1085; Cal. R. Ct. 8.486. This Court has recognized that it is appropriate to exercise original jurisdiction "where the matters to be decided are of sufficiently great importance and require immediate attention." *California Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 253 (2011).
3. *Cal. Penal Code* section 1405 also recognizes the Supreme Court's authority to grant relief in matters of great importance. Pursuant to section (k), "[a]n order granting or denying a motion for DNA testing under this section . . . shall be subject to review only through petition for writ of mandate or prohibition filed by the

person seeking DNA testing, the district attorney, or the Attorney General." *Cal. Penal Code* section 1405(k). In capital cases, section (k) further states that the California Supreme Court shall be the proper jurisdiction of the matter. *Id.*

D. Absence Of Other Remedies.

1. The Superior Court denied the second DNA motion, holding, "Defendant has not demonstrated that, had the DNA testing been available, there is a "reasonable chance" he would have received a more favorable result at trial."
2. *Cal. Penal Code* section 1405(k) makes clear that there exists no other remedy for relief in matters of DNA testing: "[a]n order granting or denying a motion for DNA testing under this section shall not be appealable."

E. Prayer For Relief

1. Petitioner Deondre Arthur Staten prays for the following relief:
   (1) That the Court order grant Petitioner's Motion for DNA testing pursuant to *California Penal Code* section 1405, and order DNA testing for the three .38 caliber bullets, one .25 caliber casing, and blood samples that were recovered at the scene of the crime.
   (2) That the Court grant such other and further relief that, in the Court's determination, is equitable and appropriate.

Dated: February 18, 2025 INNOCENCEOC

_____/S/ *Annee Della Donna*__
Annee Della Donna, Esq.

VERIFICATION

I, Annee Della Donna, state:

I am co-counsel for petitioner Deondre Staten in this matter. I have read the foregoing petition and know of its contents. The facts stated in the petition and in the supporting memorandum of points and authorities are within my personal knowledge and I know them to be true. Each of the exhibits attached to the petition are authentic copies of the matters that are in the court's files in this matter or were provided to me.

Because of my familiarity with the relevant facts concerning the proceedings in the trial court, and the emergency nature of this petition, I have verified this petition instead of Petitioner. However, Petitioner did file a declaration in support of the motion for DNA testing.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 18th day of February in 2025.

____/S/ *Annee Della Donna*_____

Annee Della Donna, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

1. The Murders

Petitioner and his parents, Faye and Arthur ("Ray") Staten, the victims in the murder by which Petitioner is convicted, were an African American family. At the time of the crime, Petitioner was 24 years old and lived with his parents in a territory claimed by the East Side Dukes, (10 RT 1734) a violent street gang comprised exclusively of Hispanic individuals. (10 RT 1722). During trial, testimony acknowledged the East Side Dukes were known to commit homicide (10 RT 1734), and had painted graffiti reading “East Side Dukes Kills N*****s” (10 RT 1758).

The Staten family owned and operated a beauty salon and beauty supply store near their home. Multiple witnesses testified at trial that Petitioner and his father, Ray Staten sold illicit drugs in the East Side Dukes territory. Multiple witnesses testified these drug sales in the East Side Dukes’ “turf” resulted in the East Side Dukes animosity toward Petitioner and Ray Staten.

Not long after midnight on October 13, 1990, Ray and Faye Staten were murdered in their home. Faye was stabbed 18 times and Ray was found dead from a single gunshot wound to the back of the head. On the mirrored wall of a hallway, the phrase "E.S.D. Kills" was sprayed in white paint.

There was no forced entry in the house, because the backdoor was left unlocked, offering easy access. If Petitioner had committed these killings, he would have been covered in gunshot residue and drenched in blood. He was not. The lack of GSR and blood on the Petitioner shortly after the killings, proves he could not have committed the crime.

Despite presenting evidence at trial showing the East Side Dukes were responsible for the murders, Petitioner was convicted. In denying Petitioner's motion for DNA testing, the Los Angeles County Superior Court Judge reasoned that "[t]here is no showing or support, either at the time of the convictions and subsequent appeals or in the current motions, for gang-related shootings." (Minute Order, Page 6). Yet, the underlying record contains substantial evidence the East Side Dukes threatened the Staten family prior to, during, and after the commission of the murders on October 13, 1990.

2. East Side Dukes Involvement Prior to the Murders.

At trial, several witnesses corroborated the Petitioner's expert Dr. Morales's testimony, stating the East Side Dukes were violently active within the neighborhood, hated Black people and routinely painted graffiti reading "ESD Kills N*****s" around the neighborhood (Habeas p.19-20). Witnesses additionally testified Petitioner had personally been targeted by the gang prior to the murders on October 13, 1990, stating that Petitioner had been chased, shot at, and harassed by the East Side Dukes.

John Nicols, one of Petitioner's friends, told the police the day before Faye and Ray Staten left for vacation, Petitioner received a phone call where the caller told Petitioner "ESD kills N*****s". Nicols, who lived approximately one block away from the Staten residence, testified he had personally witnessed the East Side Dukes' antagonism for Petitioner when the East Side Dukes came to Nicols's residence and "pulled guns" on him and Petitioner. (7 RT 1140-41.) A few months later, in early 1990, Nicols observed a car full of East Side Dukes members pull up to Petitioner and threaten him. (7 RT 1138-39.) Nicols, who is also Black, testified he was also subject to the East Side Dukes' racial antagonism, and would receive "hard stares" whenever he would encounter East Side Dukes gang members. (7 RT 1233)

A few days before Faye and Ray Staten's return from vacation, Petitioner's friend Vernon Burden came to the Staten residence, where he and Nichols heard Petitioner say, "I wish they [the East Side Dukes] would leave my family alone and stop calling here and harassing me." (8 RT 1271)

The next day, Petitioner went into the back yard and discovered "ESD Kills" spray painted in white on the patio, next to the same sliding door that was open the night of the murders. Nichols and Petitioner's friend Brandon Booker stated they also observed the graffiti, and heard Petitioner say "ESD going to get theirs" (7 RT 1159).

3. East Side Dukes involvement on the Day of the Murders.

Late on October 13, 1900, Petitioner returned to the Staten residence and discovered his father shot to death in the bedroom and his mother stabbed to death in a hallway. The responding police officers and subsequent forensic analysis were not able to conclusively prove Petitioner was in any way involved in the murders.

The weapons used to kill Ray and Faye were never recovered. Two bullets, which were recovered from the scene, were never tested for DNA evidence and the State's expert testified at trial it was possible that the different bullets could have been fired from two different guns. Moreover, in 2000, The Los Angeles Sheriff's Department found Investigator Dwight Van Horn (who was the chief investigator in this case) had failed a proficiency test in 1998 and 2 out of 51 of his investigations had ballistic errors and posed potential credibility concerns. (DNA Motion, Ex 3)

Responding police officers were likewise unable to detect any forensic evidence on Petitioner's person when Petitioner was transported to the Los Angeles Sheriff's Department for questioning immediately after the murders.

Petitioner did not have an opportunity to wash his hands prior to being transported, which was corroborated by the police who testified that Petitioner's hands were "dirty." Yet, the police were unable to detect any gunshot residue on his hands. Gunshot residue, which can remain on a person up to six hours after they came into contact with a

gun, would have likely appeared on Petitioner's hands if he were the person who had fired the gun that killed his father. (16 RT 2663) Phil Teramoto, who worked in the Scientific Services Bureau of the Los Angeles Sheriff's Department, also acknowledged Petitioner did not have gunshot residue on his hands, and testified during trial that "no statement can be made as to whether [Petitioner] had handled or discharged a firearm." (16 RT 2668)

Similarly, Faye Staten's blood was not detected on Petitioner hands, body, or clothing yet Ms. Staten was stabbed 18 times. Medical examiner, Susan Selsa, testified Faye Stated died as a result of multiple stab wounds. (Habeas p.40) If Petitioner did in fact stab his mother 18 times, a gory and violent act requiring close proximity and immediate contact, he would likely have significant blood spatter on his hands, person, and clothing.

Finally, there was no forensic evidence linking Petitioner to the spray painted "ESD Kills" detected on the hallway mirror at the scene. Police did not find any spray paint on Petitioner's hands or clothing. Although several latent fingerprints were collected from the three cans of spray paint found at the scene, suggesting the spray paint canisters had not been wiped clean, none of the Petitioner's fingerprints were found on the canisters. (11 RT 1889-90)

David Watkins, a Los Angeles Sheriff's Department gang expert, testified at trial "in his opinion" the graffiti found at the scene was not authentic. (10 RT 1747-48, 1786) However, Gomelia Baker, the Assistant principal at Nogales High School, the local high school where

most of the East Side Dukes members attended, disagreed. Mr. Baker testified he had taught at Nogales High School for 14 years and saw every piece of graffiti on school property. Mr. Baker was of the opinion the graffiti on the patio and on the mirror was authentic East Side Dukes graffiti. Similarly, Dr. Morales, submitted a declaration in support of Petitioner's state habeas petition, stating the murders of Ray and Faye Staten were typical of gang-related murders, including those committed by the East Side Dukes. Finally, even the defense handwriting expert testified the graffiti on the patio and the mirror was likely written by the same person, and that it was not Petitioner's handwriting. (12 RT 2032)

Thus, there is no forensic evidence from the crime scene to prove Petitioner committed the murders. On the contrary, the lack of forensic evidence suggests Petitioner was not involved in the murders. Petitioner did not have gunshot residue on his hands, which would be necessary to suggest that he shot Ray Staten. Petitioner did not have blood on his hands, person, or clothing, which would be necessary to suggest that he stabbed Faye Staten. Petitioner's fingerprints were not lifted from the spray paint canisters nor was spray paint found on Petitioner's hands, person, or clothing, which would be necessary to suggest that he spraypainted "ESD Kills" on the hallway mirror. Yet, Petitioner was still convicted, despite evidence uncovered at the scene directly linking the East Side Dukes to the murders.

4. East Side Dukes Involvement after the Murders.

On October 14, 1990, the day following the Staten murders, five independent witnesses observed the East Side Dukes drive by the Staten Residence yelling, "Yeah, we got them!" In 2020, the Ninth Circuit determined the trial court's decision to exclude this evidence was objectively unreasonable, and this evidence would have been helpful for the jury to further evaluate the defense's theory that the East Side Dukes were responsible for the murders of Faye and Ray Staten.

5. Critical Evidence Never Tested.

After reviewing Defendant's case file, Forensic Expert Moses identified several pieces of evidence that were never tested:

(1) Two .38 caliber bullets recovered from the Staten home, one .38 caliber bullet removed from Arthur Staten's body. (*See* Exh. 3, Declaration of Kenneth R. Moses at ¶ 6.)

(2) Several latent unidentified fingerprints lifted from inside the residence, including those found on the mirror-tiled wall with the EDS graffiti and on a can of spray paint in the closet. (*See* Exh. 3, Declaration of Kenneth R. Moses at ¶ 8.)

(3) Numerous blood samples collected from the scene, both inside and outside the front door on the suspect's path of exit, that were previously tested but found to be inconclusive. (*See* Ex. 3, Declaration of Kenneth R. Moses at ¶ 9.)

Additionally, a spent .25 caliber casing was also discovered outside the Staten residence, yet the family did not own a .25 caliber weapon.

Therefore, the Defendant has met the statutory requirement pursuant to Section 1405(d)(1)(C) by clearly identifying the evidence to be DNA tested under this motion: three .38 bullets, one .25 bullet casing, and the 11 unconclusive blood samples found at the scene.

LEGAL ARGUMENT

A. Petitioner's Murder Convictions Rely Solely on Circumstantial Evidence Thus, Enhanced DNA Testing is Critical to Proving His Innocence and Revealing That Gang Members—Who Repeatedly Threatened Him—Were the True Perpetrators.

A trial court's determination on a defendant's motion for postconviction DNA testing is reviewed for abuse of discretion. **Further, "trial courts should liberally apply the 'reasonable probability' standard to permit testing in questionable cases."** (*Jointer v. Superior Court* (2013) 217 Cal.App.4th 759, 769.) Petitioner was ultimately convicted in a case built entirely out of circumstantial evidence. Petitioner never confessed to the crime, and no scientific evidence pointed to his culpability. Moreover, evidence shows the East Side Dukes were heavily involved in threatening the Staten family before the crime, actually committing the crime, and taunting the Staten family following the crime. Thus, conducting a DNA analysis on

the bullets, casing, blood spatter recovered at the scene of the crime may provide the scientific evidence necessary to identify the responsible parties for Ray and Faye Staten's murder. This DNA evidence may also exonerate Petitioner, providing him with a more favorable verdict or sentence if the results of the DNA testing had been available at the time of his conviction pursuant to California Penal Code section 1405.

Pursuant to Section 1405(d)(1)(D), the Defendant need not prove that he absolutely would have received a different verdict, but need only "explain in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of the conviction." (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1051.) This does *not* mean the Court must find the Defendant has a reasonable chance of obtaining ultimate relief, but only "whether the defendant is entitled to develop potentially exculpatory evidence." (*Id.*)

Penal Code 1405(g) which was revised in 2014 was not addressed in the trial court's Minute Order dated January 16, 2025. Instead, Judge Ryan used the outdated version which did not include these important changes:

> "**The convicted person is only required to demonstrate that the DNA testing he or she seeks would be relevant to, rather than dispositive of, the issue of identity. The convicted person is not required to show a favorable result would conclusively establish his or her innocence.... In**

determining whether the convicted person is entitled to develop potentially exculpatory evidence, the court shall not decide whether, assuming a DNA test result favorable to the convicted person, he or she is entitled to some form of ultimate relief." 1405(g) 4, 5.)

The Trial Court further failed to apply new law in section 6(B): "The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results." Petitioner was unable to find this version used by the trial Court, even going back as far as 2004)

Here, multiple bullets and casings were recovered by police at the Staten home following the murder. Blood samples were taken from blood found inside and outside the front door. Fingerprints were lifted from the residence, including on the mirror-tiled wall of graffiti and the spray can of paint. **At the time of the investigation, the bullets and bullet casing were not examined for DNA evidence, multiple blood samples were tested but the DNA was found to be inconclusive, and several latent fingerprints were never identified.** Should the Court order DNA testing of the above limited pieces of evidence, the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or have a reasonable probability of contradicting prior test results, where here the identity of the perpetrators was a major issue at trial.

According to Ken Moses, DNA analysis was still in its infancy in 1990. Today, "modern technological advancements in DNA analysis enable forensic scientists to identify an individual to an extraordinarily high degree of statistical significance." (Ex. 3, Declaration of Kenneth R. Moses at ¶ 10.) Further, historical serological analyses required large samples, whereas today, "modern DNA forensics often utilizes sample sizes so minute as to be invisible to the naked eye, such as 'touch DNA' samples consisting of only a few skin cells on a cartridge casing." (*Id.*) Finally, Moses noted at the time of Defendant's trial, **AFIS and CODIS databases were thinly populated, but today contain many millions of subjects, increasing the chances of making a positive identification from a DNA sample**. (*Id.*)

Analysis of the bullets, bullet casing, and previously inconclusive blood samples could develop potentially exculpatory evidence in this matter. Although DNA testing in 1990 did not have the capability to analyze small samples, **modern DNA forensics would be able to test for skin cells on the bullets and bullet casing**. Further, while the blood testing in 1990 was inconclusive, today's analysis can better test the small samples of blood found at the Staten residence. Finally, **due to the much more populated AFIS and CODIS databases, there is a greater chance of identifying a positive match after testing the DNA found at the scene.**

As such, by developing this potentially exculpatory evidence, there is a reasonable probability, in light of all the evidence, the DNA testing would be relevant to the issue of identity. If any third-party DNA were

found at the scene of the murders, specifically on the bullet casings or in blood splatter at the door, it would support the Defense's claim that the Petitioner did not commit the murders. The jury found Petitioner personally used a firearm in the murder of his father and stabbed his mother. However, had DNA evidence pointed to a third party having fired the gun or left blood at the scene, there is a reasonable probability that the jury would have determined a different person committed the crimes. Furthermore, had DNA evidence or latent fingerprints been matched to East Side Dukes gang members, it would have supported the Defense's case theory that members of the East Side Dukes gang committed the murders.

B. **In Light of The Evidence, DNA Testing Will Raise A Reasonable Probability the Petitioner's Verdict Would Be More Favorable if The Results Of The DNA Testing Had Been Available At The Time Of The Conviction.**

As discussed above, the perpetrator of these crimes was a significant issue in this matter, where there were no eyewitnesses and no circumstantial evidence directly identifying Petitioner as the perpetrator.

The requested testing meets the requirements of Penal Code 1405(6):

> (A) The evidence was not tested previously.
>
> (B) The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or

accomplice or have a reasonable probability of contradicting prior test results."

In *Jointer, supra*, the trial court abused its discretion in denying defendant's motion for postconviction DNA testing of water bottle that the robbery perpetrator drank from and left at crime scene, since favorable DNA evidence would be sufficiently exculpatory to create a reasonable probability of a more favorable verdict for the defendant, where the only disputed issue as to the robbery was identity, the sole physical evidence linking defendant to the crime was fingerprint evidence from the water bottle, and two of the three eyewitnesses were uncertain about their identification of defendant as the perpetrator. Jointer v. Superior Court (App. 4 Dist. 2013) 158 Cal.Rptr.3d 778, 217 Cal.App.4th 759.

Petitioner has found potentially exculpatory evidence that does exist—*i.e.*, the bullets, bullet casings, and inconclusive blood samples—and InnocenceOC will pay for the testing. Had the DNA testing been available at the time of the Defendant's trial, there is a reasonable probability that Petitioner would have obtained a more favorable verdict at trial where the results could reasonably indicate the existence of an alternate perpetrator.

It is important to recall that trial courts have been instructed to "*liberally apply* the 'reasonable probability' standard to permit testing in questionable cases" to avoid the unnecessary expenditure of judicial resources. (*Jointer, supra*, 217 Cal.App.4th at 769 (emphasis added).) While Petitioner's trial lawyer failed to present evidence of the crimes

being gang related, there did exist evidence to support this theory. For example, Defendant testified he was being threatened by the East Side Dukes. The day after the murders, five witnesses saw a car containing ESD members drive by the Staten home and glare at them. Three of those witnesses heard them say, "Yeah we got them!" and two of those three disclosed the event to Defendant's trial attorney. East Side Dukes graffiti was left at the scene of the crime. Had the DNA evidence of the bullets, bullet casing, and blood samples, there is a reasonable probability that Defendant would have received a more favorable verdict.

Petitioner is not required to prove he would have been found not guilty beyond a reasonable doubt. He must only demonstrate that, in light of all of the circumstantial evidence, he is entitled to develop this potentially exculpatory DNA evidence as it would have had a reasonable probability of leading to a more favorable verdict if it had been available at the time of his trial. As such, the Petitioner has met this statutory requirement under Section 1405(d)(1)(D) by demonstrating the requested DNA testing will raise a reasonable probability that the Petitioner's verdict would be more favorable if the results of the testing had been available at the time of the conviction.

C. **Collateral Estoppel Does Not Apply Where The Issues Are Not Identical.**

At the first DNA motion in 2024, the Superior Court Judge ruled Petitioner did not meet the "reasonable probability of a more favorable result." In order to satisfy the Trial Court's concerns in his first Minute

Order that there is a reasonable probability of Petitioner receiving a more favorable result at trial, Petitioner hired a forensic expert, Ken Moses. According to Ken Moses, in 1990 there was no method of DNA testing for bullets and bullet casings. As such, prior DNA testing of the evidence found at the scene does not compare to the available testing procedures in the modern day. DNA testing of the bullet, bullet casings, and blood samples conducted today would yield far more information than the limited testing conducted in 1990. Today, "modern technological **advancements in DNA analysis enable forensic scientists to identify an individual to an extraordinarily high degree of statistical significance**." (Ex. 3, Declaration of Kenneth R. Moses at ¶ 10.) Further, historical serological analyses required large samples, whereas today, "modern DNA forensics often utilizes sample sizes so minute as to be invisible to the naked eye, such as 'touch DNA' samples consisting of only a few skin cells on a cartridge casing." (*Id.*) Finally, Moses noted that at the time of Defendant's trial, **AFIS and CODIS databases were thinly populated, but today contain many millions of subjects, increasing the chances of making a positive identification from a DNA sample**. (*Id.*) Analysis of the bullets, bullet casing, and previously inconclusive blood samples could develop potentially exculpatory evidence in this matter.

Astonishingly, the Trial Court completely ignored the new declaration from expert Ken Moses and instead relied on an outdated version of the statute, disregarding crucial legal updates and expert analysis. Even more troubling, despite distinct differences between the

motions, the Trial Court's Minute Orders are virtually identical-raising serious concerns the Court never read the second motion.

According to *Lucido v. Superior Court* (1990) 51 Cal.3d 335, collateral estoppel is not applied where the issues sought to be precluded are not identical. The different issue raised in the second motion backed up by a sworn declaration from a qualified expert, is whether Petitioner would receive a more favorable result in light of the new DNA testing available in the scientific community. As the United States Supreme Court has stated, "the rule of collateral estoppel in criminal cases is not to be applied with the hypertechnical and archaic approach of a nineteenth century pleading book, but with realism and rationality." (*Ashe v. Swenson* (1970) 397 U.S. 436, 444, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469; see also *Jackson v. City of Sacramento* (1981) 117 Cal.App.3d 596, 603, 172 Cal.Rptr. 826 ["collateral estoppel is not an inflexible, universally applicable principle; policy considerations may limit its use where the limitation on relitigation underpinnings of the doctrine are outweighed by other factors"].) Accordingly, the public policies underlying collateral estoppel—preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation—strongly influence whether its application in a particular circumstance would be fair to the parties and constitute sound judicial policy. Lucido v. Superior Ct., 51 Cal. 3d 335, 343, 795 P.2d 1223, 1226–27 (1990). Whatever the efficiencies of applying collateral estoppel in this case, they pale before the importance of preserving the criminal trial process as the exclusive

forum for determining guilt or innocence as to crimes. Applying collateral estoppel would unduly undermine the public interest in determining guilt and innocence at criminal trials.

Conclusion

Justice demands action. Given the critical importance of uncovering the truth, this Court must grant Petitioner's Writ of Mandate. DNA testing is not a privilege—it is a necessity when life and liberty are at stake. The untested evidence holds the potential to prove innocence, and refusing to examine it would be a grave miscarriage of justice. This Court has the power—and the duty—to ensure that truth prevails.

DATED: February 18, 2025 INNOCENCEOC

/S/Annee Della Donna__

Annee Della Donna, Esq.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, **v.** **DEONDRE STATEN,** Defendant.	Superior Court Case No. KA006698 **MOTION FOR DISCLOSURE OF DNA REPORTS AND STATUS OF BIOLOGICAL EVIDENCE PURSUANT TO PENAL CODE SECTION 1405(C); SUPPORTING DECLARATIONS** **Dept.** 100/Criminal Writs Center **Judge**: William C. Ryan

Defendant Deondre Staten, by and through his attorneys, ANNEE DELLA DONNA, ESQ. hereby moves this Court for an order pursuant to Penal Code section 1405, subdivision (c)[1] directing the prosecutor to make all reasonable efforts to obtain, and the agencies named below to make all reasonable efforts to provide, copies of DNA laboratory reports as well as the status

[1] All further references shall be to the California Penal Code, unless otherwise noted.

1

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of biological evidence related to this case: *People v. Deondre Staten*, Los Angeles Superior Court Case No. KA006698; Los Angeles Sheriff Department URN 090-20823-1443-011; Long Angeles Department of Medical Examiner Case No. 90-10014 (decedent Arthur Staten) and Case No. 90-10015 (decedent Faye Staten).

This motion is based upon the arguments contained herein, the files and records in this case, and any evidence, arguments, or authorities presented at a hearing on this motion, should this Court deem a hearing necessary.

I.

STATEMENT OF THE CASE

Defendant age 24 lived with his parents Faye and Arthur ("Ray") Staten in the La Puente/ East Valinda area of Los Angeles. Arthur and Faye owned a beauty salon and beauty supply store.

Not long after midnight on October 13, 1990, Ray and Faye Staten were killed in their home. An hour earlier, the couple had arrived at their residence following a two-week trip to Egypt. Their 24-year-old son, Defendant De'Ondre Staten, pulled their luggage inside, gave them hugs, and planned to watch videos of their vacation with family members the next day. After his parents were settled in, Defendant told them he was hungry and wanted to grab something to eat. Faye's Cadillac, which Defendant drove while his parents were away, had broken down, so Ray gave his son the keys to his Chevrolet truck. Defendant left around 12:45 AM. Defendant had been driving for about ten minutes when he realized he had forgotten his wallet. He turned around and returned home to get his wallet. Defendant returned home around 1:00 AM. He found the front door locked, as he had left it, and used his key to get inside. He first saw his mother, Faye, who Defendant affectionately called Shorty, stabbed 18 times and face down in the dining room. Next, he found his father in his parents' bedroom. Ray was on the floor, dead from a single gunshot wound to the back of the head. Deondre Staten has maintained his innocence.

Defendant ran to his neighbor's house screaming his parents were dead. Two of his neighbors accompanied him back into the house, and as one checked his Faye's pulse, Defendant sobbed and tried to put his arms around his mother. On the mirrored wall of a hallway nearby, the phrase "E.S.D. Kills" was sprayed in white paint. E.S.D. was referred to the East Side Dukes, a Latino gang who operated in the Staten's neighborhood. When the police arrived, they interviewed Defendant who leaned crouched against the garage door, rocking back and forth extremely upset. Through this interview, the police learn that two days earlier, the same message: "E.S.D. Kills" had been spray painted in white on the Defendant's patio, right by the same sliding door that was open the night of the murders. Defendant's friend, John Nichols, told police the day before his parents left on their vacation, Staten got a call saying "E.S.D. kills niggers." That same friend, Nichols, would later go on to get arrested for a parole violation, for possessing a .22 derringer gun belonging to Faye Staten. Because Nichols was on probation for a drug violation, he was arrested and taken to jail. In jail, he was contacted by Detective Roberts. Roberts asked Nichols to secretly record Defendant in exchange for "help" with his probation. Nichols' recollection was different. He claimed Roberts threatened to implicate Nichols with the murders of Faye and Ray if he didn't agree to secretly record Defendant. Nichols became the key witness against Defendant, eventually wearing a wire to a meeting with Defendant. In the tape, Nichols repeatedly asked defendant whether he had anything to do with the murders and Defendant repeatedly denied any involvement.

On January 7, 1991, Deondre Staten was charged with two counts of murder under California Penal Code section 187(a), as well as special allegations of killing for financial gain and multiple murder under section 190.2 (a)(1), (3). It was further alleged that, in murdering his father, defendant personally used a firearm within the meaning of Penal Code section 12022.5, and that, in murdering his mother, he personally used a deadly and dangerous weapon, a knife under section 12022(b). Defendant pleaded not guilty to every charge and was tried by jury. The jury found him guilty of first-degree murder of both parents, and also found the special allegations regarding the killing for financial gain, multiple murders,

personal use of a firearm and personal use of a deadly and dangerous weapon to be true. He was sentenced to death for each murder.

Staten was convicted entirely based on circumstantial evidence. The weapons used to kill Ray and Faye were never recovered. Defendant had no opportunity to wash his hands and there was no gunshot residue on Defendant's hands the night of the murders. He explained the small, dried cut on his middle finger was from gardening and trying to get the yard cleaned up before his parents arrived home. Despite his mother being stabbed 18 times, there was no blood on his body or clothing. The State's expert testified the different bullets could have been fired from two different guns. The defense handwriting expert testified that the ESD graffiti was not the Defendant's handwriting. Fingerprints found on the paint canister in the closet did not belong to Defendant. Moreover, the neighbors gave inconsistent reports to police about hearing gunshots that night. In the recorded conversation with Nichols, prior to the highlighted quote, Defendant explicitly denied having anything to do with killing his parents multiple times.

Defendant testified that overall, he had a good relationship with his parents, especially his mother, and multiple family members and friends of Defendants said in interviews that he never could have hurt his mother. He denied talking to his friends about killing his parents for their insurance money. The prosecution argued Defendant killed his parents to obtain the proceeds of the three insurance policies under which he was a contingent beneficiary. However, from the time of the murders, October 1990 until the time of his arrest in March 1991, Defendant never made any claim for any of the insurance proceeds. One of Defendant and Nichol's friends, Matthew Nottingham told police in an interview that Defendant never spoke to him about insurance money. In fact, Nottingham told police that Nichols tried to speak with him and another friend about killing someone for $15,000. Defendant testified that his parents arrived home around 12:05-12:10 AM, and when his aunt called at 12:30 AM, his mother told him she didn't feel like talking. Defendant testified that he was being threatened by the East Side Dukes. The day

after the murders, five witnesses saw a car containing ESD members drive by the Staten home and glare at them. Three of those witnesses heard them say, "yeah we got them," and two of those three disclosed the event to Defendant's trial attorney. In a 2020 Ninth Circuit decision, the Court found that it was objectively unreasonable for the California Supreme Court to conclude that the trial attorney's performance was not deficient for failing to present that testimony at trial.

In 2000, The Los Angeles Sheriff's Department found that Investigator Dwight Van Horn (who was the chief investigator in this case) had failed a proficiency test in 1998 and 2 out of 51 of his investigations had ballistic errors and posed potential credibility errors. (Ex 1)

II.

POINTS AND AUTHORITIES

Section 1405, subdivision (c) states the following:

> Upon request of the convicted person or convicted person's counsel, the court may order the prosecutor to make all reasonable efforts to obtain, and police agencies and law enforcement laboratories to make all reasonable efforts to provide the following documents that are in their possession or control, if the documents exist:
>
> (1) Copies of DNA lab reports, with underlying notes, prepared in connection with the laboratory testing of biological-evidence from the case, including presumptive tests for the presence of biological material, serological tests, and analyses of trace evidence.
>
> (2) Copies of evidence logs, chain of custody logs and reports, including, but not limited to, documentation of current location of biological evidence, and evidence destruction logs and reports.
>
> (3) If the evidence has been lost or destroyed, a custodian of record shall submit a report to the prosecutor and the convicted person's counsel that sets forth the efforts that were made in an attempt to locate the evidence. If the last known or documented location of the evidence prior to its loss or destruction was in an area controlled by a law enforcement agency, the report shall include results of a physical search of this area. If there is a record of confirmation of destruction of evidence, the report shall include a copy of the record of confirmation of destruction in lieu of the results of a physical search of the area.

(§ 1405, subd. (c).)

//

A. Identity of Prosecutor's Office, Law Enforcement Agency, and Law Enforcement Laboratories

The following prosecutor's office, law enforcement agency, and law enforcement laboratories are the subject of this motion:

1. Prosecutor's Office

Los Angeles County District Attorney's Office
Forensic Science Section
320 West Temple Street, Suite 1180
Los Angeles, CA 90012-3289

2. Law Enforcement Agencies

Los Angeles County Sheriff's Department
Central Property & Evidence
14201 East Telegraph Road
Whittier, California 90604
Attention: Sergeant Omar Carbajal

3. Law Enforcement Laboratories

Los Angeles Sheriff's Department Regional Crime Laboratory
Scientific Services Bureau
Hertzberg-Davis Forensic Science Center
1800 Paseo Rancho Castilla
Los Angeles, CA 90032
Attention: Tiffany Shew, Senior Criminalist

Los Angeles County Department of Medical Examiner
1104 North Mission Road
Los Angles, California 90033
Attention: Debra K. Gibson, Supervising Criminalist

4. Documents to be Disclosed to Defendant

By this motion, defendant requests this Court order the above agencies to make all reasonable efforts to obtain and provide the following:

1. DNA lab reports. (§ 1405, subd. (c)(1).)
2. Underlying notes prepared in connection with the laboratory testing of biological evidence from the case. (§ 1405, subd. (c)(1).)
3. Serological tests. (§ 1405, subd. (c)(1).)
4. Analyses of trace evidence. (§ 1405, subd. (c)(1).)
5. Evidence logs. (§ 1405, subd. (c)(2).)
6. Chain of custody logs and reports. (§ 1405, subd. (c)(2).)
7. Documentation of current location of biological evidence. (§ 1405, subd. (c)(2).)
8. Evidence destruction logs and reports. (§ 1405, subd. (c)(2).)
9. Police officer reports.

5. Loss or Destruction of Evidence

In the event the evidence has been lost or destroyed, defendant requests this Court to order the respective agencies to "submit a report to the prosecutor and the convicted person or convicted person's counsel that sets forth the efforts that were made in an attempt to locate the evidence." (§ 1405, subd. (c)(3).) Additionally, if the last known or documented location of the evidence prior to its loss or destruction was in an area controlled by a law enforcement agency, if the evidence is lost or destroyed, "the report shall include the results of a physical search of this area." (§ 1405, subd. (c)(3).)

CONCLUSION

Defendant respectfully requests an order directing the agencies named above to make all reasonable efforts to provide copies of the materials delineated in section 1405, subdivisions (c)(1) and (c)(2) and, if the evidence is lost or destroyed, to comply with section 1405, subdivision (c)(3). A proposed order accompanies this motion.

Respectfully submitted,

Dated: 12/5/23

Attorney for Defendant

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Attorneys for Defendants DEONDRE STATEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CLARA SHORTRIDGE CRIMINAL JUSTICE CENTER

THE STATE OF CALIFORNIA,

Plaintiff,

v.

DEONDRE STATEN,

Defendant.

Case No: KA006698

DECLARATION OF ANNEE DELLA DONNA IN SUPPORT OF MOTION FOR DISCLOSURE OF DNA REPORTS AND STATUS OF BIOLOGICAL EVIDENCE PURUSANT TO PENAL CODE 1405(C)

DEPT. 100/Criminal Writs Center
Judge: William C. Ryan

I, ANNEE DELLA DONNA, declare as follows:

DECLARATION OF ANNEE DELLA DONNA, ESQ, IN SUPPORT OF MOTION FOR DNA TESTING

1.I am an attorney at trial licensed since 1988 to practice before all courts of the State of California. I am the Director of InnocenceOC and represent Deondre Staten who is currently on Death Row for the alleged murders of his mother and father.

2.Staten continues to maintain his innocence for these crimes.

3.The evidence I seek to test for DNA, I believe, will exclude Staten as a contributor to the DNA on the bullets, casings and blood found at the scene of the crime and will help to identify the true perpetrator of the crime.

4. In 1991, numerous blood stains from the Staten home were sent from the Los Angeles Sheriff's Office to be DNA tested. The parties stipulated that none of the 14 blood samples recovered belonged to Ray and that samples VW 2-4, 6-8 and 14-16 did not belong to Faye but "could have been from" Deondre, that samples VW 10, 11A and 11B did not come from Deondre and that no conclusion could be reached if Faye or Deondre were donors of the sample VW 1AB, 1 and 5. Defense requests genealogical DNA testing. It allows law enforcement to compare the profile of the unknown suspect's DNA to other national databases and build a family tree of that person, thereby creating a small pool of suspects. Genealogical DNA testing has withstood the scrutiny of courts and has helped solved such cold cases as the Golden State serial killer in California.

In 2014 a San Diego crime lab began testing bullet casings for DNA through a new method of soaking the casings for about half an hour in tubes filled with a cocktail of chemicals that break open cells and release DNA so it can then be isolated and tested. Defendants would like to submit the shell casings SD crime lab and to the

National Integrated Ballistics Imaging Network, or NIBIN, a database that can connect a shell casing with others that were shot from the same gun.

Scientists have developed a rotation stage to allow researchers and forensic practitioners to perform highly sensitive, non-destructive Time-of-Flight Secondary Ion Mass Spectroscopy (ToF-SIMS) measurements and develop high resolution fingerprint images on surfaces that conventional fingerprint imaging fails to pick up at all. The rotation stage that they have developed opens up new possibilities for the retrieval of high-resolution fingerprints from the whole surface area of challenging shapes and materials like metal bullet casings.

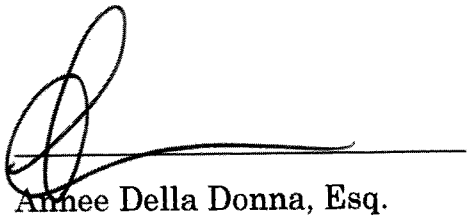
Retrieval of fingermark evidence from bullet casings is an area of major difficulty for forensic scientists. While both fired and unfired casings can often be found at the scene of violent crimes, retrieving fingermarks and linking the person that loaded the gun to the crime has consistently proven to be difficult because of the physical conditions that are experienced by the bullet casings during firing and techniques that are used to develop and image the fingermarks.

5. This new and improved technology was not available in1991 when these murders occurred.

6. I have revealed, to the best of my ability, all of the prior DNA testing conducted on the evidence in this case. My understanding is this evidence was never tested for DNA and Staten has not previously requested DNA testing under this statute.

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

Executed this 5th day of ~~July~~ December, 2023 in Laguna Beach, California.



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Attorneys for Defendants DEONDRE STATEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CLARA SHORTRIDGE CRIMINAL JUSTICE CENTER

THE STATE OF CALIFORNIA,

Plaintiff,

v.

DEONDRE STATEN,

Defendant.

Case No: KA006698

DECLARATION OF DEONDRE STATEN IN SUPPORT OF MOTION FOR DISCLOSURE OF DNA REPORTS AND STATUS OF BIOLOGICAL EVIDENCE PURUSANT TO PENAL CODE 1405(C)

DEPT. 100/Criminal Writs Center
Judge: William C. Ryan

I, Deondre Arthur Staten, declare as follows:

1. I am an inmate housed at the San Quentin State Prison in San Quentin, California, pursuant to the judgment executed in the above-captioned case. I was found guilty of two counts of first-degree murder, under the special circumstances of (1) killing for financial gain, and (2) multiple murder. In addition, I was found guilty of the accompanying special circumstances: personally using a gun and personally using a knife. I was sentenced to death under the 1978 death penalty law.
2. I did not commit these crimes, and I maintain my innocence.
3. The evidence I seek to test with this Post-Conviction Motion for DNA Testing pursuant to Penal Code, section 1405 is bullets, casings and blood samples from the October 12, 1990 to October 13, 1990 crimes.
4. I believe testing the above evidence will not only exclude me as a contributor to DNA on the items, but will reveal the profile of the true perpetrator of both crimes. Accordingly, these results would raise a reasonable probability that my verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.
5. I have revealed, to the best of my knowledge, all of the previous DNA testing conducted on the evidence. My understanding is this evidence was never tested for DNA.
6. I have reviewed the Motion for Disclosure of DNA Testing pursuant to Penal Code, section 1405(c) and have read the attached memorandum of points and authorities. I declare that all the matters alleged in the motion are true and of my own personal knowledge or are supported by the record or by the attached

exhibits. Any reports and declarations to the motion for DNA testing are originals or true copies of the originals.

7. I have not previously requested DNA testing under this statute.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on November 20, 2023 at San Quentin State Prison in San Quentin, California.

Dated: 11-20-23

Deondre Staten

DEONDRE STATEN

Defendant

PROOF OF SERVICE PEOPLE V. STATEN

STATE OF CALIFORNIA,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 301 Forest Avenue, Laguna Beach, Ca 92651.

On December 5, 2023 I served the foregoing document described as: **MOTION FOR DISCLSURE OF DNA REPORTS; SUPPORTING DECLARATIONS** on the interested parties in this action by transmitting [] the original [X] a true copy thereof as follows:

LOS ANGELES DISTRICT ATTORNEYS' OFFICE

Lee Ashley Cernok
Forensic Science Section
Los Angeles County District Attorney's Office
320 West Temple, Suite 1180
Los Angeles, California 90012
mrizzo@da.lacounty.gov

X BY EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure sections 1010.6, et seq. and CRC 2.25, or based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from the email address delladonnalaw@me.com to the persons at the email addresses listed above. I did not receive within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

BY MAIL: I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Laguna Beach, California in the ordinary course of business. I am aware that upon motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 5 day of December 2023 in Laguna Beach, Ca 92651.

ANNEE DELLA DONNA

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District Attorney
By: LEE ASHLEY CERNOK, State Bar No. 234899
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Attorney for the People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff,** **v.** **DEONDRE STATEN,** **Defendant.**	**Case No. KA006698** **PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR POST CONVICTION DNA TESTING PURSUANT TO PENAL CODE SECTION 1405; MEMORANDUM OF POINTS AND AUTHORITIES**

TO THE HONORABLE WILLIAM C. RYAN, JUDGE OF THE SUPERIOR COURT OF THE CENTRAL JUDICIAL DISTRICT; AND TO DEFENDANT DEONDRE STATEN, AND HIS ATTORNEYS OF RECORD, ANNEE DELLA DONNA AND ERIC DURBIN, PLEASE TAKE NOTICE:

The People of the State of California hereby OPPOSE the defendant's motion for post conviction DNA testing pursuant to California Penal Code section 1405, et. seq.[1] The People's opposition is based upon the following points and authorities, exhibits, and any arguments that may take place upon a hearing of the motion.

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[1] Hereafter, all statutory references shall be to the California Penal Code, unless otherwise noted.

INTRODUCTION

On December 2, 1991 a jury convicted defendant Deondre Staten (Staten) of the first-degree murder (Count 1, § 187, subd. (a)) of both of his parents, victims Arthur and Faye Staten. (3 C.T.[2] pp. 801-806; 23 R.T.[3] pp. 3622-3623.) The jury found true the allegation that Staten used a firearm to kill his father (§ 1203.01, subd. (a)(5), § 12022.5) and the allegation that Staten used a knife to kill his mother (§ 12022, subd. (b)). (3 C.T. pp. 801-806; 23 R.T. pp. 3622-3623.) The jury also found true the special circumstance allegations that the murders were intentional and carried out for financial gain (§ 190.2, subd. (a)(1)), and that the defendant committed multiple murders (§ 190.2, subd. (a)(3)). (3 C.T. pp. 801-806; 23 R.T. pp. 3622-3623.)

Following the penalty phase of the trial, the jury recommended Staten be sentenced to death. (3 C.T. p. 840; 23 R.T. p. 3847-3848.) The trial court imposed the death sentence. (23 R.T. pp. 3869-3874.) Following an automatic appeal, the California Supreme Court affirmed defendant Staten's conviction and death sentence. (*People v. Staten* (2000) 24 Cal.4th 434, attached as People's Exhibit 3.) The defendant filed a federal petition for habeas corpus, which was denied without an evidentiary hearing. The defendant appealed, and the United States Court of Appeals, 9th Circuit affirmed the lower court's denial. (*Staten v. Davis* (2020) 962 F.3d 487.)

Through his counsel, attorneys Annee Della Donna and Eric Dubin, defendant Staten filed a Notice of Motion and Motion for DNA Testing (hereafter "Def. § 1405 Motion") on July 19, 2023. The defendant filed a declaration in support of his motion on August 14, 2023. (hereafter "Def. § 1405 Declaration".) The defendant requests post conviction DNA testing of the following items:

1) Three (3) .38 caliber fired bullets;
2) One (1) .25 caliber expended cartridge case; and
3) Bloodstain evidence/swabs.

(Def. § 1405 Motion, pp. 9-10; Def. § 1405 Declaration, p. 2.)

As the People will demonstrate, the defendant has not satisfied the threshold pleading and proof requirements for post conviction DNA testing set forth in section 1405, subdivisions (d)

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[2] All citations to the Clerk's Transcript (C.T.) in this motion refer to the Reporter's Transcript on Appeal, Volumes 1 through 3, attached as People's Exhibit 1.

[3] All citations to the Reporter's Transcript (R.T.) in this motion refer to the Reporter's Transcript on Appeal, Volumes 1 through 23, attached as People's Exhibit 2.

and (g). The defendant also requests latent print analysis of the fired bullets and the expended cartridge case. However, latent print analysis falls outside the purview of testing pursuant to section 1405.

FACTUAL SUMMARY

The People adopt and incorporate the facts set forth in the California Supreme Court opinion *People v. Staten, supra*, which is provided verbatim below:

> Defendant, age 24, lived with his parents Arthur and Faye Staten in the La Puente/East Valinda area of Los Angeles County. Arthur and Faye owned a beauty salon and beauty supply store. They had several life insurance policies worth a total of more than $300,000. In August 1990, in the presence of defendant, they revised three of the policies to name him sole beneficiary if they both died; a fourth policy named him and his mentally retarded brother Lavelle co-beneficiaries.
>
> Defendant had a strained relationship with his father; they often argued and his father periodically evicted him from the house for weeks or months at a time. He told friends that he would "take his father out" or "take care of him." He also told friends about his parents' insurance policies, indicating that he would inherit a large sum if they died. On one occasion, while discussing ways of making money with two friends, he said that he knew how they could make $275,000, but that it would take a month and a half to get the money. He told them that if they would "bump off" two people who lived around the corner and owned a beauty supply and hair salon, they would be paid a "five-digit" sum of money. On another occasion, while watching a television program about the Menendez brothers, who were charged with the notorious crime of murdering their parents for their inheritance, he commented to the effect that "They did it wrong. They shouldn't have got caught."
>
> In September, Arthur and Faye left for a two-week vacation, leaving their truck at the home of Faye's parents, the McKays. Defendant stayed at home.
>
> Defendant's parents kept a .38–caliber revolver with a brown handle at the beauty supply shop in case of robberies; they kept a handgun, a .22–caliber derringer, under their bed at home. About a week after his parents left, following a visit to the beauty salon, defendant showed his friend John Nichols the .38–caliber revolver, which he was carrying in his pants; shortly thereafter, he gave Nichols the .22–caliber derringer. On several occasions he mentioned to Nichols that he had hollow-point bullets.
>
> Two or three days before his parents were to return, late at night, he told friends who were staying at his house that he heard something in the backyard. Taking the .38–caliber revolver, he looked around the outside the house, but did not find anyone. He said that he had received threatening telephone calls from the East

Side Dukes, a local Latino gang. The following day, he showed friends the letters "ESD" spray-painted on the backyard patio.

During the week before his parents' return, defendant repeatedly asked a cousin, who lived behind the McKays' house, to call him when his parents left for home. On October 11, Arthur and Faye returned from vacation to the McKays'. They spent the night and most of the following day at a family gathering at the McKays'. On October 12, defendant telephoned throughout the day and evening to find out when his parents were returning home, but declined invitations to come to dinner. In the afternoon, friends observed that he was drinking malt liquor and was fidgety. As was typical, he was wearing faded blue jeans. A brown gun handle protruded from his pocket. He said he was going to stay home and wait for his parents.

Arthur and Faye left the McKays' house for home at 11:20 or 11:25 p.m. A neighbor, Bertha Sanchez, saw their truck arrive at 11:40 p.m.. Between 11:50 and 11:55 p.m., she and her husband heard three gunshots. Another neighbor, Craig Hartman, also heard gunshots between 11:30 and 11:45 p.m.; he heard no other shots that night.

On October 13, at 12:04 a.m., defendant's aunt telephoned to find out if his parents had arrived home safely. Defendant answered, sounding nervous and rushed; he said that they had not returned and he was getting ready to go out. He did not offer to leave a note for his parents. At 12:31 a.m., defendant's aunt called again. This time, defendant said that his parents were home but did not offer to put them on the line, as he usually did.

Sometime after midnight, Sanchez heard what she thought was the Statens' truck starting and driving away; it returned around 20 minutes later.

Around 1:05 a.m., defendant knocked on the Hartmans' door and said that his parents had been killed; he was crying and appeared to be vomiting. When the Hartmans returned with defendant to his house, they found Faye's body lying facedown near the entryway and Arthur's body in the master bedroom. The words "ESD Kills" were spray-painted on a mirrored wall in the living room.

Sheriff's deputies arrived at the scene and attempted to speak to defendant, but he did not answer, appearing to be in a trance. Craig Hartman thought that he was "faking," because he had been able to communicate earlier. Defendant had a cut with dried blood on his right middle finger, and he was wearing shorts. Later, at the sheriff's station, while talking with his aunts, defendant collapsed and appeared unconscious. When paramedics arrived, however, he was alert and well-oriented, needing no medical care. Defendant's aunts returned to the Staten house to retrieve a change of clothing; they looked for a pair of blue jeans, his usual attire, but found none.

Arthur died of a single gunshot wound to the head with a .38 or .357–caliber hollow-point bullet. Faye died of multiple stab wounds; of 18 wounds, seven could have been fatal. There was no evidence of forced entry or robbery, and there were no signs of entry in the backyard. In a den, a book of historic newspaper headlines was open to an article concerning the Sharon Tate murder case.

There were bloodstains throughout the house; some could have been defendant's, others could have been Faye's. A handprint on the mirrored living room wall below the spray-painted graffito matched defendant's. There was a 90 percent probability that the graffito on the mirrored wall was produced by the same writer as the graffito on the back porch. The paint on both was of the same formula; it also matched a can of spray paint found in the hall closet.

At funeral services for his parents, defendant did not appear upset. He told a cousin that this was no time to cry because they were dead, buried and gone; instead, it was time to party and get high.

On October 14, Nichols was stopped by law enforcement officers while carrying the .22–caliber derringer and was arrested for violation of probation. On November 3, he was released from custody and met with defendant while wearing a transmitting wire monitored by a detective. In the taped conversation, defendant said that he had "gotten rid of" the .38–caliber revolver before his parents returned home. He suggested that Nichols lie about the gun to police and assured him that the police would not be able to find it and that as long as he stuck to his story, they would not have a case: "Because they lost. I'm still saying—but they can't do shit. All they can do is close the mother fucker. [¶] If they still can't find it, I'm still going to blame it on the Dukes."

The gang unit of the sheriff's department concluded that the murders were not gang related and that the graffiti found in the house and backyard did not appear genuine or to have been written in the distinctive style of the East Side Dukes. Moreover, it would be unusual for graffiti to be hidden in a backyard or inside a house rather than the front of the house, as the gang's purpose was to claim territory and to threaten others. The East Side Dukes typically performed their killings in drive-by shootings or after knocking on a victim's door and calling him outside; they used graffiti to announce their killings to the whole neighborhood, usually including the gang member's street name and identifying the intended victims. They did not ordinarily intentionally harm others living in their neighborhood, even if they were African–American, like defendant and his family. An investigator was told by members of the East Side Dukes that they would not have committed a crime of this kind.

For his part, defendant introduced evidence, including his own testimony, as follows.

> Defendant had a good relationship with his parents, especially his mother. He never spoke to friends about killing his parents for the insurance money, although he did discuss other ways of making money, including tax-deferred retirement accounts and money management.
>
> The East Side Dukes repeatedly threatened him. During his parents' vacation, he took their .38–caliber gun from the beauty shop, and gave Nichols the .22–caliber derringer, for protection. The .38–caliber gun disappeared one night after a party; defendant did not tell anyone because he suspected that one of Nichols's friends had stolen it.
>
> The cut on defendant's finger came from a hedge trimmer he used for gardening on the day of his parents' return; he may have left a trail of blood in the house while looking for a bandage. He wore shorts all day; his blue jeans were either in his bedroom or in the laundry. That night, he was working on lyrics to a "rap" song and looked through the book of historic headlines in the den; he was not reading the headline about the Sharon Tate murders but was looking for headlines about Martin Luther King, Jr.
>
> Defendant's parents arrived between 12:05 and 12:10 a.m. When his aunt called at 12:30, his mother indicated that she did not want to talk to her. He left in his parents' truck to get a hamburger between 12:30 and 12:45 a.m. Realizing he did not have money with him, he returned home, arriving about 1:00. When he returned, he discovered his parents' bodies and saw the spray-painted graffito in the living room that read "ESD Kills."
>
> Neighbors gave inconsistent reports to police officers about hearing gunshots that night; Sanchez told one police officer that she had heard "firecracker" noises after 12:30 a.m., not earlier. The Hartmans did not mention to that same officer that they had heard gunshots.
>
> No gunshot residue was found on defendant's hands.

(*People v. Staten, supra*, at pp. 441-445.)

The People also add the following information:

A. Expended Bullet and Cartridge Case Collection and Analysis

Dr. Susan Selser conducted the autopsy of Arthur Staten on October 15, 1990. (11 R.T. pp. 1904-1905.) She determined the cause of Arthur Staten's death was a single gunshot wound to the back of his head. (11 R.T. pp. 1906-1907.) The bullet traveled from back to front and slightly right to left. (11 R.T. p. 1908.) Dr. Selser did not observe any soot or stippling around the gunshot wound. (11 R.T. pp. 1908-1909.) Dr. Selser opened the skull area and removed an expended bullet, which she placed in an evidence envelope. (11 R.T. pp. 1916-1918.) The

envelope was sealed, labeled "Item #1", and provided to homicide investigators. (11 R.T. p. 1917-1918; 11/01/1991 LASD Supplementary Report, attached as People's Exhibit 4, p. 2.)

Los Angeles County Sheriff's Department (LASD) Criminalist Wayne Plumtree (Plumtree) collected evidence at the Staten residence on October 13, 1990. (8 R.T. pp. 1417-1418, 1427; see 11/01/1991 LASD Supplementary Report, attached as People's Exhibit 4, pp. 1-3.) Plumtree recovered two expended bullets inside the house. (8 R.T. p. 1418; 11/01/1991 LASD Supplementary Report, p. 2, attached as People's Exhibit 4.) Plumtree located one expended bullet in a wall in the west portion of the hallway. (8 R.T. pp. 1420-1421.) The bullet was embedded in the wall just above the baseboard. (8 R.T. p. 1421.) Plumtree chipped away the plaster to remove the bullet, which he placed in an evidence envelope and designated "Item A." (8 R.T. p. 1421.) He found another bullet embedded in the exterior wall of the center bedroom on the west side of the house. (8 R.T. p. 1419-1420.) In order to remove the bullet, Plumtree he used a hammer to break through the wall plasterboard. (8 R.T. p. 1420.) Plumtree dug the expended round out of the wall, wiped it off, and placed it in an evidence envelope and designated it "Item B." (8 R.T. p. 1420.) The evidence envelopes were dated, labeled, and submitted to the crime lab for examination. (8 R.T. p. 1421.)

LASD Firearms Examiner Dwight Van Horn (Van Horn) examined the expended bullet from Arthur Staten's autopsy (Item #1) and the two expended bullets from the Staten residence (Items A and B). (8 R.T. pp. 1443-1444.) Van Horn prepared a report documenting his examination. (10/30/1990 LASD Firearms Report, page 2 of 2, attached as People's Exhibit 5.) In a section labeled "Contamination" Van Horn noted that Item #1 had "Blood cleaned", Item A had "Building material" and Item B was "Cleaned." (10/30/1990 LASD Firearms Report, attached as People's Exhibit 5.) Van Horn compared the bullets and opined they could have been fired from the same weapon. (8 R.T. p. 1445; 10/30/1990 LASD Firearms Report, attached as People's Exhibit 5.) Van Horn testified that all three bullets were jacketed hollow point bullets and were either .38 special or .357 magnum caliber. (8 R.T. pp. 1443-1444.) The bullets could have been fired from a model .36 Smith and Wesson handgun. (8 R.T. p. 1445.)

At trial, the People introduced a single envelope containing three smaller envelopes (each containing a fired bullet – Item #1, Item A, and Item B) as Exhibit 41. (8 R.T. p. 1423; 15 R.T. p. 2612.) The envelope was opened on the record by both Plumtree and Van Horn. (8 R.T. pp.

1423, 1448.) Exhibit 41 was received into evidence at the close of the People's case in chief. (15 R.T. p. 2612.)

During a search of the Staten residence, investigators located an expended .25 caliber cartridge case outside. (11/01/1991 LASD Supplementary Report, attached as People's Exhibit 4, p. 2.) When investigators interviewed defendant Staten, he admitted that he fired his friend's gun (with .25 caliber ammunition) in his backyard a few days before his parents came home from vacation. (18 R.T. pp. 3120-3122.)

B. Bloodstain Evidence Collection and Analysis

LASD Criminalist Victor Wong (Wong) collected bloodstain evidence from inside and outside the Staten residence. (12 R.T. pp. 2044-2046.) He assigned each bloodstain swab with his initials and a corresponding number: VW-1, VW-2, etc. (12 R.T. p. 2047, 2049.) Wong documented the evidence he collected in a supplementary report and a crime scene diagram. (12 R.T. pp. 2047-2048; 10/15/1990 LASD Supplementary Report, attached as People's Exhibit 6.) Wong collected the following bloodstain evidence:

- VW-1: Bloodstain on walkway to front door,
- VW-2: Bloodstain on north side (interior) of front door,
- VW-3: Bloodstain on entryway floor,
- VW-4: Bloodstain on entryway floor,
- VW-5: Bloodstain on kitchen counter,
- VW-6: Bloodstain on right edge of kitchen sink/counter,
- VW-7: Bloodstain on left edge of dishwasher door panel,
- VW-8: Bloodstain covering 6' on south wall of dining room,
- VW-11a: Bloodstain on west wall of dining room,
- VW-11b: Blood stain on glass panel (south end) of china cabinet in dining room,
- VW-14: Bloodstain in hallway (3 drops),
- VW-16: Bloodstain on light switch in master bedroom, and
- VW-19: Bloodstain from rag in Arthur Staten's truck.

(12 R.T. pp. 2049-2063; 10/15/1990 LASD Supplementary Report, attached as People's Exhibit 6.) The evidence Wong collected is depicted in the following diagram:

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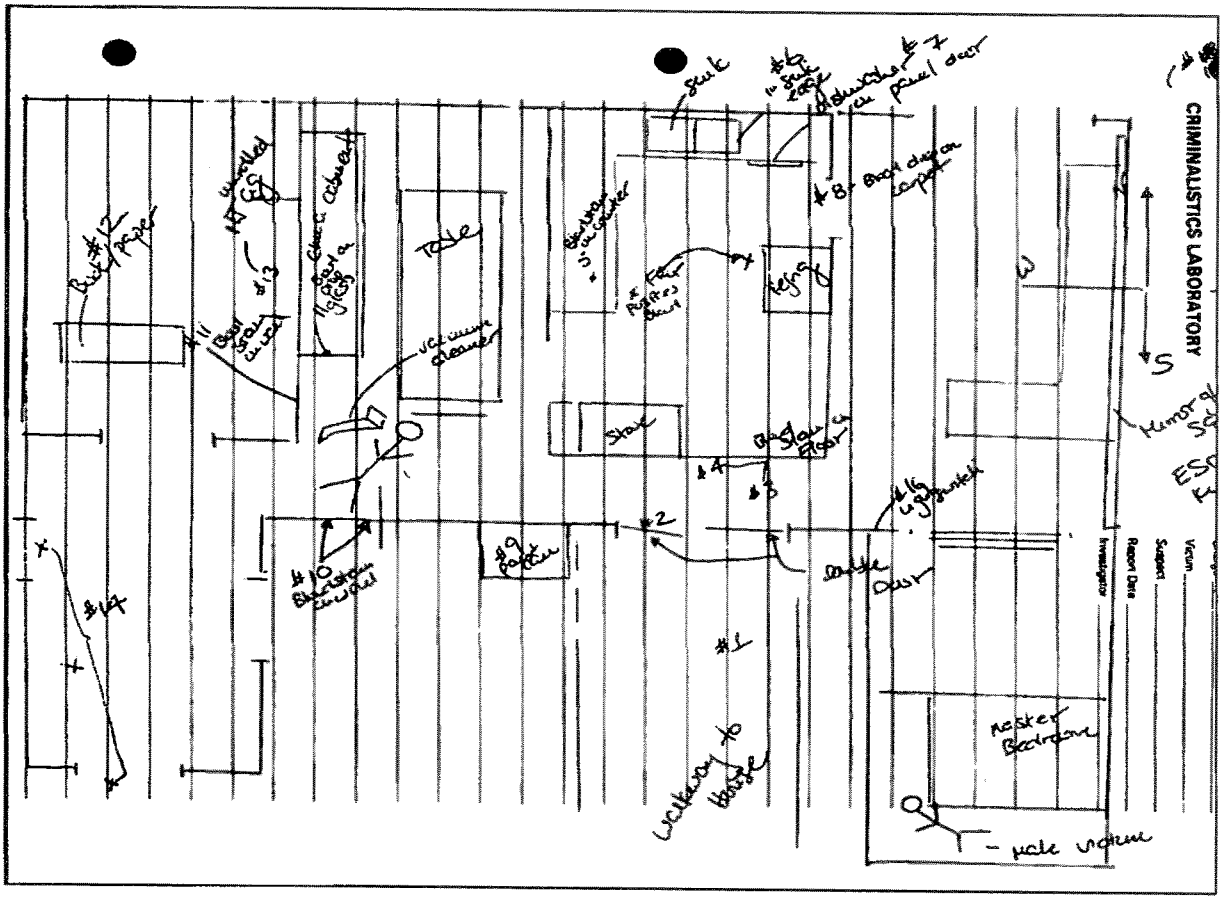
Diagram 1: Crime Scene and Evidence Samples



After collecting the evidence, Wong transported it to the crime lab where it was properly packaged and placed in frozen storage. (12 R.T. p. 2062.)

LASD Senior Criminalist Valorie Scherr (Scherr) conducted a serological analysis of the crime scene bloodstain evidence, bloodstains from defendant Staten's shoes, bloodstains from John Nichol's shorts, and a pair of gray pants found in the garage at the Staten residence. (12 R.T. pp. 2154-2156, 2163; 01/02/1991 LASD Supplementary Report, attached as People's Exhibit 7.) Scherr also analyzed victim Arthur and Faye Staten's reference blood samples. (01/02/1991 LASD Supplementary Report, attached as People's Exhibit 7.) A few months later, Scherr was provided defendant Staten's reference blood sample, which Scherr analyzed and compared to the evidence samples. (12 R.T. pp. 2163-2168; 03/05/1991 LASD Supplementary Report, attached as People's Exhibit 8.)

Following Scherr's analysis, bloodstain evidence and reference samples were sent to the Center for Blood Research Laboratory (CBRL) for DNA/DQ Alpha type testing. (10/09/1991 CBRL Report, attached as People's Exhibit 9; 11/01/1991 CBRL Report, attached as People's

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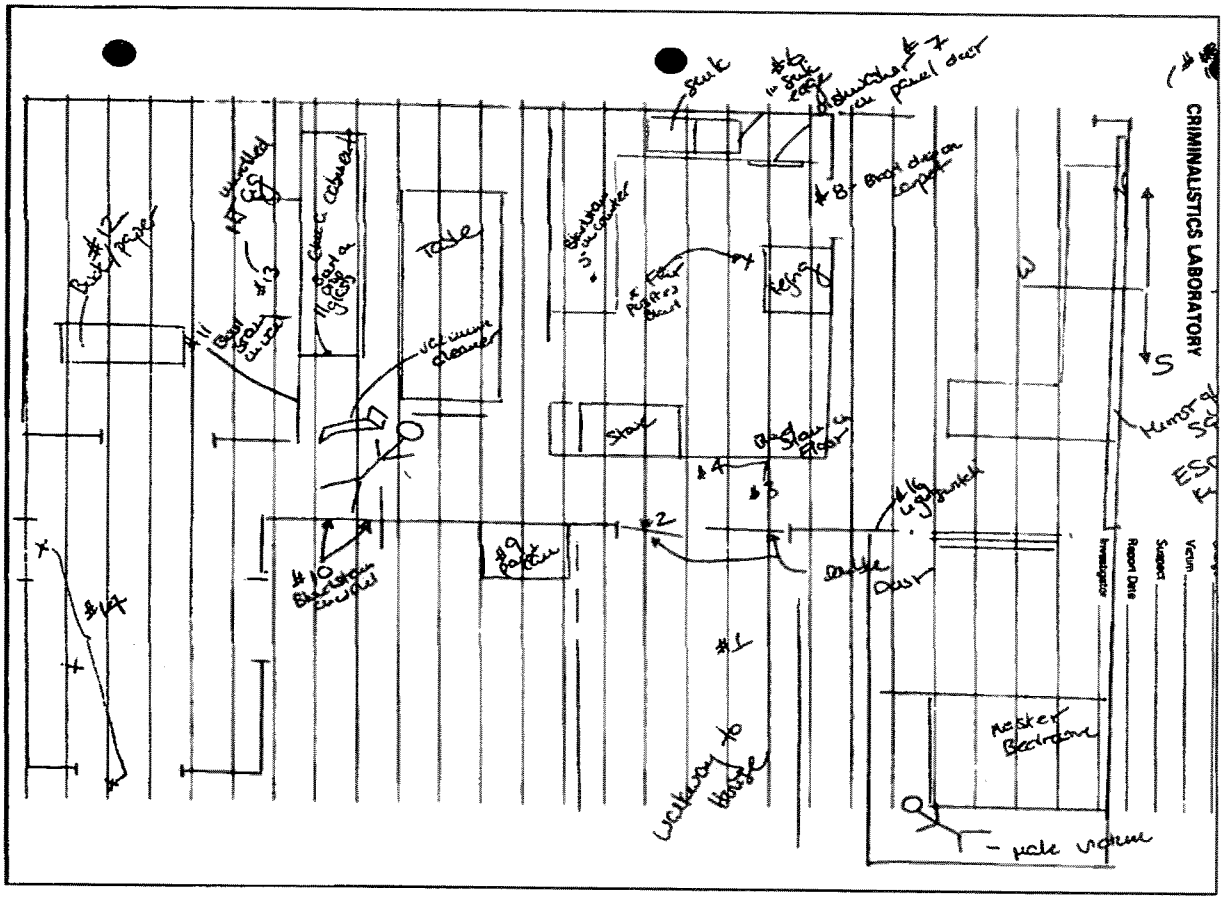

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Exhibit 10.) At trial, the parties stipulated to the DNA/DQ Alpha type results. (11 R.T. pp. 2180-2181.)

The serological testing results, the DNA/DQ Alpha type testing results, and the parties' stipulation are set forth in the following tables[4] and diagram:

Table 1: Reference Sample Results

Item	Description	DNA/DQ Alpha Type Results
LASD H374210 CBRL Item 10596	Bloodstain reference, Faye Staten (FS)	1.2/4
LASD H374211 CBRL Item 10597	Bloodstain reference, Arthur Staten (AS)	2
LASD H384427 CBRL Item 10598	Bloodstain reference, Deondre Staten (DS)	1.2/2
LASD H446805 CBRL Item 10822	Bloodstain reference, John Nichols (JN)	3/4

Table 2: Evidence Sample Results

Item	Description	Serology: Blood Type/Protein Results	DNA/DQ Alpha Type Results	Jury Trial Stipulation
VAS-1AB LASD H340196 CBRL Item 10706	Swab of combined bloodstains from the tops of DS's shoes	Could have originated from FS or DS. (01/02/91 LASD, 03/05/91 LASD)	3/4 JN cannot not be excluded. (11/01/91 CBRL)	Could not have come from AS. No other conclusion could be reached.
VAS-1B LASD H444411 CBRL Item 10823	Blood droplets removed from left shoe top (09/20/91)		Inconclusive (11/01/91 CBRL)	-
VAS-2A CBRL Item 10707	Bloodstain from right edge of shorts leg, near leg opening (shorts worn by JN)	Could not have originated from AS, FS. (01/02/1991 LASD) Could have come from FS or DS. (03/05/91 LASD)	3/4 JN cannot not be excluded. (11/01/91 CBRL)	-
VAS-3A	Swab of red stain on interior fly region of gray pants (found in Staten garage)	No human blood detected. (03/05/91 LASD)		-

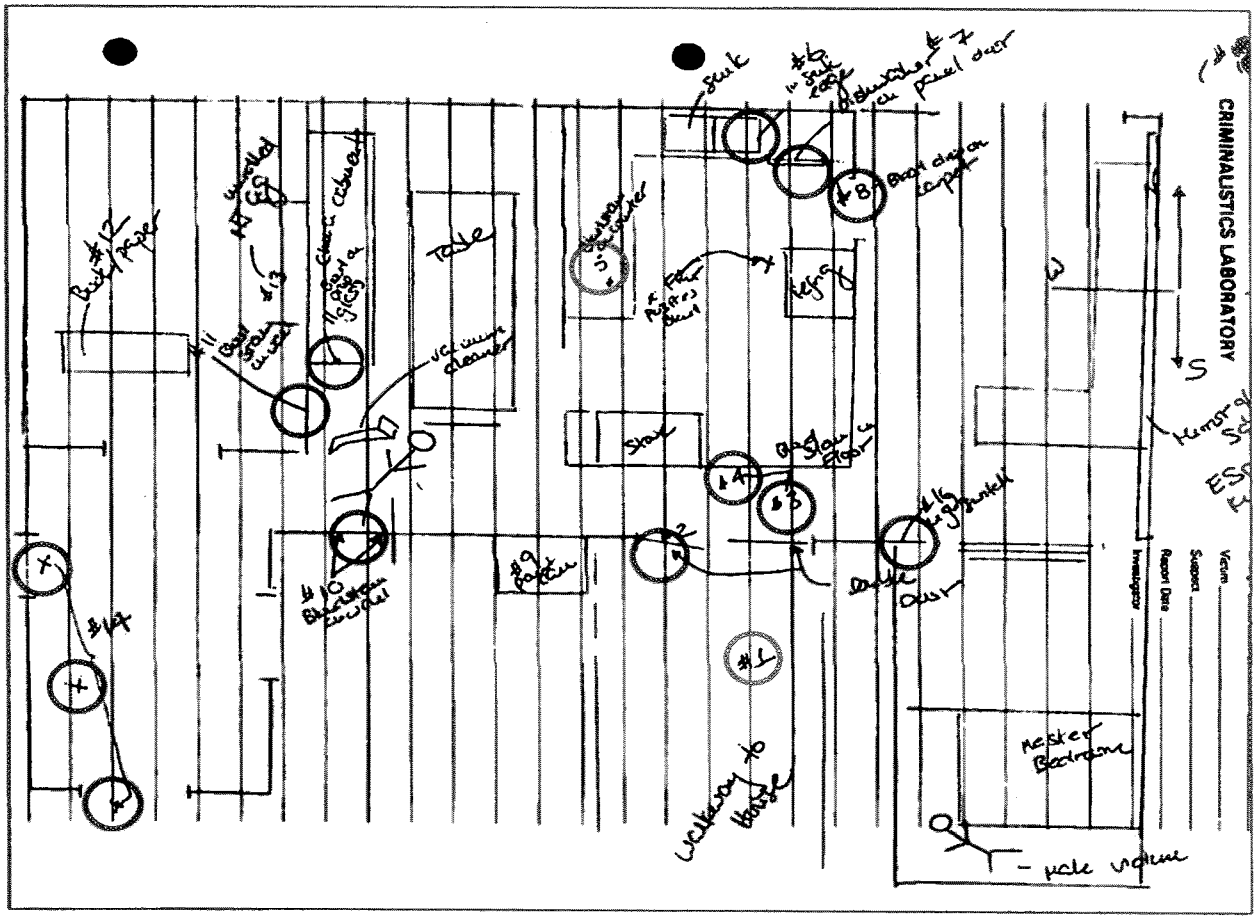
[4] Table 1 and Table 2 are also attached as People's Exhibit 11.

VW-1 CBRL Item 10691	Bloodstain on walkway to front door	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	None seen.	Source could not be AS. No other conclusion could be reached.
VW-2 CBRL Item 10692	Bloodstain on north side (interior) of front door	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-3 CBRL Item 10693	Bloodstain on entryway floor	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-4 CBRL Item 10694	Bloodstain on entryway floor	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-5 CBRL Item 10695	Bloodstain on kitchen counter		1.2/2/4 Appears to be a mixture.[5] (10/09/91 CBRL)	Source could not be AS. No other conclusion could be reached.
VW-6 CBRL Item 10696	Bloodstain on right edge of kitchen sink/counter		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-7 CBRL Item 10697	Bloodstain on left edge of dishwasher door panel		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-8 CBRL Item 10698	Bloodstain at edge of carpet between kitchen and living room		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-10 CBRL Item 10699	Bloodstain covering 6' on south wall of dining room	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-11a CBRL Item 10700	Bloodstain on west wall of dining room		1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-11b CBRL Item 10701	Blood stain on glass panel (south end) of china cabinet in dining room	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.

[5] Note that this mixture consists of DNA/DQ Alpha types attributed to DS and FS.

VW-14 CBRL Item 10702	Bloodstain in hallway (3 drops)		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-16 CBRL Item 10703	Bloodstain on light switch in master bedroom		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-19 CBRL 10704	Bloodstain from rag in Arthur Staten's truck		2 AS cannot be excluded. (10/09/91 CBRL)	-

Diagram 2: Crime Scene and Evidence Sample Results



Deondre Staten could be source (2, 3, 4, 6, 7, 8, 14, 16)

Faye Staten could be source (10, 11a, 11b)

No conclusion could be reached (1, 5)

Against this backdrop, defendant Staten now requests post conviction DNA testing of the three expended bullets, the expended cartridge case, and unspecified bloodstain evidence.

However, the defendant has failed to meet all of the required pleading and proof requirements for testing set forth in section 1405, subdivisions (d) and (g).

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THERE IS NO SUBSTANTIVE CONSTITUTIONAL RIGHT TO POST CONVICTION DNA TESTING

We note at the outset that there is no constitutional entitlement to post conviction DNA testing, because no substantive constitutional right is implicated. The United States Supreme Court declined to create such a right in *District Attorney's Office for the Third Judicial District v. Osborne* (2009) 557 U.S. 52 [Alito, J., concurring]. The Court held that while the defendant in *Osborne* did possess a "liberty interest" in attempting to demonstrate his innocence under the law of the state, this was not equivalent to the rights he enjoyed before trial. Rather, the Court made the fundamental point that once a defendant has received a fair trial and been convicted, the presumption of innocence disappears. (*Id.* at pp. 67-70.) A state then has greater flexibility in determining the procedures that must be followed to obtain post conviction relief. When a state chooses to offer assistance to defendants who seek to challenge their convictions, the Court held, "due process does not dictate the exact form such assistance must assume." (*Id.* at p. 69, internal quotations and citations omitted.)

II.

CALIFORNIA PROVIDES STATUTORY AUTHORITY FOR POST CONVICTION DNA TESTING

California state law does provide the right to post conviction DNA testing, as codified by section 1405. The statute outlines extensive pleading and proof requirements that must be met before relief is appropriate. Section 1405(d)(1) establishes that the motion must be verified by the convicted person under penalty of perjury and must include each one of the following:

(A) A statement that he or she is innocent and not the perpetrator of the crime.
(B) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.
(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.
(D) Explain, in light of all the evidence, how the requested DNA testing would

raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of the DNA testing had been available at the time of conviction.

(E) Reveal the results of any DNA or other biological testing that was conducted previously by either the prosecutor or defense, if known.

(F) State whether any motion for testing under this section previously has been filed and the results of that motion if known.

(§ 1405, subd. (d).)

If these pleading requirements are met, the motion should then be fully considered on its merits. Next, under section 1405(g) the court is only directed to grant a motion for DNA testing if *all* the following proof requirements are established:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion.

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect.

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of . . . the crime . . . that resulted in the conviction or sentence. The convicted person is only required to demonstrate that the DNA testing he or she seeks would be relevant to, rather than dispositive of, the issue of identity. The convicted person is not required to show a favorable result would conclusively establish his or her innocence.

(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial. In determining whether the convicted person is entitled to develop potentially exculpatory evidence, the court shall not decide whether, assuming a DNA test result favorable to the convicted person, he or she is entitled to some form of ultimate relief.

(6) The evidence sought to be tested meets either of the following conditions:

(A) The evidence was not tested previously.

(B) The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

(8) The motion is not made solely for the purpose of delay.

(§ 1405, subd. (g).)

In the present case, defendant Staten cannot satisfy all the pleading and proof requirements listed under this statute, and therefore his motion should be denied. A comprehensive discussion of each of these requirements is provided *infra*.

III.

PEOPLE V. RICHARDSON **PROVIDES A FRAMEWORK FOR SECTION 1405 ANALYSIS OF POST CONVICTION DNA TESTING MOTIONS**

The California Supreme Court thoroughly addressed the requirements mandated in section 1405 in *People v. Richardson* (2009) 43 Cal.4th 1040, where it upheld the denial of a section 1405 request for DNA testing in a death penalty case. In *Richardson*, the defendant was convicted of the murder of an 11-year-old girl and numerous other related crimes. Evidence at trial showed "[t]he victim was found dead in the bathtub of a residence she shared with her mother and sister. Certain hair samples were recovered from debris in the bathtub and from the victim's clothing; some of these hairs were identified by prosecution experts as consistent with [Richardson's] hair." (*Id.* at p. 1041, citation omitted.)

Following his conviction, the defendant brought a motion pursuant to section 1405, asking the trial court to order DNA testing of hairs found at the crime scene. The trial court denied the motion, and a 5-2 Supreme Court majority affirmed that denial in response to a petition for writ of mandamus. The *Richardson* court first concluded that the appropriate standard of review for a ruling on a motion for DNA testing is abuse of discretion. (*People v. Richardson*, *supra*, 43 Cal.4th 1040 at pp. 1046-1048.) A ruling will stand, therefore, unless the trial court has "exceeded the bounds of reason or contravened the un-contradicted evidence." (*Id.* at p. 1048.) The court then turned to the issues of "materiality" and "reasonable probability," which the defense is required to show under section 1405(g)(4) and (5).

The court first analyzed the materiality requirement: "[w]e conclude . . . that the moving defendant is required only to demonstrate that the DNA testing he or she seeks would be relevant to the issue of identity, rather than dispositive of it." (*People v. Richardson, supra,* 43 Cal.4th 1040 at p. 1204.) Such testing need not conclusively establish the defendant's innocence, but instead it would "be sufficient for the defendant to show that the identity of, or accomplice to, the crime was a controverted issue as to which the results of DNA testing would be relevant

evidence." (*Ibid.*) In applying this standard to the facts, the Court noted that multiple experts were called by the prosecution and defense who disputed the origin of the hairs: "it was clear that it was far from definitive and subject to quite different interpretations from equally qualified experts." (*Id.* at pp. 1051-1052.) A defense expert also "pointed out that the hair could easily be transferred from one place to another" which was relevant because "petitioner had been a sometime visitor to the victim's residence, the implication being that any hair identified consistent with his could have been deposited during an earlier visit." (*Id.* at p. 1052.) The court therefore held that the hair evidence was thus "at most, simply one piece of evidence tending to show guilt," so "fiercely disputed" by the defense that it "may well have had little significance in the jury's determination of guilt or sentence." (*Id.* at p. 1053.)

Next, the court defined the reasonability probability requirement under section 1405(g)(5): "to prevail on a section 1405 motion, the defendant must demonstrate that, had the DNA testing been available, in light of all the evidence, there is a reasonable probability – that is, a reasonable chance and not an abstract possibility – that the defendant would have obtained a more favorable result." (*People v. Richardson, supra,* 43 Cal.4th 1040 at p. 1051.) The court declined to overturn the trial court's earlier ruling, agreeing that there was a "substantial amount of other evidence linking [the petitioner] to this crime" such as the defendant's admissions to multiple parties, knowledge of details of the victim's whereabouts and details of the crime, and the defendant's flight the day after the murder. (*Id.* at p. 1053.) The court thus declined to reverse the appellate court's decision, even in light of the petitioner's death sentence.

Further, the Supreme Court of Connecticut used the same reasonable probability standard when it evaluated its similar DNA testing statute. (*State v. Dupigney*, 295 Conn. 50 (Conn. 2010) at p. 64 ['reaching the same conclusion when construing comparable California statutes'].) In that case, the defendant requested DNA testing of a hat found at the murder scene. (*Id.* at p. 53.) The court held that even if the DNA testing results were most favorable to the Petitioner, the other evidence presented at trial would not "undermine [their] confidence in the fairness of the verdict." (*Id.* at p. 73.) Other states have denied motions using the same reasonable probability standard. (*Matheney v. State* (Ind. 2005) 834 N.E.2d 658 at pp. 663-64 [denying motion for DNA testing under statute imposing reasonable probability standard when state presented a 'plethora of other evidence upon which the jury could have based its decision in convicting' the defendant of murder].)

IV.

THE COURT SHOULD DENY THE DEFENDANT'S MOTION FOR POST CONVICTION DNA TESTING BECAUSE HE CANNOT SATISFY THE PLEADING AND PROOF REQUIREMENTS OF SECTION 1405, SUBDIVISIONS (D) AND (G)

As the People will demonstrate below, defendant Staten has not met the pleading and proof requirements of Section 1405, subdivisions (d) and (g). The People's evaluation of the statutory requirements is outlined below.

A. Section 1405(d) Pleading Requirements:

(1) The motion for DNA testing shall be verified by the convicted person under penalty of perjury and shall include all of the following:

(A) A statement that he or she is innocent and not the perpetrator of the crime.

The initial section 1405 testing motion was not been verified by Staten. (Def. § 1405 Motion.) However, the defendant subsequently submitted an affidavit/statement that he is innocent and not the perpetrator of the crime. (Def. § 1405 Declaration.) Therefore, this pleading requirement has been met.

(B) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.

This requirement has been met. Although there was sufficient circumstantial evidence to convict defendant Staten at trial, the identity of the perpetrator was a significant issue in this case.

(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.

This requirement has not been met, as the defendant has failed to make "every reasonable attempt" to identify the all the evidence that should be tested. The defendant's motion does identify "[t]wo .38 caliber bullets . . . recovered from the Staten home and one . . . recovered from Arthur Staten's body" and "[a] spent .25 caliber casing . . . discovered outside the residence[.]" (Def. § 1405 motion, p. 9.)

However, the defendant's motion thereafter requests "genealogical DNA testing" of "bloodstains" in a separate section. (Def. § 1405 motion, p. 9.) This request is vague and overbroad. "Genealogical DNA testing" refers to investigative genetic genealogy, which is a specialized technique only employed after STR DNA testing has been completed and the source of the donor(s) is unknown. It is utilized after all investigative leads have been exhausted. The

results of serological and DNA testing performed in this case, *supra*, indicate that the contributors to the majority of the bloodstain evidence samples are consistent with either the defendant or his mother, victim Faye Staten. The People will therefore deem this is as a request for STR DNA testing of bloodstain samples. However, investigators obtained numerous bloodstains in this case (10/15/1990 LASD Supplementary Report, attached as People's Exhibit 6), and the defendant has not indicated the specific samples to be tested.

(D) Explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

See discussion under section 1405, subdivision (g)(5), *infra*.

(E) Reveal the results of any DNA or other biological testing that was conducted previously by either the prosecution or defense, if known.

The People are not aware of any DNA/biological testing previously conducted on the three fired bullets and the expended cartridge case.

LASD performed serological testing on bloodstain samples collected from the defendant's shoes, a pair of shorts worn by John Nichols, a pair of gray pants found in the garage at the Staten residence, and bloodstains inside and outside of the Staten residence. (01/02/1991 LASD Supplementary Report, attached as People's Exhibit 7; 03/05/1991 LASD Supplementary Report, attached as People's Exhibit 8.) CBRL subsequently performed DNA/DQ Alpha Type testing on those items. (10/09/1991 CBRL Report, attached as People's Exhibit 9; 11/1/1991 CBRL Report, attached as People's Exhibit 10.) The serological and DNA/DQ Alpha Type testing results are summarized in Table 1 and Table 2, *supra*.

(F) State whether any motion for testing under this section previously has been filed and the results of that motion, if known.

The People are not aware of any motions for post conviction DNA testing previously filed in this case.

B. Section 1405 (g) Proof Requirements:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion.

This threshold criterion has not been met. The defendant has not provided any information showing the requested items are available and in a condition that would permit testing. Although not required, the defendant has not filed a motion pursuant to section 1405,

subdivision (c) seeking a court order for the disclosure of the location of biological evidence. Had the defendant filed such a motion, and this Court ordered that the prosecutor "make all reasonable efforts to obtain, and police agencies and law enforcement laboratories to make all reasonable efforts to provide . . . (2) Copies of evidence logs, chain of custody logs and reports, including, but not limited to, documentation of current location of biological evidence, and evidence destruction logs and reports," (§ 1405, subd. (c)(2)) the parties would have information regarding the status of the evidence.

Based on the People's review of the trial record, three expended bullets were collectively marked as Exhibit 41 and received into evidence at trial. (7 R.T. pp. 1417-1425.) The People have confirmed the Los Angeles Superior Court Exhibit Room still has custody of these items, and they are available for viewing with a court order.

The whereabouts of the .25 caliber expended cartridge case and any remaining bloodstain samples are unknown.

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect.

To the extent the defendant has not shown the evidence is available, this criterion has been not been met. (See discussion of the evidence under § 1405, subd. (g)(1), *supra*.)

The fired bullets (Exhibit 41) are currently in the custody of the LASC Exhibit Room. However, the People submit that these items were not handled in a manner that would preserve any biological evidence, since they were wiped clean when they were collected, subject to toolmark examination[6], opened on the record, and provided to the jury. For nearly 32 years the evidence has been in the custody of the LASC Exhibit Room, and the storage conditions are unknown. Variations in environmental factors such as sunlight, heat, moisture, and bacteria can impact the ability to conduct DNA testing. While the People presume that the LASC has adopted the California Attorney General's recommendations for the retention and storage of

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[6] According to an LASD SSB supervisor, when DNA testing of firearms and firearm components is requested, analysts process or swab the evidence item while wearing personal protective equipment (PPE) including masks, clean nonporous gloves, and lab coats to mitigate the possibility of cross-contamination and general DNA transfer. Firearms examiners, however, do not routinely wear gloves or other PPE when performing their examination unless the evidence is contaminated with biological or chemical hazards. When evidence must be routed for both DNA and firearms examination, DNA analysis takes precedence and is therefore performed first.

DNA evidence,[7] the degradation of a biological sample over a sustained period is still a potential problem.

Given the possibility of DNA transfer onto the cartridge cases during tool mark analysis, courtroom presentation, and jury deliberations, compounded by degradation, it is thus highly unlikely that the fired bullets are "unaltered" (§ 1405, subd. (g)(2)) and "in a condition that would permit DNA testing." (§ 1405, subd. (g)(1).) For these reasons, the court should deny the defendant's motion to have the three fired bullets (Exhibit 41) analyzed for the presence of a foreign DNA profile.

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

This requirement has been met. Although there was sufficient circumstantial evidence to convict defendant Staten at trial, the identity of the perpetrator was a significant issue in this case.

(4) The convicted person has made prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence. The convicted person is only required to demonstrate that the DNA testing he or she seeks would be relevant to, rather than dispositive of, the issue of identity. The convicted person is not required to show a favorable result would conclusively establish his or her innocence.

As a general matter, a prima facie showing may not be founded upon speculation (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1241, fn. 38.) or conclusory allegations. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) Material evidence must "tend to establish guilt" or be "directly probative of the crimes charged." (*People v. Bunyard* (1988) 45 Cal.3d 1189, 1212 [citation omitted].) Applying these principles to post conviction DNA testing, if the test results could only be inconclusive or inculpatory, the evidence tested cannot be material within the meaning of this subdivision. The defendant is required to show that the DNA testing would be "relevant to

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[7] See California Attorney General, *Postconviction DNA Testing: Recommendations for Retention, Storage and Disposal of Biological Evidence* (2002), California Agencies, Paper 81. See also National Institute of Standards and Technology, Technical Working Group on Biological Evidence Preservation; The Biological Evidence Handbook: Best Practices for Evidence Handlers (2013).

the issue of identity, rather than dispositive of it." (*Richardson v. Supreme Court*, *supra*, 43 Cal.4th 1040, 1049.)

This criterion has not been met as to the fired bullets. While the fired rounds may have contained the perpetrator's DNA at one point – assuming the shooter loaded the gun and deposited his/her DNA on the rounds at that time – any material biological evidence is unlikely to remain given the post-collection handling of the rounds. LASD Criminalist Wayne Plumtree used a hammer to dig the one bullet out of the wall and "wiped it off." (8 R.T. p. 1420.) While the other bullet wasn't as deeply embedded in the wall, it was covered with plaster/building material. (8 R.T. p. 1421.) A third fired bullet was recovered from inside Arthur Staten's body during his autopsy, and was also wiped clean. (11 R.T. p. 1917.) LASD Firearms Examiner Dwight Van Horn later opened the envelopes containing each of the three fired bullets and conducted a toolmark analysis. (8 R.T. pp. 1435-1448). At trial, a single envelope containing three smaller envelopes (each containing a fired bullet) was marked as Exhibit 41 and opened on the record by Plumtree and Van Horn. (8 R.T. pp. 1423, 1448.) At the close of trial, the exhibit was received into evidence and was available for the jury to examine. (15 R.T. p. 2612.)

Similarly, the defendant has not shown how any DNA profile obtained from the .25 caliber expended cartridge case that was found outside the residence would be relevant to the issue of identity in this case. The cartridge case is not consistent with the murder weapons – a .38 caliber firearm and a knife – and there is no evidence linking it to the murders. At trial, the investigating officer testified that the defendant admitted firing his friend's gun (with .25 caliber ammunition) in his backyard a few days before his parents came home. (18 R.T. pp. 3120-3122.)

However, the People concede that DNA testing of the bloodstain samples recovered from the defendant's shoes, clothing, and the crime scene may be relevant to the identity of the perpetrator. Although the bloodstain evidence samples were previously tested and most were attributable to the defendant, victim Faye Staten, or John Nichols, current testing methods may provide additional information related to the contributors of those samples, should those items still exist.

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(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial. In determining whether the convicted person is entitled to develop potentially exculpatory evidence, the court shall not decide whether, assuming a DNA test result favorable to the convicted person, he or she is entitled to some form of ultimate relief.

The People emphasize that conditioning access to DNA evidence serves important state interests, including respect for the finality of judgments and the efficient use of limited resources. (*District Attorney's Office v. Osborne*, *supra*, 129 S. Ct. 2308.) With these policies in mind, the defendant must show that, "had the DNA testing been available, in light of all the evidence, there is a reasonable probability – that is, a reasonable chance and not merely an abstract possibility – that the Defendant would have obtained a more favorable result." (*Richardson v. Superior Court*, *supra*, 43 Cal.4th 1040 at p. 1051; *State v. Dupigney*, *supra*, 295 Conn. 50 at p. 66.) Additionally, "reasonable probability" does not merely amount to "more likely than not." Rather, it must be more than an abstract possibility when considering the entire case. (See *Richardson*, *supra*, 43 Cal.4th 1040 at p. 1050.) The trial court should not decide whether, assuming the DNA test result is favorable to the defendant, that "evidence in and of itself would ultimately require some form of relief from the conviction." (*Ibid.*)

In *Richardson*, the California Supreme Court upheld the trial court's finding that there was a substantial amount of other evidence linking him to his crime. The Supreme Court stated this constituted a finding that the defendant failed to establish the reasonable probability requirement. (*Richardson v. Superior Court*, *supra*, 43 Cal.4th 1040 at p. 1051.) The DNA evidence at Richardson's trial was not at all "conclusive" on the issue of guilt. In that case, pubic hairs were found in the bathtub where the victim was found dead. (*Id.* at pp. 1051-1052.) During trial, the prosecution's experts could not agree whether the pubic hairs were consistent with the defendant's hair, and a defense expert testified the hair samples were not consistent with the defendant's hair. (*Id.* at p. 1052.) Therefore, given the weight of the evidence of defendant Richardson's guilt, the California Supreme Court found that the trial court did not abuse its discretion in declining to order post conviction DNA testing.

In the present case, the defendant has not met this requirement as to the expended rounds and the expended cartridge case. One of the expended rounds came from Arthur Staten's body,

was wiped clean, handled by the firearms examiner, and submitted as a court exhibit. The other two expended rounds were dug out of the walls, wiped clean, and handled by the firearms examiner and submitted as a court exhibit. Any foreign profiles on the fired bullets could therefore be explained by post-firing transfer. As the expended cartridge case was not linked to the murder, any profile on that item would neither affect the verdict nor the sentence.

Samples of the bloodstain evidence were previously tested using methods available in 1991, and the results were presented to the jury through the testimony of LASD Senior Criminalist Valorie Scherr (12 R.T. pp. 2147-2179) and via stipulation by the parties (12 R.T. pp. 2180-2181.) Further, the defendant testified at trial that he cut himself while doing yard work and must have deposited his blood when he walked around the house looking for bandages. (17 R.T. pp. 2847-2848; 18 R.T. pp. 2973-2982.)

However, the People concede that current testing methods may provide additional information related to the contributors of the bloodstain evidence on the clothing, shoes, and at the crime scene. Although unlikely, given the fact that majority of the bloodstain evidence was single source and attributable to either the defendant, victim Faye Staten, or John Nichols, a favorable testing result of those samples (e.g., the presence of a third-party DNA profile) may potentially result in a more favorable verdict or sentence in this case.

(6) The evidence sought to be tested meets either of the following conditions:

a. The evidence was not tested previously.

b. The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

The People do not have any information the fired bullets or cartridge case were tested previously. The bloodstain samples were tested previously (see results *supra*), and modern (STR) DNA testing may provide more discriminating results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

The defendant has not identified the requested DNA testing method.

(8) The motion is not made solely for the purpose of delay.

The People are not challenging this criterion.

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V.

CONCLUSION

For the foregoing reasons, defendant Deondre Staten's request for post conviction DNA testing should be denied by this court. First and foremost, the defendant has not established that the evidence exists and is in a condition to be tested. Although the three fired rounds were collectively admitted as a trial exhibit and are still in custody of the LASC Exhibit Room, testing of those items would be inappropriate, as they were cleaned and subsequently handled by criminalists. Similarly, the defendant has not shown the fired cartridge case still exists, or even that it was connected to the murders. Finally, with respect to the bloodstain evidence samples, the defendant has neither specified which samples he is requesting be tested, nor has he demonstrated the samples are still in existence.

Dated: October 31, 2023

Respectfully submitted,

LEE CERNOK
Deputy District Attorney
Forensic Science Section

PROOF OF SERVICE

I, Deputy District Attorney Lee Cernok, declare:

I personally served the PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR POST CONVICTION DNA TESTING PURSUANT TO PENAL CODE SECTION 1405; MEMORANDUM OF POINTS AND AUTHORITIES in *People v. Deondre Staten* (Case No. KA006698) by USPS and email to the following:

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Attorneys for defendant Deondre Staten

I declare under penalty of perjury pursuant to the laws of California that the above is true and correct.

Dated: October 31, 2023

LEE CERNOK
Deputy District Attorney
Forensic Science Section

People v. Staten, KA006698

People's Exhibit 1
Clerk's Transcript on Appeal (C.T.) Volumes 1-3

People v. Staten, KA006698

People's Exhibit 2
Reporter's Transcript on Appeal (R.T.) Volumes 1-23

People v. Staten, KA006698

People's Exhibit 3
People v. Staten (2000) 24 Cal.4th 434

24 Cal.4th 434
Supreme Court of California

The PEOPLE, Plaintiff and Respondent,
v.
Deondre Arthur STATEN, Defendant and Appellant.

No. S025122
|
Nov. 9, 2000.
|
Rehearing Denied Jan. 24, 2001.

Synopsis

Defendant was convicted following jury trial in the Superior Court, Los Angeles County, KA006698, Alfonso M. Bazan, J., of the first-degree murders of his mother and father and was sentenced to death. On automatic appeal, the Supreme Court, Mosk, J., held that: (1) denial of defendant's application for appointment of second counsel was not abuse of discretion; (2) change of venue was not warranted; (3) hearsay statement that two purported gang members might have committed killings was inadmissible hearsay and was irrelevant; (4) evidence supported aiding and abetting instruction; (5) evidence supported convictions; (6) evidence introduced by defense did not preclude jury from finding special circumstances of multiple killings and killing for financial gain; and (7) jury could properly consider defendant's apparent lack of remorse in deciding appropriate sentence.

Affirmed.

Attorneys and Law Firms

***217 *440 **972** Jonathan P. Milberg, under appointment by the Supreme Court, Pasadena, for Defendant and Appellant.

Daniel E. Lungren and Bill Lockyer, Attorneys General, George Williamson and David P. Druliner, Chief Assistant Attorneys General, Carol Wendelin Pollack, Assistant Attorney General, Linda C. Johnson, Robert S. Henry, Susan Lee Frierson and Scott A. Taryle, Deputy Attorneys General, for Plaintiff and Respondent.

Opinion

***441** MOSK, J.

This is an automatic appeal (Pen.Code, § 1239, subd. (b)) from a judgment of death under the 1978 death penalty law (*id.*, § 190 et seq.).

On April 9, 1991, the District Attorney of Los Angeles County filed an information against Deondre Arthur Staten in the superior court of that county. The information charged that between October 12 and October 13, 1990, defendant murdered Arthur Staten, his father, and Faye Staten, his mother. (Pen.Code, § 187, subd. (a).) It was alleged for death eligibility that he did so under the special circumstances of (1) killing for financial gain and (2) multiple murder. (*Id.*, § 190.2, subd. (a)(1), (3).) It was further alleged that, in murdering his father, defendant personally used a firearm within the meaning of Penal Code section 12022.5, and that, in murdering his mother, he personally used a deadly and dangerous weapon, to wit, a knife (*id.*, § 12022, subd. (b)).

Defendant pleaded not guilty to the charges and denied the allegations. Trial was by jury. The panel returned a verdict finding defendant guilty as charged of the murders of his father and mother and fixed the degree at the first. It found true the accompanying allegations of special circumstances of murder for financial gain and multiple murder. As to the murder of his father, it found that he personally used a gun; as to the murder of his mother, it found that he personally used a knife. It fixed the punishment for each murder at death.

The superior court denied defendant's motion for a new trial and his automatic application for modification of the verdict (Pen.Code, § 190.4, subd. (e)). For the murders, it imposed a sentence of death. For the use of the gun, it imposed a middle enhancement of four years; for the use ***218** of the knife, it imposed an enhancement of one year. It stayed execution of the sentences for gun use and use of a deadly weapon temporarily, pending execution of the sentence of death, and permanently thereafter. (Pen.Code, § 654.)

As we shall explain, we conclude that we should affirm the judgment.

I. FACTS

A. *Guilt Phase*

The People introduced evidence to the following effect.

Defendant, age 24, lived with his parents Arthur and Faye Staten in the La Puente/East Valinda area of Los Angeles County. Arthur and Faye owned a ***442** beauty salon and beauty supply store. They had several life insurance policies worth a total of more than $300,000. In August 1990, in the presence of defendant, they revised three of the policies to name him sole beneficiary if they both died; a fourth policy named him and his mentally retarded brother Lavelle co-beneficiaries.

Defendant had a strained relationship with his father; they often argued and his father periodically evicted him from the house for weeks or months at a time. He told friends that he would "take his father out" or "take care of him." He also told friends about his parents' insurance policies, indicating that he would inherit a large sum if they died. On ****973** one occasion, while discussing ways of making money with two friends, he said that he knew how they could make $275,000, but that it would take a month and a half to get the money. He told them that if they would "bump off" two people who lived around the corner and owned a beauty supply and hair salon, they would be paid a "five-digit" sum of money. On another occasion, while watching a television program about the Menendez brothers, who were charged with the notorious crime of murdering their parents for their inheritance, he commented to the effect that "They did it wrong. They shouldn't have got caught."

In September, Arthur and Faye left for a two-week vacation, leaving their truck at the home of Faye's parents, the McKays. Defendant stayed at home.

Defendant's parents kept a .38–caliber revolver with a brown handle at the beauty supply shop in case of robberies; they kept a handgun, a .22–caliber derringer, under their bed at home. About a week after his parents left, following a visit to the beauty salon, defendant showed his friend John Nichols the .38–caliber revolver, which he was carrying in his pants; shortly thereafter, he gave Nichols the .22–caliber derringer. On several occasions he mentioned to Nichols that he had hollow-point bullets.

Two or three days before his parents were to return, late at night, he told friends who were staying at his house that he heard something in the backyard. Taking the .38–caliber revolver, he looked around the outside the house, but did not find anyone. He said that he had received threatening telephone calls from the East Side Dukes, a local Latino gang. The following day, he showed friends the letters "ESD" spray-painted on the backyard patio.

During the week before his parents' return, defendant repeatedly asked a cousin, who lived behind the McKays' house, to call him when his parents left for home. On October 11, Arthur and Faye returned from vacation to the ***443** McKays'. They spent the night and most of the following day at a family gathering at the McKays'. On October 12, defendant telephoned throughout the day and evening to find out when his parents were returning home, but declined invitations to come to dinner. In the afternoon, friends observed that he was drinking malt liquor and was fidgety. As was typical, he was wearing faded blue jeans. A brown gun handle protruded from his pocket. He said he was going to stay home and wait for his parents.

*****219** Arthur and Faye left the McKays' house for home at 11:20 or 11:25 p.m. A neighbor, Bertha Sanchez, saw their truck arrive at 11:40 p.m.. Between 11:50 and 11:55 p.m., she and her husband heard three gunshots. Another neighbor, Craig Hartman, also heard gunshots between 11:30 and 11:45 p.m.; he heard no other shots that night.

On October 13, at 12:04 a.m., defendant's aunt telephoned to find out if his parents had arrived home safely. Defendant answered, sounding nervous and rushed; he said that they had not returned and he was getting ready to go out. He did not offer to leave a note for his parents. At 12:31 a.m., defendant's aunt called again. This time, defendant said that his parents were home but did not offer to put them on the line, as he usually did.

Sometime after midnight, Sanchez heard what she thought was the Statens' truck starting and driving away; it returned around 20 minutes later.

Around 1:05 a.m., defendant knocked on the Hartmans' door and said that his parents had been killed; he was crying and appeared to be vomiting. When the Hartmans returned with defendant to his house, they found Faye's body lying facedown near the entryway and Arthur's body in the master bedroom. The words "ESD Kills" were spray-painted on a mirrored wall in the living room.

Sheriff's deputies arrived at the scene and attempted to speak to defendant, but he did not answer, appearing to be in a trance. Craig Hartman thought that he was "faking," because

he had been able to communicate earlier. Defendant had a cut with dried blood on his right middle finger, and he was wearing shorts. Later, at the sheriff's station, while talking with his aunts, defendant collapsed and appeared unconscious. When **974 paramedics arrived, however, he was alert and well-oriented, needing no medical care. Defendant's aunts returned to the Staten house to retrieve a change of clothing; they looked for a pair of blue jeans, his usual attire, but found none.

Arthur died of a single gunshot wound to the head with a .38 or .357–caliber hollow-point bullet. Faye died of multiple stab wounds; of 18 *444 wounds, seven could have been fatal. There was no evidence of forced entry or robbery, and there were no signs of entry in the backyard. In a den, a book of historic newspaper headlines was open to an article concerning the Sharon Tate murder case.

There were bloodstains throughout the house; some could have been defendant's, others could have been Faye's. A handprint on the mirrored living room wall below the spray-painted graffito matched defendant's. There was a 90 percent probability that the graffito on the mirrored wall was produced by the same writer as the graffito on the back porch. The paint on both was of the same formula; it also matched a can of spray paint found in the hall closet.

At funeral services for his parents, defendant did not appear upset. He told a cousin that this was no time to cry because they were dead, buried and gone; instead, it was time to party and get high.

On October 14, Nichols was stopped by law enforcement officers while carrying the .22–caliber derringer and was arrested for violation of probation. On November 3, he was released from custody and met with defendant while wearing a transmitting wire monitored by a detective. In the taped conversation, defendant said that he had "gotten rid of" the .38–caliber revolver before his parents returned home. He suggested that Nichols lie about the gun to police and assured him that the police would not be able to find it and that as long as he stuck to his story, they would not have a case: "Because they lost. I'm still saying—but they can't do shit. All they can do is close the mother fucker. [¶] If they still can't find it, I'm still going to blame it on the Dukes."

The gang unit of the sheriff's department concluded that the murders were not ***220 gang related and that the graffiti found in the house and backyard did not appear genuine or to have been written in the distinctive style of the East Side Dukes. Moreover, it would be unusual for graffiti to be hidden in a backyard or inside a house rather than the front of the house, as the gang's purpose was to claim territory and to threaten others. The East Side Dukes typically performed their killings in drive-by shootings or after knocking on a victim's door and calling him outside; they used graffiti to announce their killings to the whole neighborhood, usually including the gang member's street name and identifying the intended victims. They did not ordinarily intentionally harm others living in their neighborhood, even if they were African–American, like defendant and his family. An investigator was told by members of the East Side Dukes that they would not have committed a crime of this kind.

*445 For his part, defendant introduced evidence, including his own testimony, as follows.

Defendant had a good relationship with his parents, especially his mother. He never spoke to friends about killing his parents for the insurance money, although he did discuss other ways of making money, including tax-deferred retirement accounts and money management.

The East Side Dukes repeatedly threatened him. During his parents' vacation, he took their .38–caliber gun from the beauty shop, and gave Nichols the .22–caliber derringer, for protection. The .38–caliber gun disappeared one night after a party; defendant did not tell anyone because he suspected that one of Nichols's friends had stolen it.

The cut on defendant's finger came from a hedge trimmer he used for gardening on the day of his parents' return; he may have left a trail of blood in the house while looking for a bandage. He wore shorts all day; his blue jeans were either in his bedroom or in the laundry. That night, he was working on lyrics to a "rap" song and looked through the book of historic headlines in the den; he was not reading the headline about the Sharon **975 Tate murders but was looking for headlines about Martin Luther King, Jr.

Defendant's parents arrived between 12:05 and 12:10 a.m. When his aunt called at 12:30, his mother indicated that she did not want to talk to her. He left in his parents' truck to get a hamburger between 12:30 and 12:45 a.m. Realizing he did not have money with him, he returned home, arriving about 1:00. When he returned, he discovered his parents' bodies and saw the spray-painted graffito in the living room that read "ESD Kills."

Neighbors gave inconsistent reports to police officers about hearing gunshots that night; Sanchez told one police officer that she had heard "firecracker" noises after 12:30 a.m., not earlier. The Hartmans did not mention to that same officer that they had heard gunshots.

No gunshot residue was found on defendant's hands.

B. *Penalty Phase*

The People presented evidence in aggravation consisting of autopsy photographs of Faye's wounds.

In mitigation, defendant introduced the following evidence relating to his background and character.

*446 Defendant was intelligent; he graduated from high school and attended a community college for two years. He wrote rap songs for a music group that often had antigang, antidrug, or religious messages. He counseled other family members, friends, and neighborhood youth to avoid gangs and drugs. One friend testified that he never saw defendant take drugs.

Defendant provided emotional support for his mentally disabled brother, Lavelle, and, apart from Arthur and Faye, was the person best able to communicate with him. It would be beneficial to Lavelle to be able to continue communicating with defendant.

***221 A psychiatrist who examined defendant in custody testified that the murders appeared to have arisen from family-specific emotional problems and that such crimes have a very low rate of recidivism. Defendant showed no signs of mental illness and generally knew how to behave appropriately and to get along with others; he could be a positive influence on others in prison.

II. PRETRIAL ISSUES

Defendant raises a number of claims concerning pretrial motions and jury selection that he asserts require reversal of the judgment of guilt. As will appear, none is meritorious.

A. *Requests for Second Counsel and Funds*

In April 1991, defendant filed a confidential application for appointment of second counsel. It was supported by a declaration by appointed counsel John D. Tyre, stating that "there are both serious issues for the guilt and penalty phases of this trial" and "it is therefore necessary for the court to allot funds to cover the cost of a second attorney to handle different parts of both phases of this trial." In June 1991, defendant filed a second confidential application for appointment of second counsel, supported by an identical declaration.

At the hearing on the application, counsel argued that the case involved "strictly circumstantial evidence" and that "the burden of going through a guilt phase, the circumstantial evidence, the possible inferences, the possible investigation, the numerous people that were used at the preliminary hearing and all the investigation that would be necessary in a guilt phase" supported appointment of second counsel to help him prepare "in case a penalty phase is necessary." The superior court denied the application without prejudice, stating that "it's not a clear-cut guilt case from the standpoint of the fact that *447 it's a circumstantial evidence case, but it's a fairly straightforward case with not tremendous legal issues, complex issues involved." Trial counsel did not renew the motion, although at one point during the trial, he was hospitalized for illness and the trial was continued for six days.

Defendant argues that the superior court erred in denying the application for second counsel. He contends that with the aid of a second attorney, he would have been **976 able to present more effective guilt and penalty phase presentations. The claim is without merit.

In *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430, 180 Cal.Rptr. 489, 640 P.2d 108, we held that a trial court may appoint a second attorney in a capital case. "If it appears that a second attorney may lend important assistance in preparing for trial or presenting the case, the court should rule favorably on [a] request. Indeed, in general, under a showing of genuine need ... a presumption arises that a second attorney is required." (*Id.* at p. 434, 180 Cal.Rptr. 489, 640 P.2d 108.) "The initial burden, however, is on the defendant to present a specific factual showing as to why the appointment of a second attorney is necessary to his defense against the capital charges." (*People v. Lucky* (1988) 45 Cal.3d 259, 279, 247 Cal.Rptr. 1, 753 P.2d 1052.) An "abstract assertion" regarding the burden on defense counsel "cannot be used as a substitute for a showing of genuine need." (*Id.* at p. 280, 247 Cal.Rptr. 1, 753 P.2d 1052; *People v. Jackson* (1980) 28 Cal.3d 264, 287, 168 Cal.Rptr. 603, 618 P.2d 149 [no abuse of discretion in

denying application for second counsel when counsel merely relied on the circumstances surrounding the case].)

No abuse of discretion appears. Defendant's application, consisting of little more than a bare assertion that second counsel was necessary, did not give rise to a presumption that a second attorney was required; he presented no specific, compelling reasons for such appointment. Nor does the fact that counsel became ill during the guilt phase of trial demonstrate ***222** error in denying the requests months earlier; the illness was not anticipated. Indeed, counsel, whose earlier application was denied without prejudice, did not renew the request for second counsel; his illness was accommodated by a brief continuance of the trial.

Defendant also submitted numerous requests for funds for investigation, forensic experts, law clerks, and travel and witness expenses pursuant to Penal Code section 987.9. He contends that if the requests had been granted, he would have been able to present a more effective case at the guilt and penalty phases. This claim, too, is without merit.

The record indicates that some requests for funds for travel expenses, investigators, experts, and other assistance were denied for lack of a showing *448 of necessity, untimeliness, or other defects; other requests, including requests for funds for travel expenses, investigators, experts, and other assistance, were granted in full or in part. Defendant fails to show that any of the denials or reductions was unreasonable under the circumstances. It is sheer speculation that greater funding would have resulted in a different outcome. [1]

B. *Change of Venue Motion*

Several weeks after his arraignment, defendant moved for a change in venue out of Los Angeles County, on the ground that "there is a reasonable likelihood that a fair and impartial trial of this matter cannot be had" therein. In a supporting declaration, he listed the following grounds: the brutality of the crime; the fact that defendant's aunt, a municipal court judge in Los Angeles, was a potential witness; the small size of the community in which the offenses were committed; the fact that the victims were prominent members of the community; and the extensive media coverage and hostile reaction of the community to the offenses. The People countered that the gravity of the offense alone did not compel a change in venue; news coverage was limited and not sensationalized; apart from the homicide, the victims would have been virtually unknown; and the population from which the jury pool would be drawn, the Pomona Judicial District, was over 638,000.

The superior court denied the motion, stating: "[T]he court believes that, while there was obviously some mention of the case and stories in the press regarding the case at the **977 time it occurred, ... it was certainly not overly dramatized nor has the moving party indicated ... that there has been a continuing notoriety attributed to the case."

The trial commenced several months later. The prospective jurors were examined by written questionnaires, prepared jointly by the prosecutor and defense counsel, about their exposure to news coverage of the case. Specifically, they were asked whether they had heard or read anything about the case. Those answering in the affirmative were asked to state what they had heard or read, to identify all sources of that information, and to state whether it would cause them to lean in the direction of the defense or the prosecution. They were also asked whether there was anything they would like to bring to the court's attention that might affect their ability to be fair and impartial jurors, and to state any biases that could affect their judgment.

*449 Thirteen prospective jurors responded affirmatively in written responses to the questions concerning their knowledge of the case; of those, only one was selected to serve as a juror. That juror stated in her ***223** written responses that she had read in the newspaper that "it was a violent crime the likes of the Sharon Tate killing" and that defendant had said that gang members murdered his parents. She stated that the information did not cause her to lean in the direction of the defense or prosecution because it was "non-conclusive[;] no one saw him do it." She indicated that she would be unbiased. Neither counsel nor the superior court orally questioned prospective jurors on the subject. Defendant exercised only 16 of his 20 available peremptory challenges (Code Civ. Proc., § 231, subd. (a)) before accepting the 12 juror panel as constituted.

Defendant asserts that the superior court erred in denying the change of venue motion and in probing prospective jurors inadequately concerning the effects of pretrial publicity. The claim is without merit.

"In determining whether a change of venue is warranted, the trial court typically considers the nature and gravity of the offense, the size of the community, the status of the defendant, the prominence of the victim, and the nature and extent of the

publicity. On appeal, the defendant must show that the court 'erred in denying the change of venue motion, i.e., that at the time of the motion it was reasonably likely that a fair trial could not be had, and that the error was prejudicial, i.e., that it was reasonably likely that a fair trial was not in fact had.' " (*People v. Webb* (1993) 6 Cal.4th 494, 514, 24 Cal.Rptr.2d 779, 862 P.2d 779.)

Although the charged offenses herein were very serious, the superior court not unreasonably concluded that the remaining factors did not weigh in favor of a change of venue. The fact that defendant's aunt was a municipal court judge did not make her well-known; indeed, none of the prospective jurors indicated that he or she knew of her. The relevant juror pool, the Pomona Judicial District, was large, exceeding that of the entire population of many California counties. "The larger the local population, the more likely it is that preconceptions about the case have not become imbedded in the public consciousness." (*People v. Balderas* (1985) 41 Cal.3d 144, 178, 222 Cal.Rptr. 184, 711 P.2d 480.) The victims, owners of a small local business, were not especially well-known in the community. "[N]othing in their status was calculated to engender unusual emotion in the community." (*Id.* at p. 179, 222 Cal.Rptr. 184, 711 P.2d 480.) Media coverage does not appear to have been extensive, sensational, or persistent at the time of the change of venue motion, consisting of a few articles in local newspapers. (See *People v. Coleman* (1989) 48 Cal.3d 112, 133–134, 255 Cal.Rptr. 813, 768 P.2d 32 [denial of motion for ***450** change of venue was not prejudicial error when, inter alia, publicity, "though initially graphic, was not 'persistent and pervasive' "].)

Of a panel of 107 prospective jurors, only 13 indicated that they had heard of the case; of those, only one juror was selected. (See *People v. Balderas, supra,* 41 Cal.3d at p. 180, 222 Cal.Rptr. 184, 711 P.2d 480 [sustaining denial of venue change when 27 of 59 prospective jurors had heard about the case, including five or six of the 12 jurors selected].) The only juror with knowledge of the charged crimes stated that she believed the ****978** information she had received was "non-conclusive" and that she would be unbiased in the case. We have no reason to doubt the veracity of her statements. (See *People v. Webb, supra,* 6 Cal.4th at p. 515, 24 Cal.Rptr.2d 779, 862 P.2d 779.)

With regard to the adequacy of the screening of prospective jurors, the questionnaire, prepared jointly by the prosecution and defense counsel, sufficiently covered the question of pretrial publicity; defense counsel did not seek additional questions or exhaust his peremptory challenges. The superior court did not err in not further questioning prospective jurors on the point.

Defendant argues, for the first time on appeal, that a change of venue was *****224** required in light of the publicity surrounding the trial of the Menendez brothers, who were also tried for killing their parents, and of the fact that he was an African American in a "mostly Caucasian population." The arguments are without merit. The Menendez trial was nationally publicized; similarity to that crime would be equally apparent to jurors elsewhere. Nor does defendant point to any evidence of unusual hostility to African–Americans or to pretrial publicity calculated to excite racial prejudice.

Defendant also complains of ineffective assistance of counsel based on defense counsel's failure to conduct a public opinion survey or to submit oral questions to the superior court during voir dire. This claim, too, is without merit.

"Under both the Sixth Amendment to the United States Constitution and article I, section 15, of the California Constitution, a criminal defendant has the right to the assistance of counsel. [Citations.] The ultimate purpose of this right is to protect the defendant's fundamental right to a trial that is both fair in its conduct and reliable in its result. [Citations.] [¶] Construed in light of its purpose, the right entitles the defendant not to some bare assistance but rather to *effective* assistance." (*People v. Ledesma* (1987) 43 Cal.3d 171, 215, 233 Cal.Rptr. 404, 729 P.2d 839.) To prevail on a claim of deprivation of effective assistance of counsel, a defendant must show that ***451** trial counsel's performance was deficient under a standard of reasonableness. (*Id.* at pp. 216–217, 233 Cal.Rptr. 404, 729 P.2d 839.) He must also show that prejudice resulted. Although in certain contexts prejudice is presumed, generally, a "defendant must show that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " (*Id.* at pp. 217–218, 233 Cal.Rptr. 404, 729 P.2d 839.) Defendant shows neither. Nothing in the record suggests that a public opinion survey was necessary or that the voir dire of prospective jurors was inadequate. Media coverage of the killings was apparently neither widespread nor persistent. The juror questionnaire included questions covering any exposure of prospective jurors to pretrial publicity. Nor does prejudice appear. Only a single juror was even aware of the case and

she indicated that the information she received was "non-conclusive."[2]

C. *Voir Dire About Possible Racial Bias*

Of the panel of 107 prospective jurors, 76 were Caucasian, seven were African–Americans, and the rest were Latino or Asian–American. The written questionnaires contained a question asking jurors to describe defendant and general questions about possible bias, including racial bias. None of the potential jurors indicated that racial bias would affect his or her decision. A jury of 11 Caucasians and one African–American was ultimately selected to try the case.[3]

****979** Defendant contends that the superior court erred in failing to ask the predominantly *****225** Caucasian jury panel additional questions " designed to bring out their hidden prejudices against blacks like [him] accused of heinous crimes." He also asserts that such failure violated his state and federal constitutional right to a fair trial.

"[A] defendant cannot complain of a judge's failure to question the venire on racial prejudice unless the defendant has specifically requested ***452** such an inquiry." (*Turner v. Murray* (1986) 476 U.S. 28, 37, 106 S.Ct. 1683, 90 L.Ed.2d 27; see also *People v. Horton* (1995) 11 Cal.4th 1068, 1093, 47 Cal.Rptr.2d 516, 906 P.2d 478 [in light of defense counsel's failure to ask further questions of prospective jurors after being provided an opportunity to do so, defendant waived the right to complain of the trial court's restriction of voir dire].) Defendant participated in drafting the questionnaire, presumably including the questions regarding bias. He did not request additional voir dire concerning racial bias; nor does he justify his failure to do so. The point is waived and will not be considered on its merits.

In the alternative, defendant argues that trial counsel's failure to ask additional questions of the jurors amounted to ineffective assistance of counsel. He asserts that because the jury had to decide whether the killings were committed by him or a Latino gang, the biases of jurors might improperly influence their determination of guilt or innocence. The claim is lacking in merit. The questionnaire, which trial counsel helped prepare, included several questions designed to elicit the racial bias of prospective jurors. Defendant fails to show that additional or different questions would have been more effective in uncovering juror biases.

D. *Witherspoon–Witt Error*

Defendant asserts that three jurors, Dorothy C., Charles N., and Barbara H., all of whom ultimately voted to impose the death penalty herein, evinced bias in favor of the death penalty and should have been excused for cause by the superior court.

Dorothy C. indicated in response to the written questionnaire that she would "vote for the death penalty if the evidence called for it" and that she "would only vote for the death penalty if I honestly believed it would be right for this case. She also stated that she believed that the death penalty "should be given" in cases of "multiple murders, like serial killers," because it would stop additional killings, and also in cases involving young children. She expressed a belief that life in prison without the possibility of parole is a more severe sentence than the death penalty. In response to other questions, she also stated that she would follow the judge's instructions, "listen to both sides," and, in judging the conduct of another, would "listen carefully and do the best I could. I believe I could be fair." She also marked "yes" in response to the question whether she would vote for the death penalty "in every case, *regardless* of the evidence" if the defendant was convicted of first degree murder with at least one special circumstance.

During voir dire, Dorothy C. stated that she would follow the judge's instructions even if they differed from her beliefs, and that she would vote ***453** for the death penalty or life imprisonment without possibility of parole as she found appropriate. Asked by the superior court to explain the affirmative response to the question whether she would vote for the death penalty in every case, regardless of the evidence, she responded that she "took it to mean that if ... the evidence had proved the circumstances then I would vote the death penalty." She "definitely" agreed that she would consider both penalties and vote for the one she felt appropriate under the facts and law.

Charles N. responded in the questionnaire that "[t]he ones committing hideous crimes *must* be executed!" and "I *hate* it when they get off with a technicality!" He explained: "If I thought he (she) deserved *****226** death for the ****980** murder, I would vote for death, otherwise I would vote for life without parole." He would not vote for the death penalty in every case regardless of the evidence. He would base his decision "entirely on the circumstances, weigh *all* the evidence and make a decision based upon this evidence." He believed that the purpose of the death penalty was to stop criminals who have committed "heinous" crimes from

killing again. He also stated that he would follow the judge's instructions even if they differed from his own beliefs. In voir dire, he affirmed that he would follow the judge's instructions whether he agreed with them or not and would vote in favor of death or life imprisonment without possibility of parole as he believed appropriate.

Barbara H.'s husband, two sons, and daughter-in-law were involved in law enforcement. She believed that "anyone who harms another—intentionally—should be punished" and that the courts are "generally, too lenient." With regard to the death penalty, she stated that "it is sometimes justified," but indicated that she would not, in every case, regardless of the evidence, vote for the death penalty and "strongly disagreed" that anyone who intentionally kills another person should always get the death penalty. She felt it was appropriate for serial killers, those who kill very young or elderly victims, and those who premeditate. She "strongly disagree[d]" that it was important to know about the defendant as a person and about his background before deciding between the penalties of death and life imprisonment without possibility of parole. In voir dire, she affirmed that she would follow the law as instructed, whether she agreed with it or not, and that, if defendant was found guilty, she would vote either for death or for life imprisonment without possibility of parole depending on what she believed was the appropriate penalty in this case.

Defendant did not challenge any of the three jurors for cause or peremptorily and accepted the jury panel as constituted. Nor did he exhaust all of his peremptory challenges.

Defendant contends that all three jurors were "death penalty zealots" who should have been excused for cause by the superior court based on their bias with regard to the death penalty.

***454** The proper standard for exclusion of a juror based on bias with regard to the death penalty—the so-called *Witherspoon-Witt* standard—is whether the juror's views would " 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.' " (*Wainwright v. Witt* (1985) 469 U.S. 412, 424, 105 S.Ct. 844, 83 L.Ed.2d 841; see also *Witherspoon v. Illinois* (1968) 391 U.S. 510, 522–523, fn. 21, 88 S.Ct. 1770, 20 L.Ed.2d 776.)

Defendant did not challenge these jurors for cause or exhaust his peremptory challenges; because he did not raise it below, the point involving allegedly improper failure to excuse these jurors is waived. (*People v. Lucas* (1995) 12 Cal.4th 415, 480–481, 48 Cal.Rptr.2d 525, 907 P.2d 373.) It is also meritless. The superior court's failure to excuse the jurors for cause, sua sponte, did not constitute error. None of the jurors expressed beliefs regarding the death penalty in the questionnaires and during voir dire that would necessarily subject them to excusal for cause; none expressed views that " 'would "prevent or substantially impair" the performance of the juror's duties as defined by the court's instructions and the juror's oath.' " (*Id.* at pp. 481–482, 48 Cal.Rptr.2d 525, 907 P.2d 373.) Although Juror Dorothy C. indicated on the questionnaire that she would vote for the death penalty "regardless of the evidence," she explained in voir dire that she had understood the question to be whether she would vote for the death penalty if "the evidence had proved the circumstances"; she affirmed that she would consider both penalties under *****227** the facts and law in determining her vote.

Defendant further asserts a claim of ineffective assistance of counsel, based on trial counsel's failure to challenge the jurors for cause or exclude them peremptorily. The claim falls; defendant has not shown that counsel was ineffective in failing to challenge the jurors for cause, because there was no valid basis for such a challenge. Moreover, he has not shown that there could be no ****981** reasonable tactical basis for counsel's decision not to use his peremptory challenges to excuse these jurors. Nor, in light of his failure to exhaust his peremptory challenges, was defendant prejudiced by the failure to excuse the jurors for cause. (*People v. Lucas, supra,* 12 Cal.4th at p. 481, 48 Cal.Rptr.2d 525, 907 P.2d 373.)

III. GUILT ISSUES

Defendant raises a number of claims attacking the judgment as to guilt. As will appear, none is meritorious.

A. *Exclusion of Evidence Regarding Third Party Culpability*

During pretrial discovery, defendant obtained a copy of Detective Joseph Seeger's notes of a conversation with "Randy," a recovered "crackhead," to ***455** the effect that "Andre"—apparently defendant—had cheated the "ESD's" by selling them baking soda instead of crack cocaine. "Andre" was " 'spray basing' "—using crack cocaine with PCP. The note stated: "Hasn't heard of threats by ESD's but thinks they did it—*Puppet & Casper.*" Defendant sought discovery of all Los Angeles County Sheriff's Department records regarding

cases or contacts with Puppet and Casper. The superior court ordered the discovery of their names, addresses, and telephone numbers.

Defendant subsequently sought sanctions or dismissal for failure to preserve the information concerning whereabouts of Randy or to do any follow-up investigation about Puppet or Casper. He also moved in limine to exclude all evidence or references to his own dealing in or use of narcotics or to his membership in a gang. The People moved in limine to exclude "rumor or hearsay evidence" that the East Side Dukes were responsible for the killing.

At the hearing on the sanctions motion, Detective Seeger testified that he was approached outside the Staten residence on October 13, 1990, by "this young white male, somewhat disheveled and acting a little strange." He appeared to be under the influence of narcotics or alcohol. He identified himself as "Randy" and said that he knew defendant and some of his friends. He said that he had not heard of any "pedo [*sic*], bullshit" between defendant and the East Side Dukes. He knew that defendant and his friends were selling cocaine to gang members and occasionally defendant had "stiffed them with some baking soda and/or some bunk dope," but although a few "might be mad at him ... there was nothing that was overt." Randy did not think the gang had anything to do with the killings but "if they did, then he named two guys by the name of Puppet and Casper," although he did not know them and could not even describe them. When asked for information about his address and how to contact him, "[Randy] got rambling and uncooperative" and walked off.

Detective Seeger did not see Randy again. He subsequently investigated whether the East Side Dukes might have been involved, including contacting gang experts for advice, but found nothing indicating that the gang was responsible for the killings.

With regard to the sanctions motion, the superior court determined that there was no improper failure to preserve or collect evidence. It deemed the evidence of Randy's statements inadmissible, on the ground that it would "do nothing more than confuse issues and cause the jury to ***228** speculate on evidence that has little or no value."

The superior court granted defendant's in limine motion to exclude all evidence or references to his drug dealing. With regard to the People's ***456** motion to exclude evidence concerning the East Side Dukes, defense counsel agreed that he would not refer to Randy or "rumors on the street" without first making an offer of proof outside the presence of the jury that the East Side Dukes were actually involved. He did not subsequently make such an offer of proof at trial.

Defendant contends that the evidence of Randy's statements suggesting that members of the East Side Dukes might have killed the defendant's parents should have been admitted. We reject the claim of error. As a threshold matter, it is doubtful that the point has been preserved on appeal, in light of defendant's successful motion to exclude all evidence or reference to his own drug **982 dealing and his failure to make an offer of proof concerning Randy's statement. In any event, it is without merit. Randy's statement was inadmissible hearsay, irrelevant, and unduly prejudicial. It provided no actual information concerning the case; nor did it evince any personal knowledge whether the East Side Dukes killed the Statens. Randy merely speculated that two purported gang members he had never met *might* have committed the killings in retaliation for defendant's having "burned" them in a drug sale.

Defendant also urges that defense counsel provided ineffective assistance of counsel in failing to renew his attempt to introduce Randy's statement. The claim fails in the absence of a showing that trial counsel's representation fell below a standard of reasonableness. He had obvious tactical reasons not to do so: the evidence was damaging to defendant's own credibility, to the extent that it identified him as a drug user and dealer. [4]

B. *Instructions on Reasonable Doubt and Circumstantial Evidence*

The superior court gave the pattern instructions to the jury on reasonable doubt and circumstantial evidence. (After CALJIC Nos. 2.00, 2.01, 2.02, 2.90 (5th ed.1988).) Defendant did not object to the instructions.

Defendant contends that the reasonable doubt instruction is erroneous in referring to "moral certainty" and "moral evidence." [5] He argues that the due process clauses of the federal and state Constitutions include the right to be convicted only on proof beyond a reasonable doubt based on the evidence, rather than moral certainty.

*457 With regard to the circumstantial evidence instructions, defendant argues that they improperly allowed the jury to infer facts "merely by determining that the

inferred facts 'logically and reasonably' flow from the proven facts, without making the constitutionally required *additional* judgment that the inferred fact was *more likely than not* to follow from the proved fact."[6]

***229** We have repeatedly upheld the validity of the same instructions against identical claims; we decline to revisit the points. (See *People v. Bradford* (1997) 14 Cal.4th 1005, 1053–1054, 60 Cal.Rptr.2d 225, 929 P.2d 544; *People v. Freeman* (1994) 8 Cal.4th 450, 504, 34 Cal.Rptr.2d 558, 882 P.2d 249.)

C. *Instruction on Aiding and Abetting*

Defendant objected to any jury instruction on aiding and abetting. The superior court overruled the objection on the ground that **983** "the People's theory is that the defendant was involved; that they have no direct evidence that he was the perpetrator, even though that's also their theory, that (A) he was the perpetrator; (B), if he wasn't, he's an aider and abettor." The prosecutor confirmed that the People were presenting both theories.

The superior court gave the pattern instructions with regard to aiding and abetting, which state, inter alia, that "persons concerned in the commission of a crime who are regarded by law as principals in the crime thus committed and equally guilty thereof" include "[t]hose who aid and abet the commission of the crime." (CALJIC No. 3.00 (5th ed.1988).) It instructed that "a person who aids and abets the commission of a crime need not be *458 personally present at the scene of the crime," that "[m]ere presence at the scene of the crime which does not itself assist the commission of the crime does not amount to aiding and abetting," and that "[m]ere knowledge that a crime is being committed and the failure to prevent it does not amount to aiding and abetting." (CALJIC No. 3.01 (5th ed.1988).) The superior court also instructed: "If the evidence establishes beyond a reasonable doubt that the defendant aided and abetted the commission of the crime charged in this case, the fact, if it is a fact, that he was not present at the time and place of the commission of the alleged crime for which he is being tried is immaterial and does not, in and of itself, entitle the defendant to an acquittal." (CALJIC No. 4.51 (5th ed.1988).)

In closing argument, the prosecution alluded to the possibility that defendant may have had an accomplice who assisted him in committing the killings: "Now, whether he had to do it on his own or not, we may never know. Whether there was somebody else hiding in the house when his parents got there and assisted him, we will not know. Only he knows that. [¶] But he was clearly there. He clearly helped set it up. And I would argue to you that he was involved, if not doing the entire thing by himself."

Defendant contends that the superior court erred in instructing the jury on aiding and abetting. He asserts that the prosecution's case was based entirely on the theory that he was the lone perpetrator; no evidence was presented from which the jurors could reasonably infer that he had arranged with an accomplice to murder his parents. Accordingly, the instruction might have confused the jury or permitted it to avoid making findings on relevant issues.

***230** The claim fails. In pretrial proceedings, the People argued: "It is not necessary to prove that the defendant was the actual killer of either parent so long as he was either a co-conspirator or aider and abettor to the crimes. [Citation.] Based upon the facts presented the only logical conclusion is that Staten either did the crimes himself or with assistance thereby making him guilty of two counts of first degree murder." They also argued that theory at trial. There was sufficient basis for the jury to find from the evidence that defendant could have been guilty as an aider and abettor: he had discussed the idea of killing his parents with friends, and the lack of forcible entry on the night of the murders suggested that he either committed the killings himself or left the house unlocked for the actual killers. His defense that he was not at home at the time of the killings and that one person could not have committed both murders was not inconsistent with a theory of aiding and abetting. If the jury had accepted his evidence on that point, it could *459 nonetheless reasonably have concluded that he accomplished the murders with the aid of others.[7]

**984 D. *Failure to Instruct Sua Sponte on Absence of Flight*

Defendant asserts that the superior court erred in failing, sua sponte, to instruct that the jury might consider his absence of flight as a factor tending to show innocence. Pointing to Penal Code section 1127c, which requires an instruction on flight, when supported by the record, as showing consciousness of guilt, he argues that he has a "reciprocal" right to an instruction on *absence* of flight, as showing lack of guilt.

We discern no error. In *People v. Green* (1980) 27 Cal.3d 1, 39–40 and footnote 26, 164 Cal.Rptr. 1, 609 P.2d 468,

we held that refusal of an instruction on absence of flight was proper and was not unfair in light of Penal Code section 1127c. We observed that such an instruction would invite speculation; there are plausible reasons why a guilty person might refrain from flight. (*Green, supra,* 27 Cal.3d at pp. 37, 39, 164 Cal.Rptr. 1, 609 P.2d 468.) Our conclusion therein also forecloses any federal or state constitutional challenge based on due process. (See also *People v. Williams* (1997) 55 Cal.App.4th 648, 652–653, 64 Cal.Rptr.2d 203 [rejecting constitutional argument with regard to instruction on absence of flight].)

In the alternative, defendant asserts that trial counsel's failure to request an instruction on absence of flight constituted ineffective assistance of counsel. It was not objectively unreasonable not to request an instruction that has been held improper. Nor can defendant show that he was prejudiced thereby; it is merely speculative that the jury would have reached a different verdict if it had been so instructed.

E. *Sufficiency of the Evidence*

Defendant contends that the evidence is legally insufficient to establish that he murdered his parents and therefore insufficient under the United States and California Constitutions to support the judgment of conviction. Specifically, he argues that the evidence of his guilt was inconclusive because he did not attempt to realize ***231** any financial gain after the killings *460 and had a loving relationship with his parents. He also disputes that he had an opportunity to kill his parents and points to the lack of gunshot residue on his hands or blood on his clothing. He asserts that there was abundant evidence suggesting that gang members were responsible for the killings. His claim goes to identity: he asserts, in effect, that there was insufficient evidence that he was the perpetrator.

In *Jackson v. Virginia* (1979) 443 U.S. 307, 318–319, 99 S.Ct. 2781, 61 L.Ed.2d 560, the United States Supreme Court held, with regard to the standard on review of the sufficiency of the evidence supporting a criminal conviction, that "[t]he critical inquiry ... [is] ... whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.... [T]his inquiry does not require a court to 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.' [Citation.] Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." An identical standard applies under the California Constitution. (*People v. Johnson* (1980) 26 Cal.3d 557, 576, 162 Cal.Rptr. 431, 606 P.2d 738.) "In determining whether a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt, the appellate court 'must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier [of fact] could reasonably deduce from the evidence.' " (*Ibid.*)

Under the foregoing standard, defendant's claim fails. Viewing the evidence as a whole, in the light most favorable to the prosecution, it is clear that a rational jury could reasonably have rejected the defense and deduced that defendant was the killer.

There was substantial evidence that defendant planned and executed the murders for the purpose of obtaining insurance money, and attempted to avoid detection by suggesting that others were responsible. Thus, defendant, who had a hostile relationship with his father, repeatedly spoke of "taking him out"; he also told his friends that he would inherit a large amount of money if his parents **985 died. During their absence on a vacation, he took their .38–caliber gun, for which he had hollow-point bullets. On the day of their return, he waited at home, armed with the gun, calling repeatedly to find out when they would arrive. Shortly after their return, gunshots were heard by neighbors. Between the time of the gunshots and the time that defendant reported the killings to neighbors, he drove away in his parents' truck and returned to the house; the .38–caliber gun and the blue jeans he was seen *461 wearing that day were never found, suggesting that he concealed or destroyed the evidence. His father was killed by a hollow-point bullet that could have been shot from a .38–caliber gun. His mother was killed by multiple knife wounds; defendant had a fresh cut on his hand and his blood was found throughout the house. After the murders, he did not appear to mourn their death, but spoke after the funeral of "party[ing] and get[ting] high."

Defendant also took steps to suggest that members of the East Side Dukes, not he, committed the murders. A few days before his parents' return, he showed friends threatening graffito that he had "found" in his backyard; after the murders, similar graffito in matching spray paint was found in the living room above defendant's handprint. Both graffiti were written using the same kind of spray paint that was found in a closet in defendant's house. During the police investigation, he boasted to his friend that they had no case against him, and stated that he would continue to blame the murders on the gang.

***232** F. *Sufficiency of Evidence Supporting Special Circumstances*

Defendant asserts that the evidence at trial was insufficient to support the jury's findings of the special circumstances that he killed multiple victims (Pen.Code, § 190.2, subd. (a)(3)) and that he did so for financial gain (*id.*, subd. (a)(1)).

In reviewing the sufficiency of the evidence supporting a special circumstance finding, we must view the evidence in the light most favorable to the People. (*People v. Alvarez* (1996) 14 Cal.4th 155, 225, 58 Cal.Rptr.2d 385, 926 P.2d 365.) "The special circumstance focuses on the defendant's intention *at the time the murder was committed.*" (*People v. Howard* (1988) 44 Cal.3d 375, 409, 243 Cal.Rptr. 842, 749 P.2d 279.)

With regard to the multiple-victim special circumstance, defendant contends that even if there was sufficient evidence that he killed his father, the testimony concerning his loving relationship with his mother precludes a finding that he could have stabbed her repeatedly. He is unpersuasive. The jury was not required to believe that testimony, or to accept the inference that his feelings for her made it impossible for him to kill her or aid and abet her killing.

With regard to the financial-gain special circumstance, defendant asserts that his failure to recover on the insurance policies precludes a finding that he was motivated by financial gain. Again, he is unpersuasive. "Proof *462 of actual pecuniary benefit to the defendant from the victim's death is neither necessary nor sufficient to establish the financial-gain special circumstance.... '[T]he relevant inquiry is whether the defendant committed the murder in the expectation that he would thereby obtain the desired financial gain.' " (*People v. Edelbacher* (1989) 47 Cal.3d 983, 1025, 254 Cal.Rptr. 586, 766 P.2d 1.) His failure to recover insurance benefits after the killings does not undercut evidence of a financial motive at the time of the killings. The jury could reasonably have viewed such failure either as an abandonment of his plan or as an attempt to deflect attention from himself as the perpetrator after the murders.

IV. PENALTY ISSUES

A. *Constitutionality of California Death Penalty Law*

Defendant contends that the California death penalty is unconstitutional under the Eighth Amendment to the United States Constitution and article I, section 17 of the California Constitution. Specifically, he claims that the death penalty is inherently cruel and unusual punishment; that it is inherently unconstitutional because it cannot **986 be imposed fairly; that California's laws defining first degree murder, the class of death-eligible defendants, and the aggravating circumstances that the jury may consider are unconstitutionally broad; and, finally, that the California capital sentencing process suffers from a wide variety of procedural and substantive defects that individually and collectively violate state and federal due process, cruel and unusual punishment provisions, and Eighth Amendment reliability requirements, fail to give the jury proper guidance, and result in a vague, arbitrary, and capricious selection of death as the appropriate sentence. As defendant acknowledges, we have previously rejected the identical contentions. (See *People v. Bradford, supra,* 14 Cal.4th at pp. 1057–1059, 60 Cal.Rptr.2d 225, 929 P.2d 544; *People v. Carpenter* (1997) 15 Cal.4th 312, 419–421, 63 Cal.Rptr.2d 1, 935 P.2d 708; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1194–1195, 36 Cal.Rptr.2d 235, 885 P.2d 1; *People v. Crittenden* (1994) 9 Cal.4th 83, 152–160, 36 Cal.Rptr.2d 474, 885 P.2d 887.) We decline to revisit the points.

B. *Admission of Autopsy Photographs*

At the commencement of the penalty phase, the People sought to have admitted into evidence color photographs taken at ***233** the autopsy of Faye Staten, to show the circumstances of the crime. None of the photographs showed the face of the victim and, although they depicted her injuries, the wounds were "cleaned up, that is, there is no blood present." Defendant objected on the ground that the prejudicial effect of the photographs outweighed their probative value (Evid.Code, § 352). The photographs were admitted.

*463 At the conclusion of the penalty phase, the superior court directed the jury to take the photographs into the jury room. The court explained: "I'm going to have the bailiff tell them to take in [the photographic exhibits] first and to tell them these are the exhibits that were introduced during the penalty phase. I'm going to have her come out, and then I'm going to have her take in the other exhibits to tell them that these are available to them, if they wish to use them, during their deliberations."[8]

Defendant contends that admission of the photographs was error. He argues that the evidence was more prejudicial than probative and was cumulative in light of the extensive testimony of the pathologist concerning Faye's wounds.

The evidence was admissible under Penal Code section 190.3, factor (a), to show the "circumstances of the crime of which the defendant was convicted in the present proceeding." (*Ibid.*) As we recently explained in *People v. Box* (2000) 23 Cal.4th 1153, 1200–1201, 99 Cal.Rptr.2d 69, 5 P.3d 130, "the trial court lacks discretion to exclude *all* [evidence under Penal Code section 190.3, factor (a)] on the ground it is inflammatory or lacking in probative value." Although the trial court's discretion to exclude evidence showing the circumstances of the crime is more circumscribed than at the guilt phase, "[n]either [Penal Code section 190.3, factor (a) nor factor (b)] ... deprives the trial court of its traditional discretion to exclude 'particular items of evidence' by which the prosecution seeks to demonstrate either the circumstances of the crime ..., or violent criminal activity ... in a 'manner' that is misleading, cumulative, or unduly inflammatory." (*Id.* at p. 1201, 99 Cal.Rptr.2d 69, 5 P.3d 130.)

We find no error; the superior court did not abuse its discretion in admitting the photographs. The photographs were not unusually gruesome; they were taken in a clinical setting and depicted cleaned-up wounds; none showed the victim's face. They were ****987** neither cumulative nor misleading and were highly probative of the penalty issues, demonstrating the deliberate and brutal nature of the crime, which involved 18 stab wounds, many of which were individually fatal.

***464** C. *Denial of Request for Instruction on Lingering Doubt*

Defendant requested a special jury instruction that lingering doubt could be considered as a mitigating factor. The superior court refused the instruction, on the basis that there was no authority for such instruction, but permitted defendant to present an argument in that regard to the jury.

Defendant contends that the refusal to instruct on lingering doubt was error. We rejected the identical point in *People v. Hines* (1997) 15 Cal.4th 997, 1068, 64 Cal.Rptr.2d 594, 938 P.2d 388, holding that the *****234** proposed instruction was unnecessary. We decline to revisit the issue.

Defendant raises additional claims under the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution. They, too, are meritless. The federal constitutional provisions are not implicated. The United States Supreme Court has held that capital defendants have no federal constitutional right to such an instruction. (*Franklin v. Lynaugh* (1988) 487 U.S. 164, 173–174, 108 S.Ct. 2320, 101 L.Ed.2d 155.)

D. *Cumulative Error*

Defendant urges that cumulative error in the pretrial proceedings and in the guilt and penalty phases variously requires reversal of the guilt and penalty verdicts and the judgment of death. The premise for the claim is defective: we have rejected each of defendant's claims of error. It necessarily follows that the claim of cumulative error is also defective.

V. POSTTRIAL ISSUES

A. *Jury Misconduct*

After the judgment of death, in a declaration attached to his request for a new trial, defense counsel stated, inter alia, that "[t]he jury indicated after the trial that since the defendant did not show any emotion during his testimony that they sentenced him to death *San Gabriel Valley Tribune* (12–7–91) [*sic*]." He did not identify the jurors or purport to quote their actual statements; counsel's apparent source, a newspaper article, was not attached to the declaration.

Defendant argues that the jury improperly considered his lack of remorse during his testimony. In effect, he claims juror misconduct, urging that the jury's consideration, as an aggravating factor, of his lack of emotion or remorse during his testimony violated the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

***465** At the threshold, we do not know whether the jury actually considered defendant's lack of emotion or remorse. We are referred only to trial counsel's hearsay statement of what jurors purportedly "indicated" to unidentified persons, which was apparently reported in a newspaper. That is too thin a reed to support a claim of juror misconduct or violation of constitutional rights. In any event, the claim is lacking in merit. The jury could properly consider the defendant's apparent lack of emotion or remorse at trial, including during his own testimony, in evaluating the evidence presented in mitigation, e.g., that he was intelligent, had a loving relationship with his parents, and was concerned about his mentally retarded brother. Jurors could also properly consider

his demeanor in evaluating his credibility, and for other purposes.

Defendant also points to the prosecution's remarks in closing argument to the effect that he had not "taken responsibility" or "shown remorse for the crime."[9] To ****988** the extent he may be understood to assert prosecutorial misconduct, we reject the claim. The claim was waived by his failure to object to the statement at trial. (*People v. Crittenden, supra,* 9 Cal.4th at p. 146, 36 Cal.Rptr.2d 474, 885 P.2d 887.) It is also lacking in merit. The prosecution did not specifically argue lack of remorse as a factor in aggravation of penalty, but referred to the lack of remorse in the context of refuting the suggestion that defendant's intelligence should be regarded as a mitigating factor. We *****235** have repeatedly held that such prosecutorial comment on the absence of remorse as a mitigating factor is not improper. (See *People v. Williams* (1997) 16 Cal.4th 153, 254, 66 Cal.Rptr.2d 123, 940 P.2d 710.)[10]

B. *Denial of Motion for New Trial*

Defendant moved for a new trial on the grounds that the jury came to a decision that was "against the evidence" and that rejection of his request for ***466** special instructions concerning mitigating factors created a risk of "unguided emotional response." The motion was supported by a declaration by trial counsel that "the defendant was convicted ... [and] sentenced to death by an immotional [*sic*] jury who improperly considered the law and its application. The jury indicated after the trial that since the defendant did not show any emotion during his testimony that they sentenced him to death *San Gabriel Valley Tribune* (12–7–91) [*sic*]. This is improper and should be considered by you the court as an improper reason for the death penalty." Defendant did not request an inquiry into possible jury misconduct either in his motion or at the hearing.

Defendant contends that the superior court erred in denying the new trial motion. He is unpersuasive.

" ' "The determination of a motion for a new trial rests so completely within the court's discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears." ' " (*People v. Cox* (1991) 53 Cal.3d 618, 694, 280 Cal.Rptr. 692, 809 P.2d 351.) We reject the claim of error. As discussed, there was sufficient evidence to support the guilt and penalty verdicts; the assertion that the jury's reasoning process was "clouded by emotion" was sheer speculation. Nor would it have been improper for the jury, deliberating about the testimony in mitigation, to consider defendant's demeanor and failure to express remorse during his testimony.

Defendant also asserts that the superior court erred in failing, sua sponte, to order an evidentiary hearing to investigate possible jury misconduct. This claim, too, fails.

The holding of an evidentiary hearing to determine the truth or falsity of allegations of jury misconduct is within the discretion of the trial court. (*People v. Hedgecock* (1990) 51 Cal.3d 395, 419, 272 Cal.Rptr. 803, 795 P.2d 1260.) "The hearing should not be used as a 'fishing expedition' to search for possible misconduct, but should be held only when the defense has come forward with evidence demonstrating a strong possibility that prejudicial misconduct has occurred." (*Ibid.*) At such a hearing, jurors "may testify to 'overt acts'—that is, such statements, conduct, conditions, or events as are 'open to sight, hearing, and the other senses and thus subject to corroboration'—but may not testify 'to the subjective reasoning processes of the individual juror....' " (*In re Stankewitz* (1985) 40 Cal.3d 391, 398, 220 Cal.Rptr. 382, 708 P.2d 1260.) Here, no evidence of any overt acts of misconduct was presented. The vague reference in trial ****989** counsel's declaration to a newspaper article describing the juror's subjective mental *****236** processes did not require further inquiry by the court.

*467 VI. DISPOSITION

For the reasons stated, we affirm the judgment.

GEORGE, C.J., KENNARD, J., BAXTER, J., WERDEGAR, J., CHIN, J., and BROWN, J., concur.

All Citations

24 Cal.4th 434, 11 P.3d 968, 101 Cal.Rptr.2d 213, 00 Cal. Daily Op. Serv. 9015, 2000 Daily Journal D.A.R. 11,982

Footnotes

1 Defendant further claims that the summary denial of his application for second counsel and the reduction or denial of funding requests violated his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and article I, section 15 of the California Constitution. The points are lacking in merit. The superior court did not abuse its discretion; there is thus no predicate error on which to base the constitutional claims.

2 Defendant also claims that the erroneous denial of his motion for change of venue and the ineffective assistance of counsel deprived him of due process under the United States and California Constitutions. There was no error or ineffective assistance; a fortiori, there was no deprivation of the federal or state constitutional right to due process.

3 Of the 107 prospective jurors, 76 were Caucasian, 11 were Latino, seven were African–American, five were Asian–American, one was American–Samoan, and others did not indicate race or ethnicity. The jury originally sworn included two African–Americans; one was subsequently excused for hardship and was replaced by a Caucasian alternate juror. The People note that defendant used peremptory challenges against two Latino, one African–American, one Asian–American, and one American–Samoan juror. The People used peremptory challenges against 13 Caucasian, three Latino, and one African–American prospective juror.

4 Defendant also contends that the state law error violated the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. Because no error appears, the constitutional claims fail.

5 In relevant part, the instructions defined "reasonable doubt" as follows: "It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence, is open to some possible or imaginary doubt. [¶] It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

6 In relevant part, the instructions concerning circumstantial evidence stated: "Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn. An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence ... [A] finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only, one, consistent with the theory that the defendant is guilty of the crime; but, two, cannot be reconciled with any other rational conclusion. [¶] Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. [¶] In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance upon which such inference necessarily rests, must be proved beyond a reasonable doubt. [¶] Also, if the circumstantial evidence as to any particular count ... is susceptible of two reasonable interpretations, one of which points to the defendant's guilt, the other to his innocence, you must adopt that interpretation which points to the defendant's innocence and reject that interpretation which points to his guilt. [¶] If, on the other hand, one interpretation of such evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable."

7 Defendant refers to the instruction "on aiding and abetting *or conspiracy theory*." The People withdrew their request for an instruction on conspiracy and none was given. Although the title of the written instruction given to the jury was "Alibi—Aider and Abettor or Co–Conspirator," the word "co-conspirator" was redacted from the text of the instruction and did not appear in the oral instruction. To the extent that defendant may be understood to assert error, he is unpersuasive. He fails to show that the failure of the superior court to strike

the words "or co-conspirator" from the title of the instruction resulted in any prejudice. Defendant's additional claim that the erroneous instruction regarding aiding and abetting violated his federal constitutional rights under the Fifth and Fourteenth Amendments is also without merit; there was no predicate error.

8 Defendant asserts that the superior court, over his trial counsel's objection, ordered that *only* the photographs be sent to the jury room. The record contradicts his assertion: the court did not so order and his counsel did not so object. The court stated its intention of sending in the photographs first, and then the remaining exhibits. Defense counsel requested that "the only pieces of evidence given to the jury at this time are [the photographic exhibits]." The court disagreed: "I don't know whether [all the trial exhibits are] necessary.... [¶] My sole standard is whether or not the correct legal thing to do is to send them in because of their obligation to weigh and consider circumstances of the offenses involved." It then announced its order that *all* the trial exhibits be sent into the jury room.

9 Referring to testimony that defendant was intelligent, the prosecution argued: "[D]oes that mitigate? I don't know that it mitigates. Does it make it worse? It can't be deemed an aggravating factor, but you can question whether it really is a mitigating factor because an intelligent person, somebody who can think and realize all of the consequences of their acts, may be worse than the person who really can't take into consideration all of the consequences of their acts.... He has not taken responsibility for the crime. He has not shown remorse for the crime."

10 Defendant also points to the superior court's rejection of his request for a special instruction listing the factors to be considered in determining penalty and stating that "no other facts or circumstances may be considered in aggravation or as a reason to support a verdict of death." To the extent he can be understood to assert error on this ground, he is unpersuasive. The requested instruction, consisting, for the most part, of a general charge concerning the aggravating and mitigating factors to be considered, was properly rejected as duplicative of other instructions. The instruction also included a statement to the effect that the People must prove all aggravating factors beyond a reasonable doubt. The court properly rejected that portion of the proffered instruction as an incorrect statement of the law. (*People v. Rodriguez* (1986) 42 Cal.3d 730, 777–779, 230 Cal.Rptr. 667, 726 P.2d 113.)

End of Document

People v. Staten, KA006698

People's Exhibit 4
11/01/1990 LASD Supplementary Report

ORIGINAL

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY REPORT

DATE NOVEMBER 1, 1990 FILE NO. 090-20823-1443-011

C- MURDER - 187 P.C. Action Taken ACTIVE/INVESTIGATION MADE/EVIDENCE HELD/ V#1 - 90-10014/V#2 - 90-10015/SUSPECT NAMED

V- LISTED BELOW

D- 10-13-90 AT 0108 HOURS

L- 446 SOUTH FAXINA AVENUE, LA PUENTE, CA

S- STATEN, DE'ONDRE AUTHUR MB/24, DOB: 05-17-66, 446 S. FAXINA AVENUE, LA PUENTE, CA (818) 912-4092

VICTIMS:

V#1 - STATEN, AUTHUR MB/44 (DECEASED)

V#2 - STATEN, FAYE MB/43 (DECEASED)

PROPERTY MISSING:

Item #1 - One (1) Smith & Wesson, Model 36, .38 caliber. Serial No. BAB3063, registered to Faye Doris Staten (Victim #2) who resides at 446 Faxina Avenue, La Puente, (missing from the location of 187 P.C.)

EVIDENCE HELD:

Item #1 - One (1) book, containing reproductions of "L.A. Times" headlines, recovered on top of the coffee table in the den at the north/west bedroom of the location. It should be noted the book was open to the Sharon Tate murder.

Item #2 - White lined paper, 8" X 10" with printed words on it. The white lined paper was found lying on top of the Evidence, Item #1, in the den.

Item #3 - One (1) spray can, glossy white, recovered from the shelf in the hall closet of the location.

Item #4 - Three (3) mirror panes, approximately 12" x 12" with white paint on it. The panes were removed from the south wall of the living room were the words "ESD Kills" were painted on the panes.

Item #5 - One (1) cigarette hand rolled type, containing a green leafy substance resembling marijuana, recovered from the

top of a sewing machine cabinet stand in the closet of the den.

Item #6 - One (1) pair of "L.A. Gear" tennis shoes white, black and blue, containing blood spots. These shoes were taken from the victim's son, Suspect De'Ondre Staten at Industry Sheriff's Station.

Item #7 - Three (3) insurance policies and one annuity, belonging to Victims Arthur and Faye Staten, removed from the file cabinet in the master bedroom.

Item #8 - One (1) stake knife, single edge blade, with black handle, removed from the second drawer of the dresser drawers in the south/west bedroom, belonging to Suspect De'Ondre Staten.

Item #9 - One (1) spent shell casing, .25 caliber found on a box, outside at the east side of the location.

Item #10- One (1) .38 caliber spent round, recovered from the west wall of the center bedroom by Detective Plumtree, Firearms Technician.

Item #11- One (1) .38 caliber spent round, recovered from the west wall of the hallway, adjacent to the den door by Deputy Plumtree, Firearms Technician.

Item #12- One (1) envelope containing, 97 live .22 caliber rounds, bearing the imprint of "C" on the base; one orange case and one U.S. coin "dime" and one U.S. coin "nickel" found in a plastic bag, under the bed of the master bedroom against the east wall.

Item #13- One (1) pair of white shorts with blood stains on the right leg, recovered from John Nickols, at Industry Sheriff's Station on 10-14-90.

Item #14- One (1) frontier "Derringer" chrome, .22 caliber weapon, Serial No. 1695 with no grips. The weapon had (2) two live .22 caliber rounds, bearing the letter "C" on the base of the round, recovered from John Nichols, upon his arrest on 10-14-90, under file No. 090-20905-1434-290. This weapon belonged to Victim #2, Faye Staten.

Item #15- One (1) spent round, .38 caliber, removed by Doctor Selser, Los Angeles County Medical Examiner, during the autopsy of Victim #1, Arthur Staten, Coroner's Case No. 90-10014.

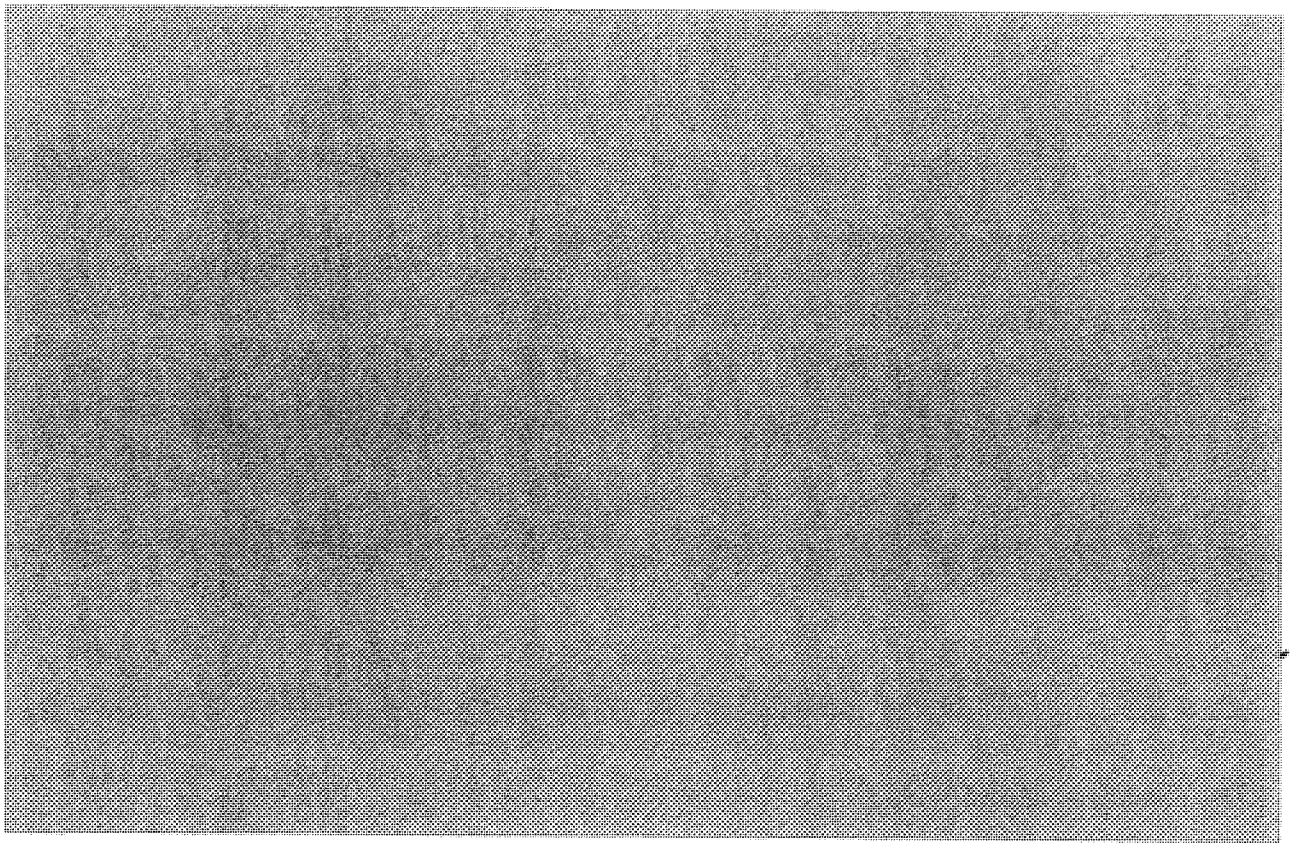
Item #16- One (1) pair of gray pants with blood stains on the legs, possibly belonging to Suspect De'Ondre Staten, recovered from the garage on 10-17-90, at the location by Detective Seeger.

Item #17- Two (2) cans of white spray paint, recovered from the garage on 10-17-90, by Sergeant Moultman Sheriff's Print Detail.

Item #18- One (1) gun cleaning rod and wire gun brush, recovered from the office desk at Najamah's Beauty Supply Shop, located at 15662 East Amar Road, La Puente by Detective Seeger, under the authorization of a search warrant. Also four photographs of gang writings.

Item #23- One envelope containing miscellaneous papers and two checks dated 10/6/50, for $75.00 each. One signed by Audrey January and the other by Thyra Wilson, recovered from the floor of the south/west bedroom, Suspect De'Ondre Staten's room.

* * * * * * * * * * * * * * * * * *



People v. Staten, KA006698

People's Exhibit 5
10/13/1990 LASD Firearms Report

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
SCIENTIFIC SERVICES BUREAU
FIREARMS IDENTIFICATION SECTION

REC'D FROM: Homicide Bureau - Dep. Seeger				FILE: 090-20823-1443-011	
DATE: 10-13-1990	C: 187 PC			RECEIPT: H351868	
SUSPECT: Unknown				VICTIM: Staten, Arthur	
GRC	CALIBER: 38/357	NO. L&G: 5	TWIST: R	LAND IMP. WIDTH: .101	GROOVE IMP. WIDTH: .102
ITEM	#1		A		B
TYPE	Jacketed Hollow Point		JHP		JHP
WEIGHT	106.3 Grains		124.4 Grains		123.6 Grains
MAKE	Unknown		Unknown		Unknown
PERCENTAGE MUTILATION	---		---		---
CONTAMINATION	Blood cleaned		Building material		Cleaned
MARKS OF VALUE FOR COMPARISON	Yes		Yes		Yes

OTHER EVIDENCE-OPINIONS-COMMENTS

EVIDENCE

Item A & B were recovered from 446 Faxina Avenue, Valinda by Supervising Criminalist W. Plumtree.

Item #1, A & B could have been fired from the same firearm and are suitable for comparison to a suspect firearm.

Firearms manufactured with the same general rifling characteristics include, but is not limited to Smith & Wesson, Ruger, Taurus and I.N.A. double action revolvers.

FIREARMS EXAMINER: Dwight D. Van Horn	SIGNATURE
EMP. NO.: 207054	DATE COMPLETED: October 30, 1990

85

People v. Staten, KA006698

People's Exhibit 6
10/15/1990 LASD Supplementary Report

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY REPORT

DATE October 15, 1990 FILE NO. 090-20823-1443-011

C- 187 PC Action Taken

H340194

V- (1) STATEN, Arthur (2) STATEN, Faye

D- ---

S- Unknown

On October 13, 1990, at the request of Deputy George Roberts of the Los Angeles County Sheriff's Department Homicide Bureau, a field investigation was conducted at 446 South Faxina Avenue, a single story residence located in the east Valinda area of La Puente.

The following items of evidence were collected and transported to the Criminalistics Laboratory under laboratory receipt number H340194.

#1: Bloodstain on the walkway to the front door of the house 6'9" from the front door, 3'2" from the east wall.

#2: Bloodstain on the north side of the front door 25" to 35" up from the bottom of the door, 9" from the hinge edge of the door.

#3: Bloodstain on the floor of the entryway 29" south of the south wall and 22"east of the east wall of the hallway.

#4: Bloodstain on the floor of the entryway 15 1/2" to 18 1/2" from the south wall and 38" from the east wall of the hallway.

#5: Bloodstain on the kitchen counter.

#6: Bloodstain on the right edge of the kitchen sink and counter.

#7: Bloodstain on the left edge of the dishwasher door panel.

#8: Bloodstain at the edge of the carpet between the kitchen and the living room.

#10: Bloodstain covering an area of approximately 6 square feet on the south wall of the dining room.

#11A: Bloodstain on the west wall of the dining room.

#11B: Bloodstain on a glass panel (south end) of the china cabinet in the dining room.

#14: Bloodstain (3 drops) in the hallway leading to the southwest bedroom.

#16: Bloodstain on the light switch area on the north wall of the master bedroom.

#19: White towel with bloodstain from behind the driver's seat floorboard of a 1988 Chevrolet Silverado truck.

Items number 9, 12, 13, 15, 17 and 18 are listed in Deputy Ron George's report.

Victor Wong

Field Investigation by: Victor Wong, Senior Criminalist

VW:sca

People v. Staten, KA006698

People's Exhibit 7
01/02/1991 LASD Supplementary Report

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY REPORT

DATE January 2, 1991 FILE NO. 090-20823-1443-011

C- 187 PC Action Taken

H340196, H340180, H356943, H374210, H374211

V- STATEN, Faye / STATEN, Arthur

D- ---

S- STATEN, Deondre

This report is supplemental to the field investigation report issued by Senior Criminalist Victor Wong on October 15, 1990.

On October 13, Deputy George of the Los Angeles County Sheriff's Department Scientific Services Bureau submitted the following items to the Serology section under laboratory receipt number H340196.

VAs - 1: One pair of athletic shoes reportedly collected from Deondre Staten including:

VAS - 1AB: Combined bloodstains from the tops of both shoes

On October 15, 1990, Detective Roberts of the Los Angeles County Sheriff's Department Homicide Bureau submitted the following item to the laboratory under receipt number H340180:

VAS - 2: One pair of white shorts with red stains reportedly collected from witness Nichols including:

VAS - 2A: A bloodstain from the front right edge of the shorts leg adjacent to the leg opening

On October 22, 1990, the following whole blood samples were transported form the Los Angeles County Coroner's Department and submitted to the laboratory under the following receipt numbers:

H374210 One whole blood sample reportedly collected from Faye Staten

H374211 One whole blood sample reportedly collected from Arthur Staten

090-20823-1443-011 January 2, 1991

On October 23, 1990, Detective Roberts submitted the following item to the laboratory under receipt number H356943:

VAS - 3: One pair of grey pants with red stains including:

VAS - 3A: A red stain on the interior fly region of pants

LABORATORY EXAMINATION

Human blood was detected on the following samples:

VAS - 1AB
VW1
VW2
VW3
VW4
VW10
VW11b
VAS - 2A

The post mortem blood samples obtained from Faye and Arthur Staten were typed and compared to the blood stains VAS-1AB, VAS-2A, VAS-3A, VW1-4, VW10 and VW11b. The results are listed on the enclosed "LASO Forensic Serology Examinations Summary" sheet.

CONCLUSIONS:

The following bloodstains could not have originated from Arthur Staten and were consistent with having come from Faye Staten:

VAS - 1AB
VW1
VW2
VW3
VW4
VW10
VW11b

The bloodstain providing the most information was VW10. The combination of enzyme types in this stain occur in approximately 1.4% of the population or 1 in 71 individuals.

172

090-20823-1443-011 January 2, 1991

The bloodstain VAS-2A could not have originated from either Faye Staten or Arthur Staten.

No further work will be completed without the submission of a reference blood sample from Deondre Staten.

Valorie A Scherr

Examination by: Valorie A. Scherr, Senior Criminalist

VAS:pa

cc: Roberts/LASD - HOMICIDE

People v. Staten, KA006698

People's Exhibit 8
03/05/1991 LASD Supplementary Report

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT
SCIENTIFIC SERVICES BUREAU
LABORATORY REPORT

SEROLOGY SECTION	File Number: 090-20823-1443-011
2020 West Beverly Boulevard	Agency: Homicide
Los Angeles, CA 90057	Charge: 187 P.C.
(213) 974-7018	Investigator: Roberts
	Report Date: March 5, 1991

Lab Receipts: H384427 H340196 H340180 H356943 H374210 H374211
Subject: STATEN, De'Ondre
Victim: (1) STATEN, Arthur (2) STATEN, Faye

This report is supplemental to the report issued by the undersigned on January 2, 1991.

On February 4, 1991, Detective Roberts submitted a whole blood sample reportedly collected from De'Ondre Staten under laboratory receipt **H384427.**

The blood sample obtained from De'Ondre Staten was typed and compared to the bloodstains VAS-1AB, VAS-2A, VW1-4, VW10, and VW11b. The results are listed on the enclosed "LASO Forensic Serology Examinations Summary" sheet.

CONCLUSIONS

De'Ondre Staten and Faye Staten have the same genetic profile given the forensic testing available within this laboratory. The following bloodstains could have originated from either of them:

VAS-1AB
VAS-2A
VW1
VW2
VW3
VW4
VW10
VW11b

Examination by: Valorie A. Scherr, Senior Criminalist

Copy to: Roberts/Homicide

People v. Staten, KA006698

People's Exhibit 9
10/09/1991 CBRL Report

CBR LABORATORIES, INC.
800 HUNTINGTON AVENUE, BOSTON, MASSACHUSETTS 02115 (617) 731-6470 FAX (617) 738-8983

October 9, 1991

Mr. Ronald Linhart
Los Angeles County Sheriff's Department
Scientific Services Bureau
2020 W. Beverly Blvd.
Los Angeles, CA 90057

Re: State of California v. Deondre Staten
CBRL Case No. F108

Dear Mr. Linhart:

On 8/20/91 a package was received via Express Mail Next Day Service from Mr. Harley M. Sagara, Scientific Services Bureau, Los Angeles Sheriff's Department. Enclosed was a letter of authorization, and an envelope which contained the following items:

CBRL Item	Description
10691	"Blood Stain VW1"
10692	"Blood Stain VW2"
10693	"Blood Stain VW3"
10694	"Blood Stain VW4"
10695	"Blood Stain VW5"
10696	"Blood Stain VW6"
10697	"Blood Stain VW7"
10698	"Blood Stain VW8"
10699	"Blood Stain VW10"
10700	"Blood Stain VW11a"
10701	"Blood Stain VW11b"
10702	"Blood Stain VW14"
10703	"Blood Stain VW16"
10704	'Blood Stain VW19"
10706	'Blood Stain VAS-1AB"
10707	"Blood Stain VAS-2A"

Mr. Ronald Linhart

Re: State of California v. Deondre Staten
CBRL Case No. F108

CBRL Item	Description
10596	"Blood Stain, Faye Staten"
10597	"Blood Stain, Arthur Staten"
10598	"Blood Stain, Deondre Staten"

There was no evidence of tampering. Photographs were taken of all of the items.

An attempt was made to extract DNA from all samples relating to this case by a method that yields high molecular weight DNA from blood. All DNA extracted was amplified with the Cetus HLA-DQ Alpha Amplitype kit. The results were as follows:

CBRL Item	Description	DQ Alpha Type
10691	Blood stain, VW1	NS
10692	Blood stain, VW2	1.2/2
10693	Blood stain, VW3	1.2/2
10694	Blood stain, VW4	1.2/2
10695	Blood stain, VW5	1.2/2/4
10696	Blood stain, VW6	1.2/2
10697	Blood stain, VW7	1.2/2
10698	Blood stain, VW8	1.2/2
10699	Blood stain, VW10	1.2/4
10700	Blood stain, VW11a	1.2/4
10701	Blood stain, VW11b	1.2/4
10702	Blood stain, VW14	1.2/2
10703	Blood stain, VW16	1.2/2
10704	Blood stain, VW19	2

Mr. Ronald Linhart

Re: State of California vs. Deondre Staten
CBRL Case No. F108

CBRL Item	Description	DQ Alpha Type
10706	Blood stain, VAS-1AB	3/4
10707	Blood stain, VAS-2A	3/4
10596	Blood stain, Faye Staten	1.2/4
10597	Blood stain, Arthur Staten	2
10598	Blood stain, Deondre Staten	1.2/2

NS - None Seen

The DQ Alpha type of Faye Staten is 1.2/4, of Arthur Staten is 2 and of Deondre Staten is 1.2/2. Faye Staten cannot be excluded as the contributor of the DNA typed in items 10699, 10700 and 10701. Arthur Staten cannot be excluded as the contributor of the DNA typed in item 10704. Deondre Staten cannot be excluded as the contributor of the DNA typed in items 10692, 10693, 10694, 10696 10697, 10698, 10702, and 10703. No conclusion can be made about possible contributors to the DNA typed in sample 10706 and 10707. Item 10695 appears to be a mixture of two or more individuals.

The frequency of the DQ Alpha 1.2/4 type in Blacks is between 14.7% and 19.2 % and in Caucasians is between 10.4% and 13.2%. The frequency of the DQ Alpha 2 type in Blacks is between 0.6% and 2.2 % and in Caucasians is approximately 2.3%. The frequency of the DQ Alpha 1.2/2 type in Blacks is between 4% and 6.4 % and in Caucasians is approximately 4.6%.

If there is any further assistance we can provide you, please contact us.

Sincerely yours,

David H. Bing, Ph.D.
Scientific Director
DHB/eag

People v. Staten, KA006698

People's Exhibit 10
11/01/1991 CBRL Report

CBR LABORATORIES, INC.
800 HUNTINGTON AVENUE, BOSTON, MASSACHUSETTS 02115 (617) 731-6470 FAX (617) 738-8993

November 1, 1991

Mr. Ronald Linhart
Los Angeles County Sheriff's Department
Scientific Services Bureau
2020 W. Beverly Blvd.
Los Angeles, CA 90057

Re: State of California v. Deondre Staten
CBRL Case No. F108

Dear Mr. Linhart:

On 10/17/91 a package was received from the Los Angeles County Sheriff's Department, Scientific Services Bureau, 2020 W. Beverly Blvd., Los Angeles, CA 90057 via U.S. Express Mail containing a letter of authorization and the following items:

CBRL Item	Description
10822	"H446805, blood from John Nichols" Enclosed was a stain in waxed paper
10823	"H444411, blood droplets removed from left shoe top 9/20/21."

There was no evidence of tampering. Photographs were taken of all of the evidence.

An attempt was next made to extract DNA from all samples by a method that yields high molecular weight DNA from blood. The DNA isolated was then tested with the Cetus HLA-DQ Alpha Amplitype kit. The results were as follows:

CBRL Item	Description	DQ Alpha Type
10822	Blood, John Nichols	3/4
10823	Blood, shoe	Inconclusive

The data are consistent with Mr. Nichols having the DQ Alpha type 3/4. No conclusion can be reached with regard to the DQ Alpha type in the DNA isolated from item 10823.

In our report of October 2, 1991, we reported the following DQ Alpha typing results for items 10706 and 10707, two blood stains submitted 8/20/91.

CBRL Item	Description	DQ Alpha Type
10706	VW1AB	3/4
10707	VW2A	3/4

Based on these results Mr. Nichols cannot be excluded as the contributor of DNA isolated from items 10706 and 10707.

The frequency of the DQ Alpha type 3/4 in Blacks is approximately 9.4%, in Caucasians is between 11.4% and 10.9%.

If there is further assistance we can provide you, please contact us.

Sincerely yours,

David H. Bing, Ph.D.
Scientific Director

cc: Mr. Gary Hearnsberger

People v. Staten, KA006698

People's Exhibit 11
Table 1: Reference Sample Results
Table 2: Evidence Sample Results

Table 1: Reference Sample Results

Item	Description	DNA/DQ Alpha Type Results
LASD H374210 CBRL Item 10596	Bloodstain reference, Faye Staten (FS)	1.2/4
LASD H374211 CBRL Item 10597	Bloodstain reference, Arthur Staten (AS)	2
LASD H384427 CBRL Item 10598	Bloodstain reference, Deondre Staten (DS)	1.2/2
LASD H446805 CBRL Item 10822	Bloodstain reference, John Nichols (JN)	3/4

Table 2: Evidence Sample Results

Item	Description	Serology: Blood Type/Protein Results	DNA/DQ Alpha Type Results	Jury Trial Stipulation
VAS-1AB LASD H340196 CBRL Item 10706	Swab of combined bloodstains from the tops of DS's shoes	Could have originated from FS or DS. (01/02/91 LASD, 03/05/91 LASD)	3/4 JN cannot not be excluded. (11/01/91 CBRL)	Could not have come from AS. No other conclusion could be reached.
VAS-1B LASD H444411 CBRL Item 10823	Blood droplets removed from left shoe top (09/20/91)		Inconclusive (11/01/91 CBRL)	-
VAS-2A CBRL Item 10707	Bloodstain from right edge of shorts leg, near leg opening (shorts worn by JN)	Could not have originated from AS, FS. (01/02/1991 LASD) Could have come from FS or DS. (03/05/91 LASD)	3/4 JN cannot not be excluded. (11/01/91 CBRL)	-
VAS-3A	Swab of red stain on interior fly region of gray pants (found in Staten garage)	No human blood detected. (03/05/91 LASD)		-
VW-1 CBRL Item 10691	Bloodstain on walkway to front door	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	None seen.	Source could not be AS. No other conclusion could be reached.
VW-2 CBRL Item 10692	Bloodstain on north side (interior) of front door	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.

VW-3 CBRL Item 10693	Bloodstain on entryway floor	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-4 CBRL Item 10694	Bloodstain on entryway floor	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-5 CBRL Item 10695	Bloodstain on kitchen counter		1.2/2/4 Appears to be a mixture.[1] (10/09/91 CBRL)	Source could not be AS. No other conclusion could be reached.
VW-6 CBRL Item 10696	Bloodstain on right edge of kitchen sink/counter		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-7 CBRL Item 10697	Bloodstain on left edge of dishwasher door panel		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-8 CBRL Item 10698	Bloodstain at edge of carpet between kitchen and living room		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-10 CBRL Item 10699	Bloodstain covering 6' on south wall of dining room	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-11a CBRL Item 10700	Bloodstain on west wall of dining room		1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-11b CBRL Item 10701	Blood stain on glass panel (south end) of china cabinet in dining room	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-14 CBRL Item 10702	Bloodstain in hallway (3 drops)		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-16 CBRL Item 10703	Bloodstain on light switch in master bedroom		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-19 CBRL 10704	Bloodstain from rag in Arthur Staten's truck		2 AS cannot be excluded. (10/09/91 CBRL)	-

[1] Note that this mixture consists of DNA/DQ Alpha types attributed to DS and FS.

2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Criminal Division

Clara Shortridge Foltz Criminal Justice Center Dept. - 100

XEAKA006698-01 **January 26, 2024**

The People of the State of California **8:30 AM**
vs.
STATEN, DEONDRE ARTHUR

Honorable William C. Ryan, Judge
B. Perez, Judicial Assistant Not Reported, Court Reporter

PC187(a), PC187(a)

NATURE OF PROCEEDINGS: Judicial Action

The following parties are present for the aforementioned proceeding:

No Appearances

The matter is called for Judicial Action.

NO LEGAL FILE

IN CHAMBERS

Motion for the performance of forensic deoxyribonucleic acid (DNA) testing filed by Deondre Staten (Defendant), represented by Annee Della Donna, Esq. Respondent, the People of the State of California (People), represented by Deputy District Attorney Lee Ashley Cernok. Denied.

BACKGROUND

In 1991, defendant was convicted of two counts of murder as well as allegations of killing for financial gain and multiple murder. Penal Code sections 187(a), 190.2(a)(1), (a)(3). It was further found true that defendant personally used a firearm in the killing of his father and personally used a deadly weapon, a knife, in the killing of his mother. Penal Code sections 12022.5 and 12022(b). Defendant was sentenced to death.

On July 19, 2023, defendant filed the instant motion for DNA testing in the East District of the Los Angeles County Superior Court. On July 25, 2023, the motion was transferred to Department 100 of the Foltz Criminal Justice Center from the East District pursuant to Local Rule 8.33(a)(3)(D), where it was then forwarded to the undersigned in the Criminal Writs Center on August 4, 2023. On October 31, 2023, the People filed an opposition to the motion as stated in Penal Code section 1405(d)(2). To date, there has been no reply filed by

defendant. Defendant did file a motion for disclosure of DNA reports and status of biological evidence pursuant to Penal Code section 1405(c) on December 7, 2023.*1

Defendant filed the motion for postconviction DNA testing pursuant to section 1405. Defendant requests the release and DNA testing of (1) three .38 caliber fired bullets, (2) one .25 caliber casing; and (3) bloodstain evidence, although unspecified as to which of the 18 samples collected on the day of the crimes. Defendant contends that he has established the required conditions under section 1405.

The People filed an opposition to the motion for postconviction DNA testing. The People argue that the motion should be denied because Defendant cannot demonstrate that all the evidence is available, and in a condition to be tested, or that favorable DNA testing results would raise a reasonable probability of a more favorable verdict or sentence.

COMMITMENT OFFENSE*2

Defendant, age 24, lived with his parents, Arthur and Faye Staten. Mr. and Mrs. Staten owned a beauty salon and beauty supply store. His parents had several life insurance policies worth more than $300,000. In August 1990, in the presence of defendant, they revised their policies to name defendant as the sole beneficiary. A fourth policy named defendant and his mentally disabled brother as co-beneficiaries.

Defendant argued often with his father and would be evicted from the home periodically for weeks or months at a time. He would tell friends that he "would take his father out" or take care of him." He also told them about the insurance policies and how he would inherit a large sum if they died. On one occasion when discussing with friends as to how to make money, he told them that he knew how they could make $275,000. Defendant told them that if they would "bump off" two people who lived around the corner and owned a beauty salon and beauty supply store, they could make a "five-digit" sum of money.

In September 1990, Arthur and Faye Staten left for a two-week vacation. They left their truck at the home of Faye's parents, the McKays. Defendant stayed at home. A week after his parents left, defendant showed his friend John Nichols, the .38 caliber revolver that belonged to his parents. He gave Nichols a .22 caliber gun. On several occasions, he told Nichols that he had hollow-point bullets.

Two or three days before his parents were to return, late at night, defendant told his friends that he heard something in the backyard. He did not find anyone. He said that he had received threatening phone calls from the East Side Dukes (ESD), a local Latino gang. The following day, he showed friends the letters "ESD" spray-painted on the backyard patio.

During the week before the Statens' return from vacation, defendant repeatedly asked a cousin, who lived behind the McKays' home, to call him when the Statens left for home after retrieving their truck. On October

11, 1990, the Statens returned from vacation but spent the night and most of the next day at the McKays' home. On October 12, defendant telephoned throughout the day to find out when his parents were coming home but declined invitations to come to dinner.

A neighbor, Bertha Sanchez, saw the Statens' truck arrive at about 11:40 p.m. Within 10 to 15 minutes, the neighbor and her husband heard three gunshots. Another neighbor, Craig Hartman, heard guns shots between 11:30 and 11:45 p.m. Shortly after midnight, defendant's aunt phoned him to find out if his parents had arrived safely. Defendant answered but sounded nervous and rushed. He said that they had not returned and that he was getting ready to go out. He did not offer to leave a message for his parents. About thirty minutes later, defendant's aunt called again. This time, defendant stated that they were home but did not put them on the line.

Sometime after midnight, Sanchez heard what she thought was the Statens' truck driving away. It returned about 20 minutes later. Around 1:05 a.m., the Hartmans state that defendant knocked on his door and told him his parents had been killed. The Hartmans returned with defendant to his house to find Faye's body lying near the entryway and Arthurs's body in the master bedroom. The words "ESD Kills" were spray-painted on a mirrored wall in the living room. Arthur died of a single gunshot to the head with a .38 or .357 caliber hollow-point bullet. Faye died of 18 stab wounds, seven of which could have been fatal. There was no evidence of forced entry or robbery and no signs of entry in the backyard.

There were bloodstains throughout the house. A handprint on the mirrored living room wall below the spray-painted graffiti matched defendant's. There was a 90 percent chance that the graffiti on the mirrored wall was produced by the same writer as the graffiti on the back porch. The paint on both was the same and it also matched a can of spray paint found in the hall closet. At funeral service for his parents, defendant did not appear sad. He told a cousin that this was no time to cry because his parents were dead. Rather, it was a time to party and get high.

On October 14, 1990, Nichols was stopped by law enforcement and arrested for violating probation for carrying the .22 handgun on his person. On November 3, 1990, Nichols was released and met with defendant while wearing a wire monitored by law enforcement. In taped conversations, defendant said that he had "gotten rid of" the .38 caliber revolver before his parents returned home. He suggested Nichols lie about the gun to police and assured him that the police would not be able to find it and that as long as he stuck to his story, they would not have a case: "[i]f they still can't find it, I'm still going to blame it on the Dukes."

The gang unit of the Los Angeles County Sheriff's Department concluded that the murders were not gang related and that the graffiti found in the house and backyard did not appear genuine or written in the distinctive style of the ESD. It would be unusual to have graffiti hidden in the backyard or house rather than in a prominent place in front of the house to announce and identify their killings.

Defendant introduced his own testimony and evidence to claim that his relationship with his parents was good. He stated that he never spoke to others about killing his parents for financial gain. The ESD repeatedly threatened him. He suspected that one of Nichols' friends stole the .38 caliber gun.

On the night of the killings, he states that he left after talking to his aunt and took his parents' truck to get a hamburger but returned home after realizing that he left his wallet at home. When he arrived, he discovered his parents' bodies and saw the spray-painted graffiti. No gunshot residue was found on his hands.

On December 2, 1991, a jury convicted defendant of the murder of his parents. The jury found true that he used a firearm to kill his father and a knife to kill his mother. The jury also found true special circumstances that the murders were intentionally carried out for financial gain and that defendant committed multiple murders. The trial court sentenced defendant to death after the jury recommended the same. Following an automatic appeal, the California Supreme Court affirmed the conviction and death sentence. People v. Staten (2000) 24 Cal.4th 434, 441-446. The defendant filed a federal petition for writ of habeas corpus, which was denied without an evidentiary hearing. Defendant appealed and the United States Court of Appeals, 9th Circuit affirmed the decision.

APPLICABLE LEGAL PRINCIPLES

Subdivision (a) of section 1405 provides, "[a] person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion, pursuant to subdivision (d), before the trial court that entered the judgment of conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing." The motion must be verified by the convicted person under penalty of perjury and:
(1) include a statement that he or she is innocent and not the perpetrator of the crime;
(2) explain why the identity of the perpetrator was, or should have been, a significant issue in the case;
(3) make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought;
(4) explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction;
(5) reveal the results of any DNA testing that was conducted previously; and
(6) state whether any motion for testing under this section previously has been filed and the results of that motion. (§ 1405, subd. (d).)

The court shall grant the motion for DNA testing only if it determines all of the following have been established:
(1) The evidence is available and in a condition that would permit the requested testing;
(2) The evidence has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect;

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case;
(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of his identity as the perpetrator of the crime;
(5) The requested DNA testing results would raise a reasonable probability, in light of all the evidence, that the convicted person would have received a more favorable judgment if the DNA results were available at the time of conviction;
(6) The evidence sought to be tested was not tested previously, or was tested previously, but the requested DNA test would provide results that are reasonably more probative of the identity of the perpetrator;
(7) The testing requested employs a method generally accepted within the relevant scientific community; and
(8) The motion is not made solely for the purpose of delay. (§ 1405, subd. (g).)

DISCUSSION

Requirements of Section 1405
With respect to the requirements set forth in subdivision (g) of section 1405, listed ante, the elements opposed by the People are Defendant's claims that: (1) the evidence is in a condition that would permit testing and has not been altered in any material aspect (subd.(g)(2)); and (2) the requested DNA results would raise a reasonable probability that Defendant's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction (subd. (g)(6).*3
1. Condition and Alteration of Evidence
In order for a defendant to succeed on a motion for postconviction DNA testing, the defendant must establish that the evidence to be tested is available and in a condition that would permit the requested testing, and that it has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect. (§ 1405, subd. (g)(1)-(2).)

Given the high probability of non-probative DNA transfer onto the fired bullets and the lone cartridge case because they were wiped clean upon collection and ballistics testing, presented in court, and impacted by environmental factors such as moisture, heat, and light over 32 year period in an evidence room, the degradation of DNA is highly likely that accurate testing would not be possible.

However, the court notes that the parties point to no binding case law interpreting what it means for evidence to be "available and in a condition that would permit DNA testing," and the court finds none. Therefore, the court will use the reasonable and ordinary meaning of the words used. (De Vries v. Regents of University of California (2016) 6 Cal.App.5th 574, 590–591 ['When a term goes undefined in a statute, we give the term its ordinary meaning.'].) Accordingly, "available" means "able to be used, obtained, or selected; at one's disposal" and "in a condition that would permit DNA testing" reasonably looks to whether a sample may be attempted to be obtained from the evidence by swabbing, or other such accepted collection procedure, and submitted for testing. (Oxford English Dict. Online <https://www.oed.com/search/dictionary/?scope=Entries&q=available> [Accessed Jan. 24, 2024.].) Here, the court finds that the three .38 caliber fired bullets and one .25 caliber

casing are available at LASD Central Property and Evidence and could be subject to swabbing, or other such collection procedure. The fact that a DNA sample may or may not be developed from the items is not relevant to the question of whether the evidence is available and in a condition that permits an attempt at DNA testing.

Accordingly, the court finds the requirements under section 1405, subdivision (g)(1) and (g)(2) have been met.
2. Reasonable Probability of a More Favorable Result

The court is authorized to grant a DNA motion only if it finds that the requested DNA testing results would raise a reasonable probability that, in light of all the evidence, Defendant would have received a more favorable verdict or sentence if the results of DNA testing had been available at the time of conviction. (§ 1405, subd. (g)(5).) That is, the defendant must demonstrate that, had the DNA testing been available, there is a "reasonable chance" he would have obtained a more favorable result at trial. (Richardson, supra, 43 Cal.4th at p. 1051.) "In making this assessment, however, it is important for the trial court to bear in mind that the question before it is whether the defendant is entitled to develop potentially exculpatory evidence and not whether he or she is entitled to some form of ultimate relief such as the granting of a petition for habeas corpus based on that evidence." (§ 1405, subd. (g)(5).) As the Ninth Circuit observed in an analogous decision, "'Obtaining post-conviction access to evidence is not habeas relief.' [Citation.] Therefore, the trial court does not, and should not, decide whether, assuming a DNA test result favorable to the defendant, that evidence in and of itself would ultimately require some form of relief from the conviction." (Ibid.) The court is obligated to "liberally apply the 'reasonable probability' standard to permit testing in questionable cases." (Jointer v. Superior Court (2013) 217 Cal.App.4th 759, 769 (Jointer).)

Here, however, the court does not find a "reasonable probability" that any of the requested evidence recited in the case either by the motion, the opposition, or past case decisions regarding this defendant, supports his version of the crimes. The overwhelming state of the evidence refutes his defense that the killings were gang related.*4 There is no showing or support, either at the time of the convictions and subsequent appeals or in the current motion, for gang-related shootings. The motive is unexplained and not even stated by defendant in the motion.

Furthermore, the method of killing is inconsistent with defendant's claim that it was gang killings. The ESD graffiti was hidden in the house and in the backyard rather than announced and identified in a public area. There was no evidence of forced entry or robbery and no signs of entry in the backyard.

Lastly, and most importantly, no amount of DNA evidence would refute defendant's own words in taped conversations where he explicitly states that he would "blame [the crimes] on the Dukes."

Testing of the .25 caliber bullet casing has no relevance as the three fired bullets, including the one removed from Arthur Staten's head, were .38 caliber. Defendant has not explained the relevance of re-testing the 18 blood samples nor specified which of the 18 samples collected on the day of the crimes are available or relevant

for testing. Defendant has not demonstrated that, had the DNA testing been available, there is a "reasonable chance" he would have obtained a more favorable result at trial.

DISPOSITION

For the foregoing reasons, Defendant's motion for DNA testing of the three fired bullets, one bullet casing, and the 18 bloodstains from the crime scene is DENIED.

The Clerk is ordered to serve a copy of this order upon Annee Della Donna, Esq., as counsel for Defendant, and upon Deputy District Attorney Lee Ashley Cernok, as counsel for Respondent, the People of the State of California.

The order is signed and filed this date. A true copy of this minute order is sent via U.S. Mail to the following parties listed below.

*FOOTNOTES:
*1 To date, there has been no opposition filed by the People to this motion.
*2 The facts of the commitment offense are taken from the California Supreme Court opinion in *People v. Staten* (2000) 24 Cal.4th 434, 441-446, unless otherwise specified.
*3 In the opposition, the People do not contest that Defendant has fulfilled the requirements set forth in the other subdivisions of section 1405(g).
*4 *See* People v. Staten, *supra*, at pp. 460-462.

CLERK'S CERTIFICATE OF MAILING

I, David W. Slayton, Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served a copy of the above minute order of January 26, 2024 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: January 30, 2024

By: /s/ B. Perez
B. Perez, Deputy Clerk

Annee Della Donna, Esq.
Law Offices of Annee Della Donna
301 Forest Ave.
Laguna Beach, CA 92651

Office of the District Attorney
Forensic Science Section
Attn: Lee Ashley Cernok, Deputy District Attorney
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Los Angeles, CA 90012

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Criminal Division

Clara Shortridge Foltz Criminal Justice Center Dept. - 100

XEAKA006698-01

January 26, 2024

8:30 AM

The People of the State of California
vs.
STATEN, DEONDRE ARTHUR

3

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Attorneys for Defendants DEONDRE STATEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CLARA SHORTRIDGE CRIMINAL JUSTICE CENTER

THE STATE OF CALIFORNIA, Plaintiff, v. **DEONDRE ARTHUR STATEN,** Defendant.	Case No: KA006698-01 Assigned to: Honorable Judge William C. Ryan Dept.: 100 **MOTION FOR DNA TESTING**

Defendant DEONDRE STATEN hereby moves for DNA testing.

INTRODUCTION

The strength of our criminal justice system depends on its accuracy-its ability to convict those who have committed crimes and clear those who are innocent. Yet we face an undeniable truth: innocent people are wrongfully convicted. These wrongful convictions undermine the confidence our nation has in the criminal justice system. **What we cannot do as a society, is to ignore untested evidence** that could point toward innocence, especially when the benefit of exoneration significantly outweighs the inconvenience of the testing.

In light of the Court's prior ruling on DNA testing, Defendant hired a forensic expert to review the untested evidence and now Defendant is only requesting specific items that were **never tested in the original investigation**: two bullets, one set of fingerprints and two blood samples that could point to another perpetrator.

Defendant has consistently maintained his innocence. Merely stating on tape that he would "blame the crime on the Dukes" does not equate to a confession of guilt. It simply reflected his uncertainty about the true perpetrator, not an admission of his own involvement. To assume otherwise is to distort the meaning of his words and overlook the possibility that he too, was searching for the truth.

There was no forced entry in his house, because the backdoor was left unlocked, offering easy access. More crucially, if Defendant had committed these killings, he would have been covered in gunshot residue and drenched in blood. He was not. The lack of GSR and blood on the Defendant shortly after the killings, proves he could not have committed the crime.

The requested DNA testing could significantly alter the outcome of this case. In light of the untested evidence, discovering third party DNA at the crime scene, would raise the reasonable probability that the Defendant would have received a more favorable verdict. Such a finding would cast substantial doubt on the defendant's guilt, creating reasonable doubt that is essential to ensuring a just and fair trial.

STATEMENT OF FACTS

A. October 13, 1990

Defendant age 24 lived with his parents Faye and Arthur ("Ray") Staten in the La Puente/ East Valinda area of Los Angeles. Arthur and Faye owned a beauty salon and beauty supply store.

Not long after midnight on October 13, 1990, Ray and Faye Staten were killed in their home. An hour earlier, the couple had arrived at their residence following a two-week trip to Egypt. Their 24-year-old son, Defendant De'Ondre Staten, pulled their luggage inside, gave them hugs, and planned to watch videos of their vacation with family members the next day. After his parents were settled in, Defendant told them he was hungry and wanted to grab something to eat. Faye's Cadillac, which Defendant drove while his parents were away, had broken down, so Ray gave his son the keys to his Chevrolet truck. Defendant left around 12:45 AM. Defendant had been driving for about ten minutes when he realized he had forgotten his wallet. He turned around and returned home to get his wallet. Defendant returned home around 1:00 AM. He found the front door locked, as he had left it, and used his key to get inside. He first saw his mother, Faye, who Defendant affectionately called Shorty, stabbed 18 times and face down in the dining room. Next, he found his father in his parents' bedroom. Ray was on the floor, dead from a single gunshot wound to the back of the head. Deondre Staten has maintained his innocence.

Defendant ran to his neighbor's house screaming his parents were dead. Two of his neighbors accompanied him back into the house, and as one checked his Faye's pulse, Defendant sobbed and tried to put his arms around his mother. On the mirrored wall of a hallway nearby, the phrase "E.S.D. Kills" was sprayed in white paint. E.S.D. was referred to the East Side Dukes, a Latino gang who operated in the Staten's neighborhood. When the police arrived, they interviewed Defendant who leaned crouched against the garage door, rocking back and forth extremely upset. Through this interview, the police learn that two days earlier, the same message: "E.S.D. Kills" had been spray painted in white on the Defendant's patio, right by the same sliding door that was open the night of the murders. Defendant's friend, John Nichols, told police the day before his parents left on their vacation, Staten got a call saying "E.S.D. kills niggers." That same friend, Nichols, would later go on to get arrested for a parole violation, for possessing a .22 derringer gun belonging to Faye Staten. Because Nichols

was on probation for a drug violation, he was arrested and taken to jail. In jail, he was contacted by Detective Roberts. Roberts asked Nichols to secretly record Defendant in exchange for "help" with his probation. Nichols' recollection was different. He claimed Roberts threatened to implicate Nichols with the murders of Faye and Ray if he didn't agree to secretly record Defendant. Nichols became the key witness against Defendant, eventually wearing a wire to a meeting with Defendant. In the tape, Nichols repeatedly asked defendant whether he had anything to do with the murders and Defendant repeatedly denied any involvement.

B. The Trial

On January 7, 1991, Deondre Staten was charged with two counts of murder under California Penal Code section 187(a), as well as special allegations of killing for financial gain and multiple murder under section 190.2 (a)(1), (3). It was further alleged that, in murdering his father, defendant personally used a firearm within the meaning of Penal Code section 12022.5, and that, in murdering his mother, he personally used a deadly and dangerous weapon, a knife under section 12022(b). Defendant pleaded not guilty to every charge and was tried by jury. The jury found him guilty of first-degree murder of both parents, and also found the special allegations regarding the killing for financial gain, multiple murders, personal use of a firearm and personal use of a deadly and dangerous weapon to be true. He was sentenced to death for each murder.

Staten was convicted entirely based on circumstantial evidence. The weapons used to kill Ray and Faye were never recovered. Defendant had no opportunity to wash his hands and there was no gunshot residue on Defendant's hands the night of the murders. He explained the small, dried cut on his middle finger was from gardening and trying to get the yard cleaned up before his parents arrived home. Despite his mother being stabbed 18 times, there was no blood on his body or clothing. The State's expert testified the different bullets could have been fired from two different guns. The defense handwriting expert testified that the ESD graffiti was not the Defendant's handwriting. Fingerprints found on the paint canister in the closet did not belong to Defendant. Moreover, the neighbors gave inconsistent reports to police about hearing gunshots that night. In the recorded conversation with Nichols, prior to

the highlighted quote, Defendant explicitly denied having anything to do with killing his parents multiple times.

At his trial, Defendant testified that overall, he had a good relationship with his parents, especially his mother, and multiple family members and friends of Defendants said in interviews that he never could have hurt his mother. He denied talking to his friends about killing his parents for their insurance money. The prosecution argued Defendant killed his parents to obtain the proceeds of the three insurance policies under which he was a contingent beneficiary. However, from the time of the murders, October 1990 until the time of his arrest in March 1991, Defendant never made any claim for any of the insurance proceeds. One of Defendant and Nichol's friends, Matthew Nottingham told police in an interview that Defendant never spoke to him about insurance money. In fact, Nottingham told police that Nichols tried to speak with him and another friend about killing someone for $15,000.

Defendant testified that his parents arrived home around 12:05-12:10 AM, and when his aunt called at 12:30 AM, his mother told him she didn't feel like talking. Defendant testified that he was being threatened by the East Side Dukes. The day after the murders, five witnesses saw a car containing ESD members drive by the Staten home and glare at them. Three of those witnesses heard them say, "yeah we got them," and two of those three disclosed the event to Defendant's trial attorney. In a 2020 Ninth Circuit decision, the Court found that it was objectively unreasonable for the California Supreme Court to conclude that the trial attorney's performance was not deficient for failing to present that testimony at trial.

Defendant maintains his innocence to this day and asserts that he was not the perpetrator of these crimes. (*See* Exh. 1, Declaration of De'Ondre Staten.)

In 2000, The Los Angeles Sheriff's Department found that Investigator Dwight Van Horn (who was the chief investigator in this case) had failed a proficiency test in 1998 and 2 out of 51 of his investigations had ballistic errors and posed potential credibility errors. (*See* Exh. 2)

POINTS & AUTHORITIES

I. Pursuant To Penal Code Section 1405, Testing of Evidence For the Presence of DNA Inconsistent With Either Defendant and/or the Alleged Victims Is Warranted

A wrongful conviction based on possible factual innocence can sometimes be detected using postconviction DNA testing. Postconviction DNA testing is a major factor contributing to the increased discovery of wrongful convictions. With the advent of DNA testing over the last two decades, biological evidence retained in cases from the "pre-DNA" era could be tested. In addition, advancements in DNA technology have broadened opportunities for DNA testing. For example, as DNA analysis of aged, degraded, limited or otherwise compromised biological evidence has improved, samples that previously generated inconclusive results might be amenable to reanalysis with newer methods.

California Penal Code section 1405 states:

"[A]n individual who was convicted of a felony and who is currently serving a state prison sentence may petition the court in which he was convicted for post-conviction DNA testing." (Cal. Penal Code § 1405(d)(1)).

The motion must be verified under penalty of perjury and must include the following:

> (A) A statement that [the Defendant] is innocent and not the perpetrator of the crime.
>
> (B) Explain why the identity of the perpetrator was or should have been a significant issue in the case.
>
> (C) Make every reasonable attempt to identify both the evidence that should be testing and the specific type of DNA testing sought.
>
> (D) Explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of the DNA testing had been available at the time of the conviction

(E) Reveal the results of any DNA or other biological testing that was conducted previously by either the prosecution or the defense, if known.

(F) State whether any motion for testing under this section previously has been filed and the results of that motion, if known.

(*Id.*)

The Defendant submits to this Court that each of these criterions has been met in the instant matter and petitions for the performance of DNA testing on all relevant evidence collected in this matter.

A. **Defendant has Maintained his Innocence Since his Arrest in 1990 (Cal. Penal Code § 1405(d)(1)(A)).**

Defendant submits his declaration, under penalty of perjury, that he is innocent and not the perpetrator of these crimes, fulfilling this statutory requirement under Section 1405(d)(1)(A). (*See* Exh. 1, Declaration of De'Ondre Staten.)

B. **The Identity of the Perpetrator was and Should have been a Significant Issue in the Instant Matter (Cal. Penal Code § 1405(d)(1)(B)).**

Since there were no eyewitnesses to the murders of Arthur and Faye Staten, the identity of the perpetrator or perpetrators is undoubtedly a significant issue in the case. Defendant was convicted solely on circumstantial evidence, and there was no physical evidence found that suggested Defendant wielded the weapons that killed his parents.

Defendant hired Forensic Expert Kenneth R. Moses, ("Moses") Director of Forensic Identification Services, who reviewed Defendant's case file in 2024. Moses determined that the two different modes of attack—firearm and knife—**may indicate the presence of more than one perpetrator.** (*See* Exh. 3, Declaration of Kenneth R. Moses ¶ 6.) Moses further noted the lack of blood found on Defendant's clothes and body, as well as the absence of gunshot residue on Defendant's hands, pointed towards

his innocence. (*Id.* at ¶ 7.) Additionally, investigators found third party fingerprints and blood samples at the scene that did not belong to either the victims or Defendant. (*Id.* at ¶ 8-9.)

We cannot ignore the presence of graffiti at the crime scene which suggested the East Side Duke gang may have committed the murders, demonstrating the significance of the issue of the identity of the third-party perpetrator. Further, witnesses informed Defendant's attorney that there were East Side Duke gang members that took responsibility for the murders, but his attorney failed to ask questions about this exculpatory evidence. While the Defense failed to present this exculpatory evidence at the trial, the identity of the perpetrator or perpetrators *should have been* a significant issue in the matter, particularly whether the East Side Duke gang members had committed the murders. As such, Defendant has satisfied this statutory requirement for DNA testing under Section 1405(d)(1)(B).

C. **There is Clearly Identifiable Evidence to be Tested Under this Motion (Cal. Penal Code § 1405(d)(l)(C)).**

After reviewing Defendant's case file, Forensic Expert Moses identified several pieces of evidence that were never tested:

(1) Two .38 caliber bullets recovered from the Staten home, one .38 caliber bullet removed from Arthur Staten's body. (*See* Exh. 3, Declaration of Kenneth R. Moses at ¶ 6.)

(2) Several latent unidentified fingerprints lifted from inside the residence, including those found on the mirror-tiled wall with the EDS graffiti and on a can of spray paint in the closet. (*See* Exh. 3, Declaration of Kenneth R. Moses at ¶ 8.)

(3) Numerous blood samples collected from the scene, both inside and outside the front door on the suspect's path of exit, that were previously tested but found to be inconclusive. (*See* Exh. 3, Declaration of Kenneth R. Moses at ¶ 9.)

Additionally, a spent .25 caliber casing was also discovered outside the Staten residence, yet the family did not own a .25 caliber weapon.

Therefore, the Defendant has met the statutory requirement pursuant to Section 1405(d)(1)(C) by clearly identifying the evidence to be DNA tested under this motion: three .38 bullets, one .25 bullet casing, and the 11 unconclusive blood samples found at the scene.

D. In Light of The Evidence, DNA Testing Will Raise A Reasonable Probability That The Defendant's Verdict or Sentence Would Be More Favorable if The Results Of The DNA Testing Had Been Available At The Time Of The Conviction (Cal. Penal Code § 1405(d)(l)(D)).

Pursuant to Section 1405(d)(1)(D), the Defendant need not prove that he absolutely would have received a different verdict, but need only "demonstrate that, had the DNA testing been available, in light of all of the evidence, there is a reasonable probability . . . that the defendant would have obtained a more favorable result. (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1051.) This does *not* mean the Court must find that the Defendant has a reasonable chance of obtaining ultimate relief, but only "whether the defendant is entitled to develop potentially exculpatory evidence." (*Id.*) **Further, "trial courts should liberally apply the 'reasonable probability' standard to permit testing in questionable cases."** (*Jointer v. Superior Court* (2013) 217 Cal.App.4th 759, 769.) Should the Court order DNA testing of the above limited pieces of evidence, there is a reasonable probability that the results would have led to a more favorable verdict for the Defendant where the identity of the perpetrators should have been a major issue at trial and the potentially exculpatory evidence could have been developed.

Here, multiple bullets and casings were recovered by police at the Staten home following the murder. Blood samples were taken from blood found inside and outside the front door. Fingerprints were lifted from the residence, including on the mirror-tiled wall of graffiti and the spray can of paint. **At the time of the investigation, the bullets and bullet casing were not examined for DNA evidence, multiple blood samples were tested but the DNA was found to be inconclusive, and several latent fingerprints were never identified.**

According to Moses, DNA analysis was still in its infancy in 1990. Today, "modern technological advancements in DNA analysis enable forensic scientists to identify an individual to an extraordinarily high degree of statistical significance." (Exh. 3, Declaration of Kenneth R. Moses at ¶ 10.) Further, historical serological analyses required large samples, whereas today, "modern DNA forensics often utilizes sample sizes so minute as to be invisible to the naked eye, such as 'touch DNA' samples consisting of only a few skin cells on a cartridge casing." (*Id.*) Finally, Moses noted that at the time of Defendant's trial, **AFIS and CODIS databases were thinly populated, but today contain many millions of subjects, increasing the chances of making a positive identification from a DNA sample**. (*Id.*)

Analysis of the bullets, bullet casing, and previously inconclusive blood samples could develop potentially exculpatory evidence in this matter. Although DNA testing in 1990 did not have the capability to analyze small samples, **modern DNA forensics would be able to test for skin cells on the bullets and bullet casing**. Further, while the blood testing in 1990 was inconclusive, today's analysis can better test the small samples of blood found at the Staten residence. Finally, **due to the much more populated AFIS and CODIS databases, there is a greater chance of identifying a positive match after testing the DNA found at the scene.**

As such, by developing this potentially exculpatory evidence, there is a reasonable probability, in light of all the evidence, that Defendant would have received a more favorable verdict. If any third-party DNA were found at the scene of the murders, specifically on the bullet casings or in blood splatter at the door, it would support the Defense's claim that the Defendant did not commit the murders. The jury found Defendant personally used a firearm in the murder of his father and stabbed his mother. However, had DNA evidence pointed to a third party having fired the gun or left blood at the scene, there is a reasonable probability that the jury would have determined a different person committed the crimes. Furthermore, had DNA evidence or latent fingerprints been matched to East Side Dukes gang members, it would have supported the Defense's case theory that members of the East Side Dukes gang committed the murders.

As discussed above, the perpetrator of these crimes was a significant issue in this matter, where there were no eyewitnesses and no circumstantial evidence directly identifying Defendant as the murderer. Potentially exculpatory evidence does exist—*i.e.*, the bullets, bullet casings, and inconclusive blood samples—but could not be tested in 1990. Had the DNA testing been available at the time of the Defendant's trial, there is a reasonable probability that the Defendant would have obtained a more favorable verdict at trial where the results could reasonably indicate the existence of an alternate perpetrator. It is important to recall that trial courts have been instructed to "*liberally apply* the 'reasonable probability' standard to permit testing in questionable cases" to avoid the unnecessary expenditure of judicial resources. (*Jointer*, *supra*, 217 Cal.App.4th at 769 (emphasis added).) While Defendant's trial lawyer failed to present evidence of the crimes being gang related, there did exist evidence to support this theory. For example, Defendant testified that he was being threatened by the East Side Dukes. The day after the murders, five witnesses saw a car containing ESD members drive by the Staten home and glare at them. Three of those witnesses heard them say, "yeah we got them," and two of those three disclosed the event to Defendant's trial attorney. East Side Dukes graffiti was left at the scene of the crime. Had all of this evidence been presented at Defendant's trial, in addition to the DNA evidence of the bullets, bullet casing, and blood samples, there is a reasonable probability that Defendant would have received a more favorable verdict.

Defendant is not required to prove that he would have been found not guilty beyond a reasonable doubt. He must only demonstrate that, in light of all of the circumstantial evidence, he is entitled to develop this potentially exculpatory DNA evidence as it would have had a reasonable probability of leading to a more favorable verdict if it had been available at the time of his trial. As such, the Defendant has met this statutory requirement under Section 1405(d)(1)(D) by demonstrating that the requested DNA testing will raise a reasonable probability that the Defendant's verdict would be more favorable if the results of the testing had been available at the time of the conviction.

E. The Only DNA Testing Done In This Matter Was Done On Blood Stains Found In The Home. (Cal. Penal Code § 1405(d)(l)(E)).

At the time of Defendant's trial, DNA testing of blood samples was still in its nascent form. In 1991, blood stains from the Staten home were sent from the Los Angeles Sheriff's Office to be DNA tested. While numerous blood samples collected at the scene came back as being consistent with Faye Staten, **there were several blood stains that were found to be inconclusive.** The parties stipulated that none of the 14 blood samples recovered belonged to Ray Staten and that samples VW 2-4, 6-8 and 14-16 did not belong to Faye but "could have been from" Defendant, that samples VW 10, 11A and 11B did not come from Defendant and that no conclusion could be reached if Faye or Defendant were donors of the sample VW 1AB, 1 and 5. Specifically, Defendant requests DNA testing of the following blood samples: VW 2-4, 6-8, 14-16, 10, 11A, 11B, 1AB, 1, and 5.

Defendant requests genealogical DNA testing. It allows law enforcement to compare the profile of the unknown suspect's DNA to other national databases and build a family tree of that person, thereby creating a small pool of suspects. Genealogical DNA testing has withstood the scrutiny of courts and has helped solved such cold cases as the Golden State serial killer in California.

In 1990, there was no method of DNA testing for bullets and bullet casings. However, in 2014, a San Diego crime lab began testing bullet casings for DNA through a new method of soaking the casings for about half an hour in tubes filled with a cocktail of chemicals that break open cells and release DNA so it can then be isolated and tested. Defendants would like to submit the shell casings SD crime lab and to the National Integrated Ballistics Imaging Network, or NIBIN, a database that can connect a shell casing with others that were shot from the same gun.

Scientists have developed a rotation stage to allow researchers and forensic practitioners to perform highly sensitive, non-destructive Time-of-Flight Secondary Ion Mass Spectroscopy (ToF-SIMS) measurements and develop high resolution fingerprint images on surfaces that conventional fingerprint imaging fails to pick up at all. The rotation stage that they have developed opens up new possibilities for the

retrieval of high-resolution fingerprints from the whole surface area of challenging shapes and materials like metal bullet casings.

Retrieval of fingermark evidence from bullet casings is an area of major difficulty for forensic scientists. While both fired and unfired casings can often be found at the scene of violent crimes, retrieving fingermarks and linking the person that loaded the gun to the crime has consistently proven to be difficult because of the physical conditions that are experienced by the bullet casings during firing and techniques that are used to develop and image the fingermarks.

As such, prior DNA testing of the evidence found at the scene does not compare to the available testing procedures in the modern day. DNA testing of the bullet, bullet casings, and blood samples conducted today would yield far more information than the limited testing conducted in 1990.

F. **One prior motion for DNA testing has been filed and denied by the Court (Cal. Penal Code § 1405(d)(l)(F)).**

Defendant has filed one prior motion pursuant to Cal. Penal Code § 1405. The Court denied the motion on January 30, 2024 finding Defendant did not "demonstrate[] that, had the DNA testing been available, there is a 'reasonable chance' he would have obtained a more favorable result at trial." Defendant sufficiently addressed these prior deficiencies above.

CONCLUSION

Each of the five requirements to file a motion under Cal. Penal Code § 1405(D) have been satisfied by the Defendant. We respectfully request that the Court grant the Defendant's motion and order the performance of DNA testing on the 11 blood samples, three fired bullets, and one bullet casing in the instant matter.

Date: September 11, 2024

LAW OFFICES OF ANNEE DELLA DONNA

_____/S/_____

Annee Della Donna, Esq.

DECLARATION OF ANNEE DELLA DONNA, ESQ, IN SUPPORT OF MOTION FOR DNA TESTING

1.I am an attorney at trial licensed since 1988 to practice before all courts of the State of California. I am the Director of InnocenceOC and represent Deondre Staten who is currently on Death Row for the alleged murders of his mother and father.

2.Staten continues to maintain his innocence for these crimes.

3.The evidence I seek to test for DNA, I believe, will exclude Staten as a contributor to the DNA on the bullets, casings and blood found at the scene of the crime and will help to identify the true perpetrator of the crime.

4. In 1991, numerous blood stains from the Staten home were sent from the Los Angeles Sheriff's Office to be DNA tested. The parties stipulated that none of the 14 blood samples recovered belonged to Ray and that samples VW 2-4, 6-8 and 14-16 did not belong to Faye but "could have been from" Deondre, that samples VW 10, 11A and 11B did not come from Deondre and that no conclusion could be reached if Faye or Deondre were donors of the sample VW 1AB, 1 and 5. Defense requests genealogical DNA testing. It allows law enforcement to compare the profile of the unknown suspect's DNA to other national databases and build a family tree of that person, thereby creating a small pool of suspects. Genealogical DNA testing has withstood the scrutiny of courts and has helped solved such cold cases as the Golden State serial killer in California.

5. In 2014 a San Diego crime lab began testing bullet casings for DNA through a new method of soaking the casings for about half an hour in tubes filled with a cocktail of chemicals that break open cells and release DNA so it can then be isolated and tested. Defendants would like to submit the shell casings SD crime lab and to the National Integrated Ballistics Imaging Network, or NIBIN, a database that can connect a shell casing with others that were shot from the same gun.

6. Scientists have developed a rotation stage to allow researchers and forensic practitioners to perform highly sensitive, non-destructive Time-of-Flight Secondary Ion Mass Spectroscopy (ToF-SIMS) measurements and develop high resolution fingerprint images on surfaces that conventional fingerprint imaging fails to pick up at

all. The rotation stage that they have developed opens up new possibilities for the retrieval of high-resolution fingerprints from the whole surface area of challenging shapes and materials like metal bullet casings.

7. Retrieval of fingermark evidence from bullet casings is an area of major difficulty for forensic scientists. While both fired and unfired casings can often be found at the scene of violent crimes, retrieving fingermarks and linking the person that loaded the gun to the crime has consistently proven to be difficult because of the physical conditions that are experienced by the bullet casings during firing and techniques that are used to develop and image the fingermarks.

8. This new and improved technology was not available in1991 when these murders occurred.

9. I have revealed, to the best of my ability, all of the prior DNA testing conducted on the evidence in this case. My understanding is this evidence was never tested for DNA and Staten has not previously requested DNA testing under this statute.

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

Executed this 5th day of September, 2024 in Laguna Beach, California.

_____/S/_____

Annee Della Donna, Esq.

EXHIBIT 1

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Attorneys for Defendants DEONDRE STATEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CLARA SHORTRIDGE CRIMINAL JUSTICE CENTER

THE STATE OF CALIFORNIA, Plaintiff, v. **DEONDRE STATEN,** Defendant.	Case No: KA006698 Assigned to: Dept.: **DECLARATION OF DEONDRE STATEN IN SUPPORT OF MOTION FOR DNA TESTING**

I, Deondre Arthur Staten, declare as follows:

1. I am an inmate housed at the San Quentin State Prison in San Quentin, California, pursuant to the judgment executed in the above-captioned case. I was found guilty of two counts of first-degree murder, under the special circumstances of (1) killing for financial gain, and (2) multiple murder. In addition, I was found guilty of the accompanying special circumstances: personally using a gun and personally using a knife. I was sentenced to death under the 1978 death penalty law.

2. I did not commit these crimes, and I maintain my innocence.

3. The evidence I seek to test with this Post-Conviction Motion for DNA Testing pursuant to Penal Code, section 1405 is bullets, casings and blood samples from the October 12, 1990 to October 13, 1990 crimes.

4. I believe testing the above evidence will not only exclude me as a contributor to DNA on the items, but will reveal the profile of the true perpetrator of both crimes. Accordingly, these results would raise a reasonable probability that my verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

5. I have revealed, to the best of my knowledge, all of the previous DNA testing conducted on the evidence. My understanding is this evidence was never tested for DNA.

6. I have reviewed the Post-Conviction Motion for DNA Testing pursuant to Penal Code, section 1405 and have read the attached memorandum of points and authorities. I declare that all the matters alleged in the motion are true and of my own personal knowledge or are supported by the record or by the attached

exhibits. Any reports and declarations to the motion for DNA testing are originals or true copies of the originals.

7. I have not previously requested DNA testing under this statute.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on 8-4-23 at San Quentin State Prison in San Quentin, California.

Dated: 8-4-23

Deondre Staten

DEONDRE STATEN

Defendant

EXHIBIT 2

Term

2/4/00 L.A. Times B4
2000 WL 2207610

Doug,
Here's something Liz dug up on her newspaper searches for Cleveland. Not sure if we can get any mileage out of this but it's sure interesting.
Steph

Los Angeles Times

Friday, February 4, 2000

Metro; Metro Desk

SOUTHERN CALIFORNIA / A news summary The Local Review / DEVELOPMENTS IN LOS ANGELES COUNTY **+Sheriff+** to Review 150 Cases for Possible Errors

LOS ANGELES COUNTY -- The **+Sheriff's+** Department will reexamine more than 150 law enforcement investigations as a result of "potential credibility issues" involving a **+sheriff's+** firearms examiner, according to the district attorney's office.

The examiner, **+Dwight Van Horn,** "+failed a proficiency test" in 1998, according to a letter sent by Assistant Dist. Atty. Michael E. Tranbarger to the public defender's office. **+Van Horn+** is now retired.

+"Sheriff's+ Department records indicate that Mr. **+Van Horn+** conducted firearms comparisons in 153 law enforcement investigations during that period," according to the letter. It said ballistics evidence had been retested in 51 of **+Van Horn's+** cases and that investigators concluded there may have been errors in two cases. Defense attorneys in those two cases have been notified, the letter said.

---- INDEX REFERENCES ----

KEY WORDS: LOS ANGELES COUNTY **+SHERIFF'S+** DEPARTMENT; WEAPONS; LAW ENFORCEMENT OFFICERS; INVESTIGATIONS; PROFICIENCY TESTS

NEWS SUBJECT: Metro News; Los Angeles Times (MTR LATM)

STORY ORIGIN: LOS ANGELES COUNTY

NEWS CATEGORY: BRIEF

INDUSTRY: Aerospace (ARO)

REGION: California; North America; Pacific Rim; United States; Western U.S. (CA NME PRM US USW)

EDITION: HOME EDITION

Word Count: 126
2/4/00 LATIMES B4
END OF DOCUMENT

Term

EXHIBIT 3

Forensic
Identification
Services

Declaration in Support of Retesting Biometric Evidence

State v. Deondre Staten

I, Kenneth R. Moses, declare as follows:

1. I am currently the Director of Forensic Identification Services, an independent crime laboratory established in 1997 in San Francisco. I make this declaration of my own personal knowledge and, if called upon to do so, could and would testify competently to the facts set forth herein.

2. I have over 50 years of experience in the forensic sciences. I served for 17 years as the supervisor of Crime Scene Investigations for the San Francisco Police Department In the course of my career, I have investigated over 18,000 crime scenes and have testified as an expert witness in crime scene investigations in more than 800 cases in state and federal courts. (CV submitted.)

3. I have been active in the development and implementation of new technologies in biometric systems that have revolutionized forensic science. I assisted in system design of the automated fingerprint identification system (AFIS,) and in the funding of the DNA section within the San Francisco Crime Laboratory. Both of these technologies emerged and spread nationwide in the late 1980's.

4. I have served as a resource expert for Innocence Projects in the past and was asked by Annee Della Donna to review the physical evidence in State v. Deondre Staten who was convicted largely on circumstantial evidence for the 1990 murder of his parents, Faye and Arthur Staten.

5. In examining the case, I reviewed 360 pages of police, crime laboratory, and autopsy reports as well as 160 photographs.

6. Arthur Staten died in his bedroom of a single gunshot wound to the back of his head fired by a .38 caliber revolver. An additional two shots that missed were recovered from the walls leaving potentially two or three rounds unfired in the cylinder. Faye Staten was found on the floor in the adjacent dining room dead from 18 stab wounds. That different modes of attack were used might indicate the presence of more than one assailant.

7. Deondre stated that he came home and discovered the victims. When police arrived, they saw no blood on his hands or clothing. Blood stains were found on his tennis shoes which Deondre said occurred when he kneeled next to his mother. His hands were tested for gunshot residue but no residue was present.. No murder weapon was ever found.

130 Hernandez Ave. San Francisco CA 94127
Phone: 415.664.2600 Fax: 415-664-2615 Email: ForensicID@aol.com

Forensic
Identification
Services

8. Twenty-seven latent fingerprints were lifted inside the residence. After comparing them to known residents and visitors, several latents were still unidentified. No bloody fingerprints of Deondre were found anywhere at the scene. Graffiti had been spray painted by an assailant on a mirror-tiled wall. Unidentified latent fingerprints were developed on the mirror tiles and on a can of spray paint found in a closet.

9. Numerous blood samples collected at the scene were analyzed by the Sheriff's Crime Lab using pre-DNA methods. Many of the samples came back as being consistent with Faye Staten. Results from stains collected from the floor just inside and outside the front door on a suspect's path of exit were inconclusive.

10. Automated fingerprint technology (AFIS) and DNA Analysis were still in their nascent forms in 1990. While then current blood typing and enzymatic analyses used by the Sheriff's Crime Lab might include or exclude individuals from large populations, modern technological advancements in DNA analysis enable forensic scientists to identify an individual to an extraordinarily high degree of statistical significance over thirteen highly variable regions along the human genome. Whereas historical serological analyses required larger samples, such as a full drop of blood, modern DNA forensics often utilizes sample sizes so minute as to be invisible to the naked eye, such as "touch DNA" samples consisting of only a few skin cells on a cartridge casing.

In 1990, both AFIS and CODIS databases were thinly populated; today, they contain many millions of subjects from a very wide geographic area and the chances of making an identification are much greater.

11. Biometric testing today using new technologies not available in 1990 present a compelling case for re-testing the serologic as well as the fingerprint evidence in the Staten case to obtain more definitive and potentially exculpatory answers as it has in many other cases.

Executed this 3rd day of May 2024 at San Francisco, California.

KENNETH R. MOSES

130 Hernandez Ave. San Francisco CA 94127
Phone: 415.664.2600 Fax: 415-664-2615 Email: ForensicID@aol.com

PROOF OF SERVICE PEOPLE V. STATEN

STATE OF CALIFORNIA,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 301 Forest Avenue, Laguna Beach, Ca 92651.

On SEPTEMBER 11, 2024 I served the foregoing document described as: **MOTION FOR DNA TESTING** on the interested parties in this action by transmitting [] the original [X] a true copy thereof as follows:

LOS ANGELES DISTRICT ATTORNEYS' OFFICE
FORENSIC SCIENCE TEAM
MARGUERITE RIZZO
320 West Temple Street, Suite 540
Los Angeles, Ca 90012
mrizzo@da.lacounty.gov

X BY EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure sections 1010.6, et seq. and CRC 2.25, or based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from the email address delladonnalaw@me.com to the persons at the email addresses listed above. I did not receive within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

X BY MAIL: I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Laguna Beach, California in the ordinary course of business. I am aware that upon motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 11st day of September 2024 in Laguna Beach, Ca 92651.

_____/S/_____
ANNEE DELLA DONNA

NATHAN J. HOCHMAN
District Attorney
By: LEE ASHLEY CERNOK, State Bar No. 234899
Deputy District Attorney
Forensic Science Section
320 West Temple Street, Suite 1180
Los Angeles, California 90012
Telephone (213) 974-2118
E-mail leecernok@da.lacounty.gov

Attorney for the People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff,** **v.** **DEONDRE STATEN,** **Defendant.**	**Case No. KA006698** **PEOPLE'S OPPOSITION TO DEFENDANT'S SECOND MOTION FOR POST CONVICTION DNA TESTING PURSUANT TO PENAL CODE SECTION 1405; MEMORANDUM OF POINTS AND AUTHORITIES**

TO THE HONORABLE WILLIAM C. RYAN, JUDGE OF THE SUPERIOR COURT OF THE CENTRAL JUDICIAL DISTRICT; AND TO DEFENDANT DEONDRE STATEN, AND HIS ATTORNEYS OF RECORD, ANNEE DELLA DONNA AND ERIC DURBIN, PLEASE TAKE NOTICE:

The People of the State of California hereby OPPOSE the defendant's second motion for post conviction DNA testing pursuant to California Penal Code section 1405, et. seq.[1] The People's opposition is based upon the following points and authorities, exhibits, and any arguments that may take place upon a hearing of the motion.

//

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[1] Hereafter, all statutory references shall be to the California Penal Code, unless otherwise noted.

INTRODUCTION

A. Record of Conviction

On December 2, 1991, a jury convicted defendant Deondre Staten (Staten) of the first-degree murder (Count 1, § 187, subd. (a)) of his parents, victims Arthur and Faye Staten. (3 C.T.[2] pp. 801-806; 23 R.T.[3] pp. 3622-3623.) The jury found true the allegations that Staten used a firearm to kill his father (§ 1203.01, subd. (a)(5), § 12022.5) and a knife to kill his mother (§ 12022, subd. (b)). (3 C.T. pp. 801-806; 23 R.T. pp. 3622-3623.) The jury also found true the special circumstance allegations that the murders were intentional and carried out for financial gain (§ 190.2, subd. (a)(1)) and that the defendant committed multiple murders (§ 190.2, subd. (a)(3)). (3 C.T. pp. 801-806; 23 R.T. pp. 3622-3623.)

B. Appellate Proceedings

Following the penalty phase of the trial, the jury recommended Staten be sentenced to death. (3 C.T. p. 840; 23 R.T. p. 3847-3848.) The trial court imposed the death sentence. (23 R.T. pp. 3869-3874.) Following an automatic appeal, the California Supreme Court affirmed defendant Staten's conviction and death sentence. (*People v. Staten* (2000) 24 Cal.4th 434.) The defendant filed a federal petition for habeas corpus, which was denied without an evidentiary hearing. The defendant appealed, and the United States Court of Appeals, 9th Circuit affirmed the lower court's denial. (*Staten v. Davis* (2020) 962 F.3d 487.)

C. The Defendant's First Motion for Post Conviction DNA Testing Pursuant to Section 1405

Through his counsel, attorneys Annee Della Donna and Eric Dubin, defendant Staten filed a Notice of Motion and Motion for DNA Testing on July 19, 2023. The defendant filed a declaration in support of his motion on August 14, 2023. (The motion and declaration, collectively "Def. First § 1405 Motion", are attached as People's Exhibit 1 and incorporated herein as though fully set forth.) In the Def. First § 1405 Motion, the defendant requested post conviction DNA testing of the following items: three .38 caliber expended bullets; one .25

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[2] All citations to the Clerk's Transcript (C.T.) in this motion refer to the Reporter's Transcript on Appeal, Volumes 1 through 3. As these transcripts were previously provided to the court, the People will not reproduce them here.

[3] All citations to the Reporter's Transcript (R.T.) in this motion refer to the Reporter's Transcript on Appeal, Volumes 1 through 23. As these transcripts were previously provided to the court, the People will not reproduce them here.

caliber expended cartridge case; and bloodstain evidence/swabs.[4] The defendant also requested latent print analysis of the fired bullets and the expended cartridge case. (Def. First § 1405 Motion, p. 11.)

On October 31, 2023 the People filed an Opposition to Defendant's Motion for Post Conviction DNA Testing Pursuant to Section 1405 (hereafter "People's First § 1405 Opposition", attached as People's Exhibit 2 and incorporated herein as though fully set forth). The People argued that the defendant failed to meet the requisite pleading and proof requirements set forth in section 1405, subdivisions (d) and (g). (People's First § 1405 Opposition, attached as People's Exhibit 2, pp. 17-23.) The People also argued that the requested latent print analysis falls outside the purview of section 1405. (People's First § 1405 Opposition, attached as People's Exhibit 2, p. 3.)

On January 26, 2024, this Court issued a ruling denying the defendant's motion. (See 01/26/2024 Minute Order, attached as People's Exhibit 3 and incorporated herein as though fully set forth.) This Court stated in relevant part,

> [T]he court does not find a "reasonable probability" that any of the requested evidence recited in the case either by the motion, the opposition, or past case decisions regarding this defendant, supports his version of the crimes. The overwhelming state of the evidence refutes his defense that the killings were gang related. There is no showing or support, either at the time of the convictions and subsequent appeals or in the current motion, for gang-related shootings. The motive is unexplained and not even stated by defendant in the motion.
>
> Furthermore, the method of killing is inconsistent with defendant's claim that it was gang killings. The ESD graffiti was hidden in the house and in the backyard rather than announced and identified in a public area. There was no evidence of forced entry or robbery and no signs of entry in the backyard.
>
> Lastly, and most importantly, no amount of DNA evidence would refute defendant's own words in taped conversations where he explicitly states that he would "blame [the crimes] on the Dukes."
>
> Testing of the .25 caliber bullet has no relevance as the three fired bullets, including the one removed from Arthur Staten's head, were .38 caliber. Defendant has not explained the relevance of re-testing the 18 blood samples nor specified which of the 18 samples collected on the day of the crimes are available or relevant for testing. Defendant has not demonstrated that, had the

[4] The defendant subsequently filed a Motion for Disclosure of DNA Reports and Status of Biological Evidence Pursuant to Penal Code Section 1405(c) and an accompanying Proposed Order on December 7, 2023. This court did not take any action on that motion.

DNA testing been available, there is a "reasonable chance" he would have obtained a more favorable result at trial.

(01/26/2024 Minute Order, attached as People's Exhibit 3, at pp. 6-7.)

D. The Defendant's Second Motion for Post Conviction DNA Testing Pursuant to Section 1405

On September 12, 2024, the defendant filed a *second* Motion for DNA Testing, which is presently before this Court. (Hereafter "Def. Second § 1405 Motion", attached as People's Exhibit 4 and incorporated herein as though fully set forth).

In the Def. Second § 1405 Motion, the defendant states he is "only requesting specific items that were never tested in the original investigation" including "two bullets." (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 2, lines 9-10.) The defendant then lists the following items under section 1405, subdivision (d)(1)(c): "Two .38 caliber bullets recovered from the Staten home, one .38 caliber bullet removed from Arthur Staten's body." (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 8.) After this paragraph, the defendant states, "[a]dditionally, a spent .25 caliber casing (*sic*) was also discovered outside the Staten residence . . .." (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 8.) Though it is unclear at this point the defendant is requesting DNA testing of the expended .25 cartridge case, he does reference it later in his motion. (See Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 9, line 26; p. 10, line 10, p. 15, lines 20-21.) The People will thus presume that defendant Staten is requesting post conviction DNA testing of three expended .38 caliber bullets and one expended .25 caliber cartridge case.

As in his first motion, the defendant also references latent fingerprint analysis/comparison. He states that he is "only requesting specific items that were never tested" including "one set of fingerprints." (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 2, lines 10-11.) The defendant then lists under section 1405, subdivision (d)(1)(c): "[s]everal latent unidentified fingerprints lifted from inside the residence". (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 8, lines 20-23.) In the attached declaration, defense expert Kenneth Moses states:

> 8. Twenty-seven latent fingerprints were lifted inside the residence. After comparing them to known residents and visitors, several latents were still unidentified. No bloody fingerprints of Deondre were found anywhere at the scene. Graffiti had been spray painted by an assailant on a mirror-tiled wall. Unidentified latent fingerprints were developed on the mirror tiles and on a can of spray paint found in a closet.

(Def. Second § 1405 Motion, attached as People's Exhibit 4, "Declaration in Support of Retesting Biometric Evidence", p. 2.) In counsel's attached declaration, she references methods for retrieval of latent prints from firearms evidence. (Def. Second § 1405 Motion, attached as People's Exhibit 4, "Declaration of Annee Della Donna, Esq. in Support of Motion for DNA Testing", pp. 15-16.) As the People previously noted, section 1405 explicitly relates to DNA analysis and does not contemplate other types of forensic testing such as latent print examinations.

Finally, the defendant requests DNA testing of "[n]umerous blood samples collected from the scene, both inside and outside the front door on the suspect's path of exit, that were previously tested but found to be inconclusive." (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 8.) The defendant later requests "DNA testing of the following blood samples: VW 2-4, 6-8, 14-16, 10, 11A, 11B, 1AB, 1, and 5." (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 12.) He then states that he is requesting "genealogical DNA testing" of those samples. (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 12.)

As the People will demonstrate, the defendant previously raised identical claims in his first testing motion and is barred from raising the same claims again pursuant to the doctrine of collateral estoppel. For this reason, this Court should DENY his motion. In the alternative, the People once again assert the defendant has failed to meet the pleading and proof requirements of section 1405, subdivisions (d) and (g).

FACTUAL SUMMARY

Once again, the People adopt and incorporate the facts set forth in the California Supreme Court opinion *People v. Staten, supra*, which is provided verbatim below:

> Defendant, age 24, lived with his parents Arthur and Faye Staten in the La Puente/East Valinda area of Los Angeles County. Arthur and Faye owned a beauty salon and beauty supply store. They had several life insurance policies worth a total of more than $300,000. In August 1990, in the presence of defendant, they revised three of the policies to name him sole beneficiary if they both died; a fourth policy named him and his mentally retarded brother Lavelle co-beneficiaries.
>
> Defendant had a strained relationship with his father; they often argued and his father periodically evicted him from the house for weeks or months at a time. He told friends that he would "take his father out" or "take care of him." He also told friends about his parents' insurance policies, indicating that he would inherit a large sum if they died. On one occasion, while discussing ways of making money

with two friends, he said that he knew how they could make $275,000, but that it would take a month and a half to get the money. He told them that if they would "bump off" two people who lived around the corner and owned a beauty supply and hair salon, they would be paid a "five-digit" sum of money. On another occasion, while watching a television program about the Menendez brothers, who were charged with the notorious crime of murdering their parents for their inheritance, he commented to the effect that "They did it wrong. They shouldn't have got caught."

In September, Arthur and Faye left for a two-week vacation, leaving their truck at the home of Faye's parents, the McKays. Defendant stayed at home.

Defendant's parents kept a .38–caliber revolver with a brown handle at the beauty supply shop in case of robberies; they kept a handgun, a .22–caliber derringer, under their bed at home. About a week after his parents left, following a visit to the beauty salon, defendant showed his friend John Nichols the .38–caliber revolver, which he was carrying in his pants; shortly thereafter, he gave Nichols the .22–caliber derringer. On several occasions he mentioned to Nichols that he had hollow-point bullets.

Two or three days before his parents were to return, late at night, he told friends who were staying at his house that he heard something in the backyard. Taking the .38–caliber revolver, he looked around the outside the house, but did not find anyone. He said that he had received threatening telephone calls from the East Side Dukes, a local Latino gang. The following day, he showed friends the letters "ESD" spray-painted on the backyard patio.

During the week before his parents' return, defendant repeatedly asked a cousin, who lived behind the McKays' house, to call him when his parents left for home. On October 11, Arthur and Faye returned from vacation to the McKays'. They spent the night and most of the following day at a family gathering at the McKays'. On October 12, defendant telephoned throughout the day and evening to find out when his parents were returning home, but declined invitations to come to dinner. In the afternoon, friends observed that he was drinking malt liquor and was fidgety. As was typical, he was wearing faded blue jeans. A brown gun handle protruded from his pocket. He said he was going to stay home and wait for his parents.

Arthur and Faye left the McKays' house for home at 11:20 or 11:25 p.m. A neighbor, Bertha Sanchez, saw their truck arrive at 11:40 p.m.. Between 11:50 and 11:55 p.m., she and her husband heard three gunshots. Another neighbor, Craig Hartman, also heard gunshots between 11:30 and 11:45 p.m.; he heard no other shots that night.

On October 13, at 12:04 a.m., defendant's aunt telephoned to find out if his parents had arrived home safely. Defendant answered, sounding nervous and

rushed; he said that they had not returned and he was getting ready to go out. He did not offer to leave a note for his parents. At 12:31 a.m., defendant's aunt called again. This time, defendant said that his parents were home but did not offer to put them on the line, as he usually did.

Sometime after midnight, Sanchez heard what she thought was the Statens' truck starting and driving away; it returned around 20 minutes later.

Around 1:05 a.m., defendant knocked on the Hartmans' door and said that his parents had been killed; he was crying and appeared to be vomiting. When the Hartmans returned with defendant to his house, they found Faye's body lying facedown near the entryway and Arthur's body in the master bedroom. The words "ESD Kills" were spray-painted on a mirrored wall in the living room.

Sheriff's deputies arrived at the scene and attempted to speak to defendant, but he did not answer, appearing to be in a trance. Craig Hartman thought that he was "faking," because he had been able to communicate earlier. Defendant had a cut with dried blood on his right middle finger, and he was wearing shorts. Later, at the sheriff's station, while talking with his aunts, defendant collapsed and appeared unconscious. When paramedics arrived, however, he was alert and well-oriented, needing no medical care. Defendant's aunts returned to the Staten house to retrieve a change of clothing; they looked for a pair of blue jeans, his usual attire, but found none.

Arthur died of a single gunshot wound to the head with a .38 or .357–caliber hollow-point bullet. Faye died of multiple stab wounds; of 18 wounds, seven could have been fatal. There was no evidence of forced entry or robbery, and there were no signs of entry in the backyard. In a den, a book of historic newspaper headlines was open to an article concerning the Sharon Tate murder case.

There were bloodstains throughout the house; some could have been defendant's, others could have been Faye's. A handprint on the mirrored living room wall below the spray-painted graffito matched defendant's. There was a 90 percent probability that the graffito on the mirrored wall was produced by the same writer as the graffito on the back porch. The paint on both was of the same formula; it also matched a can of spray paint found in the hall closet.

At funeral services for his parents, defendant did not appear upset. He told a cousin that this was no time to cry because they were dead, buried and gone; instead, it was time to party and get high.

On October 14, Nichols was stopped by law enforcement officers while carrying the .22–caliber derringer and was arrested for violation of probation. On November 3, he was released from custody and met with defendant while wearing a transmitting wire monitored by a detective. In the taped conversation, defendant

said that he had "gotten rid of" the .38–caliber revolver before his parents returned home. He suggested that Nichols lie about the gun to police and assured him that the police would not be able to find it and that as long as he stuck to his story, they would not have a case: "Because they lost. I'm still saying—but they can't do shit. All they can do is close the mother fucker. [¶] If they still can't find it, I'm still going to blame it on the Dukes."

The gang unit of the sheriff's department concluded that the murders were not gang related and that the graffiti found in the house and backyard did not appear genuine or to have been written in the distinctive style of the East Side Dukes. Moreover, it would be unusual for graffiti to be hidden in a backyard or inside a house rather than the front of the house, as the gang's purpose was to claim territory and to threaten others. The East Side Dukes typically performed their killings in drive-by shootings or after knocking on a victim's door and calling him outside; they used graffiti to announce their killings to the whole neighborhood, usually including the gang member's street name and identifying the intended victims. They did not ordinarily intentionally harm others living in their neighborhood, even if they were African–American, like defendant and his family. An investigator was told by members of the East Side Dukes that they would not have committed a crime of this kind.

For his part, defendant introduced evidence, including his own testimony, as follows.

Defendant had a good relationship with his parents, especially his mother. He never spoke to friends about killing his parents for the insurance money, although he did discuss other ways of making money, including tax-deferred retirement accounts and money management.

The East Side Dukes repeatedly threatened him. During his parents' vacation, he took their .38–caliber gun from the beauty shop, and gave Nichols the .22–caliber derringer, for protection. The .38–caliber gun disappeared one night after a party; defendant did not tell anyone because he suspected that one of Nichols's friends had stolen it.

The cut on defendant's finger came from a hedge trimmer he used for gardening on the day of his parents' return; he may have left a trail of blood in the house while looking for a bandage. He wore shorts all day; his blue jeans were either in his bedroom or in the laundry. That night, he was working on lyrics to a "rap" song and looked through the book of historic headlines in the den; he was not reading the headline about the Sharon Tate murders but was looking for headlines about Martin Luther King, Jr.

Defendant's parents arrived between 12:05 and 12:10 a.m. When his aunt called at 12:30, his mother indicated that she did not want to talk to her. He left in his parents' truck to get a hamburger between 12:30 and 12:45 a.m. Realizing he did

not have money with him, he returned home, arriving about 1:00. When he returned, he discovered his parents' bodies and saw the spray-painted graffito in the living room that read "ESD Kills."

Neighbors gave inconsistent reports to police officers about hearing gunshots that night; Sanchez told one police officer that she had heard "firecracker" noises after 12:30 a.m., not earlier. The Hartmans did not mention to that same officer that they had heard gunshots.

No gunshot residue was found on defendant's hands.

(*People v. Staten, supra,* at pp. 441-445.)[5]

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE COURT SHOULD DENY THE DEFENDANT'S SECOND MOTION FOR POST CONVICTION DNA TESTING TO THE EXTENT THE DEFENDANT IS COLLATERALLY ESTOPPED FROM RAISING THE SAME ISSUE

It is well-settled that the doctrine of collateral estoppel precludes relitigation of issues that were argued and decided in prior proceedings. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; citing *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.* (1962) 58 Cal.2d 601, 604.) The California Supreme Court articulated the doctrine's five requirements:

> First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations omitted.]

(*Lucido, supra,* 51 Cal.3d 335, 341.) The party asserting collateral estoppel bears the burden of establishing these requirements. (*Id.*)

However, even if all threshold requirements are satisfied, the court should still look to the public policies underlying the collateral estoppel doctrine to determine before concluding it should be applied in a particular setting. (*Lucido, supra,* 51 Cal.3d 335, 343.) The public policies underlying collateral estoppel include "the preservation of the integrity of the judicial

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[5] Additional details about the expended bullet and cartridge case collection and analysis and the bloodstain collection and analysis were detailed at length in the People's First § 1405 Opposition at pp. 6-13.

system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." (*Id.*) These policies "strongly influence whether its application in a particular circumstance would be fair to the parties and constitute sound judicial policy." (*Id.*, citation omitted.)

As the People will demonstrate, defendant Staten's should be collaterally estopped from raising the same issue (post conviction DNA testing pursuant to section 1405), as he previously filed a nearly identical motion, which was actually litigated and decided on the merits.

A. The Defendant Raised the Same Issue in his Prior Motion, and it was Actually Litigated.

Defendant Staten previously filed a motion for post conviction DNA testing pursuant to Penal Code section 1405, subdivisions (g), which is the sole vehicle for post conviction DNA testing in California. (Def. First § 1405 Motion, attached as People's Exhibit 1.) In that motion, the defendant requested DNA testing of three expended .38 caliber bullets and one .25 caliber cartridge case. (Def. First § 1405 Motion, attached as People's Exhibit 1, p. 9.) He also requested "genealogical DNA testing" of unspecified bloodstain samples that were collected from the crime scene. (Def. First § 1405 Motion, attached as People's Exhibit 1, "Declaration of Annee Della Donna, Esq. in Support of Motion for DNA Testing", p. 2.) The defendant argued that this Court should grant his testing motion because the eight criteria under section 1405, subdivision (g) were met. (Def. First § 1405 Motion, attached as People's Exhibit 1, pp. 7-12.)

The People opposed the defendant's motion and argued the defendant had not fulfilled the pleading and proof requirements under section 1405, subdivisions (d) and (g). (People's First § 1405 Motion, attached as People's Exhibit 2.) The People's opposition contained detailed responses to each of those pleading and proof requirements, citing to relevant statutory authority and caselaw. (People's First § 1405 Motion, attached as People's Exhibit 2, pp. 17-23.)

In the Def. Second 1405 Motion, which is presently before this Court, the defendant has raised the exact same issue as his previous motion, as he once again requests testing under Penal Code section 1405. Although the defendant claims he has narrowed the list of items he is requesting be tested, they are nonetheless the same items: "[t]wo .38 caliber bullets recovered from the Staten home, one .38 caliber bullet removed from Arthur Staten's body" and "a spent .25 caliber casing (*sic*)." (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 8.) The defendant also requests "DNA testing of the following blood samples: VW 2-4, 6-8, 14-16, 10,

11A, 11B, 1AB, 1, and 5." (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 12.) He then states that he is requesting "genealogical DNA testing" of those samples. (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 12.)

Therefore, the defendant has raised the same claim – post conviction DNA testing pursuant to section 1405 – as he did in his previous motion. As the defendant and the People litigated this issue pursuant to written motions, the defendant is now foreclosed from raising it again.

B. This Court Decided the Same Issue and Issued a Final Ruling on the Merits of the Applicable Law and Facts.

This Court issued its ruling in a Minute Order dated January 26, 2024. (See 01/26/2024 Minute Order, attached as People's Exhibit 3.) In that ruling, this Court provided detailed case background information, including the history of the section 1405 litigation, summarized the details underlying the commitment offense, and then stated the applicable legal principles. (01/26/2024 Minute Order, attached as People's Exhibit 3, pp. 1-5.) After that, this Court provided a lengthy discussion of the requirements of section 1405 as they applied to the defendant's case. (01/26/2024 Minute Order, attached as People's Exhibit 3, pp. 5-7.) As the People demonstrated in Section A, *supra*, the prior motion raised the same issue – testing pursuant to section 1405 – as the instant motion before this Court.

This Court then held, "[f]or the foregoing reasons, Defendant's motion for DNA testing of the three fired bullets, one bullet casing, and the 18 bloodstains from the crimes scene is DENIED." (01/26/2024 Minute Order, attached as People's Exhibit 3, p. 7.) This Court's ruling was thus based on the merits of the applicable law and facts in the defendant's case. The ruling was final (not tentative) and the defendant did not seek review through petition for writ of mandate. Therefore, the defendant should be bound by this Court's prior ruling and barred from bringing the same claim again.

C. Defendant Deondre Staten was the Same Party in the Prior Litigation

Defendant Staten was the party who brought the prior motion for post conviction DNA testing pursuant to section 1405. (Def. First § 1405 Motion, attached as People's Exhibit 1.) The People (through the Los Angeles County District Attorney's Office Forensic Science Section) were the party that responded to the motion. (People's First § 1405 Motion, attached as

People's Exhibit 2.) As defendant Staten and the People are the same parties to the instant motion, this criteria has clearly been meet.

D. Public Policy Supports Collateral Estoppel in this Case

The public policies underlying collateral estoppel include "the preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." (*Lucido, supra*, 51 Cal.3d 335, 343.) To this end, it is also important to recognize that section 1405, the only statutory vehicle for post conviction DNA testing in California, is a "narrowly circumscribed opportunity to develop new evidence in preparation for a new trial motion based on newly discovered evidence." (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1047.)

In the present case, it would be an inefficient and unjust use of the parties' and this Court's resources to allow the defendant to continue to bring forth repeated section 1405 motions. The section 1405 litigation spanned from July 2023 to January 2024, when this Court issued its ruling. (See Def. First § 1405 Motion, attached as People's Exhibit 1; People's First § 1405 Opposition, attached as People's Exhibit 2; 01/26/2024 Minute Order, attached as People's Exhibit 3.) In response to the Def. First § 1405 Motion the People extensively researched and briefed this Court on the underlying facts of this case, including prior DNA testing results. The People's First § 1405 Opposition contained 10 pages of facts, including crime scene diagrams and tables of serological testing results. (People's First § 1405 Opposition, attached as People's Exhibit 2, pp. 3-13.) The Clerk's Transcript contained three volumes, and the Reporter's Transcript contained 23 volumes – nearly 4,000 pages.

Further, as this Court's ruling reached the merits of the defendant's prior testing motion, there is nothing new to litigate. Defendant Staten recognized that this Court denied his prior motion pursuant to section 1405, subdivision (g)(5). (Def. Second § 1405 Motion, attached as People's Exhibit 4, p. 13.) This Court's ruling was unequivocal and bears repeating:

> Lastly, and most importantly, **no amount of DNA evidence would refute defendant's own words** in taped conversations where he explicitly states **that he would "blame [the crimes] on the Dukes**."

(01/26/2023 Minute Order, attached as People's Exhibit 3, pp. 6-7, emphasis added.) Although the defendant now claims he "sufficiently addressed these prior deficiencies", he has simply repackaged his arguments, at best. (Def. Second § 1405 Motion, attached as People's Exhibit 4,

p. 13.) Should the defendant be given multiple opportunities to raise a section 1405 motion and re-argue his case, then there would be no end to section 1405 litigation.

For the foregoing reasons, the public policies behind the collateral estoppel doctrine would be well-served by barring a subsequent testing motion where the court has already ruled on the merits and denied DNA testing pursuant to section 1405.

II.

THE COURT SHOULD DENY THE DEFENDANT'S MOTION FOR POST CONVICTION DNA TESTING BECAUSE HE CANNOT SATISFY THE PLEADING AND PROOF REQUIREMENTS OF SECTION 1405, SUBDIVISIONS (D) AND (G)

As the People extensively briefed the statutory authority and caselaw governing section 1405 motions, that information will not be repeated here. (See People's First § 1405 Opposition, attached as People's Exhibit 2, pp. 13-16.) The People also adopt and incorporate the People's prior evaluation of the statutory requirements. (People's First § 1405 Opposition, attached as People's Exhibit 2, pp. 17-23.)

In the event this Court determines its prior ruling on the Def. First § 1405 Motion does not bar the defendant's second testing motion, the People submit that this Court's prior ruling is persuasive authority and supports the Court reaching the conclusion:

> [T]he court does not find a "reasonable probability" that any of the requested evidence recited in the case either by the motion, the opposition, or past case decisions regarding this defendant, supports his version of the crimes. The overwhelming state of the evidence refutes his defense that the killings were gang related. There is no showing or support, either at the time of the convictions and subsequent appeals or in the current motion, for gang-related shootings. The motive is unexplained and not even stated by defendant in the motion.
>
> Furthermore, the method of killing is inconsistent with defendant's claim that it was gang killings. The ESD graffiti was hidden in the house and in the backyard rather than announced and identified in a public area. There was no evidence of forced entry or robbery and no signs of entry in the backyard.
>
> Lastly, and most importantly, **no amount of DNA evidence would refute defendant's own words** in taped conversations where he explicitly states **that he would "blame [the crimes] on the Dukes."**
>
> Testing of the .25 caliber bullet has no relevance as the three fired bullets, including the one removed from Arthur Staten's head, were .38 caliber.

> Defendant has not explained the relevance of re-testing the 18 blood samples nor specified which of the 18 samples collected on the day of the crimes are available or relevant for testing. Defendant has not demonstrated that, had the DNA testing been available, there is a "reasonable chance" he would have obtained a more favorable result at trial.

(01/26/2023 Minute Order, attached as People's Exhibit 3, pp. 6-7, emphasis added.) As it has done previously, this Court should conclude that the defendant can satisfy neither the pleading nor proof requirements of section 1405 and deny his motion.

III.

CONCLUSION

For the foregoing reasons, the People believe that defendant Deondre Staten's second request for post conviction DNA testing should be DENIED by this court. The doctrine of collateral estoppel should apply, as the same motion was previously litigated by the parties, and this Court issued a ruling on the merits, denying that motion. In the alternative, the defendant's second motion should be denied for the reasons previously articulated by the People pursuant to section 1405, subdivisions (d) and (g).

Dated: December 9, 2024

Respectfully submitted,

LEE CERNOK
Deputy District Attorney
Forensic Science Section

PROOF OF SERVICE

I, Deputy District Attorney Lee Cernok, declare:

I personally served the PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR POST CONVICTION DNA TESTING PURSUANT TO PENAL CODE SECTION 1405; MEMORANDUM OF POINTS AND AUTHORITIES in *People v. Deondre Staten* (Case No. KA006698) by email to the following:

Annee Della Donna
Law Offices of Annee Della Donna
301 Forest Avenue
Laguna Beach, California 92651
delladonnalaw@cox.net

Eric J. Dubin
The Dubin Law Firm
19200 Von Karman Avenue, Sixth Floor
Irvine, California 92612
edubin@dubinlaw.com

Attorneys for defendant Deondre Staten

I declare under penalty of perjury pursuant to the laws of California that the above is true and correct.

Dated: December 9, 2024

LEE CERNOK
Deputy District Attorney
Forensic Science Section

People v. Staten, KA006698

People's Exhibit 1
Def. First § 1405 Motion

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Attorneys for Defendants DEONDRE STATEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CLARA SHORTRIDGE CRIMINAL JUSTICE CENTER

THE STATE OF CALIFORNIA, **Plaintiff,** **v.** **DEONDRE STATEN,** **Defendant.**	Case No: KA106698 Assigned to: Dept: S DATE: 8/21/23 TIME: 8:30 AM **NOTICE OF MOTION AND MOTION FOR DNA TESTING**

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

Defendant age 24 lived with his parents Faye and Arthur ("Ray") Staten in the La Puente/ East Valinda area of Los Angeles. Arthur and Faye owned a beauty salon and beauty supply store.

Not long after midnight on October 18, 1990, Ray and Faye Staten were killed in their home. An hour earlier, the couple had arrived at their residence following a two-week trip to Egypt. Their 24-year-old son, Defendant Deondre Staten, pulled their luggage inside, gave them hugs, and planned to watch videos of their vacation with family members the next day. After his parents were settled in, Defendant told them he was hungry and wanted to grab something to eat. Faye's Cadillac, which Defendant drove while his parents were away, had broken down, so Ray gave his son the keys to his Chevrolet truck. Defendant left around 12:45 AM. Defendant had been driving for about ten minutes when he realized he had forgotten his wallet. He turned around and returned home to get his wallet. Defendant returned home around 1:00 AM. He found the front door locked, as he had left it, and used his key to get inside. He first saw his mother, Faye, who Defendant affectionately called Sharty, stabbed 18 times and face down in the dining room. Next, he found his father in his parents' bedroom. Ray was on the floor, dead from a single gunshot wound to the back of the head. Deondre Staten has maintained his innocence.

Defendant ran to his neighbor's house screaming his parents were dead. Two of his neighbors accompanied him back into the house, and as one checked his Faye's pulse, Defendant sobbed and tried to put his arms around his mother. On the mirrored

personally used a deadly and dangerous weapon, a knife under section 12022(b). Defendant pleaded not guilty to every charge and was tried by jury. The jury found him guilty of first degree murder of both parents, and also found the special allegations regarding the killing for financial gain, multiple murders, personal use of a firearm and personal use of a deadly and dangerous weapon to be true. He was sentenced to death for each murder.

Staten was convicted entirely based on circumstantial evidence. The weapons used to kill Ray and Faye were never recovered. Defendant had no opportunity to wash his hands and there was no gunshot residue on Defendant's hands the night of the murders. He explained the small, dried cut on his middle finger was from gardening and trying to get the yard cleaned up before his parents arrived home. Despite his mother being stabbed 18 times, there was no blood on his body or clothing. The State's expert testified the different bullets could have been fired from two different guns. The defense handwriting expert testified that the ESD graffiti was not the Defendant's handwriting. Fingerprints found on the paint canister in the closet did not belong to Defendant. Moreover, the neighbors gave inconsistent reports to police about hearing gunshots that night. In the recorded conversation with Nichols, prior to the highlighted quote, Defendant explicitly denied having anything to do with killing his parents multiple times.

Defendant testified that overall, he had a good relationship with his parents, especially his mother, and multiple family members and friends of Defendants said in interviews that he never could have hurt his mother. He denied talking to his friends about killing his parents for their insurance money. The prosecution argued

LEGAL ANAYLSIS

Pursuant To Penal Code Section 1405, Testing Of Evidence For The Presence Of DNA Inconsistent With Either Defendant And/Or The Alleged Victims Is Warranted

The strength of our criminal justice system depends on its accuracy — its ability to convict the guilty and to clear the innocent. But we know that wrongful convictions happen. Identifying and understanding the causes of wrongful convictions is critical to maintaining the integrity of our justice system. A wrongful conviction based on possible factual innocence can sometimes be detected using postconviction DNA testing. Postconviction DNA testing is a major factor contributing to the increased discovery of wrongful convictions. With the advent of DNA testing over the last two decades, biological evidence retained in cases from the "pre-DNA" era could be tested. In addition, advancements in DNA technology have broadened opportunities for DNA testing. For example, as DNA analysis of aged, degraded, limited or otherwise compromised biological evidence has improved, samples that previously generated inconclusive results might be amenable to reanalysis with newer methods.

California Penal Code section 1405 states:

"[A]n individual who was convicted of a felony and who is currently serving a state prison sentence may petition the court in which he was convicted for post-conviction DNA testing."

The motion must be verified under penalty of perjury and must:

questions about this exculpatory evidence. Additionally, Defense and Prosecution case theories differed concerning the identity of the perpetrator or perpetrators of the crime, satisfying this requirement.

B. In light of the evidence, DNA testing will raise a reasonable probability that the Defendant's verdict or sentence would be more favorable if the results of the DNA testing had been available at the time of the conviction.

Multiple bullets and casings were recovered by police at the Staten home following the murder. DNA testing of this evidence could determine if the bullets that killed Arthur were handled by someone other than the defendant or his parents. If third party DNA is found on the bullets or casings, and Defendant Staten's was not, it unquestionably would have made his sentence more favorable. The jury found Defendant personally used a firearm in the murder of his father and was given additional time on his sentence because of that finding. If DNA evidence pointed to a third party having fired the gun at trial, the jury could have been less likely to find he had personally used the firearm, and the additional time would not have been added.

DNA testing of the bullets and casings would also raise a reasonable probability the Defendant's verdict would have been more favorable at trial. Defendant maintained he was threatened by members of the East Side Dukes gang. If DNA of a person connected to the East Side Dukes was found on the bullets or casings, that would have supported the defense's case theory and would likely have raised reasonable doubt in the jurors' minds that Defendant Staten was the perpetrator of the murders.

scrutiny of courts and has helped solved such cold cases as the Golden State serial killer in California.

In 2014 a San Diego crime lab began testing bullet casings for DNA through a new method of soaking the casings for about half an hour in tubes filled with a cocktail of chemicals that break open cells and release DNA so it can then be isolated and tested. Defendants would like to submit the shell casings SD crime lab and to the National Integrated Ballistics Imaging Network, or NIBIN, a database that can connect a shell casing with others that were shot from the same gun.

Scientists have developed a rotation stage to allow researchers and forensic practitioners to perform highly sensitive, non-destructive Time-of-Flight Secondary Ion Mass Spectroscopy (ToF-SIMS) measurements and develop high resolution fingerprint images on surfaces that conventional fingerprint imaging fails to pick up at all. The rotation stage that they have developed opens up new possibilities for the retrieval of high resolution fingerprints from the whole surface area of challenging shapes and materials like metal bullet casings.

Retrieval of fingermark evidence from bullet casings is an area of major difficulty for forensic scientists. While both fired and unfired casings can often be found at the scene of violent crimes, retrieving fingermarks and linking the person that loaded the gun to the crime has consistently proven to be difficult because of the physical conditions that are experienced by the bullet casings during firing and techniques that are used to develop and image the fingermarks.

DECLARATION OF ANNEE DELLA DONNA, ESQ. IN SUPPORT OF MOTION FOR DNA TESTING

1.I am an attorney at trial licensed since 1988 to practice before all courts of the State of California. I am the Director of InnocenceOC and represent Deondre Staten who is currently on Death Row for the alleged murders of his mother and father.

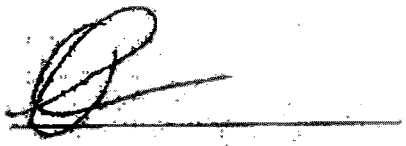
2.Staten continues to maintain his innocence for these crimes.

3.The evidence I seek to test for DNA, I believe, will exclude Staten as a contributor to the DNA on the bullets, casings and blood found at the scene of the crime and will help to identify the true perpetrator of the crime.

4. In 1991, numerous blood stains from the Staten home were sent from the Los Angeles Sheriff's Office to be DNA tested. The parties stipulated that none of the 14 blood samples recovered belonged to Ray and that samples VW 2-4, 6-8 and 14-16 did not belong to Faye but "could have been from" Deondre, that samples VW 10, 11A and 11B did not come from Deondre and that no conclusion could be reached if Faye or Deondre were donors of the sample VW 1AB, 1 and 5. Defense requests genealogical DNA testing. It allows law enforcement to compare the profile of the unknown suspect's DNA to other national databases and build a family tree of that person, thereby creating a small pool of suspects. Genealogical DNA testing has withstood the scrutiny of courts and has helped solved such cold cases as the Golden State serial killer in California.

In 2014 a San Diego crime lab began testing bullet casings for DNA through a new method of soaking the casings for about half an hour in tubes filled with a cocktail of chemicals that break open cells and release DNA so it can then be isolated and tested. Defendants would like to submit the shell casings SD crime lab and to the

Executed this 5th day of July, 2023 in Laguna Beach, California.



Annee Della Donna, Esq.

PROOF OF SERVICE PEOPLE V. STATEN

STATE OF CALIFORNIA,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 301 Forest Avenue, Laguna Beach, Ca 92651.

On July 6, 2023 I served the foregoing document described as: Motion for DNA Testing on the interested parties in this action by tranamitting [] the original [X] a true copy thereof as follows:

LOS ANGELES DISTRICT ATTORNEYS' OFFICE
George Gascon
211 West Temple Street
Suite 1200
Los Angeles, Ca 90012

BY EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure sections 1010.6, et seq. and CRC 2.25, or based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from the email address delladonnalaw@me.com to the persons at the email addresses listed above. I did not receive within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

X BY MAIL: I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Laguna Beach, California in the ordinary course of business. I am aware that upon motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 6 day of July 2023 in Laguna Beach, Ca 92651.

ANNEE DELLA DONNA

People v. Staten, KA006698

People's Exhibit 2
People's First § 1405 Opposition

GEORGE GASCON
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff,** **v.** **DEONDRE STATEN,** **Defendant.**	**Case No. KA006698** **PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR POST CONVICTION DNA TESTING PURSUANT TO PENAL CODE SECTION 1405; MEMORANDUM OF POINTS AND AUTHORITIES**

TO THE HONORABLE WILLIAM C. RYAN, JUDGE OF THE SUPERIOR COURT OF THE CENTRAL JUDICIAL DISTRICT; AND TO DEFENDANT DEONDRE STATEN, AND HIS ATTORNEYS OF RECORD, ANNEE DELLA DONNA AND ERIC DURBIN, PLEASE TAKE NOTICE:

The People of the State of California hereby OPPOSE the defendant's motion for post conviction DNA testing pursuant to California Penal Code section 1405, et. seq.[1] The People's opposition is based upon the following points and authorities, exhibits, and any arguments that may take place upon a hearing of the motion.

//

//

[1] Hereafter, all statutory references shall be to the California Penal Code, unless otherwise noted.

INTRODUCTION

On December 2, 1991 a jury convicted defendant Deondre Staten (Staten) of the first-degree murder (Count 1, § 187, subd. (a)) of both of his parents, victims Arthur and Faye Staten. (3 C.T.[2] pp. 801-806; 23 R.T.[3] pp. 3622-3623.) The jury found true the allegation that Staten used a firearm to kill his father (§ 1203.01, subd. (a)(5), § 12022.5) and the allegation that Staten used a knife to kill his mother (§ 12022, subd. (b)). (3 C.T. pp. 801-806; 23 R.T. pp. 3622-3623.) The jury also found true the special circumstance allegations that the murders were intentional and carried out for financial gain (§ 190.2, subd. (a)(1)), and that the defendant committed multiple murders (§ 190.2, subd. (a)(3)). (3 C.T. pp. 801-806; 23 R.T. pp. 3622-3623.)

Following the penalty phase of the trial, the jury recommended Staten be sentenced to death. (3 C.T. p. 840; 23 R.T. p. 3847-3848.) The trial court imposed the death sentence. (23 R.T. pp. 3869-3874.) Following an automatic appeal, the California Supreme Court affirmed defendant Staten's conviction and death sentence. (*People v. Staten* (2000) 24 Cal.4th 434, attached as People's Exhibit 3.) The defendant filed a federal petition for habeas corpus, which was denied without an evidentiary hearing. The defendant appealed, and the United States Court of Appeals, 9th Circuit affirmed the lower court's denial. (*Staten v. Davis* (2020) 962 F.3d 487.)

Through his counsel, attorneys Annee Della Donna and Eric Dubin, defendant Staten filed a Notice of Motion and Motion for DNA Testing (hereafter "Def. § 1405 Motion") on July 19, 2023. The defendant filed a declaration in support of his motion on August 14, 2023. (hereafter "Def. § 1405 Declaration".) The defendant requests post conviction DNA testing of the following items:

1) Three (3) .38 caliber fired bullets;
2) One (1) .25 caliber expended cartridge case; and
3) Bloodstain evidence/swabs.

(Def. § 1405 Motion, pp. 9-10; Def. § 1405 Declaration, p. 2.)

As the People will demonstrate, the defendant has not satisfied the threshold pleading and proof requirements for post conviction DNA testing set forth in section 1405, subdivisions (d)

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[2] All citations to the Clerk's Transcript (C.T.) in this motion refer to the Reporter's Transcript on Appeal, Volumes 1 through 3, attached as People's Exhibit 1.

[3] All citations to the Reporter's Transcript (R.T.) in this motion refer to the Reporter's Transcript on Appeal, Volumes 1 through 23, attached as People's Exhibit 2.

and (g). The defendant also requests latent print analysis of the fired bullets and the expended cartridge case. However, latent print analysis falls outside the purview of testing pursuant to section 1405.

FACTUAL SUMMARY

The People adopt and incorporate the facts set forth in the California Supreme Court opinion *People v. Staten, supra*, which is provided verbatim below:

> Defendant, age 24, lived with his parents Arthur and Faye Staten in the La Puente/East Valinda area of Los Angeles County. Arthur and Faye owned a beauty salon and beauty supply store. They had several life insurance policies worth a total of more than $300,000. In August 1990, in the presence of defendant, they revised three of the policies to name him sole beneficiary if they both died; a fourth policy named him and his mentally retarded brother Lavelle co-beneficiaries.
>
> Defendant had a strained relationship with his father; they often argued and his father periodically evicted him from the house for weeks or months at a time. He told friends that he would "take his father out" or "take care of him." He also told friends about his parents' insurance policies, indicating that he would inherit a large sum if they died. On one occasion, while discussing ways of making money with two friends, he said that he knew how they could make $275,000, but that it would take a month and a half to get the money. He told them that if they would "bump off" two people who lived around the corner and owned a beauty supply and hair salon, they would be paid a "five-digit" sum of money. On another occasion, while watching a television program about the Menendez brothers, who were charged with the notorious crime of murdering their parents for their inheritance, he commented to the effect that "They did it wrong. They shouldn't have got caught."
>
> In September, Arthur and Faye left for a two-week vacation, leaving their truck at the home of Faye's parents, the McKays. Defendant stayed at home.
>
> Defendant's parents kept a .38–caliber revolver with a brown handle at the beauty supply shop in case of robberies; they kept a handgun, a .22–caliber derringer, under their bed at home. About a week after his parents left, following a visit to the beauty salon, defendant showed his friend John Nichols the .38–caliber revolver, which he was carrying in his pants; shortly thereafter, he gave Nichols the .22–caliber derringer. On several occasions he mentioned to Nichols that he had hollow-point bullets.
>
> Two or three days before his parents were to return, late at night, he told friends who were staying at his house that he heard something in the backyard. Taking the .38–caliber revolver, he looked around the outside the house, but did not find anyone. He said that he had received threatening telephone calls from the East

Side Dukes, a local Latino gang. The following day, he showed friends the letters "ESD" spray-painted on the backyard patio.

During the week before his parents' return, defendant repeatedly asked a cousin, who lived behind the McKays' house, to call him when his parents left for home. On October 11, Arthur and Faye returned from vacation to the McKays'. They spent the night and most of the following day at a family gathering at the McKays'. On October 12, defendant telephoned throughout the day and evening to find out when his parents were returning home, but declined invitations to come to dinner. In the afternoon, friends observed that he was drinking malt liquor and was fidgety. As was typical, he was wearing faded blue jeans. A brown gun handle protruded from his pocket. He said he was going to stay home and wait for his parents.

Arthur and Faye left the McKays' house for home at 11:20 or 11:25 p.m. A neighbor, Bertha Sanchez, saw their truck arrive at 11:40 p.m.. Between 11:50 and 11:55 p.m., she and her husband heard three gunshots. Another neighbor, Craig Hartman, also heard gunshots between 11:30 and 11:45 p.m.; he heard no other shots that night.

On October 13, at 12:04 a.m., defendant's aunt telephoned to find out if his parents had arrived home safely. Defendant answered, sounding nervous and rushed; he said that they had not returned and he was getting ready to go out. He did not offer to leave a note for his parents. At 12:31 a.m., defendant's aunt called again. This time, defendant said that his parents were home but did not offer to put them on the line, as he usually did.

Sometime after midnight, Sanchez heard what she thought was the Statens' truck starting and driving away; it returned around 20 minutes later.

Around 1:05 a.m., defendant knocked on the Hartmans' door and said that his parents had been killed; he was crying and appeared to be vomiting. When the Hartmans returned with defendant to his house, they found Faye's body lying facedown near the entryway and Arthur's body in the master bedroom. The words "ESD Kills" were spray-painted on a mirrored wall in the living room.

Sheriff's deputies arrived at the scene and attempted to speak to defendant, but he did not answer, appearing to be in a trance. Craig Hartman thought that he was "faking," because he had been able to communicate earlier. Defendant had a cut with dried blood on his right middle finger, and he was wearing shorts. Later, at the sheriff's station, while talking with his aunts, defendant collapsed and appeared unconscious. When paramedics arrived, however, he was alert and well-oriented, needing no medical care. Defendant's aunts returned to the Staten house to retrieve a change of clothing; they looked for a pair of blue jeans, his usual attire, but found none.

Arthur died of a single gunshot wound to the head with a .38 or .357–caliber hollow-point bullet. Faye died of multiple stab wounds; of 18 wounds, seven could have been fatal. There was no evidence of forced entry or robbery, and there were no signs of entry in the backyard. In a den, a book of historic newspaper headlines was open to an article concerning the Sharon Tate murder case.

There were bloodstains throughout the house; some could have been defendant's, others could have been Faye's. A handprint on the mirrored living room wall below the spray-painted graffito matched defendant's. There was a 90 percent probability that the graffito on the mirrored wall was produced by the same writer as the graffito on the back porch. The paint on both was of the same formula; it also matched a can of spray paint found in the hall closet.

At funeral services for his parents, defendant did not appear upset. He told a cousin that this was no time to cry because they were dead, buried and gone; instead, it was time to party and get high.

On October 14, Nichols was stopped by law enforcement officers while carrying the .22–caliber derringer and was arrested for violation of probation. On November 3, he was released from custody and met with defendant while wearing a transmitting wire monitored by a detective. In the taped conversation, defendant said that he had "gotten rid of" the .38–caliber revolver before his parents returned home. He suggested that Nichols lie about the gun to police and assured him that the police would not be able to find it and that as long as he stuck to his story, they would not have a case: "Because they lost. I'm still saying—but they can't do shit. All they can do is close the mother fucker. [¶] If they still can't find it, I'm still going to blame it on the Dukes."

The gang unit of the sheriff's department concluded that the murders were not gang related and that the graffiti found in the house and backyard did not appear genuine or to have been written in the distinctive style of the East Side Dukes. Moreover, it would be unusual for graffiti to be hidden in a backyard or inside a house rather than the front of the house, as the gang's purpose was to claim territory and to threaten others. The East Side Dukes typically performed their killings in drive-by shootings or after knocking on a victim's door and calling him outside; they used graffiti to announce their killings to the whole neighborhood, usually including the gang member's street name and identifying the intended victims. They did not ordinarily intentionally harm others living in their neighborhood, even if they were African–American, like defendant and his family. An investigator was told by members of the East Side Dukes that they would not have committed a crime of this kind.

For his part, defendant introduced evidence, including his own testimony, as follows.

Defendant had a good relationship with his parents, especially his mother. He never spoke to friends about killing his parents for the insurance money, although he did discuss other ways of making money, including tax-deferred retirement accounts and money management.

The East Side Dukes repeatedly threatened him. During his parents' vacation, he took their .38–caliber gun from the beauty shop, and gave Nichols the .22–caliber derringer, for protection. The .38–caliber gun disappeared one night after a party; defendant did not tell anyone because he suspected that one of Nichols's friends had stolen it.

The cut on defendant's finger came from a hedge trimmer he used for gardening on the day of his parents' return; he may have left a trail of blood in the house while looking for a bandage. He wore shorts all day; his blue jeans were either in his bedroom or in the laundry. That night, he was working on lyrics to a "rap" song and looked through the book of historic headlines in the den; he was not reading the headline about the Sharon Tate murders but was looking for headlines about Martin Luther King, Jr.

Defendant's parents arrived between 12:05 and 12:10 a.m. When his aunt called at 12:30, his mother indicated that she did not want to talk to her. He left in his parents' truck to get a hamburger between 12:30 and 12:45 a.m. Realizing he did not have money with him, he returned home, arriving about 1:00. When he returned, he discovered his parents' bodies and saw the spray-painted graffito in the living room that read "ESD Kills."

Neighbors gave inconsistent reports to police officers about hearing gunshots that night; Sanchez told one police officer that she had heard "firecracker" noises after 12:30 a.m., not earlier. The Hartmans did not mention to that same officer that they had heard gunshots.

No gunshot residue was found on defendant's hands.

(*People v. Staten, supra*, at pp. 441-445.)

The People also add the following information:

A. Expended Bullet and Cartridge Case Collection and Analysis

Dr. Susan Selser conducted the autopsy of Arthur Staten on October 15, 1990. (11 R.T. pp. 1904-1905.) She determined the cause of Arthur Staten's death was a single gunshot wound to the back of his head. (11 R.T. pp. 1906-1907.) The bullet traveled from back to front and slightly right to left. (11 R.T. p. 1908.) Dr. Selser did not observe any soot or stippling around the gunshot wound. (11 R.T. pp. 1908-1909.) Dr. Selser opened the skull area and removed an expended bullet, which she placed in an evidence envelope. (11 R.T. pp. 1916-1918.) The

envelope was sealed, labeled "Item #1", and provided to homicide investigators. (11 R.T. p. 1917-1918; 11/01/1991 LASD Supplementary Report, attached as People's Exhibit 4, p. 2.)

Los Angeles County Sheriff's Department (LASD) Criminalist Wayne Plumtree (Plumtree) collected evidence at the Staten residence on October 13, 1990. (8 R.T. pp. 1417-1418, 1427; see 11/01/1991 LASD Supplementary Report, attached as People's Exhibit 4, pp. 1-3.) Plumtree recovered two expended bullets inside the house. (8 R.T. p. 1418; 11/01/1991 LASD Supplementary Report, p. 2, attached as People's Exhibit 4.) Plumtree located one expended bullet in a wall in the west portion of the hallway. (8 R.T. pp. 1420-1421.) The bullet was embedded in the wall just above the baseboard. (8 R.T. p. 1421.) Plumtree chipped away the plaster to remove the bullet, which he placed in an evidence envelope and designated "Item A." (8 R.T. p. 1421.) He found another bullet embedded in the exterior wall of the center bedroom on the west side of the house. (8 R.T. p. 1419-1420.) In order to remove the bullet, Plumtree he used a hammer to break through the wall plasterboard. (8 R.T. p. 1420.) Plumtree dug the expended round out of the wall, wiped it off, and placed it in an evidence envelope and designated it "Item B." (8 R.T. p. 1420.) The evidence envelopes were dated, labeled, and submitted to the crime lab for examination. (8 R.T. p. 1421.)

LASD Firearms Examiner Dwight Van Horn (Van Horn) examined the expended bullet from Arthur Staten's autopsy (Item #1) and the two expended bullets from the Staten residence (Items A and B). (8 R.T. pp. 1443-1444.) Van Horn prepared a report documenting his examination. (10/30/1990 LASD Firearms Report, page 2 of 2, attached as People's Exhibit 5.) In a section labeled "Contamination" Van Horn noted that Item #1 had "Blood cleaned", Item A had "Building material" and Item B was "Cleaned." (10/30/1990 LASD Firearms Report, attached as People's Exhibit 5.) Van Horn compared the bullets and opined they could have been fired from the same weapon. (8 R.T. p. 1445; 10/30/1990 LASD Firearms Report, attached as People's Exhibit 5.) Van Horn testified that all three bullets were jacketed hollow point bullets and were either .38 special or .357 magnum caliber. (8 R.T. pp. 1443-1444.) The bullets could have been fired from a model .36 Smith and Wesson handgun. (8 R.T. p. 1445.)

At trial, the People introduced a single envelope containing three smaller envelopes (each containing a fired bullet – Item #1, Item A, and Item B) as Exhibit 41. (8 R.T. p. 1423; 15 R.T. p. 2612.) The envelope was opened on the record by both Plumtree and Van Horn. (8 R.T. pp.

1423, 1448.) Exhibit 41 was received into evidence at the close of the People's case in chief. (15 R.T. p. 2612.)

During a search of the Staten residence, investigators located an expended .25 caliber cartridge case outside. (11/01/1991 LASD Supplementary Report, attached as People's Exhibit 4, p. 2.) When investigators interviewed defendant Staten, he admitted that he fired his friend's gun (with .25 caliber ammunition) in his backyard a few days before his parents came home from vacation. (18 R.T. pp. 3120-3122.)

B. Bloodstain Evidence Collection and Analysis

LASD Criminalist Victor Wong (Wong) collected bloodstain evidence from inside and outside the Staten residence. (12 R.T. pp. 2044-2046.) He assigned each bloodstain swab with his initials and a corresponding number: VW-1, VW-2, etc. (12 R.T. p. 2047, 2049.) Wong documented the evidence he collected in a supplementary report and a crime scene diagram. (12 R.T. pp. 2047-2048; 10/15/1990 LASD Supplementary Report, attached as People's Exhibit 6.) Wong collected the following bloodstain evidence:

- VW-1: Bloodstain on walkway to front door,
- VW-2: Bloodstain on north side (interior) of front door,
- VW-3: Bloodstain on entryway floor,
- VW-4: Bloodstain on entryway floor,
- VW-5: Bloodstain on kitchen counter,
- VW-6: Bloodstain on right edge of kitchen sink/counter,
- VW-7: Bloodstain on left edge of dishwasher door panel,
- VW-8: Bloodstain covering 6' on south wall of dining room,
- VW-11a: Bloodstain on west wall of dining room,
- VW-11b: Blood stain on glass panel (south end) of china cabinet in dining room,
- VW-14: Bloodstain in hallway (3 drops),
- VW-16: Bloodstain on light switch in master bedroom, and
- VW-19: Bloodstain from rag in Arthur Staten's truck.

(12 R.T. pp. 2049-2063; 10/15/1990 LASD Supplementary Report, attached as People's Exhibit 6.) The evidence Wong collected is depicted in the following diagram:

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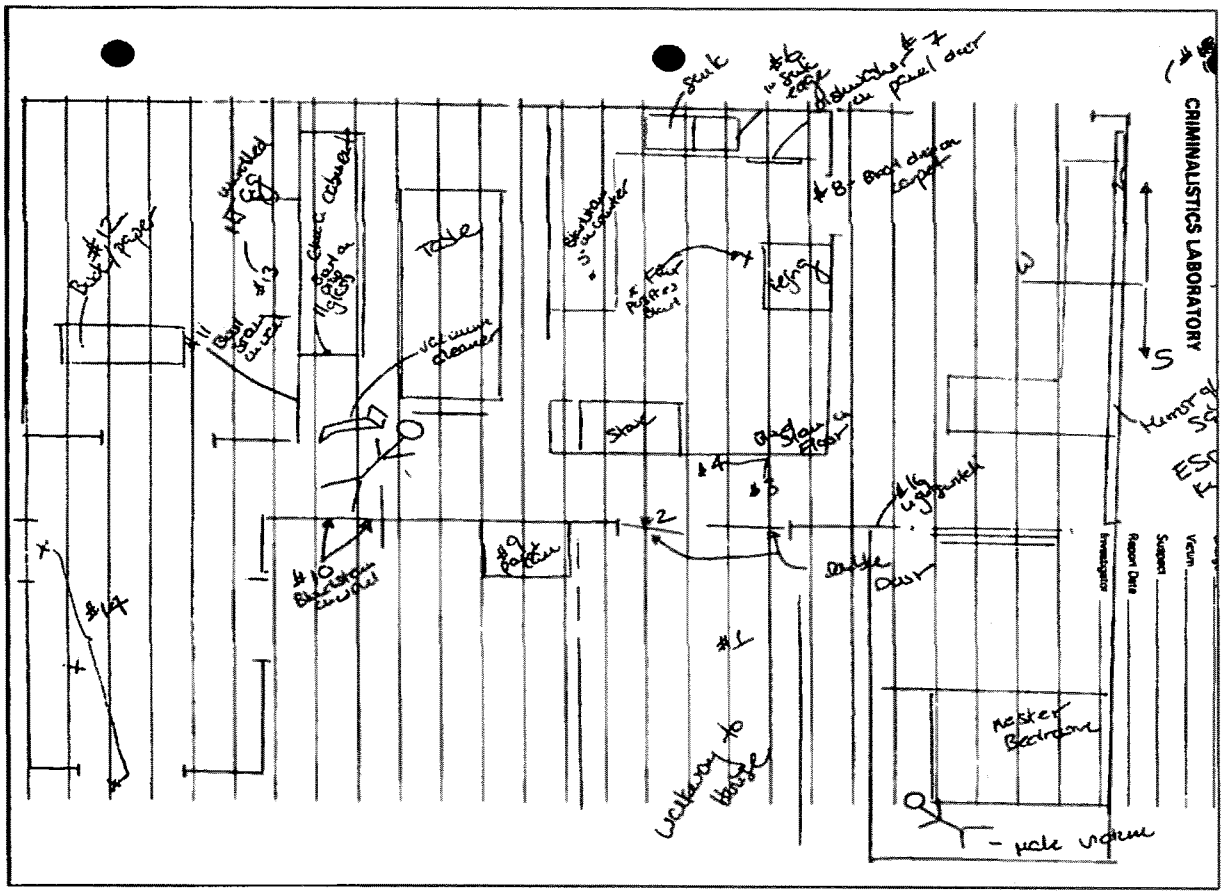
Diagram 1: Crime Scene and Evidence Samples



After collecting the evidence, Wong transported it to the crime lab where it was properly packaged and placed in frozen storage. (12 R.T. p. 2062.)

LASD Senior Criminalist Valorie Scherr (Scherr) conducted a serological analysis of the crime scene bloodstain evidence, bloodstains from defendant Staten's shoes, bloodstains from John Nichol's shorts, and a pair of gray pants found in the garage at the Staten residence. (12 R.T. pp. 2154-2156, 2163; 01/02/1991 LASD Supplementary Report, attached as People's Exhibit 7.) Scherr also analyzed victim Arthur and Faye Staten's reference blood samples. (01/02/1991 LASD Supplementary Report, attached as People's Exhibit 7.) A few months later, Scherr was provided defendant Staten's reference blood sample, which Scherr analyzed and compared to the evidence samples. (12 R.T. pp. 2163-2168; 03/05/1991 LASD Supplementary Report, attached as People's Exhibit 8.)

Following Scherr's analysis, bloodstain evidence and reference samples were sent to the Center for Blood Research Laboratory (CBRL) for DNA/DQ Alpha type testing. (10/09/1991 CBRL Report, attached as People's Exhibit 9; 11/01/1991 CBRL Report, attached as People's

Exhibit 10.) At trial, the parties stipulated to the DNA/DQ Alpha type results. (11 R.T. pp. 2180-2181.)

The serological testing results, the DNA/DQ Alpha type testing results, and the parties' stipulation are set forth in the following tables[4] and diagram:

Table 1: Reference Sample Results

Item	Description	DNA/DQ Alpha Type Results
LASD H374210 CBRL Item 10596	Bloodstain reference, Faye Staten (FS)	1.2/4
LASD H374211 CBRL Item 10597	Bloodstain reference, Arthur Staten (AS)	2
LASD H384427 CBRL Item 10598	Bloodstain reference, Deondre Staten (DS)	1.2/2
LASD H446805 CBRL Item 10822	Bloodstain reference, John Nichols (JN)	3/4

Table 2: Evidence Sample Results

Item	Description	Serology: Blood Type/Protein Results	DNA/DQ Alpha Type Results	Jury Trial Stipulation
VAS-1AB LASD H340196 CBRL Item 10706	Swab of combined bloodstains from the tops of DS's shoes	Could have originated from FS or DS. (01/02/91 LASD, 03/05/91 LASD)	3/4 JN cannot not be excluded. (11/01/91 CBRL)	Could not have come from AS. No other conclusion could be reached.
VAS-1B LASD H444411 CBRL Item 10823	Blood droplets removed from left shoe top (09/20/91)		Inconclusive (11/01/91 CBRL)	-
VAS-2A CBRL Item 10707	Bloodstain from right edge of shorts leg, near leg opening (shorts worn by JN)	Could not have originated from AS, FS. (01/02/1991 LASD) Could have come from FS or DS. (03/05/91 LASD)	3/4 JN cannot not be excluded. (11/01/91 CBRL)	-
VAS-3A	Swab of red stain on interior fly region of gray pants (found in Staten garage)	No human blood detected. (03/05/91 LASD)		-

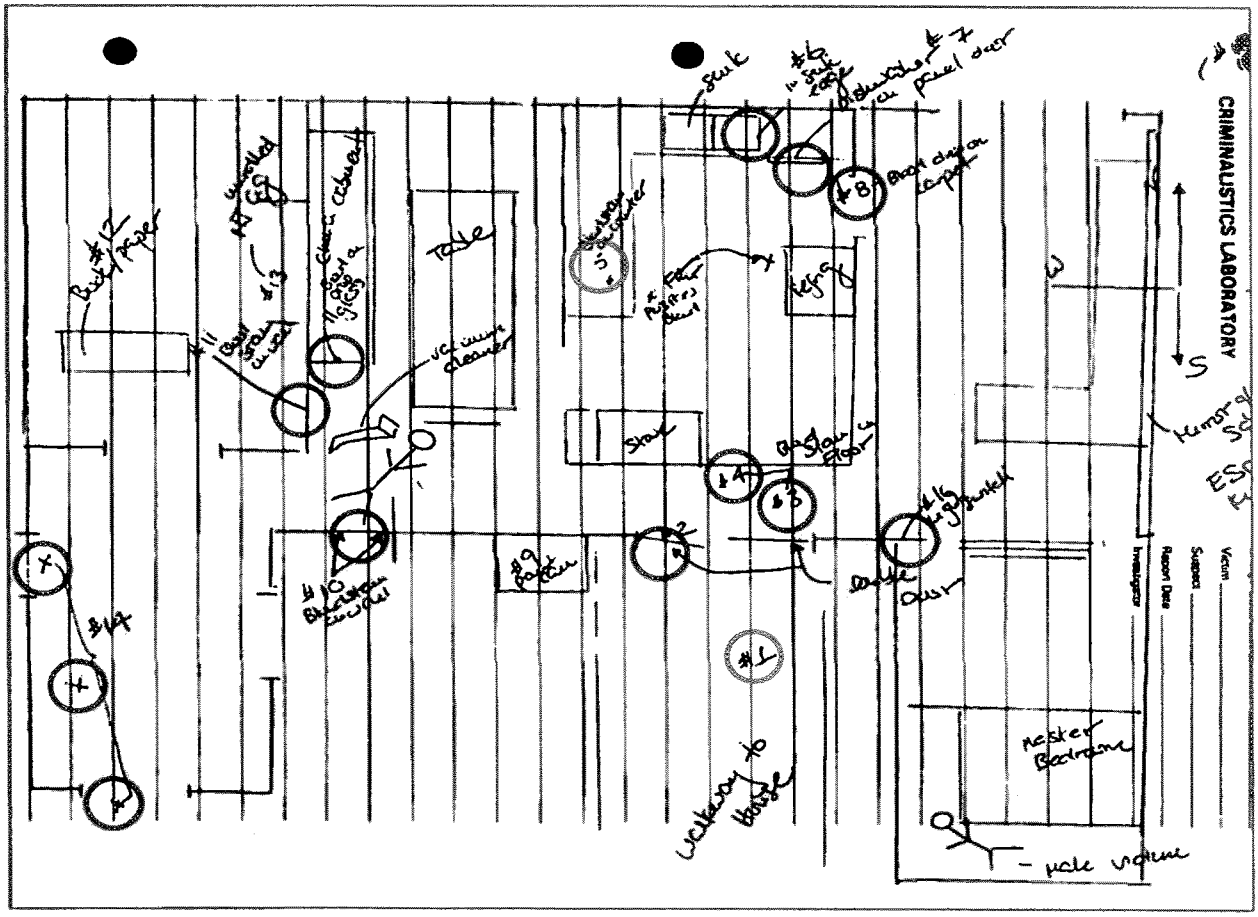
[4] Table 1 and Table 2 are also attached as People's Exhibit 11.

VW-1 CBRL Item 10691	Bloodstain on walkway to front door	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	None seen.	Source could not be AS. No other conclusion could be reached.
VW-2 CBRL Item 10692	Bloodstain on north side (interior) of front door	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-3 CBRL Item 10693	Bloodstain on entryway floor	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-4 CBRL Item 10694	Bloodstain on entryway floor	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-5 CBRL Item 10695	Bloodstain on kitchen counter		1.2/2/4 Appears to be a mixture.[5] (10/09/91 CBRL)	Source could not be AS. No other conclusion could be reached.
VW-6 CBRL Item 10696	Bloodstain on right edge of kitchen sink/counter		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-7 CBRL Item 10697	Bloodstain on left edge of dishwasher door panel		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-8 CBRL Item 10698	Bloodstain at edge of carpet between kitchen and living room		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-10 CBRL Item 10699	Bloodstain covering 6' on south wall of dining room	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-11a CBRL Item 10700	Bloodstain on west wall of dining room		1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-11b CBRL Item 10701	Blood stain on glass panel (south end) of china cabinet in dining room	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.

[5] Note that this mixture consists of DNA/DQ Alpha types attributed to DS and FS.

VW-14 CBRL Item 10702	Bloodstain in hallway (3 drops)		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-16 CBRL Item 10703	Bloodstain on light switch in master bedroom		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-19 CBRL 10704	Bloodstain from rag in Arthur Staten's truck		2 AS cannot be excluded. (10/09/91 CBRL)	-

Diagram 2: Crime Scene and Evidence Sample Results



Deondre Staten could be source (2, 3, 4, 6, 7, 8, 14, 16)

Faye Staten could be source (10, 11a, 11b)

No conclusion could be reached (1, 5)

Against this backdrop, defendant Staten now requests post conviction DNA testing of the three expended bullets, the expended cartridge case, and unspecified bloodstain evidence.

However, the defendant has failed to meet all of the required pleading and proof requirements for testing set forth in section 1405, subdivisions (d) and (g).

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THERE IS NO SUBSTANTIVE CONSTITUTIONAL RIGHT TO POST CONVICTION DNA TESTING

We note at the outset that there is no constitutional entitlement to post conviction DNA testing, because no substantive constitutional right is implicated. The United States Supreme Court declined to create such a right in *District Attorney's Office for the Third Judicial District v. Osborne* (2009) 557 U.S. 52 [Alito, J., concurring]. The Court held that while the defendant in *Osborne* did possess a "liberty interest" in attempting to demonstrate his innocence under the law of the state, this was not equivalent to the rights he enjoyed before trial. Rather, the Court made the fundamental point that once a defendant has received a fair trial and been convicted, the presumption of innocence disappears. (*Id.* at pp. 67-70.) A state then has greater flexibility in determining the procedures that must be followed to obtain post conviction relief. When a state chooses to offer assistance to defendants who seek to challenge their convictions, the Court held, "due process does not dictate the exact form such assistance must assume." (*Id.* at p. 69, internal quotations and citations omitted.)

II.

CALIFORNIA PROVIDES STATUTORY AUTHORITY FOR POST CONVICTION DNA TESTING

California state law does provide the right to post conviction DNA testing, as codified by section 1405. The statute outlines extensive pleading and proof requirements that must be met before relief is appropriate. Section 1405(d)(1) establishes that the motion must be verified by the convicted person under penalty of perjury and must include each one of the following:

(A) A statement that he or she is innocent and not the perpetrator of the crime.
(B) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.
(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.
(D) Explain, in light of all the evidence, how the requested DNA testing would

raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of the DNA testing had been available at the time of conviction.

(E) Reveal the results of any DNA or other biological testing that was conducted previously by either the prosecutor or defense, if known.

(F) State whether any motion for testing under this section previously has been filed and the results of that motion if known.

(§ 1405, subd. (d).)

If these pleading requirements are met, the motion should then be fully considered on its merits. Next, under section 1405(g) the court is only directed to grant a motion for DNA testing if *all* the following proof requirements are established:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion.

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect.

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of . . . the crime . . . that resulted in the conviction or sentence. The convicted person is only required to demonstrate that the DNA testing he or she seeks would be relevant to, rather than dispositive of, the issue of identity. The convicted person is not required to show a favorable result would conclusively establish his or her innocence.

(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial. In determining whether the convicted person is entitled to develop potentially exculpatory evidence, the court shall not decide whether, assuming a DNA test result favorable to the convicted person, he or she is entitled to some form of ultimate relief.

(6) The evidence sought to be tested meets either of the following conditions:

(A) The evidence was not tested previously.

(B) The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

(8) The motion is not made solely for the purpose of delay.

(§ 1405, subd. (g).)

In the present case, defendant Staten cannot satisfy all the pleading and proof requirements listed under this statute, and therefore his motion should be denied. A comprehensive discussion of each of these requirements is provided *infra*.

III.

PEOPLE V. RICHARDSON **PROVIDES A FRAMEWORK FOR SECTION 1405 ANALYSIS OF POST CONVICTION DNA TESTING MOTIONS**

The California Supreme Court thoroughly addressed the requirements mandated in section 1405 in *People v. Richardson* (2009) 43 Cal.4th 1040, where it upheld the denial of a section 1405 request for DNA testing in a death penalty case. In *Richardson*, the defendant was convicted of the murder of an 11-year-old girl and numerous other related crimes. Evidence at trial showed "[t]he victim was found dead in the bathtub of a residence she shared with her mother and sister. Certain hair samples were recovered from debris in the bathtub and from the victim's clothing; some of these hairs were identified by prosecution experts as consistent with [Richardson's] hair." (*Id.* at p. 1041, citation omitted.)

Following his conviction, the defendant brought a motion pursuant to section 1405, asking the trial court to order DNA testing of hairs found at the crime scene. The trial court denied the motion, and a 5-2 Supreme Court majority affirmed that denial in response to a petition for writ of mandamus. The *Richardson* court first concluded that the appropriate standard of review for a ruling on a motion for DNA testing is abuse of discretion. (*People v. Richardson*, *supra*, 43 Cal.4th 1040 at pp. 1046-1048.) A ruling will stand, therefore, unless the trial court has "exceeded the bounds of reason or contravened the un-contradicted evidence." (*Id.* at p. 1048.) The court then turned to the issues of "materiality" and "reasonable probability," which the defense is required to show under section 1405(g)(4) and (5).

The court first analyzed the materiality requirement: "[w]e conclude . . . that the moving defendant is required only to demonstrate that the DNA testing he or she seeks would be relevant to the issue of identity, rather than dispositive of it." (*People v. Richardson, supra,* 43 Cal.4th 1040 at p. 1204.) Such testing need not conclusively establish the defendant's innocence, but instead it would "be sufficient for the defendant to show that the identity of, or accomplice to, the crime was a controverted issue as to which the results of DNA testing would be relevant

evidence." (*Ibid.*) In applying this standard to the facts, the Court noted that multiple experts were called by the prosecution and defense who disputed the origin of the hairs: "it was clear that it was far from definitive and subject to quite different interpretations from equally qualified experts." (*Id.* at pp. 1051-1052.) A defense expert also "pointed out that the hair could easily be transferred from one place to another" which was relevant because "petitioner had been a sometime visitor to the victim's residence, the implication being that any hair identified consistent with his could have been deposited during an earlier visit." (*Id.* at p. 1052.) The court therefore held that the hair evidence was thus "at most, simply one piece of evidence tending to show guilt," so "fiercely disputed" by the defense that it "may well have had little significance in the jury's determination of guilt or sentence." (*Id.* at p. 1053.)

Next, the court defined the reasonability probability requirement under section 1405(g)(5): "to prevail on a section 1405 motion, the defendant must demonstrate that, had the DNA testing been available, in light of all the evidence, there is a reasonable probability – that is, a reasonable chance and not an abstract possibility – that the defendant would have obtained a more favorable result." (*People v. Richardson*, *supra*, 43 Cal.4th 1040 at p. 1051.) The court declined to overturn the trial court's earlier ruling, agreeing that there was a "substantial amount of other evidence linking [the petitioner] to this crime" such as the defendant's admissions to multiple parties, knowledge of details of the victim's whereabouts and details of the crime, and the defendant's flight the day after the murder. (*Id.* at p. 1053.) The court thus declined to reverse the appellate court's decision, even in light of the petitioner's death sentence.

Further, the Supreme Court of Connecticut used the same reasonable probability standard when it evaluated its similar DNA testing statute. (*State v. Dupigney*, 295 Conn. 50 (Conn. 2010) at p. 64 ['reaching the same conclusion when construing comparable California statutes'].) In that case, the defendant requested DNA testing of a hat found at the murder scene. (*Id.* at p. 53.) The court held that even if the DNA testing results were most favorable to the Petitioner, the other evidence presented at trial would not "undermine [their] confidence in the fairness of the verdict." (*Id.* at p. 73.) Other states have denied motions using the same reasonable probability standard. (*Matheney v. State* (Ind. 2005) 834 N.E.2d 658 at pp. 663-64 [denying motion for DNA testing under statute imposing reasonable probability standard when state presented a 'plethora of other evidence upon which the jury could have based its decision in convicting' the defendant of murder].)

IV.

THE COURT SHOULD DENY THE DEFENDANT'S MOTION FOR POST CONVICTION DNA TESTING BECAUSE HE CANNOT SATISFY THE PLEADING AND PROOF REQUIREMENTS OF SECTION 1405, SUBDIVISIONS (D) AND (G)

As the People will demonstrate below, defendant Staten has not met the pleading and proof requirements of Section 1405, subdivisions (d) and (g). The People's evaluation of the statutory requirements is outlined below.

A. Section 1405(d) Pleading Requirements:

(1) The motion for DNA testing shall be verified by the convicted person under penalty of perjury and shall include all of the following:

(A) A statement that he or she is innocent and not the perpetrator of the crime.

The initial section 1405 testing motion was not been verified by Staten. (Def. § 1405 Motion.) However, the defendant subsequently submitted an affidavit/statement that he is innocent and not the perpetrator of the crime. (Def. § 1405 Declaration.) Therefore, this pleading requirement has been met.

(B) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.

This requirement has been met. Although there was sufficient circumstantial evidence to convict defendant Staten at trial, the identity of the perpetrator was a significant issue in this case.

(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.

This requirement has not been met, as the defendant has failed to make "every reasonable attempt" to identify the all the evidence that should be tested. The defendant's motion does identify "[t]wo .38 caliber bullets . . . recovered from the Staten home and one . . . recovered from Arthur Staten's body" and "[a] spent .25 caliber casing . . . discovered outside the residence[.]" (Def. § 1405 motion, p. 9.)

However, the defendant's motion thereafter requests "genealogical DNA testing" of "bloodstains" in a separate section. (Def. § 1405 motion, p. 9.) This request is vague and overbroad. "Genealogical DNA testing" refers to investigative genetic genealogy, which is a specialized technique only employed after STR DNA testing has been completed and the source of the donor(s) is unknown. It is utilized after all investigative leads have been exhausted. The

results of serological and DNA testing performed in this case, *supra*, indicate that the contributors to the majority of the bloodstain evidence samples are consistent with either the defendant or his mother, victim Faye Staten. The People will therefore deem this is as a request for STR DNA testing of bloodstain samples. However, investigators obtained numerous bloodstains in this case (10/15/1990 LASD Supplementary Report, attached as People's Exhibit 6), and the defendant has not indicated the specific samples to be tested.

(D) Explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

See discussion under section 1405, subdivision (g)(5), *infra*.

(E) Reveal the results of any DNA or other biological testing that was conducted previously by either the prosecution or defense, if known.

The People are not aware of any DNA/biological testing previously conducted on the three fired bullets and the expended cartridge case.

LASD performed serological testing on bloodstain samples collected from the defendant's shoes, a pair of shorts worn by John Nichols, a pair of gray pants found in the garage at the Staten residence, and bloodstains inside and outside of the Staten residence. (01/02/1991 LASD Supplementary Report, attached as People's Exhibit 7; 03/05/1991 LASD Supplementary Report, attached as People's Exhibit 8.) CBRL subsequently performed DNA/DQ Alpha Type testing on those items. (10/09/1991 CBRL Report, attached as People's Exhibit 9; 11/1/1991 CBRL Report, attached as People's Exhibit 10.) The serological and DNA/DQ Alpha Type testing results are summarized in Table 1 and Table 2, *supra*.

(F) State whether any motion for testing under this section previously has been filed and the results of that motion, if known.

The People are not aware of any motions for post conviction DNA testing previously filed in this case.

B. Section 1405 (g) Proof Requirements:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion.

This threshold criterion has not been met. The defendant has not provided any information showing the requested items are available and in a condition that would permit testing. Although not required, the defendant has not filed a motion pursuant to section 1405,

subdivision (c) seeking a court order for the disclosure of the location of biological evidence. Had the defendant filed such a motion, and this Court ordered that the prosecutor "make all reasonable efforts to obtain, and police agencies and law enforcement laboratories to make all reasonable efforts to provide . . . (2) Copies of evidence logs, chain of custody logs and reports, including, but not limited to, documentation of current location of biological evidence, and evidence destruction logs and reports," (§ 1405, subd. (c)(2)) the parties would have information regarding the status of the evidence.

Based on the People's review of the trial record, three expended bullets were collectively marked as Exhibit 41 and received into evidence at trial. (7 R.T. pp. 1417-1425.) The People have confirmed the Los Angeles Superior Court Exhibit Room still has custody of these items, and they are available for viewing with a court order.

The whereabouts of the .25 caliber expended cartridge case and any remaining bloodstain samples are unknown.

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect.

To the extent the defendant has not shown the evidence is available, this criterion has been not been met. (See discussion of the evidence under § 1405, subd. (g)(1), *supra*.)

The fired bullets (Exhibit 41) are currently in the custody of the LASC Exhibit Room. However, the People submit that these items were not handled in a manner that would preserve any biological evidence, since they were wiped clean when they were collected, subject to toolmark examination[6], opened on the record, and provided to the jury. For nearly 32 years the evidence has been in the custody of the LASC Exhibit Room, and the storage conditions are unknown. Variations in environmental factors such as sunlight, heat, moisture, and bacteria can impact the ability to conduct DNA testing. While the People presume that the LASC has adopted the California Attorney General's recommendations for the retention and storage of

[6] According to an LASD SSB supervisor, when DNA testing of firearms and firearm components is requested, analysts process or swab the evidence item while wearing personal protective equipment (PPE) including masks, clean nonporous gloves, and lab coats to mitigate the possibility of cross-contamination and general DNA transfer. Firearms examiners, however, do not routinely wear gloves or other PPE when performing their examination unless the evidence is contaminated with biological or chemical hazards. When evidence must be routed for both DNA and firearms examination, DNA analysis takes precedence and is therefore performed first.

DNA evidence,[7] the degradation of a biological sample over a sustained period is still a potential problem.

Given the possibility of DNA transfer onto the cartridge cases during tool mark analysis, courtroom presentation, and jury deliberations, compounded by degradation, it is thus highly unlikely that the fired bullets are "unaltered" (§ 1405, subd. (g)(2)) and "in a condition that would permit DNA testing." (§ 1405, subd. (g)(1).) For these reasons, the court should deny the defendant's motion to have the three fired bullets (Exhibit 41) analyzed for the presence of a foreign DNA profile.

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

This requirement has been met. Although there was sufficient circumstantial evidence to convict defendant Staten at trial, the identity of the perpetrator was a significant issue in this case.

(4) The convicted person has made prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence. The convicted person is only required to demonstrate that the DNA testing he or she seeks would be relevant to, rather than dispositive of, the issue of identity. The convicted person is not required to show a favorable result would conclusively establish his or her innocence.

As a general matter, a prima facie showing may not be founded upon speculation (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1241, fn. 38.) or conclusory allegations. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) Material evidence must "tend to establish guilt" or be "directly probative of the crimes charged." (*People v. Bunyard* (1988) 45 Cal.3d 1189, 1212 [citation omitted].) Applying these principles to post conviction DNA testing, if the test results could only be inconclusive or inculpatory, the evidence tested cannot be material within the meaning of this subdivision. The defendant is required to show that the DNA testing would be "relevant to

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[7] See California Attorney General, *Postconviction DNA Testing: Recommendations for Retention, Storage and Disposal of Biological Evidence* (2002), California Agencies, Paper 81. See also National Institute of Standards and Technology, Technical Working Group on Biological Evidence Preservation; The Biological Evidence Handbook: Best Practices for Evidence Handlers (2013).

the issue of identity, rather than dispositive of it." (*Richardson v. Supreme Court*, *supra*, 43 Cal.4th 1040, 1049.)

This criterion has not been met as to the fired bullets. While the fired rounds may have contained the perpetrator's DNA at one point – assuming the shooter loaded the gun and deposited his/her DNA on the rounds at that time – any material biological evidence is unlikely to remain given the post-collection handling of the rounds. LASD Criminalist Wayne Plumtree used a hammer to dig the one bullet out of the wall and "wiped it off." (8 R.T. p. 1420.) While the other bullet wasn't as deeply embedded in the wall, it was covered with plaster/building material. (8 R.T. p. 1421.) A third fired bullet was recovered from inside Arthur Staten's body during his autopsy, and was also wiped clean. (11 R.T. p. 1917.) LASD Firearms Examiner Dwight Van Horn later opened the envelopes containing each of the three fired bullets and conducted a toolmark analysis. (8 R.T. pp. 1435-1448). At trial, a single envelope containing three smaller envelopes (each containing a fired bullet) was marked as Exhibit 41 and opened on the record by Plumtree and Van Horn. (8 R.T. pp. 1423, 1448.) At the close of trial, the exhibit was received into evidence and was available for the jury to examine. (15 R.T. p. 2612.)

Similarly, the defendant has not shown how any DNA profile obtained from the .25 caliber expended cartridge case that was found outside the residence would be relevant to the issue of identity in this case. The cartridge case is not consistent with the murder weapons – a .38 caliber firearm and a knife – and there is no evidence linking it to the murders. At trial, the investigating officer testified that the defendant admitted firing his friend's gun (with .25 caliber ammunition) in his backyard a few days before his parents came home. (18 R.T. pp. 3120-3122.)

However, the People concede that DNA testing of the bloodstain samples recovered from the defendant's shoes, clothing, and the crime scene may be relevant to the identity of the perpetrator. Although the bloodstain evidence samples were previously tested and most were attributable to the defendant, victim Faye Staten, or John Nichols, current testing methods may provide additional information related to the contributors of those samples, should those items still exist.

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(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial. In determining whether the convicted person is entitled to develop potentially exculpatory evidence, the court shall not decide whether, assuming a DNA test result favorable to the convicted person, he or she is entitled to some form of ultimate relief.

The People emphasize that conditioning access to DNA evidence serves important state interests, including respect for the finality of judgments and the efficient use of limited resources. (*District Attorney's Office v. Osborne, supra*, 129 S. Ct. 2308.) With these policies in mind, the defendant must show that, "had the DNA testing been available, in light of all the evidence, there is a reasonable probability – that is, a reasonable chance and not merely an abstract possibility – that the Defendant would have obtained a more favorable result." (*Richardson v. Superior Court, supra*, 43 Cal.4th 1040 at p. 1051; *State v. Dupigney, supra*, 295 Conn. 50 at p. 66.) Additionally, "reasonable probability" does not merely amount to "more likely than not." Rather, it must be more than an abstract possibility when considering the entire case. (See *Richardson, supra*, 43 Cal.4th 1040 at p. 1050.) The trial court should not decide whether, assuming the DNA test result is favorable to the defendant, that "evidence in and of itself would ultimately require some form of relief from the conviction." (*Ibid.*)

In *Richardson*, the California Supreme Court upheld the trial court's finding that there was a substantial amount of other evidence linking him to his crime. The Supreme Court stated this constituted a finding that the defendant failed to establish the reasonable probability requirement. (*Richardson v. Superior Court, supra*, 43 Cal.4th 1040 at p. 1051.) The DNA evidence at Richardson's trial was not at all "conclusive" on the issue of guilt. In that case, pubic hairs were found in the bathtub where the victim was found dead. (*Id.* at pp. 1051-1052.) During trial, the prosecution's experts could not agree whether the pubic hairs were consistent with the defendant's hair, and a defense expert testified the hair samples were not consistent with the defendant's hair. (*Id.* at p. 1052.) Therefore, given the weight of the evidence of defendant Richardson's guilt, the California Supreme Court found that the trial court did not abuse its discretion in declining to order post conviction DNA testing.

In the present case, the defendant has not met this requirement as to the expended rounds and the expended cartridge case. One of the expended rounds came from Arthur Staten's body,

was wiped clean, handled by the firearms examiner, and submitted as a court exhibit. The other two expended rounds were dug out of the walls, wiped clean, and handled by the firearms examiner and submitted as a court exhibit. Any foreign profiles on the fired bullets could therefore be explained by post-firing transfer. As the expended cartridge case was not linked to the murder, any profile on that item would neither affect the verdict nor the sentence.

Samples of the bloodstain evidence were previously tested using methods available in 1991, and the results were presented to the jury through the testimony of LASD Senior Criminalist Valorie Scherr (12 R.T. pp. 2147-2179) and via stipulation by the parties (12 R.T. pp. 2180-2181.) Further, the defendant testified at trial that he cut himself while doing yard work and must have deposited his blood when he walked around the house looking for bandages. (17 R.T. pp. 2847-2848; 18 R.T. pp. 2973-2982.)

However, the People concede that current testing methods may provide additional information related to the contributors of the bloodstain evidence on the clothing, shoes, and at the crime scene. Although unlikely, given the fact that majority of the bloodstain evidence was single source and attributable to either the defendant, victim Faye Staten, or John Nichols, a favorable testing result of those samples (e.g., the presence of a third-party DNA profile) may potentially result in a more favorable verdict or sentence in this case.

(6) The evidence sought to be tested meets either of the following conditions:

a. The evidence was not tested previously.

b. The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

The People do not have any information the fired bullets or cartridge case were tested previously. The bloodstain samples were tested previously (see results *supra*), and modern (STR) DNA testing may provide more discriminating results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

The defendant has not identified the requested DNA testing method.

(8) The motion is not made solely for the purpose of delay.

The People are not challenging this criterion.

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V.

CONCLUSION

For the foregoing reasons, defendant Deondre Staten's request for post conviction DNA testing should be denied by this court. First and foremost, the defendant has not established that the evidence exists and is in a condition to be tested. Although the three fired rounds were collectively admitted as a trial exhibit and are still in custody of the LASC Exhibit Room, testing of those items would be inappropriate, as they were cleaned and subsequently handled by criminalists. Similarly, the defendant has not shown the fired cartridge case still exists, or even that it was connected to the murders. Finally, with respect to the bloodstain evidence samples, the defendant has neither specified which samples he is requesting be tested, nor has he demonstrated the samples are still in existence.

Dated: October 31, 2023

Respectfully submitted,

LEE CERNOK
Deputy District Attorney
Forensic Science Section

PROOF OF SERVICE

I, Deputy District Attorney Lee Cernok, declare:

I personally served the PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR POST CONVICTION DNA TESTING PURSUANT TO PENAL CODE SECTION 1405; MEMORANDUM OF POINTS AND AUTHORITIES in *People v. Deondre Staten* (Case No. KA006698) by USPS and email to the following:

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Attorneys for defendant Deondre Staten

I declare under penalty of perjury pursuant to the laws of California that the above is true and correct.

Dated: October 31, 2023

LEE CERNOK
Deputy District Attorney
Forensic Science Section

People v. Staten, KA006698

People's Exhibit 1
Clerk's Transcript on Appeal (C.T.) Volumes 1-3

People v. Staten, KA006698

People's Exhibit 2
Reporter's Transcript on Appeal (R.T.) Volumes 1-23

People v. Staten, KA006698

People's Exhibit 3
People v. Staten (2000) 24 Cal.4th 434

24 Cal.4th 434
Supreme Court of California

The PEOPLE, Plaintiff and Respondent,
v.
Deondre Arthur STATEN, Defendant and Appellant.

No. S025122
|
Nov. 9, 2000.
|
Rehearing Denied Jan. 24, 2001.

Synopsis

Defendant was convicted following jury trial in the Superior Court, Los Angeles County, KA006698, Alfonso M. Bazan, J., of the first-degree murders of his mother and father and was sentenced to death. On automatic appeal, the Supreme Court, Mosk, J., held that: (1) denial of defendant's application for appointment of second counsel was not abuse of discretion; (2) change of venue was not warranted; (3) hearsay statement that two purported gang members might have committed killings was inadmissible hearsay and was irrelevant; (4) evidence supported aiding and abetting instruction; (5) evidence supported convictions; (6) evidence introduced by defense did not preclude jury from finding special circumstances of multiple killings and killing for financial gain; and (7) jury could properly consider defendant's apparent lack of remorse in deciding appropriate sentence.

Affirmed.

Attorneys and Law Firms

***217 *440 **972** Jonathan P. Milberg, under appointment by the Supreme Court, Pasadena, for Defendant and Appellant.

Daniel E. Lungren and Bill Lockyer, Attorneys General, George Williamson and David P. Druliner, Chief Assistant Attorneys General, Carol Wendelin Pollack, Assistant Attorney General, Linda C. Johnson, Robert S. Henry, Susan Lee Frierson and Scott A. Taryle, Deputy Attorneys General, for Plaintiff and Respondent.

Opinion

***441** MOSK, J.

This is an automatic appeal (Pen.Code, § 1239, subd. (b)) from a judgment of death under the 1978 death penalty law (*id.*, § 190 et seq.).

On April 9, 1991, the District Attorney of Los Angeles County filed an information against Deondre Arthur Staten in the superior court of that county. The information charged that between October 12 and October 13, 1990, defendant murdered Arthur Staten, his father, and Faye Staten, his mother. (Pen.Code, § 187, subd. (a).) It was alleged for death eligibility that he did so under the special circumstances of (1) killing for financial gain and (2) multiple murder. (*Id.*, § 190.2, subd. (a)(1), (3).) It was further alleged that, in murdering his father, defendant personally used a firearm within the meaning of Penal Code section 12022.5, and that, in murdering his mother, he personally used a deadly and dangerous weapon, to wit, a knife (*id.*, § 12022, subd. (b)).

Defendant pleaded not guilty to the charges and denied the allegations. Trial was by jury. The panel returned a verdict finding defendant guilty as charged of the murders of his father and mother and fixed the degree at the first. It found true the accompanying allegations of special circumstances of murder for financial gain and multiple murder. As to the murder of his father, it found that he personally used a gun; as to the murder of his mother, it found that he personally used a knife. It fixed the punishment for each murder at death.

The superior court denied defendant's motion for a new trial and his automatic application for modification of the verdict (Pen.Code, § 190.4, subd. (e)). For the murders, it imposed a sentence of death. For the use of the gun, it imposed a middle enhancement of four years; for the use ***218** of the knife, it imposed an enhancement of one year. It stayed execution of the sentences for gun use and use of a deadly weapon temporarily, pending execution of the sentence of death, and permanently thereafter. (Pen.Code, § 654.)

As we shall explain, we conclude that we should affirm the judgment.

I. FACTS

A. *Guilt Phase*

The People introduced evidence to the following effect.

Defendant, age 24, lived with his parents Arthur and Faye Staten in the La Puente/East Valinda area of Los Angeles County. Arthur and Faye owned a ***442** beauty salon and beauty supply store. They had several life insurance policies worth a total of more than $300,000. In August 1990, in the presence of defendant, they revised three of the policies to name him sole beneficiary if they both died; a fourth policy named him and his mentally retarded brother Lavelle co-beneficiaries.

Defendant had a strained relationship with his father; they often argued and his father periodically evicted him from the house for weeks or months at a time. He told friends that he would "take his father out" or "take care of him." He also told friends about his parents' insurance policies, indicating that he would inherit a large sum if they died. On ****973** one occasion, while discussing ways of making money with two friends, he said that he knew how they could make $275,000, but that it would take a month and a half to get the money. He told them that if they would "bump off" two people who lived around the corner and owned a beauty supply and hair salon, they would be paid a "five-digit" sum of money. On another occasion, while watching a television program about the Menendez brothers, who were charged with the notorious crime of murdering their parents for their inheritance, he commented to the effect that "They did it wrong. They shouldn't have got caught."

In September, Arthur and Faye left for a two-week vacation, leaving their truck at the home of Faye's parents, the McKays. Defendant stayed at home.

Defendant's parents kept a .38–caliber revolver with a brown handle at the beauty supply shop in case of robberies; they kept a handgun, a .22–caliber derringer, under their bed at home. About a week after his parents left, following a visit to the beauty salon, defendant showed his friend John Nichols the .38–caliber revolver, which he was carrying in his pants; shortly thereafter, he gave Nichols the .22–caliber derringer. On several occasions he mentioned to Nichols that he had hollow-point bullets.

Two or three days before his parents were to return, late at night, he told friends who were staying at his house that he heard something in the backyard. Taking the .38–caliber revolver, he looked around the outside the house, but did not find anyone. He said that he had received threatening telephone calls from the East Side Dukes, a local Latino gang. The following day, he showed friends the letters "ESD" spray-painted on the backyard patio.

During the week before his parents' return, defendant repeatedly asked a cousin, who lived behind the McKays' house, to call him when his parents left for home. On October 11, Arthur and Faye returned from vacation to the ***443** McKays'. They spent the night and most of the following day at a family gathering at the McKays'. On October 12, defendant telephoned throughout the day and evening to find out when his parents were returning home, but declined invitations to come to dinner. In the afternoon, friends observed that he was drinking malt liquor and was fidgety. As was typical, he was wearing faded blue jeans. A brown gun handle protruded from his pocket. He said he was going to stay home and wait for his parents.

*****219** Arthur and Faye left the McKays' house for home at 11:20 or 11:25 p.m. A neighbor, Bertha Sanchez, saw their truck arrive at 11:40 p.m.. Between 11:50 and 11:55 p.m., she and her husband heard three gunshots. Another neighbor, Craig Hartman, also heard gunshots between 11:30 and 11:45 p.m.; he heard no other shots that night.

On October 13, at 12:04 a.m., defendant's aunt telephoned to find out if his parents had arrived home safely. Defendant answered, sounding nervous and rushed; he said that they had not returned and he was getting ready to go out. He did not offer to leave a note for his parents. At 12:31 a.m., defendant's aunt called again. This time, defendant said that his parents were home but did not offer to put them on the line, as he usually did.

Sometime after midnight, Sanchez heard what she thought was the Statens' truck starting and driving away; it returned around 20 minutes later.

Around 1:05 a.m., defendant knocked on the Hartmans' door and said that his parents had been killed; he was crying and appeared to be vomiting. When the Hartmans returned with defendant to his house, they found Faye's body lying facedown near the entryway and Arthur's body in the master bedroom. The words "ESD Kills" were spray-painted on a mirrored wall in the living room.

Sheriff's deputies arrived at the scene and attempted to speak to defendant, but he did not answer, appearing to be in a trance. Craig Hartman thought that he was "faking," because

he had been able to communicate earlier. Defendant had a cut with dried blood on his right middle finger, and he was wearing shorts. Later, at the sheriff's station, while talking with his aunts, defendant collapsed and appeared unconscious. When **974 paramedics arrived, however, he was alert and well-oriented, needing no medical care. Defendant's aunts returned to the Staten house to retrieve a change of clothing; they looked for a pair of blue jeans, his usual attire, but found none.

Arthur died of a single gunshot wound to the head with a .38 or .357–caliber hollow-point bullet. Faye died of multiple stab wounds; of 18 *444 wounds, seven could have been fatal. There was no evidence of forced entry or robbery, and there were no signs of entry in the backyard. In a den, a book of historic newspaper headlines was open to an article concerning the Sharon Tate murder case.

There were bloodstains throughout the house; some could have been defendant's, others could have been Faye's. A handprint on the mirrored living room wall below the spray-painted graffito matched defendant's. There was a 90 percent probability that the graffito on the mirrored wall was produced by the same writer as the graffito on the back porch. The paint on both was of the same formula; it also matched a can of spray paint found in the hall closet.

At funeral services for his parents, defendant did not appear upset. He told a cousin that this was no time to cry because they were dead, buried and gone; instead, it was time to party and get high.

On October 14, Nichols was stopped by law enforcement officers while carrying the .22–caliber derringer and was arrested for violation of probation. On November 3, he was released from custody and met with defendant while wearing a transmitting wire monitored by a detective. In the taped conversation, defendant said that he had "gotten rid of" the .38–caliber revolver before his parents returned home. He suggested that Nichols lie about the gun to police and assured him that the police would not be able to find it and that as long as he stuck to his story, they would not have a case: "Because they lost. I'm still saying—but they can't do shit. All they can do is close the mother fucker. [¶] If they still can't find it, I'm still going to blame it on the Dukes."

The gang unit of the sheriff's department concluded that the murders were not ***220 gang related and that the graffiti found in the house and backyard did not appear genuine or to have been written in the distinctive style of the East Side Dukes. Moreover, it would be unusual for graffiti to be hidden in a backyard or inside a house rather than the front of the house, as the gang's purpose was to claim territory and to threaten others. The East Side Dukes typically performed their killings in drive-by shootings or after knocking on a victim's door and calling him outside; they used graffiti to announce their killings to the whole neighborhood, usually including the gang member's street name and identifying the intended victims. They did not ordinarily intentionally harm others living in their neighborhood, even if they were African–American, like defendant and his family. An investigator was told by members of the East Side Dukes that they would not have committed a crime of this kind.

*445 For his part, defendant introduced evidence, including his own testimony, as follows.

Defendant had a good relationship with his parents, especially his mother. He never spoke to friends about killing his parents for the insurance money, although he did discuss other ways of making money, including tax-deferred retirement accounts and money management.

The East Side Dukes repeatedly threatened him. During his parents' vacation, he took their .38–caliber gun from the beauty shop, and gave Nichols the .22–caliber derringer, for protection. The .38–caliber gun disappeared one night after a party; defendant did not tell anyone because he suspected that one of Nichols's friends had stolen it.

The cut on defendant's finger came from a hedge trimmer he used for gardening on the day of his parents' return; he may have left a trail of blood in the house while looking for a bandage. He wore shorts all day; his blue jeans were either in his bedroom or in the laundry. That night, he was working on lyrics to a "rap" song and looked through the book of historic headlines in the den; he was not reading the headline about the Sharon **975 Tate murders but was looking for headlines about Martin Luther King, Jr.

Defendant's parents arrived between 12:05 and 12:10 a.m. When his aunt called at 12:30, his mother indicated that she did not want to talk to her. He left in his parents' truck to get a hamburger between 12:30 and 12:45 a.m. Realizing he did not have money with him, he returned home, arriving about 1:00. When he returned, he discovered his parents' bodies and saw the spray-painted graffito in the living room that read "ESD Kills."

Neighbors gave inconsistent reports to police officers about hearing gunshots that night; Sanchez told one police officer that she had heard "firecracker" noises after 12:30 a.m., not earlier. The Hartmans did not mention to that same officer that they had heard gunshots.

No gunshot residue was found on defendant's hands.

B. *Penalty Phase*

The People presented evidence in aggravation consisting of autopsy photographs of Faye's wounds.

In mitigation, defendant introduced the following evidence relating to his background and character.

***446** Defendant was intelligent; he graduated from high school and attended a community college for two years. He wrote rap songs for a music group that often had antigang, antidrug, or religious messages. He counseled other family members, friends, and neighborhood youth to avoid gangs and drugs. One friend testified that he never saw defendant take drugs.

Defendant provided emotional support for his mentally disabled brother, Lavelle, and, apart from Arthur and Faye, was the person best able to communicate with him. It would be beneficial to Lavelle to be able to continue communicating with defendant.

*****221** A psychiatrist who examined defendant in custody testified that the murders appeared to have arisen from family-specific emotional problems and that such crimes have a very low rate of recidivism. Defendant showed no signs of mental illness and generally knew how to behave appropriately and to get along with others; he could be a positive influence on others in prison.

II. PRETRIAL ISSUES

Defendant raises a number of claims concerning pretrial motions and jury selection that he asserts require reversal of the judgment of guilt. As will appear, none is meritorious.

A. *Requests for Second Counsel and Funds*

In April 1991, defendant filed a confidential application for appointment of second counsel. It was supported by a declaration by appointed counsel John D. Tyre, stating that "there are both serious issues for the guilt and penalty phases of this trial" and "it is therefore necessary for the court to allot funds to cover the cost of a second attorney to handle different parts of both phases of this trial." In June 1991, defendant filed a second confidential application for appointment of second counsel, supported by an identical declaration.

At the hearing on the application, counsel argued that the case involved "strictly circumstantial evidence" and that "the burden of going through a guilt phase, the circumstantial evidence, the possible inferences, the possible investigation, the numerous people that were used at the preliminary hearing and all the investigation that would be necessary in a guilt phase" supported appointment of second counsel to help him prepare "in case a penalty phase is necessary." The superior court denied the application without prejudice, stating that "it's not a clear-cut guilt case from the standpoint of the fact that ***447** it's a circumstantial evidence case, but it's a fairly straightforward case with not tremendous legal issues, complex issues involved." Trial counsel did not renew the motion, although at one point during the trial, he was hospitalized for illness and the trial was continued for six days.

Defendant argues that the superior court erred in denying the application for second counsel. He contends that with the aid of a second attorney, he would have been ****976** able to present more effective guilt and penalty phase presentations. The claim is without merit.

In *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430, 180 Cal.Rptr. 489, 640 P.2d 108, we held that a trial court may appoint a second attorney in a capital case. "If it appears that a second attorney may lend important assistance in preparing for trial or presenting the case, the court should rule favorably on [a] request. Indeed, in general, under a showing of genuine need ... a presumption arises that a second attorney is required." (*Id.* at p. 434, 180 Cal.Rptr. 489, 640 P.2d 108.) "The initial burden, however, is on the defendant to present a specific factual showing as to why the appointment of a second attorney is necessary to his defense against the capital charges." (*People v. Lucky* (1988) 45 Cal.3d 259, 279, 247 Cal.Rptr. 1, 753 P.2d 1052.) An "abstract assertion" regarding the burden on defense counsel "cannot be used as a substitute for a showing of genuine need." (*Id.* at p. 280, 247 Cal.Rptr. 1, 753 P.2d 1052; *People v. Jackson* (1980) 28 Cal.3d 264, 287, 168 Cal.Rptr. 603, 618 P.2d 149 [no abuse of discretion in

denying application for second counsel when counsel merely relied on the circumstances surrounding the case].)

No abuse of discretion appears. Defendant's application, consisting of little more than a bare assertion that second counsel was necessary, did not give rise to a presumption that a second attorney was required; he presented no specific, compelling reasons for such appointment. Nor does the fact that counsel became ill during the guilt phase of trial demonstrate ***222** error in denying the requests months earlier; the illness was not anticipated. Indeed, counsel, whose earlier application was denied without prejudice, did not renew the request for second counsel; his illness was accommodated by a brief continuance of the trial.

Defendant also submitted numerous requests for funds for investigation, forensic experts, law clerks, and travel and witness expenses pursuant to Penal Code section 987.9. He contends that if the requests had been granted, he would have been able to present a more effective case at the guilt and penalty phases. This claim, too, is without merit.

The record indicates that some requests for funds for travel expenses, investigators, experts, and other assistance were denied for lack of a showing *448 of necessity, untimeliness, or other defects; other requests, including requests for funds for travel expenses, investigators, experts, and other assistance, were granted in full or in part. Defendant fails to show that any of the denials or reductions was unreasonable under the circumstances. It is sheer speculation that greater funding would have resulted in a different outcome. [1]

B. *Change of Venue Motion*

Several weeks after his arraignment, defendant moved for a change in venue out of Los Angeles County, on the ground that "there is a reasonable likelihood that a fair and impartial trial of this matter cannot be had" therein. In a supporting declaration, he listed the following grounds: the brutality of the crime; the fact that defendant's aunt, a municipal court judge in Los Angeles, was a potential witness; the small size of the community in which the offenses were committed; the fact that the victims were prominent members of the community; and the extensive media coverage and hostile reaction of the community to the offenses. The People countered that the gravity of the offense alone did not compel a change in venue; news coverage was limited and not sensationalized; apart from the homicide, the victims would have been virtually unknown; and the population from which the jury pool would be drawn, the Pomona Judicial District, was over 638,000.

The superior court denied the motion, stating: "[T]he court believes that, while there was obviously some mention of the case and stories in the press regarding the case at the **977 time it occurred, ... it was certainly not overly dramatized nor has the moving party indicated ... that there has been a continuing notoriety attributed to the case."

The trial commenced several months later. The prospective jurors were examined by written questionnaires, prepared jointly by the prosecutor and defense counsel, about their exposure to news coverage of the case. Specifically, they were asked whether they had heard or read anything about the case. Those answering in the affirmative were asked to state what they had heard or read, to identify all sources of that information, and to state whether it would cause them to lean in the direction of the defense or the prosecution. They were also asked whether there was anything they would like to bring to the court's attention that might affect their ability to be fair and impartial jurors, and to state any biases that could affect their judgment.

*449 Thirteen prospective jurors responded affirmatively in written responses to the questions concerning their knowledge of the case; of those, only one was selected to serve as a juror. That juror stated in her ***223** written responses that she had read in the newspaper that "it was a violent crime the likes of the Sharon Tate killing" and that defendant had said that gang members murdered his parents. She stated that the information did not cause her to lean in the direction of the defense or prosecution because it was "non-conclusive[;] no one saw him do it." She indicated that she would be unbiased. Neither counsel nor the superior court orally questioned prospective jurors on the subject. Defendant exercised only 16 of his 20 available peremptory challenges (Code Civ. Proc., § 231, subd. (a)) before accepting the 12 juror panel as constituted.

Defendant asserts that the superior court erred in denying the change of venue motion and in probing prospective jurors inadequately concerning the effects of pretrial publicity. The claim is without merit.

"In determining whether a change of venue is warranted, the trial court typically considers the nature and gravity of the offense, the size of the community, the status of the defendant, the prominence of the victim, and the nature and extent of the

publicity. On appeal, the defendant must show that the court 'erred in denying the change of venue motion, i.e., that at the time of the motion it was reasonably likely that a fair trial could not be had, and that the error was prejudicial, i.e., that it was reasonably likely that a fair trial was not in fact had.' " (*People v. Webb* (1993) 6 Cal.4th 494, 514, 24 Cal.Rptr.2d 779, 862 P.2d 779.)

Although the charged offenses herein were very serious, the superior court not unreasonably concluded that the remaining factors did not weigh in favor of a change of venue. The fact that defendant's aunt was a municipal court judge did not make her well-known; indeed, none of the prospective jurors indicated that he or she knew of her. The relevant juror pool, the Pomona Judicial District, was large, exceeding that of the entire population of many California counties. "The larger the local population, the more likely it is that preconceptions about the case have not become imbedded in the public consciousness." (*People v. Balderas* (1985) 41 Cal.3d 144, 178, 222 Cal.Rptr. 184, 711 P.2d 480.) The victims, owners of a small local business, were not especially well-known in the community. "[N]othing in their status was calculated to engender unusual emotion in the community." (*Id.* at p. 179, 222 Cal.Rptr. 184, 711 P.2d 480.) Media coverage does not appear to have been extensive, sensational, or persistent at the time of the change of venue motion, consisting of a few articles in local newspapers. (See *People v. Coleman* (1989) 48 Cal.3d 112, 133–134, 255 Cal.Rptr. 813, 768 P.2d 32 [denial of motion for *450 change of venue was not prejudicial error when, inter alia, publicity, "though initially graphic, was not 'persistent and pervasive' "].)

Of a panel of 107 prospective jurors, only 13 indicated that they had heard of the case; of those, only one juror was selected. (See *People v. Balderas, supra,* 41 Cal.3d at p. 180, 222 Cal.Rptr. 184, 711 P.2d 480 [sustaining denial of venue change when 27 of 59 prospective jurors had heard about the case, including five or six of the 12 jurors selected].) The only juror with knowledge of the charged crimes stated that she believed the **978 information she had received was "non-conclusive" and that she would be unbiased in the case. We have no reason to doubt the veracity of her statements. (See *People v. Webb, supra,* 6 Cal.4th at p. 515, 24 Cal.Rptr.2d 779, 862 P.2d 779.)

With regard to the adequacy of the screening of prospective jurors, the questionnaire, prepared jointly by the prosecution and defense counsel, sufficiently covered the question of pretrial publicity; defense counsel did not seek additional questions or exhaust his peremptory challenges. The superior court did not err in not further questioning prospective jurors on the point.

Defendant argues, for the first time on appeal, that a change of venue was ***224 required in light of the publicity surrounding the trial of the Menendez brothers, who were also tried for killing their parents, and of the fact that he was an African American in a "mostly Caucasian population." The arguments are without merit. The Menendez trial was nationally publicized; similarity to that crime would be equally apparent to jurors elsewhere. Nor does defendant point to any evidence of unusual hostility to African–Americans or to pretrial publicity calculated to excite racial prejudice.

Defendant also complains of ineffective assistance of counsel based on defense counsel's failure to conduct a public opinion survey or to submit oral questions to the superior court during voir dire. This claim, too, is without merit.

"Under both the Sixth Amendment to the United States Constitution and article I, section 15, of the California Constitution, a criminal defendant has the right to the assistance of counsel. [Citations.] The ultimate purpose of this right is to protect the defendant's fundamental right to a trial that is both fair in its conduct and reliable in its result. [Citations.] [¶] Construed in light of its purpose, the right entitles the defendant not to some bare assistance but rather to *effective* assistance." (*People v. Ledesma* (1987) 43 Cal.3d 171, 215, 233 Cal.Rptr. 404, 729 P.2d 839.) To prevail on a claim of deprivation of effective assistance of counsel, a defendant must show that *451 trial counsel's performance was deficient under a standard of reasonableness. (*Id.* at pp. 216–217, 233 Cal.Rptr. 404, 729 P.2d 839.) He must also show that prejudice resulted. Although in certain contexts prejudice is presumed, generally, a "defendant must show that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " (*Id.* at pp. 217–218, 233 Cal.Rptr. 404, 729 P.2d 839.) Defendant shows neither. Nothing in the record suggests that a public opinion survey was necessary or that the voir dire of prospective jurors was inadequate. Media coverage of the killings was apparently neither widespread nor persistent. The juror questionnaire included questions covering any exposure of prospective jurors to pretrial publicity. Nor does prejudice appear. Only a single juror was even aware of the case and

she indicated that the information she received was "non-conclusive."[2]

C. *Voir Dire About Possible Racial Bias*

Of the panel of 107 prospective jurors, 76 were Caucasian, seven were African–Americans, and the rest were Latino or Asian–American. The written questionnaires contained a question asking jurors to describe defendant and general questions about possible bias, including racial bias. None of the potential jurors indicated that racial bias would affect his or her decision. A jury of 11 Caucasians and one African–American was ultimately selected to try the case.[3]

****979** Defendant contends that the superior court erred in failing to ask the predominantly *****225** Caucasian jury panel additional questions " designed to bring out their hidden prejudices against blacks like [him] accused of heinous crimes." He also asserts that such failure violated his state and federal constitutional right to a fair trial.

"[A] defendant cannot complain of a judge's failure to question the venire on racial prejudice unless the defendant has specifically requested ***452** such an inquiry." (*Turner v. Murray* (1986) 476 U.S. 28, 37, 106 S.Ct. 1683, 90 L.Ed.2d 27; see also *People v. Horton* (1995) 11 Cal.4th 1068, 1093, 47 Cal.Rptr.2d 516, 906 P.2d 478 [in light of defense counsel's failure to ask further questions of prospective jurors after being provided an opportunity to do so, defendant waived the right to complain of the trial court's restriction of voir dire].) Defendant participated in drafting the questionnaire, presumably including the questions regarding bias. He did not request additional voir dire concerning racial bias; nor does he justify his failure to do so. The point is waived and will not be considered on its merits.

In the alternative, defendant argues that trial counsel's failure to ask additional questions of the jurors amounted to ineffective assistance of counsel. He asserts that because the jury had to decide whether the killings were committed by him or a Latino gang, the biases of jurors might improperly influence their determination of guilt or innocence. The claim is lacking in merit. The questionnaire, which trial counsel helped prepare, included several questions designed to elicit the racial bias of prospective jurors. Defendant fails to show that additional or different questions would have been more effective in uncovering juror biases.

D. *Witherspoon–Witt Error*

Defendant asserts that three jurors, Dorothy C., Charles N., and Barbara H., all of whom ultimately voted to impose the death penalty herein, evinced bias in favor of the death penalty and should have been excused for cause by the superior court.

Dorothy C. indicated in response to the written questionnaire that she would "vote for the death penalty if the evidence called for it" and that she "would only vote for the death penalty if I honestly believed it would be right for this case. She also stated that she believed that the death penalty "should be given" in cases of "multiple murders, like serial killers," because it would stop additional killings, and also in cases involving young children. She expressed a belief that life in prison without the possibility of parole is a more severe sentence than the death penalty. In response to other questions, she also stated that she would follow the judge's instructions, "listen to both sides," and, in judging the conduct of another, would "listen carefully and do the best I could. I believe I could be fair." She also marked "yes" in response to the question whether she would vote for the death penalty "in every case, *regardless* of the evidence" if the defendant was convicted of first degree murder with at least one special circumstance.

During voir dire, Dorothy C. stated that she would follow the judge's instructions even if they differed from her beliefs, and that she would vote ***453** for the death penalty or life imprisonment without possibility of parole as she found appropriate. Asked by the superior court to explain the affirmative response to the question whether she would vote for the death penalty in every case, regardless of the evidence, she responded that she "took it to mean that if ... the evidence had proved the circumstances then I would vote the death penalty." She "definitely" agreed that she would consider both penalties and vote for the one she felt appropriate under the facts and law.

Charles N. responded in the questionnaire that "[t]he ones committing hideous crimes *must* be executed!" and "I *hate* it when they get off with a technicality!" He explained: "If I thought he (she) deserved *****226** death for the ****980** murder, I would vote for death, otherwise I would vote for life without parole." He would not vote for the death penalty in every case regardless of the evidence. He would base his decision "entirely on the circumstances, weigh *all* the evidence and make a decision based upon this evidence." He believed that the purpose of the death penalty was to stop criminals who have committed "heinous" crimes from

killing again. He also stated that he would follow the judge's instructions even if they differed from his own beliefs. In voir dire, he affirmed that he would follow the judge's instructions whether he agreed with them or not and would vote in favor of death or life imprisonment without possibility of parole as he believed appropriate.

Barbara H.'s husband, two sons, and daughter-in-law were involved in law enforcement. She believed that "anyone who harms another—intentionally—should be punished" and that the courts are "generally, too lenient." With regard to the death penalty, she stated that "it is sometimes justified," but indicated that she would not, in every case, regardless of the evidence, vote for the death penalty and "strongly disagreed" that anyone who intentionally kills another person should always get the death penalty. She felt it was appropriate for serial killers, those who kill very young or elderly victims, and those who premeditate. She "strongly disagree[d]" that it was important to know about the defendant as a person and about his background before deciding between the penalties of death and life imprisonment without possibility of parole. In voir dire, she affirmed that she would follow the law as instructed, whether she agreed with it or not, and that, if defendant was found guilty, she would vote either for death or for life imprisonment without possibility of parole depending on what she believed was the appropriate penalty in this case.

Defendant did not challenge any of the three jurors for cause or peremptorily and accepted the jury panel as constituted. Nor did he exhaust all of his peremptory challenges.

Defendant contends that all three jurors were "death penalty zealots" who should have been excused for cause by the superior court based on their bias with regard to the death penalty.

***454** The proper standard for exclusion of a juror based on bias with regard to the death penalty—the so-called *Witherspoon-Witt* standard—is whether the juror's views would " 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.' " (*Wainwright v. Witt* (1985) 469 U.S. 412, 424, 105 S.Ct. 844, 83 L.Ed.2d 841; see also *Witherspoon v. Illinois* (1968) 391 U.S. 510, 522–523, fn. 21, 88 S.Ct. 1770, 20 L.Ed.2d 776.)

Defendant did not challenge these jurors for cause or exhaust his peremptory challenges; because he did not raise it below, the point involving allegedly improper failure to excuse these jurors is waived. (*People v. Lucas* (1995) 12 Cal.4th 415, 480–481, 48 Cal.Rptr.2d 525, 907 P.2d 373.) It is also meritless. The superior court's failure to excuse the jurors for cause, sua sponte, did not constitute error. None of the jurors expressed beliefs regarding the death penalty in the questionnaires and during voir dire that would necessarily subject them to excusal for cause; none expressed views that " 'would "prevent or substantially impair" the performance of the juror's duties as defined by the court's instructions and the juror's oath.' " (*Id.* at pp. 481–482, 48 Cal.Rptr.2d 525, 907 P.2d 373.) Although Juror Dorothy C. indicated on the questionnaire that she would vote for the death penalty "regardless of the evidence," she explained in voir dire that she had understood the question to be whether she would vote for the death penalty if "the evidence had proved the circumstances"; she affirmed that she would consider both penalties under *****227** the facts and law in determining her vote.

Defendant further asserts a claim of ineffective assistance of counsel, based on trial counsel's failure to challenge the jurors for cause or exclude them peremptorily. The claim falls; defendant has not shown that counsel was ineffective in failing to challenge the jurors for cause, because there was no valid basis for such a challenge. Moreover, he has not shown that there could be no ****981** reasonable tactical basis for counsel's decision not to use his peremptory challenges to excuse these jurors. Nor, in light of his failure to exhaust his peremptory challenges, was defendant prejudiced by the failure to excuse the jurors for cause. (*People v. Lucas, supra,* 12 Cal.4th at p. 481, 48 Cal.Rptr.2d 525, 907 P.2d 373.)

III. GUILT ISSUES

Defendant raises a number of claims attacking the judgment as to guilt. As will appear, none is meritorious.

A. *Exclusion of Evidence Regarding Third Party Culpability*

During pretrial discovery, defendant obtained a copy of Detective Joseph Seeger's notes of a conversation with "Randy," a recovered "crackhead," to ***455** the effect that "Andre"—apparently defendant—had cheated the "ESD's" by selling them baking soda instead of crack cocaine. "Andre" was " 'spray basing' "—using crack cocaine with PCP. The note stated: "Hasn't heard of threats by ESD's but thinks they did it—*Puppet & Casper.*" Defendant sought discovery of all Los Angeles County Sheriff's Department records regarding

cases or contacts with Puppet and Casper. The superior court ordered the discovery of their names, addresses, and telephone numbers.

Defendant subsequently sought sanctions or dismissal for failure to preserve the information concerning whereabouts of Randy or to do any follow-up investigation about Puppet or Casper. He also moved in limine to exclude all evidence or references to his own dealing in or use of narcotics or to his membership in a gang. The People moved in limine to exclude "rumor or hearsay evidence" that the East Side Dukes were responsible for the killing.

At the hearing on the sanctions motion, Detective Seeger testified that he was approached outside the Staten residence on October 13, 1990, by "this young white male, somewhat disheveled and acting a little strange." He appeared to be under the influence of narcotics or alcohol. He identified himself as "Randy" and said that he knew defendant and some of his friends. He said that he had not heard of any "pedo [*sic*], bullshit" between defendant and the East Side Dukes. He knew that defendant and his friends were selling cocaine to gang members and occasionally defendant had "stiffed them with some baking soda and/or some bunk dope," but although a few "might be mad at him ... there was nothing that was overt." Randy did not think the gang had anything to do with the killings but "if they did, then he named two guys by the name of Puppet and Casper," although he did not know them and could not even describe them. When asked for information about his address and how to contact him, "[Randy] got rambling and uncooperative" and walked off.

Detective Seeger did not see Randy again. He subsequently investigated whether the East Side Dukes might have been involved, including contacting gang experts for advice, but found nothing indicating that the gang was responsible for the killings.

With regard to the sanctions motion, the superior court determined that there was no improper failure to preserve or collect evidence. It deemed the evidence of Randy's statements inadmissible, on the ground that it would "do nothing more than confuse issues and cause the jury to ***228** speculate on evidence that has little or no value."

The superior court granted defendant's in limine motion to exclude all evidence or references to his drug dealing. With regard to the People's *456 motion to exclude evidence concerning the East Side Dukes, defense counsel agreed that he would not refer to Randy or "rumors on the street" without first making an offer of proof outside the presence of the jury that the East Side Dukes were actually involved. He did not subsequently make such an offer of proof at trial.

Defendant contends that the evidence of Randy's statements suggesting that members of the East Side Dukes might have killed the defendant's parents should have been admitted. We reject the claim of error. As a threshold matter, it is doubtful that the point has been preserved on appeal, in light of defendant's successful motion to exclude all evidence or reference to his own drug **982 dealing and his failure to make an offer of proof concerning Randy's statement. In any event, it is without merit. Randy's statement was inadmissible hearsay, irrelevant, and unduly prejudicial. It provided no actual information concerning the case; nor did it evince any personal knowledge whether the East Side Dukes killed the Statens. Randy merely speculated that two purported gang members he had never met *might* have committed the killings in retaliation for defendant's having "burned" them in a drug sale.

Defendant also urges that defense counsel provided ineffective assistance of counsel in failing to renew his attempt to introduce Randy's statement. The claim fails in the absence of a showing that trial counsel's representation fell below a standard of reasonableness. He had obvious tactical reasons not to do so: the evidence was damaging to defendant's own credibility, to the extent that it identified him as a drug user and dealer. [4]

B. *Instructions on Reasonable Doubt and Circumstantial Evidence*

The superior court gave the pattern instructions to the jury on reasonable doubt and circumstantial evidence. (After CALJIC Nos. 2.00, 2.01, 2.02, 2.90 (5th ed.1988).) Defendant did not object to the instructions.

Defendant contends that the reasonable doubt instruction is erroneous in referring to "moral certainty" and "moral evidence." [5] He argues that the due process clauses of the federal and state Constitutions include the right to be convicted only on proof beyond a reasonable doubt based on the evidence, rather than moral certainty.

*457 With regard to the circumstantial evidence instructions, defendant argues that they improperly allowed the jury to infer facts "merely by determining that the

inferred facts 'logically and reasonably' flow from the proven facts, without making the constitutionally required *additional* judgment that the inferred fact was *more likely than not* to follow from the proved fact."[6]

***229** We have repeatedly upheld the validity of the same instructions against identical claims; we decline to revisit the points. (See *People v. Bradford* (1997) 14 Cal.4th 1005, 1053–1054, 60 Cal.Rptr.2d 225, 929 P.2d 544; *People v. Freeman* (1994) 8 Cal.4th 450, 504, 34 Cal.Rptr.2d 558, 882 P.2d 249.)

C. *Instruction on Aiding and Abetting*

Defendant objected to any jury instruction on aiding and abetting. The superior court overruled the objection on the ground that **983** "the People's theory is that the defendant was involved; that they have no direct evidence that he was the perpetrator, even though that's also their theory, that (A) he was the perpetrator; (B), if he wasn't, he's an aider and abettor." The prosecutor confirmed that the People were presenting both theories.

The superior court gave the pattern instructions with regard to aiding and abetting, which state, inter alia, that "persons concerned in the commission of a crime who are regarded by law as principals in the crime thus committed and equally guilty thereof" include "[t]hose who aid and abet the commission of the crime." (CALJIC No. 3.00 (5th ed.1988).) It instructed that "a person who aids and abets the commission of a crime need not be *458 personally present at the scene of the crime," that "[m]ere presence at the scene of the crime which does not itself assist the commission of the crime does not amount to aiding and abetting," and that "[m]ere knowledge that a crime is being committed and the failure to prevent it does not amount to aiding and abetting." (CALJIC No. 3.01 (5th ed.1988).) The superior court also instructed: "If the evidence establishes beyond a reasonable doubt that the defendant aided and abetted the commission of the crime charged in this case, the fact, if it is a fact, that he was not present at the time and place of the commission of the alleged crime for which he is being tried is immaterial and does not, in and of itself, entitle the defendant to an acquittal." (CALJIC No. 4.51 (5th ed.1988).)

In closing argument, the prosecution alluded to the possibility that defendant may have had an accomplice who assisted him in committing the killings: "Now, whether he had to do it on his own or not, we may never know. Whether there was somebody else hiding in the house when his parents got there and assisted him, we will not know. Only he knows that. [¶] But he was clearly there. He clearly helped set it up. And I would argue to you that he was involved, if not doing the entire thing by himself."

Defendant contends that the superior court erred in instructing the jury on aiding and abetting. He asserts that the prosecution's case was based entirely on the theory that he was the lone perpetrator; no evidence was presented from which the jurors could reasonably infer that he had arranged with an accomplice to murder his parents. Accordingly, the instruction might have confused the jury or permitted it to avoid making findings on relevant issues.

***230** The claim fails. In pretrial proceedings, the People argued: "It is not necessary to prove that the defendant was the actual killer of either parent so long as he was either a co-conspirator or aider and abettor to the crimes. [Citation.] Based upon the facts presented the only logical conclusion is that Staten either did the crimes himself or with assistance thereby making him guilty of two counts of first degree murder." They also argued that theory at trial. There was sufficient basis for the jury to find from the evidence that defendant could have been guilty as an aider and abettor: he had discussed the idea of killing his parents with friends, and the lack of forcible entry on the night of the murders suggested that he either committed the killings himself or left the house unlocked for the actual killers. His defense that he was not at home at the time of the killings and that one person could not have committed both murders was not inconsistent with a theory of aiding and abetting. If the jury had accepted his evidence on that point, it could *459 nonetheless reasonably have concluded that he accomplished the murders with the aid of others.[7]

**984 D. *Failure to Instruct Sua Sponte on Absence of Flight*

Defendant asserts that the superior court erred in failing, sua sponte, to instruct that the jury might consider his absence of flight as a factor tending to show innocence. Pointing to Penal Code section 1127c, which requires an instruction on flight, when supported by the record, as showing consciousness of guilt, he argues that he has a "reciprocal" right to an instruction on *absence* of flight, as showing lack of guilt.

We discern no error. In *People v. Green* (1980) 27 Cal.3d 1, 39–40 and footnote 26, 164 Cal.Rptr. 1, 609 P.2d 468,

we held that refusal of an instruction on absence of flight was proper and was not unfair in light of Penal Code section 1127c. We observed that such an instruction would invite speculation; there are plausible reasons why a guilty person might refrain from flight. (*Green, supra,* 27 Cal.3d at pp. 37, 39, 164 Cal.Rptr. 1, 609 P.2d 468.) Our conclusion therein also forecloses any federal or state constitutional challenge based on due process. (See also *People v. Williams* (1997) 55 Cal.App.4th 648, 652–653, 64 Cal.Rptr.2d 203 [rejecting constitutional argument with regard to instruction on absence of flight].)

In the alternative, defendant asserts that trial counsel's failure to request an instruction on absence of flight constituted ineffective assistance of counsel. It was not objectively unreasonable not to request an instruction that has been held improper. Nor can defendant show that he was prejudiced thereby; it is merely speculative that the jury would have reached a different verdict if it had been so instructed.

E. *Sufficiency of the Evidence*

Defendant contends that the evidence is legally insufficient to establish that he murdered his parents and therefore insufficient under the United States and California Constitutions to support the judgment of conviction. Specifically, he argues that the evidence of his guilt was inconclusive because he did not attempt to realize ***231** any financial gain after the killings ***460** and had a loving relationship with his parents. He also disputes that he had an opportunity to kill his parents and points to the lack of gunshot residue on his hands or blood on his clothing. He asserts that there was abundant evidence suggesting that gang members were responsible for the killings. His claim goes to identity: he asserts, in effect, that there was insufficient evidence that he was the perpetrator.

In *Jackson v. Virginia* (1979) 443 U.S. 307, 318–319, 99 S.Ct. 2781, 61 L.Ed.2d 560, the United States Supreme Court held, with regard to the standard on review of the sufficiency of the evidence supporting a criminal conviction, that "[t]he critical inquiry ... [is] ... whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.... [T]his inquiry does not require a court to 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.' [Citation.] Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." An identical standard applies under the California Constitution. (*People v. Johnson* (1980) 26 Cal.3d 557, 576, 162 Cal.Rptr. 431, 606 P.2d 738.) "In determining whether a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt, the appellate court 'must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier [of fact] could reasonably deduce from the evidence.' " (*Ibid.*)

Under the foregoing standard, defendant's claim fails. Viewing the evidence as a whole, in the light most favorable to the prosecution, it is clear that a rational jury could reasonably have rejected the defense and deduced that defendant was the killer.

There was substantial evidence that defendant planned and executed the murders for the purpose of obtaining insurance money, and attempted to avoid detection by suggesting that others were responsible. Thus, defendant, who had a hostile relationship with his father, repeatedly spoke of "taking him out"; he also told his friends that he would inherit a large amount of money if his parents ****985** died. During their absence on a vacation, he took their .38–caliber gun, for which he had hollow-point bullets. On the day of their return, he waited at home, armed with the gun, calling repeatedly to find out when they would arrive. Shortly after their return, gunshots were heard by neighbors. Between the time of the gunshots and the time that defendant reported the killings to neighbors, he drove away in his parents' truck and returned to the house; the .38–caliber gun and the blue jeans he was seen ***461** wearing that day were never found, suggesting that he concealed or destroyed the evidence. His father was killed by a hollow-point bullet that could have been shot from a .38–caliber gun. His mother was killed by multiple knife wounds; defendant had a fresh cut on his hand and his blood was found throughout the house. After the murders, he did not appear to mourn their death, but spoke after the funeral of "party[ing] and get[ting] high."

Defendant also took steps to suggest that members of the East Side Dukes, not he, committed the murders. A few days before his parents' return, he showed friends threatening graffito that he had "found" in his backyard; after the murders, similar graffito in matching spray paint was found in the living room above defendant's handprint. Both graffiti were written using the same kind of spray paint that was found in a closet in defendant's house. During the police investigation, he boasted to his friend that they had no case against him, and stated that he would continue to blame the murders on the gang.

***232** F. *Sufficiency of Evidence Supporting Special Circumstances*

Defendant asserts that the evidence at trial was insufficient to support the jury's findings of the special circumstances that he killed multiple victims (Pen.Code, § 190.2, subd. (a)(3)) and that he did so for financial gain (*id.*, subd. (a)(1)).

In reviewing the sufficiency of the evidence supporting a special circumstance finding, we must view the evidence in the light most favorable to the People. (*People v. Alvarez* (1996) 14 Cal.4th 155, 225, 58 Cal.Rptr.2d 385, 926 P.2d 365.) "The special circumstance focuses on the defendant's intention *at the time the murder was committed.*" (*People v. Howard* (1988) 44 Cal.3d 375, 409, 243 Cal.Rptr. 842, 749 P.2d 279.)

With regard to the multiple-victim special circumstance, defendant contends that even if there was sufficient evidence that he killed his father, the testimony concerning his loving relationship with his mother precludes a finding that he could have stabbed her repeatedly. He is unpersuasive. The jury was not required to believe that testimony, or to accept the inference that his feelings for her made it impossible for him to kill her or aid and abet her killing.

With regard to the financial-gain special circumstance, defendant asserts that his failure to recover on the insurance policies precludes a finding that he was motivated by financial gain. Again, he is unpersuasive. "Proof ***462** of actual pecuniary benefit to the defendant from the victim's death is neither necessary nor sufficient to establish the financial-gain special circumstance.... '[T]he relevant inquiry is whether the defendant committed the murder in the expectation that he would thereby obtain the desired financial gain.' " (*People v. Edelbacher* (1989) 47 Cal.3d 983, 1025, 254 Cal.Rptr. 586, 766 P.2d 1.) His failure to recover insurance benefits after the killings does not undercut evidence of a financial motive at the time of the killings. The jury could reasonably have viewed such failure either as an abandonment of his plan or as an attempt to deflect attention from himself as the perpetrator after the murders.

IV. PENALTY ISSUES

A. *Constitutionality of California Death Penalty Law*

Defendant contends that the California death penalty is unconstitutional under the Eighth Amendment to the United States Constitution and article I, section 17 of the California Constitution. Specifically, he claims that the death penalty is inherently cruel and unusual punishment; that it is inherently unconstitutional because it cannot ****986** be imposed fairly; that California's laws defining first degree murder, the class of death-eligible defendants, and the aggravating circumstances that the jury may consider are unconstitutionally broad; and, finally, that the California capital sentencing process suffers from a wide variety of procedural and substantive defects that individually and collectively violate state and federal due process, cruel and unusual punishment provisions, and Eighth Amendment reliability requirements, fail to give the jury proper guidance, and result in a vague, arbitrary, and capricious selection of death as the appropriate sentence. As defendant acknowledges, we have previously rejected the identical contentions. (See *People v. Bradford, supra,* 14 Cal.4th at pp. 1057–1059, 60 Cal.Rptr.2d 225, 929 P.2d 544; *People v. Carpenter* (1997) 15 Cal.4th 312, 419–421, 63 Cal.Rptr.2d 1, 935 P.2d 708; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1194–1195, 36 Cal.Rptr.2d 235, 885 P.2d 1; *People v. Crittenden* (1994) 9 Cal.4th 83, 152–160, 36 Cal.Rptr.2d 474, 885 P.2d 887.) We decline to revisit the points.

B. *Admission of Autopsy Photographs*

At the commencement of the penalty phase, the People sought to have admitted into evidence color photographs taken at *****233** the autopsy of Faye Staten, to show the circumstances of the crime. None of the photographs showed the face of the victim and, although they depicted her injuries, the wounds were "cleaned up, that is, there is no blood present." Defendant objected on the ground that the prejudicial effect of the photographs outweighed their probative value (Evid.Code, § 352). The photographs were admitted.

***463** At the conclusion of the penalty phase, the superior court directed the jury to take the photographs into the jury room. The court explained: "I'm going to have the bailiff tell them to take in [the photographic exhibits] first and to tell them these are the exhibits that were introduced during the penalty phase. I'm going to have her come out, and then I'm going to have her take in the other exhibits to tell them that these are available to them, if they wish to use them, during their deliberations." [8]

Defendant contends that admission of the photographs was error. He argues that the evidence was more prejudicial than probative and was cumulative in light of the extensive testimony of the pathologist concerning Faye's wounds.

The evidence was admissible under Penal Code section 190.3, factor (a), to show the "circumstances of the crime of which the defendant was convicted in the present proceeding." (*Ibid.*) As we recently explained in *People v. Box* (2000) 23 Cal.4th 1153, 1200–1201, 99 Cal.Rptr.2d 69, 5 P.3d 130, "the trial court lacks discretion to exclude *all* [evidence under Penal Code section 190.3, factor (a)] on the ground it is inflammatory or lacking in probative value." Although the trial court's discretion to exclude evidence showing the circumstances of the crime is more circumscribed than at the guilt phase, "[n]either [Penal Code section 190.3, factor (a) nor factor (b)] ... deprives the trial court of its traditional discretion to exclude 'particular items of evidence' by which the prosecution seeks to demonstrate either the circumstances of the crime ..., or violent criminal activity ... in a 'manner' that is misleading, cumulative, or unduly inflammatory." (*Id.* at p. 1201, 99 Cal.Rptr.2d 69, 5 P.3d 130.)

We find no error; the superior court did not abuse its discretion in admitting the photographs. The photographs were not unusually gruesome; they were taken in a clinical setting and depicted cleaned-up wounds; none showed the victim's face. They were ****987** neither cumulative nor misleading and were highly probative of the penalty issues, demonstrating the deliberate and brutal nature of the crime, which involved 18 stab wounds, many of which were individually fatal.

***464** C. *Denial of Request for Instruction on Lingering Doubt*

Defendant requested a special jury instruction that lingering doubt could be considered as a mitigating factor. The superior court refused the instruction, on the basis that there was no authority for such instruction, but permitted defendant to present an argument in that regard to the jury.

Defendant contends that the refusal to instruct on lingering doubt was error. We rejected the identical point in *People v. Hines* (1997) 15 Cal.4th 997, 1068, 64 Cal.Rptr.2d 594, 938 P.2d 388, holding that the *****234** proposed instruction was unnecessary. We decline to revisit the issue.

Defendant raises additional claims under the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution. They, too, are meritless. The federal constitutional provisions are not implicated. The United States Supreme Court has held that capital defendants have no federal constitutional right to such an instruction. (*Franklin v. Lynaugh* (1988) 487 U.S. 164, 173–174, 108 S.Ct. 2320, 101 L.Ed.2d 155.)

D. *Cumulative Error*

Defendant urges that cumulative error in the pretrial proceedings and in the guilt and penalty phases variously requires reversal of the guilt and penalty verdicts and the judgment of death. The premise for the claim is defective: we have rejected each of defendant's claims of error. It necessarily follows that the claim of cumulative error is also defective.

V. POSTTRIAL ISSUES

A. *Jury Misconduct*

After the judgment of death, in a declaration attached to his request for a new trial, defense counsel stated, inter alia, that "[t]he jury indicated after the trial that since the defendant did not show any emotion during his testimony that they sentenced him to death *San Gabriel Valley Tribune* (12–7–91) [*sic*]." He did not identify the jurors or purport to quote their actual statements; counsel's apparent source, a newspaper article, was not attached to the declaration.

Defendant argues that the jury improperly considered his lack of remorse during his testimony. In effect, he claims juror misconduct, urging that the jury's consideration, as an aggravating factor, of his lack of emotion or remorse during his testimony violated the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

***465** At the threshold, we do not know whether the jury actually considered defendant's lack of emotion or remorse. We are referred only to trial counsel's hearsay statement of what jurors purportedly "indicated" to unidentified persons, which was apparently reported in a newspaper. That is too thin a reed to support a claim of juror misconduct or violation of constitutional rights. In any event, the claim is lacking in merit. The jury could properly consider the defendant's apparent lack of emotion or remorse at trial, including during his own testimony, in evaluating the evidence presented in mitigation, e.g., that he was intelligent, had a loving relationship with his parents, and was concerned about his mentally retarded brother. Jurors could also properly consider

his demeanor in evaluating his credibility, and for other purposes.

Defendant also points to the prosecution's remarks in closing argument to the effect that he had not "taken responsibility" or "shown remorse for the crime."[9] To ****988** the extent he may be understood to assert prosecutorial misconduct, we reject the claim. The claim was waived by his failure to object to the statement at trial. (*People v. Crittenden, supra,* 9 Cal.4th at p. 146, 36 Cal.Rptr.2d 474, 885 P.2d 887.) It is also lacking in merit. The prosecution did not specifically argue lack of remorse as a factor in aggravation of penalty, but referred to the lack of remorse in the context of refuting the suggestion that defendant's intelligence should be regarded as a mitigating factor. We *****235** have repeatedly held that such prosecutorial comment on the absence of remorse as a mitigating factor is not improper. (See *People v. Williams* (1997) 16 Cal.4th 153, 254, 66 Cal.Rptr.2d 123, 940 P.2d 710.)[10]

B. *Denial of Motion for New Trial*

Defendant moved for a new trial on the grounds that the jury came to a decision that was "against the evidence" and that rejection of his request for ***466** special instructions concerning mitigating factors created a risk of "unguided emotional response." The motion was supported by a declaration by trial counsel that "the defendant was convicted ... [and] sentenced to death by an immotional [*sic*] jury who improperly considered the law and its application. The jury indicated after the trial that since the defendant did not show any emotion during his testimony that they sentenced him to death *San Gabriel Valley Tribune* (12–7–91) [*sic*]. This is improper and should be considered by you the court as an improper reason for the death penalty." Defendant did not request an inquiry into possible jury misconduct either in his motion or at the hearing.

Defendant contends that the superior court erred in denying the new trial motion. He is unpersuasive.

" ' "The determination of a motion for a new trial rests so completely within the court's discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears." ' " (*People v. Cox* (1991) 53 Cal.3d 618, 694, 280 Cal.Rptr. 692, 809 P.2d 351.) We reject the claim of error. As discussed, there was sufficient evidence to support the guilt and penalty verdicts; the assertion that the jury's reasoning process was "clouded by emotion" was sheer speculation. Nor would it have been improper for the jury, deliberating about the testimony in mitigation, to consider defendant's demeanor and failure to express remorse during his testimony.

Defendant also asserts that the superior court erred in failing, sua sponte, to order an evidentiary hearing to investigate possible jury misconduct. This claim, too, fails.

The holding of an evidentiary hearing to determine the truth or falsity of allegations of jury misconduct is within the discretion of the trial court. (*People v. Hedgecock* (1990) 51 Cal.3d 395, 419, 272 Cal.Rptr. 803, 795 P.2d 1260.) "The hearing should not be used as a 'fishing expedition' to search for possible misconduct, but should be held only when the defense has come forward with evidence demonstrating a strong possibility that prejudicial misconduct has occurred." (*Ibid.*) At such a hearing, jurors "may testify to 'overt acts'—that is, such statements, conduct, conditions, or events as are 'open to sight, hearing, and the other senses and thus subject to corroboration'—but may not testify 'to the subjective reasoning processes of the individual juror....' " (*In re Stankewitz* (1985) 40 Cal.3d 391, 398, 220 Cal.Rptr. 382, 708 P.2d 1260.) Here, no evidence of any overt acts of misconduct was presented. The vague reference in trial ****989** counsel's declaration to a newspaper article describing the juror's subjective mental *****236** processes did not require further inquiry by the court.

*467 VI. DISPOSITION

For the reasons stated, we affirm the judgment.

GEORGE, C.J., KENNARD, J., BAXTER, J., WERDEGAR, J., CHIN, J., and BROWN, J., concur.

All Citations

24 Cal.4th 434, 11 P.3d 968, 101 Cal.Rptr.2d 213, 00 Cal. Daily Op. Serv. 9015, 2000 Daily Journal D.A.R. 11,982

Footnotes

1 Defendant further claims that the summary denial of his application for second counsel and the reduction or denial of funding requests violated his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and article I, section 15 of the California Constitution. The points are lacking in merit. The superior court did not abuse its discretion; there is thus no predicate error on which to base the constitutional claims.

2 Defendant also claims that the erroneous denial of his motion for change of venue and the ineffective assistance of counsel deprived him of due process under the United States and California Constitutions. There was no error or ineffective assistance; a fortiori, there was no deprivation of the federal or state constitutional right to due process.

3 Of the 107 prospective jurors, 76 were Caucasian, 11 were Latino, seven were African–American, five were Asian–American, one was American–Samoan, and others did not indicate race or ethnicity. The jury originally sworn included two African–Americans; one was subsequently excused for hardship and was replaced by a Caucasian alternate juror. The People note that defendant used peremptory challenges against two Latino, one African–American, one Asian–American, and one American–Samoan juror. The People used peremptory challenges against 13 Caucasian, three Latino, and one African–American prospective juror.

4 Defendant also contends that the state law error violated the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. Because no error appears, the constitutional claims fail.

5 In relevant part, the instructions defined "reasonable doubt" as follows: "It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence, is open to some possible or imaginary doubt. [¶] It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

6 In relevant part, the instructions concerning circumstantial evidence stated: "Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn. An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence ... [A] finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only, one, consistent with the theory that the defendant is guilty of the crime; but, two, cannot be reconciled with any other rational conclusion. [¶] Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. [¶] In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance upon which such inference necessarily rests, must be proved beyond a reasonable doubt. [¶] Also, if the circumstantial evidence as to any particular count ... is susceptible of two reasonable interpretations, one of which points to the defendant's guilt, the other to his innocence, you must adopt that interpretation which points to the defendant's innocence and reject that interpretation which points to his guilt. [¶] If, on the other hand, one interpretation of such evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable."

7 Defendant refers to the instruction "on aiding and abetting *or conspiracy theory*." The People withdrew their request for an instruction on conspiracy and none was given. Although the title of the written instruction given to the jury was "Alibi—Aider and Abettor or Co–Conspirator," the word "co-conspirator" was redacted from the text of the instruction and did not appear in the oral instruction. To the extent that defendant may be understood to assert error, he is unpersuasive. He fails to show that the failure of the superior court to strike

the words "or co-conspirator" from the title of the instruction resulted in any prejudice. Defendant's additional claim that the erroneous instruction regarding aiding and abetting violated his federal constitutional rights under the Fifth and Fourteenth Amendments is also without merit; there was no predicate error.

8 Defendant asserts that the superior court, over his trial counsel's objection, ordered that *only* the photographs be sent to the jury room. The record contradicts his assertion: the court did not so order and his counsel did not so object. The court stated its intention of sending in the photographs first, and then the remaining exhibits. Defense counsel requested that "the only pieces of evidence given to the jury at this time are [the photographic exhibits]." The court disagreed: "I don't know whether [all the trial exhibits are] necessary.... [¶] My sole standard is whether or not the correct legal thing to do is to send them in because of their obligation to weigh and consider circumstances of the offenses involved." It then announced its order that *all* the trial exhibits be sent into the jury room.

9 Referring to testimony that defendant was intelligent, the prosecution argued: "[D]oes that mitigate? I don't know that it mitigates. Does it make it worse? It can't be deemed an aggravating factor, but you can question whether it really is a mitigating factor because an intelligent person, somebody who can think and realize all of the consequences of their acts, may be worse than the person who really can't take into consideration all of the consequences of their acts.... He has not taken responsibility for the crime. He has not shown remorse for the crime."

10 Defendant also points to the superior court's rejection of his request for a special instruction listing the factors to be considered in determining penalty and stating that "no other facts or circumstances may be considered in aggravation or as a reason to support a verdict of death." To the extent he can be understood to assert error on this ground, he is unpersuasive. The requested instruction, consisting, for the most part, of a general charge concerning the aggravating and mitigating factors to be considered, was properly rejected as duplicative of other instructions. The instruction also included a statement to the effect that the People must prove all aggravating factors beyond a reasonable doubt. The court properly rejected that portion of the proffered instruction as an incorrect statement of the law. (*People v. Rodriguez* (1986) 42 Cal.3d 730, 777–779, 230 Cal.Rptr. 667, 726 P.2d 113.)

End of Document

People v. Staten, KA006698

People's Exhibit 4
11/01/1990 LASD Supplementary Report

ORIGINAL

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY REPORT

DATE NOVEMBER 1, 1990 FILE NO. 090-20823-1443-011

C- MURDER - 187 P.C. Action Taken ACTIVE/INVESTIGATION MADE/EVIDENCE HELD/ V#1 - 90-10014/V#2 - 90-10015/SUSPECT NAMED

V- LISTED BELOW

D- 10-13-90 AT 0108 HOURS

L- 446 SOUTH FAXINA AVENUE, LA PUENTE, CA

S- STATEN, DE'ONDRE AUTHUR MB/24, DOB: 05-17-66, 446 S. FAXINA AVENUE, LA PUENTE, CA (818) 912-4092

VICTIMS:

V#1 - STATEN, AUTHUR MB/44 (DECEASED)

V#2 - STATEN, FAYE MB/43 (DECEASED)

PROPERTY MISSING:

Item #1 - One (1) Smith & Wesson, Model 36, .38 caliber, Serial No. BAB3063, registered to Faye Doris Staten (Victim #2) who resides at 446 Faxina Avenue, La Puente, (missing from the location of 187 P.C.)

EVIDENCE HELD:

Item #1 - One (1) book, containing reproductions of "L.A. Times" headlines, recovered on top of the coffee table in the den at the north/west bedroom of the location. It should be noted the book was open to the Sharon Tate murder.

Item #2 - White lined paper, 8" X 10" with printed words on it. The white lined paper was found lying on top of the Evidence, Item #1, in the den.

Item #3 - One (1) spray can, glossy white, recovered from the shelf in the hall closet of the location.

Item #4 - Three (3) mirror panes, approximately 12" x 12" with white paint on it. The panes were removed from the south wall of the living room were the words "ESD Kills" were painted on the panes.

Item #5 - One (1) cigarette hand rolled type, containing a green leafy substance resembling marijuana, recovered from the

top of a sewing machine cabinet stand in the closet of the den.

Item #6 - One (1) pair of "L.A. Gear" tennis shoes white, black and blue, containing blood spots. These shoes were taken from the victim's son, Suspect De'Ondre Staten at Industry Sheriff's Station.

Item #7 - Three (3) insurance policies and one annuity, belonging to Victims Arthur and Faye Staten, removed from the file cabinet in the master bedroom.

Item #8 - One (1) stake knife, single edge blade, with black handle, removed from the second drawer of the dresser drawers in the south/west bedroom, belonging to Suspect De'Ondre Staten.

Item #9 - One (1) spent shell casing, .25 caliber found on a box, outside at the east side of the location.

Item #10- One (1) .38 caliber spent round, recovered from the west wall of the center bedroom by Detective Plumtree, Firearms Technician.

Item #11- One (1) .38 caliber spent round, recovered from the west wall of the hallway, adjacent to the den door by Deputy Plumtree Firearms Technician.

Item #12- One (1) envelope containing, 97 live .22 caliber rounds, bearing the imprint of "C" on the base; one orange case and one U.S. coin "dime" and one U.S. coin "nickel" found in a plastic bag, under the bed of the master bedroom against the east wall.

Item #13- One (1) pair of white shorts with blood stains on the right leg, recovered from John Nickols, at Industry Sheriff's Station on 10-14-90.

Item #14- One (1) frontier "Derringer" chrome, .22 caliber weapon, Serial No. 1695 with no grips. The weapon had (2) two live .22 caliber rounds, bearing the letter "C" on the base of the round, recovered from John Nichols, upon his arrest on 10-14-90, under file No. 090-20905-1434-290. This weapon belonged to Victim #2, Faye Staten.

Item #15- One (1) spent round, .38 caliber, removed by Doctor Selser Los Angeles County Medical Examiner, during the autopsy of Victim #1, Arthur Staten, Coroner's Case No. 90-10014.

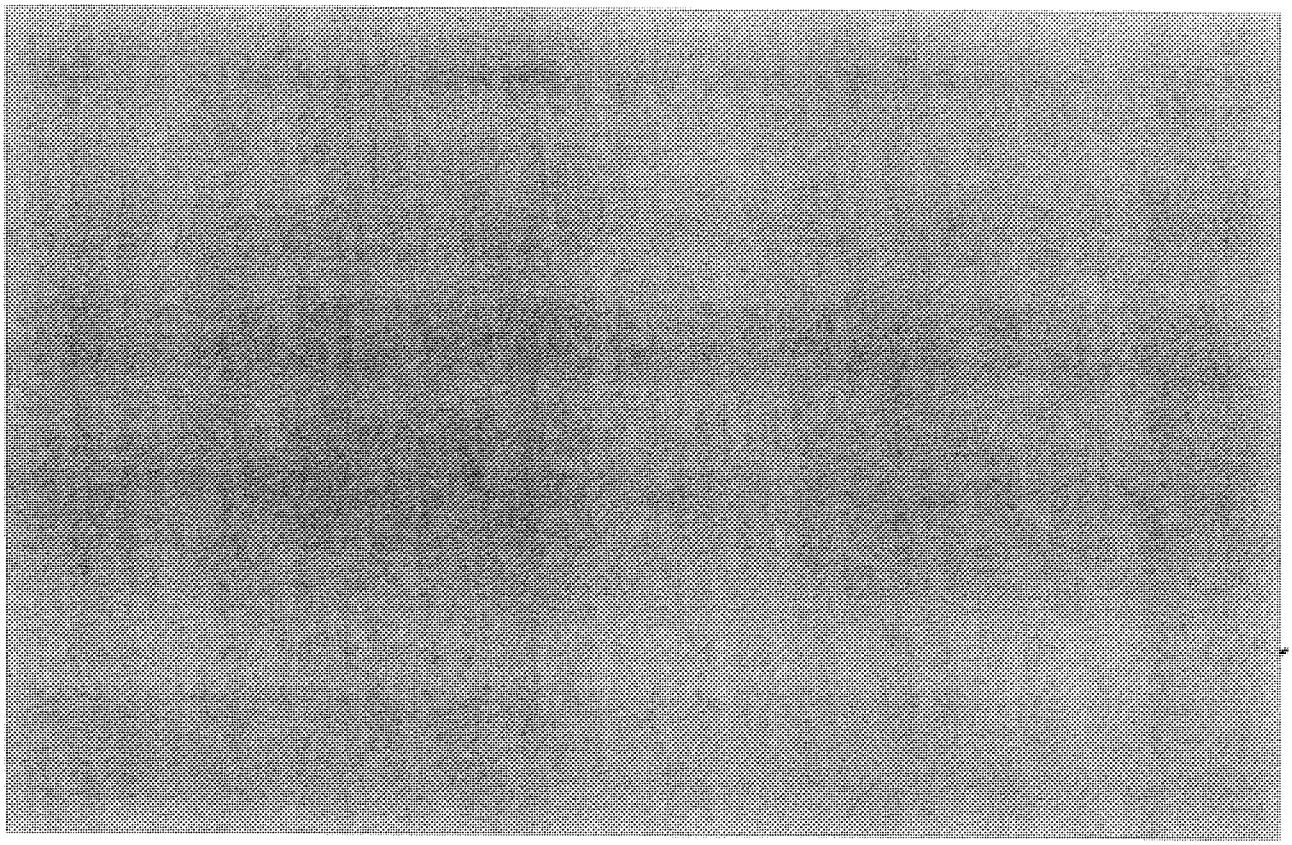
Item #16- One (1) pair of gray pants with blood stains on the legs, possibly belonging to Suspect De'Ondre Staten, recovered from the garage on 10-17-90, at the location by Detective Seeger.

Item #17- Two (2) cans of white spray paint, recovered from the garage on 10-17-90, by Sergeant Moultman Sheriff's Print Detail.

Item #18- One (1) gun cleaning rod and wire gun brush, recovered from the office desk at Najamah's Beauty Supply Shop, located at 15662 East Amar Road, La Puente by Detective Seeger, under the authorization of a search warrant. Also four photographs of gang writings.

Item #23- One envelope containing miscellaneous papers and two checks dated 10/6/50. for $75.00 each. One signed by Audrey January and the other by Thyra Wilson, recovered from the floor of the south/west bedroom, Suspect De'Ondre Staten's room.

* * * * * * * * * * * * * * * * * *



People v. Staten, KA006698

People's Exhibit 5
10/13/1990 LASD Firearms Report

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
SCIENTIFIC SERVICES BUREAU
FIREARMS IDENTIFICATION SECTION

REC'D FROM: Homicide Bureau - Dep. Seeger				FILE: 090-20823-1443-011	
DATE: 10-13-1990	C- 187 PC			RECEIPT: H351868	
SUSPECT: Unknown				VICTIM: Staten, Arthur	
GRC	CALIBER: 38/357	NO. L&G: 5	TWIST: R	LAND IMP. WIDTH: .101	GROOVE IMP. WIDTH: .102
ITEM	#1		A		B
TYPE	Jacketed Hollow Point		JHP		JHP
WEIGHT	106.3 Grains		124.4 Grains		123.6 Grains
MAKE	Unknown		Unknown		Unknown
PERCENTAGE MUTILATION	---		---		---
CONTAMINATION	Blood cleaned		Building material		Cleaned
MARKS OF VALUE FOR COMPARISON	Yes		Yes		Yes

OTHER EVIDENCE-OPINIONS-COMMENTS

EVIDENCE

Item A & B were recovered from 446 Faxina Avenue, Valinda by Supervising Criminalist W. Plumtree.

Item #1, A & B could have been fired from the same firearm and are suitable for comparison to a suspect firearm.

Firearms manufactured with the same general rifling characteristics include, but is not limited to Smith & Wesson, Ruger, Taurus and I.N.A. double action revolvers.

FIREARMS EXAMINER: Dwight D. Van Horn	SIGNATURE
EMP. NO.: 207054	DATE COMPLETED: October 30, 1990

85

People v. Staten, KA006698

People's Exhibit 6
10/15/1990 LASD Supplementary Report

745678 SH-R-2 6/81

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY REPORT

DATE October 15, 1990 FILE NO. 090-20823-1443-011

C- 187 PC Action Taken

H340194

V- (1) STATEN, Arthur (2) STATEN, Faye

D- ---

S- Unknown

On October 13, 1990, at the request of Deputy George Roberts of the Los Angeles County Sheriff's Department Homicide Bureau, a field investigation was conducted at 446 South Faxina Avenue, a single story residence located in the east Valinda area of La Puente.

The following items of evidence were collected and transported to the Criminalistics Laboratory under laboratory receipt number **H340194.**

#1: Bloodstain on the walkway to the front door of the house 6'9" from the front door, 3'2" from the east wall.

#2: Bloodstain on the north side of the front door 25" to 35" up from the bottom of the door, 9" from the hinge edge of the door.

#3: Bloodstain on the floor of the entryway 29" south of the south wall and 22"east of the east wall of the hallway.

#4: Bloodstain on the floor of the entryway 15 1/2" to 18 1/2" from the south wall and 38" from the east wall of the hallway.

#5: Bloodstain on the kitchen counter.

#6: Bloodstain on the right edge of the kitchen sink and counter.

#7: Bloodstain on the left edge of the dishwasher door panel.

#8: Bloodstain at the edge of the carpet between the kitchen and the living room.

#10: Bloodstain covering an area of approximately 6 square feet on the south wall of the dining room.

#11A: Bloodstain on the west wall of the dining room.

#11B: Bloodstain on a glass panel (south end) of the china cabinet in the dining room.

#14: Bloodstain (3 drops) in the hallway leading to the southwest bedroom.

#16: Bloodstain on the light switch area on the north wall of the master bedroom.

#19: White towel with bloodstain from behind the driver's seat floorboard of a 1988 Chevrolet Silverado truck.

Items number 9, 12, 13, 15, 17 and 18 are listed in Deputy Ron George's report.

Victor Wong

Field Investigation by: Victor Wong, Senior Criminalist

VW:sca

People v. Staten, KA006698

People's Exhibit 7
01/02/1991 LASD Supplementary Report

765878 SH-R-2 8/81

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY REPORT

DATE January 2, 1991 FILE NO. 090-20823-1443-011

C- 187 PC Action Taken

H340196, H340180, H356943, H374210, H374211

V- STATEN, Faye / STATEN, Arthur

D- ---

S- STATEN, Deondre

This report is supplemental to the field investigation report issued by Senior Criminalist Victor Wong on October 15, 1990.

On October 13, Deputy George of the Los Angeles County Sheriff's Department Scientific Services Bureau submitted the following items to the Serology section under laboratory receipt number **H340196.**

VAs - 1: One pair of athletic shoes reportedly collected from Deondre Staten including:

VAS - 1AB: Combined bloodstains from the tops of both shoes

On October 15, 1990, Detective Roberts of the Los Angeles County Sheriff's Department Homicide Bureau submitted the following item to the laboratory under receipt number **H340180:**

VAS - 2: One pair of white shorts with red stains reportedly collected from witness Nichols including:

VAS - 2A: A bloodstain from the front right edge of the shorts leg adjacent to the leg opening

On October 22, 1990, the following whole blood samples were transported form the Los Angeles County Coroner's Department and submitted to the laboratory under the following receipt numbers:

H374210 One whole blood sample reportedly collected from Faye Staten

H374211 One whole blood sample reportedly collected from Arthur Staten

090-20823-1443-011 January 2, 1991

On October 23, 1990, Detective Roberts submitted the following item to the laboratory under receipt number H356943:

VAS - 3: One pair of grey pants with red stains including:

VAS - 3A: A red stain on the interior fly region of pants

LABORATORY EXAMINATION

Human blood was detected on the following samples:

VAS - 1AB
VW1
VW2
VW3
VW4
VW10
VW11b
VAS - 2A

The post mortem blood samples obtained from Faye and Arthur Staten were typed and compared to the blood stains VAS-1AB, VAS-2A, VAS-3A, VW1-4, VW10 and VW11b. The results are listed on the enclosed "LASO Forensic Serology Examinations Summary" sheet.

CONCLUSIONS:

The following bloodstains could not have originated from Arthur Staten and were consistent with having come from Faye Staten:

VAS - 1AB
VW1
VW2
VW3
VW4
VW10
VW11b

The bloodstain providing the most information was VW10. The combination of enzyme types in this stain occur in approximately 1.4% of the population or 1 in 71 individuals.

172

090-20823-1443-011 January 2, 1991

The bloodstain VAS-2A could not have originated from either Faye Staten or Arthur Staten.

No further work will be completed without the submission of a reference blood sample from Deondre Staten.

Valorie A Scherr

Examination by: Valorie A. Scherr, Senior Criminalist

VAS:pa

cc: Roberts/LASD - HOMICIDE

People v. Staten, KA006698

People's Exhibit 8
03/05/1991 LASD Supplementary Report

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT
SCIENTIFIC SERVICES BUREAU
LABORATORY REPORT

SEROLOGY SECTION	File Number: 090-20823-1443-011
2020 West Beverly Boulevard	Agency: Homicide
Los Angeles, CA 90057	Charge: 187 P.C.
(213) 974-7018	Investigator: Roberts
	Report Date: March 5, 1991

Lab Receipts: H384427 H340196 H340180 H356943 H374210 H374211
Subject: STATEN, De'Ondre
Victim: (1) STATEN, Arthur (2) STATEN, Faye

This report is supplemental to the report issued by the undersigned on January 2, 1991.

On February 4, 1991, Detective Roberts submitted a whole blood sample reportedly collected from De'Ondre Staten under laboratory receipt **H384427.**

The blood sample obtained from De'Ondre Staten was typed and compared to the bloodstains VAS-1AB, VAS-2A, VW1-4, VW10, and VW11b. The results are listed on the enclosed "LASO Forensic Serology Examinations Summary" sheet.

CONCLUSIONS

De'Ondre Staten and Faye Staten have the same genetic profile given the forensic testing available within this laboratory. The following bloodstains could have originated from either of them:

VAS-1AB
VAS-2A
VW1
VW2
VW3
VW4
VW10
VW11b

Examination by: Valorie A. Scherr, Senior Criminalist

Copy to: Roberts/Homicide

People v. Staten, KA006698

People's Exhibit 9
10/09/1991 CBRL Report

CBR LABORATORIES, INC.
800 HUNTINGTON AVENUE, BOSTON, MASSACHUSETTS 02115 (617) 731-6470 FAX (617) 738-8983

October 9, 1991

Mr. Ronald Linhart
Los Angeles County Sheriff's Department
Scientific Services Bureau
2020 W. Beverly Blvd.
Los Angeles, CA 90057

Re: State of California v. Deondre Staten
CBRL Case No. F108

Dear Mr. Linhart:

On 8/20/91 a package was received via Express Mail Next Day Service from Mr. Harley M. Sagara, Scientific Services Bureau, Los Angeles Sheriff's Department. Enclosed was a letter of authorization, and an envelope which contained the following items:

CBRL Item	Description
10691	"Blood Stain VW1"
10692	"Blood Stain VW2"
10693	"Blood Stain VW3"
10694	"Blood Stain VW4"
10695	"Blood Stain VW5"
10696	"Blood Stain VW6"
10697	"Blood Stain VW7"
10698	"Blood Stain VW8"
10699	"Blood Stain VW10"
10700	"Blood Stain VW11a"
10701	"Blood Stain VW11b"
10702	"Blood Stain VW14"
10703	"Blood Stain VW16"
10704	'Blood Stain VW19"
10706	'Blood Stain VAS-1AB"
10707	"Blood Stain VAS-2A"

Mr. Ronald Linhart

Re: State of California v. Deondre Staten
CBRL Case No. F108

CBRL Item	Description
10596	"Blood Stain, Faye Staten"
10597	"Blood Stain, Arthur Staten"
10598	"Blood Stain, Deondre Staten"

There was no evidence of tampering. Photographs were taken of all of the items.

An attempt was made to extract DNA from all samples relating to this case by a method that yields high molecular weight DNA from blood. All DNA extracted was amplified with the Cetus HLA-DQ Alpha Amplitype kit. The results were as follows:

CBRL Item	Description	DQ Alpha Type
10691	Blood stain, VW1	NS
10692	Blood stain, VW2	1.2/2
10693	Blood stain, VW3	1.2/2
10694	Blood stain, VW4	1.2/2
10695	Blood stain, VW5	1.2/2/4
10696	Blood stain, VW6	1.2/2
10697	Blood stain, VW7	1.2/2
10698	Blood stain, VW8	1.2/2
10699	Blood stain, VW10	1.2/4
10700	Blood stain, VW11a	1.2/4
10701	Blood stain, VW11b	1.2/4
10702	Blood stain, VW14	1.2/2
10703	Blood stain, VW16	1.2/2
10704	Blood stain, VW19	2

Mr. Ronald Linhart

Re: State of California vs. Deondre Staten
CBRL Case No. F108

CBRL Item	Description	DQ Alpha Type
10706	Blood stain, VAS-1AB	3/4
10707	Blood stain, VAS-2A	3/4
10596	Blood stain, Faye Staten	1.2/4
10597	Blood stain, Arthur Staten	2
10598	Blood stain, Deondre Staten	1.2/2

NS - None Seen

The DQ Alpha type of Faye Staten is 1.2/4, of Arthur Staten is 2 and of Deondre Staten is 1.2/2. Faye Staten cannot be excluded as the contributor of the DNA typed in items 10699, 10700 and 10701. Arthur Staten cannot be excluded as the contributor of the DNA typed in item 10704. Deondre Staten cannot be excluded as the contributor of the DNA typed in items 10692, 10693, 10694, 10696 10697, 10698, 10702, and 10703. No conclusion can be made about possible contributors to the DNA typed in sample 10706 and 10707. Item 10695 appears to be a mixture of two or more individuals.

The frequency of the DQ Alpha 1.2/4 type in Blacks is between 14.7% and 19.2 % and in Caucasians is between 10.4% and 13.2%. The frequency of the DQ Alpha 2 type in Blacks is between 0.6% and 2.2 % and in Caucasians is approximately 2.3%. The frequency of the DQ Alpha 1.2/2 type in Blacks is between 4% and 6.4 % and in Caucasians is approximately 4.6%.

If there is any further assistance we can provide you, please contact us.

Sincerely yours,

David H. Bing, Ph.D.
Scientific Director
DHB/eag

People v. Staten, KA006698

People's Exhibit 10
11/01/1991 CBRL Report

CBR LABORATORIES, INC.
800 HUNTINGTON AVENUE, BOSTON, MASSACHUSETTS 02115 (617) 731-6470 FAX (617) 738-8993

November 1, 1991

Mr. Ronald Linhart
Los Angeles County Sheriff's Department
Scientific Services Bureau
2020 W. Beverly Blvd.
Los Angeles, CA 90057

Re: State of California v. Deondre Staten
CBRL Case No. F108

Dear Mr. Linhart:

On 10/17/91 a package was received from the Los Angeles County Sheriff's Department, Scientific Services Bureau, 2020 W. Beverly Blvd., Los Angeles, CA 90057 via U.S. Express Mail containing a letter of authorization and the following items:

CBRL Item	Description
10822	"H446805, blood from John Nichols" Enclosed was a stain in waxed paper
10823	"H444411, blood droplets removed from left shoe top 9/20/21."

There was no evidence of tampering. Photographs were taken of all of the evidence.

An attempt was next made to extract DNA from all samples by a method that yields high molecular weight DNA from blood. The DNA isolated was then tested with the Cetus HLA-DQ Alpha Amplitype kit. The results were as follows:

CBRL Item	Description	DQ Alpha Type
10822	Blood, John Nichols	3/4
10823	Blood, shoe	Inconclusive

The data are consistent with Mr. Nichols having the DQ Alpha type 3/4. No conclusion can be reached with regard to the DQ Alpha type in the DNA isolated from item 10823.

In our report of October 2, 1991, we reported the following DQ Alpha typing results for items 10706 and 10707, two blood stains submitted 8/20/91.

CBRL Item	Description	DQ Alpha Type
10706	VW1AB	3/4
10707	VW2A	3/4

Based on these results Mr. Nichols cannot be excluded as the contributor of DNA isolated from items 10706 and 10707.

The frequency of the DQ Alpha type 3/4 in Blacks is approximately 9.4%, in Caucasians is between 11.4% and 10.9%.

If there is further assistance we can provide you, please contact us.

Sincerely yours,

David H. Bing, Ph.D.
Scientific Director

cc: Mr. Gary Hearnsberger

People v. Staten, KA006698

People's Exhibit 11
Table 1: Reference Sample Results
Table 2: Evidence Sample Results

Table 1: Reference Sample Results

Item	Description	DNA/DQ Alpha Type Results
LASD H374210 CBRL Item 10596	Bloodstain reference, Faye Staten (FS)	1.2/4
LASD H374211 CBRL Item 10597	Bloodstain reference, Arthur Staten (AS)	2
LASD H384427 CBRL Item 10598	Bloodstain reference, Deondre Staten (DS)	1.2/2
LASD H446805 CBRL Item 10822	Bloodstain reference, John Nichols (JN)	3/4

Table 2: Evidence Sample Results

Item	Description	Serology: Blood Type/Protein Results	DNA/DQ Alpha Type Results	Jury Trial Stipulation
VAS-1AB LASD H340196 CBRL Item 10706	Swab of combined bloodstains from the tops of DS's shoes	Could have originated from FS or DS. (01/02/91 LASD, 03/05/91 LASD)	3/4 JN cannot not be excluded. (11/01/91 CBRL)	Could not have come from AS. No other conclusion could be reached.
VAS-1B LASD H444411 CBRL Item 10823	Blood droplets removed from left shoe top (09/20/91)		Inconclusive (11/01/91 CBRL)	-
VAS-2A CBRL Item 10707	Bloodstain from right edge of shorts leg, near leg opening (shorts worn by JN)	Could not have originated from AS, FS. (01/02/1991 LASD) Could have come from FS or DS. (03/05/91 LASD)	3/4 JN cannot not be excluded. (11/01/91 CBRL)	-
VAS-3A	Swab of red stain on interior fly region of gray pants (found in Staten garage)	No human blood detected. (03/05/91 LASD)		-
VW-1 CBRL Item 10691	Bloodstain on walkway to front door	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	None seen.	Source could not be AS. No other conclusion could be reached.
VW-2 CBRL Item 10692	Bloodstain on north side (interior) of front door	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.

VW-3 CBRL Item 10693	Bloodstain on entryway floor	Could have originated from FS or DS, but not AS. (01/02/91 LASD, 03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-4 CBRL Item 10694	Bloodstain on entryway floor	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-5 CBRL Item 10695	Bloodstain on kitchen counter		1.2/2/4 Appears to be a mixture.[1] (10/09/91 CBRL)	Source could not be AS. No other conclusion could be reached.
VW-6 CBRL Item 10696	Bloodstain on right edge of kitchen sink/counter		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-7 CBRL Item 10697	Bloodstain on left edge of dishwasher door panel		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-8 CBRL Item 10698	Bloodstain at edge of carpet between kitchen and living room		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-10 CBRL Item 10699	Bloodstain covering 6' on south wall of dining room	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-11a CBRL Item 10700	Bloodstain on west wall of dining room		1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-11b CBRL Item 10701	Blood stain on glass panel (south end) of china cabinet in dining room	Could have originated from FS or DS, but not AS. (03/05/91 LASD)	1.2/4 FS cannot be excluded. (10/09/91 CBRL)	FS could be source. Source could not be AS, DS.
VW-14 CBRL Item 10702	Bloodstain in hallway (3 drops)		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-16 CBRL Item 10703	Bloodstain on light switch in master bedroom		1.2/2 DS cannot be excluded. (10/09/91 CBRL)	DS could be source. Source could not be AS, FS.
VW-19 CBRL 10704	Bloodstain from rag in Arthur Staten's truck		2 AS cannot be excluded. (10/09/91 CBRL)	-

[1] Note that this mixture consists of DNA/DQ Alpha types attributed to DS and FS.

People v. Staten, KA006698

People's Exhibit 3
01/26/2024 Minute Order

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Criminal Division

Clara Shortridge Foltz Criminal Justice Center Dept. - 100

XEAKA006698-01 **January 26, 2024**

The People of the State of California **8:30 AM**
vs.
STATEN, DEONDRE ARTHUR

Honorable William C. Ryan, Judge
B. Perez, Judicial Assistant Not Reported, Court Reporter

PC187(a), PC187(a)

NATURE OF PROCEEDINGS: Judicial Action

The following parties are present for the aforementioned proceeding:

No Appearances

The matter is called for Judicial Action.

NO LEGAL FILE

IN CHAMBERS

Motion for the performance of forensic deoxyribonucleic acid (DNA) testing filed by Deondre Staten (Defendant), represented by Annee Della Donna, Esq. Respondent, the People of the State of California (People), represented by Deputy District Attorney Lee Ashley Cernok. Denied.

BACKGROUND

In 1991, defendant was convicted of two counts of murder as well as allegations of killing for financial gain and multiple murder. Penal Code sections 187(a), 190.2(a)(1), (a)(3). It was further found true that defendant personally used a firearm in the killing of his father and personally used a deadly weapon, a knife, in the killing of his mother. Penal Code sections 12022.5 and 12022(b). Defendant was sentenced to death.

On July 19, 2023, defendant filed the instant motion for DNA testing in the East District of the Los Angeles County Superior Court. On July 25, 2023, the motion was transferred to Department 100 of the Foltz Criminal Justice Center from the East District pursuant to Local Rule 8.33(a)(3)(D), where it was then forwarded to the undersigned in the Criminal Writs Center on August 4, 2023. On October 31, 2023, the People filed an opposition to the motion as stated in Penal Code section 1405(d)(2). To date, there has been no reply filed by

defendant. Defendant did file a motion for disclosure of DNA reports and status of biological evidence pursuant to Penal Code section 1405(c) on December 7, 2023.*1

Defendant filed the motion for postconviction DNA testing pursuant to section 1405. Defendant requests the release and DNA testing of (1) three .38 caliber fired bullets, (2) one .25 caliber casing; and (3) bloodstain evidence, although unspecified as to which of the 18 samples collected on the day of the crimes. Defendant contends that he has established the required conditions under section 1405.

The People filed an opposition to the motion for postconviction DNA testing. The People argue that the motion should be denied because Defendant cannot demonstrate that all the evidence is available, and in a condition to be tested, or that favorable DNA testing results would raise a reasonable probability of a more favorable verdict or sentence.

COMMITMENT OFFENSE*2

Defendant, age 24, lived with his parents, Arthur and Faye Staten. Mr. and Mrs. Staten owned a beauty salon and beauty supply store. His parents had several life insurance policies worth more than $300,000. In August 1990, in the presence of defendant, they revised their policies to name defendant as the sole beneficiary. A fourth policy named defendant and his mentally disabled brother as co-beneficiaries.

Defendant argued often with his father and would be evicted from the home periodically for weeks or months at a time. He would tell friends that he "would take his father out" or take care of him." He also told them about the insurance policies and how he would inherit a large sum if they died. On one occasion when discussing with friends as to how to make money, he told them that he knew how they could make $275,000. Defendant told them that if they would "bump off" two people who lived around the corner and owned a beauty salon and beauty supply store, they could make a "five-digit" sum of money.

In September 1990, Arthur and Faye Staten left for a two-week vacation. They left their truck at the home of Faye's parents, the McKays. Defendant stayed at home. A week after his parents left, defendant showed his friend John Nichols, the .38 caliber revolver that belonged to his parents. He gave Nichols a .22 caliber gun. On several occasions, he told Nichols that he had hollow-point bullets.

Two or three days before his parents were to return, late at night, defendant told his friends that he heard something in the backyard. He did not find anyone. He said that he had received threatening phone calls from the East Side Dukes (ESD), a local Latino gang. The following day, he showed friends the letters "ESD" spray-painted on the backyard patio.

During the week before the Statens' return from vacation, defendant repeatedly asked a cousin, who lived behind the McKays' home, to call him when the Statens left for home after retrieving their truck. On October

11, 1990, the Statens returned from vacation but spent the night and most of the next day at the McKays' home. On October 12, defendant telephoned throughout the day to find out when his parents were coming home but declined invitations to come to dinner.

A neighbor, Bertha Sanchez, saw the Statens' truck arrive at about 11:40 p.m. Within 10 to 15 minutes, the neighbor and her husband heard three gunshots. Another neighbor, Craig Hartman, heard guns shots between 11:30 and 11:45 p.m. Shortly after midnight, defendant's aunt phoned him to find out if his parents had arrived safely. Defendant answered but sounded nervous and rushed. He said that they had not returned and that he was getting ready to go out. He did not offer to leave a message for his parents. About thirty minutes later, defendant's aunt called again. This time, defendant stated that they were home but did not put them on the line.

Sometime after midnight, Sanchez heard what she thought was the Statens' truck driving away. It returned about 20 minutes later. Around 1:05 a.m., the Hartmans state that defendant knocked on his door and told him his parents had been killed. The Hartmans returned with defendant to his house to find Faye's body lying near the entryway and Arthurs's body in the master bedroom. The words "ESD Kills" were spray-painted on a mirrored wall in the living room. Arthur died of a single gunshot to the head with a .38 or .357 caliber hollow-point bullet. Faye died of 18 stab wounds, seven of which could have been fatal. There was no evidence of forced entry or robbery and no signs of entry in the backyard.

There were bloodstains throughout the house. A handprint on the mirrored living room wall below the spray-painted graffiti matched defendant's. There was a 90 percent chance that the graffiti on the mirrored wall was produced by the same writer as the graffiti on the back porch. The paint on both was the same and it also matched a can of spray paint found in the hall closet. At funeral service for his parents, defendant did not appear sad. He told a cousin that this was no time to cry because his parents were dead. Rather, it was a time to party and get high.

On October 14, 1990, Nichols was stopped by law enforcement and arrested for violating probation for carrying the .22 handgun on his person. On November 3, 1990, Nichols was released and met with defendant while wearing a wire monitored by law enforcement. In taped conversations, defendant said that he had "gotten rid of" the .38 caliber revolver before his parents returned home. He suggested Nichols lie about the gun to police and assured him that the police would not be able to find it and that as long as he stuck to his story, they would not have a case: "[i]f they still can't find it, I'm still going to blame it on the Dukes."

The gang unit of the Los Angeles County Sheriff's Department concluded that the murders were not gang related and that the graffiti found in the house and backyard did not appear genuine or written in the distinctive style of the ESD. It would be unusual to have graffiti hidden in the backyard or house rather than in a prominent place in front of the house to announce and identify their killings.

Defendant introduced his own testimony and evidence to claim that his relationship with his parents was good. He stated that he never spoke to others about killing his parents for financial gain. The ESD repeatedly threatened him. He suspected that one of Nichols' friends stole the .38 caliber gun.

On the night of the killings, he states that he left after talking to his aunt and took his parents' truck to get a hamburger but returned home after realizing that he left his wallet at home. When he arrived, he discovered his parents' bodies and saw the spray-painted graffiti. No gunshot residue was found on his hands.

On December 2, 1991, a jury convicted defendant of the murder of his parents. The jury found true that he used a firearm to kill his father and a knife to kill his mother. The jury also found true special circumstances that the murders were intentionally carried out for financial gain and that defendant committed multiple murders. The trial court sentenced defendant to death after the jury recommended the same. Following an automatic appeal, the California Supreme Court affirmed the conviction and death sentence. People v. Staten (2000) 24 Cal.4th 434, 441-446. The defendant filed a federal petition for writ of habeas corpus, which was denied without an evidentiary hearing. Defendant appealed and the United States Court of Appeals, 9th Circuit affirmed the decision.

APPLICABLE LEGAL PRINCIPLES

Subdivision (a) of section 1405 provides, "[a] person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion, pursuant to subdivision (d), before the trial court that entered the judgment of conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing." The motion must be verified by the convicted person under penalty of perjury and:
(1) include a statement that he or she is innocent and not the perpetrator of the crime;
(2) explain why the identity of the perpetrator was, or should have been, a significant issue in the case;
(3) make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought;
(4) explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction;
(5) reveal the results of any DNA testing that was conducted previously; and
(6) state whether any motion for testing under this section previously has been filed and the results of that motion. (§ 1405, subd. (d).)

The court shall grant the motion for DNA testing only if it determines all of the following have been established:
(1) The evidence is available and in a condition that would permit the requested testing;
(2) The evidence has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect;

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case;
(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of his identity as the perpetrator of the crime;
(5) The requested DNA testing results would raise a reasonable probability, in light of all the evidence, that the convicted person would have received a more favorable judgment if the DNA results were available at the time of conviction;
(6) The evidence sought to be tested was not tested previously, or was tested previously, but the requested DNA test would provide results that are reasonably more probative of the identity of the perpetrator;
(7) The testing requested employs a method generally accepted within the relevant scientific community; and
(8) The motion is not made solely for the purpose of delay. (§ 1405, subd. (g).)

DISCUSSION

Requirements of Section 1405
With respect to the requirements set forth in subdivision (g) of section 1405, listed ante, the elements opposed by the People are Defendant's claims that: (1) the evidence is in a condition that would permit testing and has not been altered in any material aspect (subd.(g)(2)); and (2) the requested DNA results would raise a reasonable probability that Defendant's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction (subd. (g)(6).*3
1. Condition and Alteration of Evidence
In order for a defendant to succeed on a motion for postconviction DNA testing, the defendant must establish that the evidence to be tested is available and in a condition that would permit the requested testing, and that it has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect. (§ 1405, subd. (g)(1)-(2).)

Given the high probability of non-probative DNA transfer onto the fired bullets and the lone cartridge case because they were wiped clean upon collection and ballistics testing, presented in court, and impacted by environmental factors such as moisture, heat, and light over 32 year period in an evidence room, the degradation of DNA is highly likely that accurate testing would not be possible.

However, the court notes that the parties point to no binding case law interpreting what it means for evidence to be "available and in a condition that would permit DNA testing," and the court finds none. Therefore, the court will use the reasonable and ordinary meaning of the words used. (De Vries v. Regents of University of California (2016) 6 Cal.App.5th 574, 590–591 ['When a term goes undefined in a statute, we give the term its ordinary meaning.'].) Accordingly, "available" means "able to be used, obtained, or selected; at one's disposal" and "in a condition that would permit DNA testing" reasonably looks to whether a sample may be attempted to be obtained from the evidence by swabbing, or other such accepted collection procedure, and submitted for testing. (Oxford English Dict. Online <https://www.oed.com/search/dictionary/?scope=Entries&q=available> [Accessed Jan. 24, 2024.].) Here, the court finds that the three .38 caliber fired bullets and one .25 caliber

casing are available at LASD Central Property and Evidence and could be subject to swabbing, or other such collection procedure. The fact that a DNA sample may or may not be developed from the items is not relevant to the question of whether the evidence is available and in a condition that permits an attempt at DNA testing.

Accordingly, the court finds the requirements under section 1405, subdivision (g)(1) and (g)(2) have been met.
2. Reasonable Probability of a More Favorable Result

The court is authorized to grant a DNA motion only if it finds that the requested DNA testing results would raise a reasonable probability that, in light of all the evidence, Defendant would have received a more favorable verdict or sentence if the results of DNA testing had been available at the time of conviction. (§ 1405, subd. (g)(5).) That is, the defendant must demonstrate that, had the DNA testing been available, there is a "reasonable chance" he would have obtained a more favorable result at trial. (Richardson, supra, 43 Cal.4th at p. 1051.) "In making this assessment, however, it is important for the trial court to bear in mind that the question before it is whether the defendant is entitled to develop potentially exculpatory evidence and not whether he or she is entitled to some form of ultimate relief such as the granting of a petition for habeas corpus based on that evidence." (§ 1405, subd. (g)(5).) As the Ninth Circuit observed in an analogous decision, "'Obtaining post-conviction access to evidence is not habeas relief.' [Citation.] Therefore, the trial court does not, and should not, decide whether, assuming a DNA test result favorable to the defendant, that evidence in and of itself would ultimately require some form of relief from the conviction." (Ibid.) The court is obligated to "liberally apply the 'reasonable probability' standard to permit testing in questionable cases." (Jointer v. Superior Court (2013) 217 Cal.App.4th 759, 769 (Jointer).)

Here, however, the court does not find a "reasonable probability" that any of the requested evidence recited in the case either by the motion, the opposition, or past case decisions regarding this defendant, supports his version of the crimes. The overwhelming state of the evidence refutes his defense that the killings were gang related.*4 There is no showing or support, either at the time of the convictions and subsequent appeals or in the current motion, for gang-related shootings. The motive is unexplained and not even stated by defendant in the motion.

Furthermore, the method of killing is inconsistent with defendant's claim that it was gang killings. The ESD graffiti was hidden in the house and in the backyard rather than announced and identified in a public area. There was no evidence of forced entry or robbery and no signs of entry in the backyard.

Lastly, and most importantly, no amount of DNA evidence would refute defendant's own words in taped conversations where he explicitly states that he would "blame [the crimes] on the Dukes."

Testing of the .25 caliber bullet casing has no relevance as the three fired bullets, including the one removed from Arthur Staten's head, were .38 caliber. Defendant has not explained the relevance of re-testing the 18 blood samples nor specified which of the 18 samples collected on the day of the crimes are available or relevant

for testing. Defendant has not demonstrated that, had the DNA testing been available, there is a "reasonable chance" he would have obtained a more favorable result at trial.

DISPOSITION

For the foregoing reasons, Defendant's motion for DNA testing of the three fired bullets, one bullet casing, and the 18 bloodstains from the crime scene is DENIED.

The Clerk is ordered to serve a copy of this order upon Annee Della Donna, Esq., as counsel for Defendant, and upon Deputy District Attorney Lee Ashley Cernok, as counsel for Respondent, the People of the State of California.

The order is signed and filed this date. A true copy of this minute order is sent via U.S. Mail to the following parties listed below.

*FOOTNOTES:
*1 To date, there has been no opposition filed by the People to this motion.
*2 The facts of the commitment offense are taken from the California Supreme Court opinion in *People v. Staten* (2000) 24 Cal.4th 434, 441-446, unless otherwise specified.
*3 In the opposition, the People do not contest that Defendant has fulfilled the requirements set forth in the other subdivisions of section 1405(g).
*4 *See* People v. Staten, *supra*, at pp. 460-462.

CLERK'S CERTIFICATE OF MAILING

I, David W. Slayton, Executive Officer/Clerk of Court of the above-entitled court. do hereby certify that I am not a party to the cause herein, and that on this date I served a copy of the above minute order of January 26, 2024 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: January 30, 2024

By: /s/ B. Perez
B. Perez, Deputy Clerk

Annee Della Donna, Esq.
Law Offices of Annee Della Donna
301 Forest Ave.
Laguna Beach, CA 92651

Office of the District Attorney
Forensic Science Section
Attn: Lee Ashley Cernok, Deputy District Attorney
320 W. Temple St., Rm. 1180
Los Angeles, CA 90012

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Criminal Division

Clara Shortridge Foltz Criminal Justice Center Dept. - 100

XEAKA006698-01 **January 26, 2024**

The People of the State of California **8:30 AM**

vs.

STATEN, DEONDRE ARTHUR

People v. Staten, KA006698

People's Exhibit 4
Def. Second § 1405 Motion

ORIGINAL

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Attorneys for Defendants DEONDRE STATEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CLARA SHORTRIDGE CRIMINAL JUSTICE CENTER

THE STATE OF CALIFORNIA,

Plaintiff,

v.

DEONDRE ARTHUR STATEN,

Defendant.

Case No: KA006698-01

Assigned to: Honorable Judge William C. Ryan

Dept.: 100

MOTION FOR DNA TESTING

BY FAX

Defendant DEONDRE STATEN hereby moves for DNA testing.

INTRODUCTION

The strength of our criminal justice system depends on its accuracy-its ability to convict those who have committed crimes and clear those who are innocent. Yet we face an undeniable truth: innocent people are wrongfully convicted. These wrongful convictions undermine the confidence our nation has in the criminal justice system. **What we cannot do as a society, is to ignore untested evidence** that could point toward innocence, especially when the benefit of exoneration significantly outweighs the inconvenience of the testing.

In light of the Court's prior ruling on DNA testing, Defendant hired a forensic expert to review the untested evidence and now Defendant is only requesting specific items that were **never tested in the original investigation**: two bullets, one set of fingerprints and two blood samples that could point to another perpetrator.

Defendant has consistently maintained his innocence. Merely stating on tape that he would "blame the crime on the Dukes" does not equate to a confession of guilt. It simply reflected his uncertainty about the true perpetrator, not an admission of his own involvement. To assume otherwise is to distort the meaning of his words and overlook the possibility that he too, was searching for the truth.

There was no forced entry in his house, because the backdoor was left unlocked, offering easy access. More crucially, if Defendant had committed these killings, he would have been covered in gunshot residue and drenched in blood. He was not. The lack of GSR and blood on the Defendant shortly after the killings, proves he could not have committed the crime.

The requested DNA testing could significantly alter the outcome of this case. In light of the untested evidence, discovering third party DNA at the crime scene, would raise the reasonable probability that the Defendant would have received a more favorable verdict. Such a finding would cast substantial doubt on the defendant's guilt, creating reasonable doubt that is essential to ensuring a just and fair trial.

STATEMENT OF FACTS

A. October 13, 1990

Defendant age 24 lived with his parents Faye and Arthur ("Ray") Staten in the La Puente/ East Valinda area of Los Angeles. Arthur and Faye owned a beauty salon and beauty supply store.

Not long after midnight on October 13, 1990, Ray and Faye Staten were killed in their home. An hour earlier, the couple had arrived at their residence following a two-week trip to Egypt. Their 24-year-old son, Defendant De'Ondre Staten, pulled their luggage inside, gave them hugs, and planned to watch videos of their vacation with family members the next day. After his parents were settled in, Defendant told them he was hungry and wanted to grab something to eat. Faye's Cadillac, which Defendant drove while his parents were away, had broken down, so Ray gave his son the keys to his Chevrolet truck. Defendant left around 12:45 AM. Defendant had been driving for about ten minutes when he realized he had forgotten his wallet. He turned around and returned home to get his wallet. Defendant returned home around 1:00 AM. He found the front door locked, as he had left it, and used his key to get inside. He first saw his mother, Faye, who Defendant affectionately called Shorty, stabbed 18 times and face down in the dining room. Next, he found his father in his parents' bedroom. Ray was on the floor, dead from a single gunshot wound to the back of the head. Deondre Staten has maintained his innocence.

Defendant ran to his neighbor's house screaming his parents were dead. Two of his neighbors accompanied him back into the house, and as one checked his Faye's pulse, Defendant sobbed and tried to put his arms around his mother. On the mirrored wall of a hallway nearby, the phrase "E.S.D. Kills" was sprayed in white paint. E.S.D. was referred to the East Side Dukes, a Latino gang who operated in the Staten's neighborhood. When the police arrived, they interviewed Defendant who leaned crouched against the garage door, rocking back and forth extremely upset. Through this interview, the police learn that two days earlier, the same message: "E.S.D. Kills" had been spray painted in white on the Defendant's patio, right by the same sliding door that was open the night of the murders. Defendant's friend, John Nichols, told police the day before his parents left on their vacation, Staten got a call saying "E.S.D. kills niggers." That same friend, Nichols, would later go on to get arrested for a parole violation, for possessing a .22 derringer gun belonging to Faye Staten. Because Nichols

was on probation for a drug violation, he was arrested and taken to jail. In jail, he was contacted by Detective Roberts. Roberts asked Nichols to secretly record Defendant in exchange for "help" with his probation. Nichols' recollection was different. He claimed Roberts threatened to implicate Nichols with the murders of Faye and Ray if he didn't agree to secretly record Defendant. Nichols became the key witness against Defendant, eventually wearing a wire to a meeting with Defendant. In the tape, Nichols repeatedly asked defendant whether he had anything to do with the murders and Defendant repeatedly denied any involvement.

B. The Trial

On January 7, 1991, Deondre Staten was charged with two counts of murder under California Penal Code section 187(a), as well as special allegations of killing for financial gain and multiple murder under section 190.2 (a)(1), (3). It was further alleged that, in murdering his father, defendant personally used a firearm within the meaning of Penal Code section 12022.5, and that, in murdering his mother, he personally used a deadly and dangerous weapon, a knife under section 12022(b). Defendant pleaded not guilty to every charge and was tried by jury. The jury found him guilty of first-degree murder of both parents, and also found the special allegations regarding the killing for financial gain, multiple murders, personal use of a firearm and personal use of a deadly and dangerous weapon to be true. He was sentenced to death for each murder.

Staten was convicted entirely based on circumstantial evidence. The weapons used to kill Ray and Faye were never recovered. Defendant had no opportunity to wash his hands and there was no gunshot residue on Defendant's hands the night of the murders. He explained the small, dried cut on his middle finger was from gardening and trying to get the yard cleaned up before his parents arrived home. Despite his mother being stabbed 18 times, there was no blood on his body or clothing. The State's expert testified the different bullets could have been fired from two different guns. The defense handwriting expert testified that the ESD graffiti was not the Defendant's handwriting. Fingerprints found on the paint canister in the closet did not belong to Defendant. Moreover, the neighbors gave inconsistent reports to police about hearing gunshots that night. In the recorded conversation with Nichols, prior to

the highlighted quote, Defendant explicitly denied having anything to do with killing his parents multiple times.

At his trial, Defendant testified that overall, he had a good relationship with his parents, especially his mother, and multiple family members and friends of Defendants said in interviews that he never could have hurt his mother. He denied talking to his friends about killing his parents for their insurance money. The prosecution argued Defendant killed his parents to obtain the proceeds of the three insurance policies under which he was a contingent beneficiary. However, from the time of the murders, October 1990 until the time of his arrest in March 1991, Defendant never made any claim for any of the insurance proceeds. One of Defendant and Nichol's friends, Matthew Nottingham told police in an interview that Defendant never spoke to him about insurance money. In fact, Nottingham told police that Nichols tried to speak with him and another friend about killing someone for $15,000.

Defendant testified that his parents arrived home around 12:05-12:10 AM, and when his aunt called at 12:30 AM, his mother told him she didn't feel like talking. Defendant testified that he was being threatened by the East Side Dukes. The day after the murders, five witnesses saw a car containing ESD members drive by the Staten home and glare at them. Three of those witnesses heard them say, "yeah we got them," and two of those three disclosed the event to Defendant's trial attorney. In a 2020 Ninth Circuit decision, the Court found that it was objectively unreasonable for the California Supreme Court to conclude that the trial attorney's performance was not deficient for failing to present that testimony at trial.

Defendant maintains his innocence to this day and asserts that he was not the perpetrator of these crimes. (*See* Exh. 1, Declaration of De'Ondre Staten.)

In 2000, The Los Angeles Sheriff's Department found that Investigator Dwight Van Horn (who was the chief investigator in this case) had failed a proficiency test in 1998 and 2 out of 51 of his investigations had ballistic errors and posed potential credibility errors. (*See* Exh. 2)

POINTS & AUTHORITIES

I. Pursuant To Penal Code Section 1405, Testing of Evidence For the Presence of DNA Inconsistent With Either Defendant and/or the Alleged Victims Is Warranted

A wrongful conviction based on possible factual innocence can sometimes be detected using postconviction DNA testing. Postconviction DNA testing is a major factor contributing to the increased discovery of wrongful convictions. With the advent of DNA testing over the last two decades, biological evidence retained in cases from the "pre-DNA" era could be tested. In addition, advancements in DNA technology have broadened opportunities for DNA testing. For example, as DNA analysis of aged, degraded, limited or otherwise compromised biological evidence has improved, samples that previously generated inconclusive results might be amenable to reanalysis with newer methods.

California Penal Code section 1405 states:

"[A]n individual who was convicted of a felony and who is currently serving a state prison sentence may petition the court in which he was convicted for post-conviction DNA testing." (Cal. Penal Code § 1405(d)(1)).

The motion must be verified under penalty of perjury and must include the following:

(A) A statement that [the Defendant] is innocent and not the perpetrator of the crime.

(B) Explain why the identity of the perpetrator was or should have been a significant issue in the case.

(C) Make every reasonable attempt to identify both the evidence that should be testing and the specific type of DNA testing sought.

(D) Explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of the DNA testing had been available at the time of the conviction

(E) Reveal the results of any DNA or other biological testing that was conducted previously by either the prosecution or the defense, if known.

(F) State whether any motion for testing under this section previously has been filed and the results of that motion, if known.

(*Id.*)

The Defendant submits to this Court that each of these criterions has been met in the instant matter and petitions for the performance of DNA testing on all relevant evidence collected in this matter.

A. **Defendant has Maintained his Innocence Since his Arrest in 1990 (Cal. Penal Code § 1405(d)(1)(A)).**

Defendant submits his declaration, under penalty of perjury, that he is innocent and not the perpetrator of these crimes, fulfilling this statutory requirement under Section 1405(d)(1)(A). (*See* Exh. 1, Declaration of De'Ondre Staten.)

B. **The Identity of the Perpetrator was and Should have been a Significant Issue in the Instant Matter (Cal. Penal Code § 1405(d)(1)(B)).**

Since there were no eyewitnesses to the murders of Arthur and Faye Staten, the identity of the perpetrator or perpetrators is undoubtedly a significant issue in the case. Defendant was convicted solely on circumstantial evidence, and there was no physical evidence found that suggested Defendant wielded the weapons that killed his parents.

Defendant hired Forensic Expert Kenneth R. Moses, ("Moses") Director of Forensic Identification Services, who reviewed Defendant's case file in 2024. Moses determined that the two different modes of attack—firearm and knife—**may indicate the presence of more than one perpetrator.** (*See* Exh. 3, Declaration of Kenneth R. Moses ¶ 6.) Moses further noted the lack of blood found on Defendant's clothes and body, as well as the absence of gunshot residue on Defendant's hands, pointed towards

his innocence. (*Id.* at ¶ 7.) Additionally, investigators found third party fingerprints and blood samples at the scene that did not belong to either the victims or Defendant. (*Id.* at ¶ 8-9.)

We cannot ignore the presence of graffiti at the crime scene which suggested the East Side Duke gang may have committed the murders, demonstrating the significance of the issue of the identity of the third-party perpetrator. Further, witnesses informed Defendant's attorney that there were East Side Duke gang members that took responsibility for the murders, but his attorney failed to ask questions about this exculpatory evidence. While the Defense failed to present this exculpatory evidence at the trial, the identity of the perpetrator or perpetrators *should have been* a significant issue in the matter, particularly whether the East Side Duke gang members had committed the murders. As such, Defendant has satisfied this statutory requirement for DNA testing under Section 1405(d)(1)(B).

C. **There is Clearly Identifiable Evidence to be Tested Under this Motion (Cal. Penal Code § 1405(d)(l)(C)).**

After reviewing Defendant's case file, Forensic Expert Moses identified several pieces of evidence that were never tested:

(1) Two .38 caliber bullets recovered from the Staten home, one .38 caliber bullet removed from Arthur Staten's body. (*See* Exh. 3, Declaration of Kenneth R. Moses at ¶ 6.)

(2) Several latent unidentified fingerprints lifted from inside the residence, including those found on the mirror-tiled wall with the EDS graffiti and on a can of spray paint in the closet. (*See* Exh. 3, Declaration of Kenneth R. Moses at ¶ 8.)

(3) Numerous blood samples collected from the scene, both inside and outside the front door on the suspect's path of exit, that were previously tested but found to be inconclusive. (*See* Exh. 3, Declaration of Kenneth R. Moses at ¶ 9.)

Additionally, a spent .25 caliber casing was also discovered outside the Staten residence, yet the family did not own a .25 caliber weapon.

Therefore, the Defendant has met the statutory requirement pursuant to Section 1405(d)(1)(C) by clearly identifying the evidence to be DNA tested under this motion: three .38 bullets, one .25 bullet casing, and the 11 unconclusive blood samples found at the scene.

D. In Light of The Evidence, DNA Testing Will Raise A Reasonable Probability That The Defendant's Verdict or Sentence Would Be More Favorable if The Results Of The DNA Testing Had Been Available At The Time Of The Conviction (Cal. Penal Code § 1405(d)(l)(D)).

Pursuant to Section 1405(d)(1)(D), the Defendant need not prove that he absolutely would have received a different verdict, but need only "demonstrate that, had the DNA testing been available, in light of all of the evidence, there is a reasonable probability . . . that the defendant would have obtained a more favorable result. (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1051.) This does *not* mean the Court must find that the Defendant has a reasonable chance of obtaining ultimate relief, but only "whether the defendant is entitled to develop potentially exculpatory evidence." (*Id.*) **Further, "trial courts should liberally apply the 'reasonable probability' standard to permit testing in questionable cases."** (*Jointer v. Superior Court* (2013) 217 Cal.App.4th 759, 769.) Should the Court order DNA testing of the above limited pieces of evidence, there is a reasonable probability that the results would have led to a more favorable verdict for the Defendant where the identity of the perpetrators should have been a major issue at trial and the potentially exculpatory evidence could have been developed.

Here, multiple bullets and casings were recovered by police at the Staten home following the murder. Blood samples were taken from blood found inside and outside the front door. Fingerprints were lifted from the residence, including on the mirror-tiled wall of graffiti and the spray can of paint. **At the time of the investigation, the bullets and bullet casing were not examined for DNA evidence, multiple blood samples were tested but the DNA was found to be inconclusive, and several latent fingerprints were never identified.**

According to Moses, DNA analysis was still in its infancy in 1990. Today, "modern technological advancements in DNA analysis enable forensic scientists to identify an individual to an extraordinarily high degree of statistical significance." (Exh. 3, Declaration of Kenneth R. Moses at ¶ 10.) Further, historical serological analyses required large samples, whereas today, "modern DNA forensics often utilizes sample sizes so minute as to be invisible to the naked eye, such as 'touch DNA' samples consisting of only a few skin cells on a cartridge casing." (*Id.*) Finally, Moses noted that at the time of Defendant's trial, **AFIS and CODIS databases were thinly populated, but today contain many millions of subjects, increasing the chances of making a positive identification from a DNA sample.** (*Id.*)

Analysis of the bullets, bullet casing, and previously inconclusive blood samples could develop potentially exculpatory evidence in this matter. Although DNA testing in 1990 did not have the capability to analyze small samples, **modern DNA forensics would be able to test for skin cells on the bullets and bullet casing.** Further, while the blood testing in 1990 was inconclusive, today's analysis can better test the small samples of blood found at the Staten residence. Finally, **due to the much more populated AFIS and CODIS databases, there is a greater chance of identifying a positive match after testing the DNA found at the scene.**

As such, by developing this potentially exculpatory evidence, there is a reasonable probability, in light of all the evidence, that Defendant would have received a more favorable verdict. If any third-party DNA were found at the scene of the murders, specifically on the bullet casings or in blood splatter at the door, it would support the Defense's claim that the Defendant did not commit the murders. The jury found Defendant personally used a firearm in the murder of his father and stabbed his mother. However, had DNA evidence pointed to a third party having fired the gun or left blood at the scene, there is a reasonable probability that the jury would have determined a different person committed the crimes. Furthermore, had DNA evidence or latent fingerprints been matched to East Side Dukes gang members, it would have supported the Defense's case theory that members of the East Side Dukes gang committed the murders.

As discussed above, the perpetrator of these crimes was a significant issue in this matter, where there were no eyewitnesses and no circumstantial evidence directly identifying Defendant as the murderer. Potentially exculpatory evidence does exist—*i.e.*, the bullets, bullet casings, and inconclusive blood samples—but could not be tested in 1990. Had the DNA testing been available at the time of the Defendant's trial, there is a reasonable probability that the Defendant would have obtained a more favorable verdict at trial where the results could reasonably indicate the existence of an alternate perpetrator. It is important to recall that trial courts have been instructed to "*liberally apply* the 'reasonable probability' standard to permit testing in questionable cases" to avoid the unnecessary expenditure of judicial resources. (*Jointer, supra*, 217 Cal.App.4th at 769 (emphasis added).) While Defendant's trial lawyer failed to present evidence of the crimes being gang related, there did exist evidence to support this theory. For example, Defendant testified that he was being threatened by the East Side Dukes. The day after the murders, five witnesses saw a car containing ESD members drive by the Staten home and glare at them. Three of those witnesses heard them say, "yeah we got them," and two of those three disclosed the event to Defendant's trial attorney. East Side Dukes graffiti was left at the scene of the crime. Had all of this evidence been presented at Defendant's trial, in addition to the DNA evidence of the bullets, bullet casing, and blood samples, there is a reasonable probability that Defendant would have received a more favorable verdict.

Defendant is not required to prove that he would have been found not guilty beyond a reasonable doubt. He must only demonstrate that, in light of all of the circumstantial evidence, he is entitled to develop this potentially exculpatory DNA evidence as it would have had a reasonable probability of leading to a more favorable verdict if it had been available at the time of his trial. As such, the Defendant has met this statutory requirement under Section 1405(d)(1)(D) by demonstrating that the requested DNA testing will raise a reasonable probability that the Defendant's verdict would be more favorable if the results of the testing had been available at the time of the conviction.

E. The Only DNA Testing Done In This Matter Was Done On Blood Stains Found In The Home. (Cal. Penal Code § 1405(d)(l)(E)).

At the time of Defendant's trial, DNA testing of blood samples was still in its nascent form. In 1991, blood stains from the Staten home were sent from the Los Angeles Sheriff's Office to be DNA tested. While numerous blood samples collected at the scene came back as being consistent with Faye Staten, **there were several blood stains that were found to be inconclusive.** The parties stipulated that none of the 14 blood samples recovered belonged to Ray Staten and that samples VW 2-4, 6-8 and 14-16 did not belong to Faye but "could have been from" Defendant, that samples VW 10, 11A and 11B did not come from Defendant and that no conclusion could be reached if Faye or Defendant were donors of the sample VW 1AB, 1 and 5. Specifically, Defendant requests DNA testing of the following blood samples: VW 2-4, 6-8, 14-16, 10, 11A, 11B, 1AB, 1, and 5.

Defendant requests genealogical DNA testing. It allows law enforcement to compare the profile of the unknown suspect's DNA to other national databases and build a family tree of that person, thereby creating a small pool of suspects. Genealogical DNA testing has withstood the scrutiny of courts and has helped solved such cold cases as the Golden State serial killer in California.

In 1990, there was no method of DNA testing for bullets and bullet casings. However, in 2014, a San Diego crime lab began testing bullet casings for DNA through a new method of soaking the casings for about half an hour in tubes filled with a cocktail of chemicals that break open cells and release DNA so it can then be isolated and tested. Defendants would like to submit the shell casings SD crime lab and to the National Integrated Ballistics Imaging Network, or NIBIN, a database that can connect a shell casing with others that were shot from the same gun.

Scientists have developed a rotation stage to allow researchers and forensic practitioners to perform highly sensitive, non-destructive Time-of-Flight Secondary Ion Mass Spectroscopy (ToF-SIMS) measurements and develop high resolution fingerprint images on surfaces that conventional fingerprint imaging fails to pick up at all. The rotation stage that they have developed opens up new possibilities for the

retrieval of high-resolution fingerprints from the whole surface area of challenging shapes and materials like metal bullet casings.

Retrieval of fingermark evidence from bullet casings is an area of major difficulty for forensic scientists. While both fired and unfired casings can often be found at the scene of violent crimes, retrieving fingermarks and linking the person that loaded the gun to the crime has consistently proven to be difficult because of the physical conditions that are experienced by the bullet casings during firing and techniques that are used to develop and image the fingermarks.

As such, prior DNA testing of the evidence found at the scene does not compare to the available testing procedures in the modern day. DNA testing of the bullet, bullet casings, and blood samples conducted today would yield far more information than the limited testing conducted in 1990.

F. **One prior motion for DNA testing has been filed and denied by the Court (Cal. Penal Code § 1405(d)(l)(F)).**

Defendant has filed one prior motion pursuant to Cal. Penal Code § 1405. The Court denied the motion on January 30, 2024 finding Defendant did not "demonstrate[] that, had the DNA testing been available, there is a 'reasonable chance' he would have obtained a more favorable result at trial." Defendant sufficiently addressed these prior deficiencies above.

CONCLUSION

Each of the five requirements to file a motion under Cal. Penal Code § 1405(D) have been satisfied by the Defendant. We respectfully request that the Court grant the Defendant's motion and order the performance of DNA testing on the 11 blood samples, three fired bullets, and one bullet casing in the instant matter.

Date: September 11, 2024

LAW OFFICES OF ANNEE DELLA DONNA

/S/

Annee Della Donna, Esq.

DECLARATION OF ANNEE DELLA DONNA, ESQ, IN SUPPORT OF MOTION FOR DNA TESTING

1.I am an attorney at trial licensed since 1988 to practice before all courts of the State of California. I am the Director of InnocenceOC and represent Deondre Staten who is currently on Death Row for the alleged murders of his mother and father.

2.Staten continues to maintain his innocence for these crimes.

3.The evidence I seek to test for DNA, I believe, will exclude Staten as a contributor to the DNA on the bullets, casings and blood found at the scene of the crime and will help to identify the true perpetrator of the crime.

4. In 1991, numerous blood stains from the Staten home were sent from the Los Angeles Sheriff's Office to be DNA tested. The parties stipulated that none of the 14 blood samples recovered belonged to Ray and that samples VW 2-4, 6-8 and 14-16 did not belong to Faye but "could have been from" Deondre, that samples VW 10, 11A and 11B did not come from Deondre and that no conclusion could be reached if Faye or Deondre were donors of the sample VW 1AB, 1 and 5. Defense requests genealogical DNA testing. It allows law enforcement to compare the profile of the unknown suspect's DNA to other national databases and build a family tree of that person, thereby creating a small pool of suspects. Genealogical DNA testing has withstood the scrutiny of courts and has helped solved such cold cases as the Golden State serial killer in California.

5. In 2014 a San Diego crime lab began testing bullet casings for DNA through a new method of soaking the casings for about half an hour in tubes filled with a cocktail of chemicals that break open cells and release DNA so it can then be isolated and tested. Defendants would like to submit the shell casings SD crime lab and to the National Integrated Ballistics Imaging Network, or NIBIN, a database that can connect a shell casing with others that were shot from the same gun.

6. Scientists have developed a rotation stage to allow researchers and forensic practitioners to perform highly sensitive, non-destructive Time-of-Flight Secondary Ion Mass Spectroscopy (ToF-SIMS) measurements and develop high resolution fingerprint images on surfaces that conventional fingerprint imaging fails to pick up at

all. The rotation stage that they have developed opens up new possibilities for the retrieval of high-resolution fingerprints from the whole surface area of challenging shapes and materials like metal bullet casings.

7. Retrieval of fingermark evidence from bullet casings is an area of major difficulty for forensic scientists. While both fired and unfired casings can often be found at the scene of violent crimes, retrieving fingermarks and linking the person that loaded the gun to the crime has consistently proven to be difficult because of the physical conditions that are experienced by the bullet casings during firing and techniques that are used to develop and image the fingermarks.

8. This new and improved technology was not available in1991 when these murders occurred.

9. I have revealed, to the best of my ability, all of the prior DNA testing conducted on the evidence in this case. My understanding is this evidence was never tested for DNA and Staten has not previously requested DNA testing under this statute.

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

Executed this 5th day of September, 2024 in Laguna Beach, California.

_____/S/_____

Annee Della Donna, Esq.

EXHIBIT 1

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Attorneys for Defendants DEONDRE STATEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CLARA SHORTRIDGE CRIMINAL JUSTICE CENTER

THE STATE OF CALIFORNIA, Plaintiff. v. **DEONDRE STATEN,** Defendant.	Case No: KA006698 Assigned to: Dept.: **DECLARATION OF DEONDRE STATEN IN SUPPORT OF MOTION FOR DNA TESTING**

I, Deondre Arthur Staten, declare as follows:

1. I am an inmate housed at the San Quentin State Prison in San Quentin, California, pursuant to the judgment executed in the above-captioned case. I was found guilty of two counts of first-degree murder, under the special circumstances of (1) killing for financial gain, and (2) multiple murder. In addition, I was found guilty of the accompanying special circumstances: personally using a gun and personally using a knife. I was sentenced to death under the 1978 death penalty law.

2. I did not commit these crimes, and I maintain my innocence.

3. The evidence I seek to test with this Post-Conviction Motion for DNA Testing pursuant to Penal Code, section 1405 is bullets, casings and blood samples from the October 12, 1990 to October 13, 1990 crimes.

4. I believe testing the above evidence will not only exclude me as a contributor to DNA on the items, but will reveal the profile of the true perpetrator of both crimes. Accordingly, these results would raise a reasonable probability that my verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

5. I have revealed, to the best of my knowledge, all of the previous DNA testing conducted on the evidence. My understanding is this evidence was never tested for DNA.

6. I have reviewed the Post-Conviction Motion for DNA Testing pursuant to Penal Code, section 1405 and have read the attached memorandum of points and authorities. I declare that all the matters alleged in the motion are true and of my own personal knowledge or are supported by the record or by the attached

exhibits. Any reports and declarations to the motion for DNA testing are originals or true copies of the originals.

7. I have not previously requested DNA testing under this statute.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on 8-4-23 at San Quentin State Prison in San Quentin, California.

Dated: 8-4-23

Deondre Staten

DEONDRE STATEN

Defendant

EXHIBIT 2

2/4/00 L.A. Times B4
2000 WL 2207610

Doug,
Here's something Liz dug up on her newspaper searches for Cleveland. Not sure if we can get any mileage out of this but it sure is interesting.
Steph

Los Angeles Times

Friday, February 4, 2000

Metro; Metro Desk

SOUTHERN CALIFORNIA / A news summary The Local Review / DEVELOPMENTS IN LOS ANGELES COUNTY +**Sheriff**+ to Review 150 Cases for Possible Errors

LOS ANGELES COUNTY -- The +**Sheriff's**+ Department will reexamine more than 150 law enforcement investigations as a result of "potential credibility issues" involving a +**sheriff's**+ firearms examiner, according to the district attorney's office.

The examiner, +**Dwight Van Horn**, "+failed a proficiency test" in 1998, according to a letter sent by Assistant Dist. Atty. Michael E. Tranbarger to the public defender's office. +**Van Horn**+ is now retired.

+"**Sheriff's**+ Department records indicate that Mr. +**Van Horn**+ conducted firearms comparisons in 153 law enforcement investigations during that period," according to the letter. It said ballistics evidence had been retested in 51 of +**Van Horn's**+ cases and that investigators concluded there may have been errors in two cases. Defense attorneys in those two cases have been notified, the letter said.

---- INDEX REFERENCES ----

KEY WORDS: LOS ANGELES COUNTY +**SHERIFF'S**+ DEPARTMENT; WEAPONS; LAW ENFORCEMENT OFFICERS; INVESTIGATIONS; PROFICIENCY TESTS

NEWS SUBJECT: Metro News; Los Angeles Times (MTR LATM)

STORY ORIGIN: LOS ANGELES COUNTY

NEWS CATEGORY: BRIEF

INDUSTRY: Aerospace (ARO)

REGION: California; North America; Pacific Rim; United States; Western U.S. (CA NME PRM US USW)

EDITION: HOME EDITION

Word Count: 126
2/4/00 LATIMES B4
END OF DOCUMENT

EXHIBIT 3

Forensic
Identification
Services

Declaration in Support of Retesting Biometric Evidence

State v. Deondre Staten

I, Kenneth R. Moses, declare as follows:

1. I am currently the Director of Forensic Identification Services, an independent crime laboratory established in 1997 in San Francisco. I make this declaration of my own personal knowledge and, if called upon to do so, could and would testify competently to the facts set forth herein.

2. I have over 50 years of experience in the forensic sciences. I served for 17 years as the supervisor of Crime Scene Investigations for the San Francisco Police Department In the course of my career, I have investigated over 18,000 crime scenes and have testified as an expert witness in crime scene investigations in more than 800 cases in state and federal courts. (CV submitted.)

3. I have been active in the development and implementation of new technologies in biometric systems that have revolutionized forensic science. I assisted in system design of the automated fingerprint identification system (AFIS,) and in the funding of the DNA section within the San Francisco Crime Laboratory. Both of these technologies emerged and spread nationwide in the late 1980's.

4. I have served as a resource expert for Innocence Projects in the past and was asked by Annee Della Donna to review the physical evidence in State v. Deondre Staten who was convicted largely on circumstantial evidence for the 1990 murder of his parents, Faye and Arthur Staten.

5. In examining the case, I reviewed 360 pages of police, crime laboratory, and autopsy reports as well as 160 photographs.

6. Arthur Staten died in his bedroom of a single gunshot wound to the back of his head fired by a .38 caliber revolver. An additional two shots that missed were recovered from the walls leaving potentially two or three rounds unfired in the cylinder. Faye Staten was found on the floor in the adjacent dining room dead from 18 stab wounds. That different modes of attack were used might indicate the presence of more than one assailant.

7. Deondre stated that he came home and discovered the victims. When police arrived, they saw no blood on his hands or clothing. Blood stains were found on his tennis shoes which Deondre said occurred when he kneeled next to his mother. His hands were tested for gunshot residue but no residue was present.. No murder weapon was ever found.

130 Hernandez Ave. San Francisco CA 94127
Phone: 415.664.2600 Fax: 415-664-2615 Email: ForensicID@aol.com

Forensic
Identification
Services

8. Twenty-seven latent fingerprints were lifted inside the residence. After comparing them to known residents and visitors, several latents were still unidentified. No bloody fingerprints of Deondre were found anywhere at the scene. Graffiti had been spray painted by an assailant on a mirror-tiled wall. Unidentified latent fingerprints were developed on the mirror tiles and on a can of spray paint found in a closet.

9. Numerous blood samples collected at the scene were analyzed by the Sheriff's Crime Lab using pre-DNA methods. Many of the samples came back as being consistent with Faye Staten. Results from stains collected from the floor just inside and outside the front door on a suspect's path of exit were inconclusive.

10. Automated fingerprint technology (AFIS) and DNA Analysis were still in their nascent forms in 1990. While then current blood typing and enzymatic analyses used by the Sheriff's Crime Lab might include or exclude individuals from large populations, modern technological advancements in DNA analysis enable forensic scientists to identify an individual to an extraordinarily high degree of statistical significance over thirteen highly variable regions along the human genome. Whereas historical serological analyses required larger samples, such as a full drop of blood, modern DNA forensics often utilizes sample sizes so minute as to be invisible to the naked eye, such as "touch DNA" samples consisting of only a few skin cells on a cartridge casing.

In 1990, both AFIS and CODIS databases were thinly populated; today, they contain many millions of subjects from a very wide geographic area and the chances of making an identification are much greater.

11. Biometric testing today using new technologies not available in 1990 present a compelling case for re-testing the serologic as well as the fingerprint evidence in the Staten case to obtain more definitive and potentially exculpatory answers as it has in many other cases.

Executed this 3rd day of May 2024 at San Francisco, California.

/Kenneth R. Moses

KENNETH R. MOSES

130 Hernandez Ave. San Francisco CA 94127
Phone: 415.664.2600 Fax: 415-664-2615 Email: ForensicID@aol.com

PROOF OF SERVICE PEOPLE V. STATEN

STATE OF CALIFORNIA,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 301 Forest Avenue, Laguna Beach, Ca 92651.

On SEPTEMBER 11, 2024 I served the foregoing document described as: **MOTION FOR DNA TESTING** on the interested parties in this action by transmitting [] the original [X] a true copy thereof as follows:

LOS ANGELES DISTRICT ATTORNEYS' OFFICE
FORENSIC SCIENCE TEAM
MARGUERITE RIZZO
320 West Temple Street, Suite 540
Los Angeles, Ca 90012
mrizzo@da.lacounty.gov

X BY EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure sections 1010.6, et seq. and CRC 2.25, or based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from the email address delladonnalaw@me.com to the persons at the email addresses listed above. I did not receive within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

X BY MAIL: I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Laguna Beach, California in the ordinary course of business. I am aware that upon motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 11st day of September 2024 in Laguna Beach, Ca 92651.

_____/S/_____
ANNEE DELLA DONNA

ANNEE DELLA DONNA, ESQ., SBN 138420
LAW OFFICES OF ANNEE DELLA DONNA
301 Forest Avenue
Laguna Beach, California 92651
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Attorneys for Defendants DEONDRE STATEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CLARA SHORTRIDGE CRIMINAL JUSTICE CENTER

THE STATE OF CALIFORNIA,

Plaintiff,

v.

DEONDRE STATEN,

Defendant.

Case No. KA006698

REPLY TO THE PEOPLE'S OPPOSITION TO DNA TESTING

Dept: 100
Assigned to: Honorable William C. Ryan

ARGUMENT

INTRODUCTION

In response to Defendant's prior motion, the Court ruled on January 26, 2024, that Defendant did "not demonstrate that, had DNA testing been available, there is a 'reasonable chance' he would have obtained a more favorable result at trial." However, the Court did not deny the motion with prejudice. Rather, the Court held that the Defendant did not meet the requirements of section 1405 *at that time.*

In Defendant's new motion, he not only addresses and satisfies each element of §1405; but he also provides a declaration from a qualified forensic scientist, Kenneth Moses. This expert opinion supports the conclusion that there is a reasonable chance the Defendant would have obtained a more favorable outcome at trial, if advanced DNA testing been conducted. This expert opinion bolsters the argument that the new evidence could materially affect the case.

Although the Court previously concluded that the "overwhelming state of the evidence" refuted the notion that the killings were gang-related, key evidence found at the scene cast serious doubt on this finding. For instance, there was gang graffiti found both inside and outside the house, none of which matched Defendant's own handwriting. This discrepancy raises significant questions about alternative perpetrators and their potential gang affiliations.

Moreover, the lack of forced entry into the residence has a plausible explanation: the back door was left unlocked. This scenario undermines any assumption that the absence of forced entry implicates the Defendant directly. Finally, in the taped conversation where the Defendant stated he would blame the crime on the Dukes, this

statement could be interpreted multiple ways. One plausible explanation is that the Defendant, at the time of the statement, genuinely did not know the identity of the murderers. This ambiguity further underscores the necessity for additional forensic testing. Given these factors, and the newly presented evidence and expert opinion, the Defendant has demonstrated a compelling basis for the Court to grant the motion. Conducting advanced DNA testing is not only justified but essential to ensure a fair and just outcome in this case.

A. Defendant is not Collaterally Estopped from Raising the Issue of Post-Conviction DNA Testing Where Public Policy Supports it.

The doctrine of collateral estoppel crucially includes a requirement that the Court "look[] to the public policies underlying the doctrine before concluding that collateral estoppel should be applied in a particular setting." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342-43.) Even where an issue has been previously litigated in a former proceeding, "collateral estoppel is not an inflexible, universally applicable principle." (*Jackson v. City of Sacramento* (1981) 117 Cal. App. 3d 596, 603.) A Court may still hear the matter "where the limitation on relitigation underpinnings of the [collateral estoppel] doctrine are outweighed by other factors." (*Id.*) This policy applies especially in criminal cases: "the rule of collateral estoppel in criminal cases is not to be applied with the hypertechnical and archaic approach of a nineteenth century pleading book, but with realism and rationality." (*Ashe v. Swenson* (1970) 397 U.S. 436, 444.)

Here, Defendant was sentenced to the death penalty. The basis for bringing a second motion for post-conviction DNA testing is that there exists potentially exculpatory DNA evidence. Since the advent of forensic DNA analysis, a growing number of Americans convicted of violent crimes have been exonerated through DNA

analysis of evidence that was untested at the time of trial. New technologies have increased the likelihood of successful DNA analysis of aged, degraded, limited, or otherwise compromised biological evidence. As a result, crime scene samples once thought to be unsuitable for testing may now yield viable DNA profiles. Moreover, samples that had previously generated inconclusive DNA results may be amenable to reanalysis using newer methods.

In the 34 years since Defendant's parents were murdered, biometric testing has progressed such that blood samples—that in 1990 were inconclusive—can now yield accurate DNA results. According to Forensic Expert Kenneth Moses, these DNA results could result in more definitive and potentially exculpatory answers. The public policy that the State does not execute a defendant without performing DNA testing on potentially exculpatory evidence is essential to the preservation of the integrity of the justice system. Therefore, this Court should hear Defendant's motion for post-conviction DNA testing where the limitation on relitigation is outweighed by the preservation of judicial integrity.

B. The Declaration of expert Kenneth R. Moses Meets the Requirements of Section 1405(d)(1)(d) and (g) Demonstrating a Reasonable Probability That Defendant Would Have Received a More Favorable Result had DNA Testing Been Available at the Time of Trial.

Defendant has satisfied the pleading requirements of § 1405(d)(1)(d) and (g). Forensic Expert Kenneth Moses reviewed 360 pages of police, crime, laboratory and autopsy reports as well as 160 photographs. In his opinion, there was credible evidence pointing to Defendant's innocence-no blood on his hands and clothing despite Faye Staten being stabbed 18 times, no gun residue on his hands, no murder weapon found,

no bloody fingerprints of Defendant found anywhere at the scene, unidentified fingerprints found on the spray can, and multiple inconclusive blood samples.

Mr. Moses' expert opinion is that the untested blood and fingerprints could yield potentially exculpatory evidence if tested using modern techniques. If a third party's DNA was found at the murder scene back in 1990, this evidence reasonably likely would have resulted in a more favorable result for Defendant at trial. Unfortunately, DNA testing was in its infancy in 1990, and DNA and fingerprint testing on samples found at the scene were inconclusive. However, modern technological advances would likely result in conclusive results should the DNA be tested. "In 1990, both AFIS and CODIS databases were thinly populated; today, they contain many millions of subjects from a very wide geographic area and the chances of making an identification are much greater. Biometric testing today using new technologies not available in 1990 present a compelling case for re-testing the serologic as well as the fingerprint evidence in the Staten case to obtain more definitive and potentially exculpatory answers as it has in may other cases." (Dec. of Moses, para. 9, 10.)

Pursuant to § 1405(d)(1)(d), Defendant is not required to prove he would have received a different verdict at trial. He only has to demonstrate there is a reasonable probability that he would have received a more favorable result. The Court is obligated to "liberally apply the 'reasonable probability' standard to permit testing in questionable cases." (*Jointer v. Superior Court* (2013) 217 Cal.App. 759, 769.) The State argues DNA evidence would not refute Defendant's own words in taped conversations. However, there was never any admission of guilt by the Defendant in any taped conversation. Moreover, definitive DNA evidence revealing a third party's

blood and fingerprints at the crime scene would decisively validate Defendant's claim that gang members committed the murders, far outweighing the impact of a single ambiguous statement made by the young and vulnerable Defendant. Further, the Forensic Expert, Mr. Moses presented a compelling need for further DNA testing, emphasizing its potential to uncover exculpatory evidence that could decisively impact the outcome of the case. As such, Defendant has met the statutory requirements under § 1405(d)(1)(d) and (g) and relief should be granted.

CONCLUSION

DNA testing has opened a window to give us a disturbing view of the defects of the capital punishment system nationwide. Just as fingerprints, when available, were a major part of evidence in the 20th century, in the 21st century DNA is the fingerprint. If it is available, then it should be available in the same way in the last century we made fingerprints available.

Mounting evidence suggests that the cases in which DNA evidence has proved death row inmates innocent are just the tip of an iceberg of constitutional violations and wrongful convictions in death penalty cases--the tip of the iceberg, but DNA is a good starting point.

Date: December 19, 2024

DELLA DONNA LAW

Annee Della Donna

Annee Della Donna, Esq.

PROOF OF SERVICE PEOPLE V. STATEN

STATE OF CALIFORNIA,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 301 Forest Avenue, Laguna Beach, Ca 92651.

On December 19, 2024 I served the foregoing document described as: **REPLY BRIEF MOTION FOR DNA TESTING** on the interested parties in this action by transmitting [] the original [X] a true copy thereof as follows:

LOS ANGELES DISTRICT ATTORNEYS' OFFICE
FORENSIC SCIENCE TEAM
MARGUERITE RIZZO
320 West Temple Street, Suite 540
Los Angeles, Ca 90012
mrizzo@da.lacounty.gov

X BY EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure sections 1010.6, et seq. and CRC 2.25, or based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from the email address **delladonnalaw@me.com** to the persons at the email addresses listed above. I did not receive within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

X BY MAIL: I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Laguna Beach, California in the ordinary course of business. I am aware that upon motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 19th day of December 2024 in Laguna Beach, Ca 92651.

_____/S/_____
ANNEE DELLA DONNA

4

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Criminal Division

Clara Shortridge Foltz Criminal Justice Center Dept. - 100

XEAKA006698-01 **January 16, 2025**

The People of the State of California **8:30 AM**

vs.

STATEN, DEONDRE ARTHUR

Honorable William C. Ryan, Judge
B. Perez, Judicial Assistant — Not Reported, Court Reporter

PC187(a), PC187(a)

NATURE OF PROCEEDINGS: Judicial Action

The following parties are present for the aforementioned proceeding:

No Appearances

The matter is called for Judicial Action.

ORDER RE: SECOND MOTION FOR DNA TESTING (PEN. CODE, § 1405)

IN CHAMBERS

Second Motion for the performance of forensic deoxyribonucleic acid (DNA) testing filed by Deondre Staten (Defendant), represented by Annee Della Donna, Esq. Respondent, the People of the State of California (People), represented by Deputy District Attorney Lee Ashley Cernok. Denied.

BACKGROUND

In 1991, defendant was convicted of two counts of murder as well as allegations of killing for financial gain an multiple murder. Penal Code sections 187(a), 190.2(a)(1), (a)(3). It was further found true that defendant personally used a firearm in the killing of his father and personally used a deadly weapon, a knife, in the killing of his mother. Penal Code sections 12022.5 and 12022(b). Defendant was sentenced to death.

On July 19, 2023, defendant filed the instant motion for DNA testing in the East District of the Los Angeles County Superior Court. On July 25, 2023, the motion was transferred to Department 100 of the Foltz Criminal Justice Center from the East District pursuant to Local Rule 8.33(a)(3)(D), where it was then forwarded to the undersigned in the Criminal Writs Center on August 4, 2023. On October 31, 2023, the People filed an opposition to the motion as stated in Penal Code section 1405(d)(2). Defendant also filed a motion for

disclosure of DNA reports and status of biological evidence pursuant to Penal Code section 1405(c) on December 7, 2023.

Defendant filed the first motion for postconviction DNA testing pursuant to section 1405. In it, defendant requests the release and DNA testing of (1) three .38 caliber fired bullets, (2) one .25 caliber casing; and (3) bloodstain evidence, although unspecified as to which of the 18 samples collected on the day of the crimes. Defendant contended that he has established the required conditions under section 1405.

The People filed an opposition to the motion for postconviction DNA testing. The People argued that the motion should be denied because Defendant could not demonstrate that all the evidence is available, and in a condition to be tested, or that favorable DNA testing results would raise a reasonable probability of a more favorable verdict or sentence.

On January 26, 2024, the court denied the motion.

On September 12, 2024, the defendant filed the instant second motion for DNA testing. On December 9, 2024 the People filed its opposition. On December 19, 2024, the defendant filed his reply.

COMMITMENT OFFENSE[1]

Defendant, age 24, lived with his parents, Arthur and Faye Staten. Mr. and Mrs. Staten owned a beauty salon and beauty supply store. His parents had several life insurance policies worth more than $300,000. In August 1990, in the presence of defendant, they revised their policies to name defendant as the sole beneficiary. A fourth policy named defendant and his mentally disabled brother as co-beneficiaries.

Defendant argued often with his father and would be evicted from the home periodically for weeks or months a time. He would tell friends that he "would take his father out" or take care of him." He also told them about the insurance policies and how he would inherit a large sum if his parents died. On one occasion when discussing with friends as to how to make money, he told them that he knew how they could make $275,000. Defendant told them that if they would "bump off" two people who lived around the corner and owned a beaut salon and beauty supply store, they could make a "five-digit" sum of money.

In September 1990, Arthur and Faye Staten left for a two-week vacation. They left their truck at the home of Faye's parents, the McKays. Defendant stayed at home. A week after his parents left, defendant showed his friend John Nichols, the .38 caliber revolver that belonged to his parents. He gave Nichols a .22 caliber gun. On several occasions, he told Nichols that he had hollow-point bullets.

Two or three days before his parents were to return, late at night, defendant told his friends that he heard something in the backyard. He did not find anyone. He said that he had received threatening phone calls from

the East Side Dukes (ESD), a local Latino gang. The following day, he showed friends the letters "ESD" spray-painted on the backyard patio.

During the week before the Statens' return from vacation, defendant repeatedly asked a cousin, who lived behind the McKays' home, to call him when the Statens left for home after retrieving their truck. On October 11, 1990, the Statens returned from vacation but spent the night and most of the next day at the McKays' home. On October 12, defendant telephoned throughout the day to find out when his parents were coming home but declined invitations to come to dinner.

A neighbor, Bertha Sanchez, saw the Statens' truck arrive at about 11:40 p.m. Within 10 to 15 minutes, the neighbor and her husband heard three gunshots. Another neighbor, Craig Hartman, heard guns shots between 11:30 and 11:45 p.m. Shortly after midnight, defendant's aunt phoned him to find out if his parents had arrived safely. Defendant answered but sounded nervous and rushed. He said that they had not returned and that he was getting ready to go out. He did not offer to leave a message for his parents. About thirty minutes later, defendant's aunt called again. This time, defendant stated that they were home but did not put them on the line.

Sometime after midnight, Sanchez heard what she thought was the Statens' truck driving away. It returned about 20 minutes later. Around 1:05 a.m., the Hartmans state that defendant knocked on his door and told him his parents had been killed. The Hartmans returned with defendant to his house to find Faye's body lying near the entryway and Arthurs's body in the master bedroom. The words "ESD Kills" were spray-painted on a mirrored wall in the living room. Arthur died of a single gunshot to the head with a .38 or .357 caliber hollow-point bullet. Faye died of 18 stab wounds, seven of which could have been fatal. There was no evidence of forced entry or robbery and no signs of entry in the backyard.

There were bloodstains throughout the house. A handprint on the mirrored living room wall below the spray-painted graffiti matched defendant's. There was a 90 percent chance that the graffiti on the mirrored wall was produced by the same writer as the graffiti on the back porch. The paint on both was the same and it also matched a can of spray paint found in the hall closet. At funeral service for his parents, defendant did not appear sad. He told a cousin that this was no time to cry because his parents were dead. Rather, it was a time tc party and get high.

On October 14, 1990, Nichols was stopped by law enforcement and arrested for violating probation for carrying the .22 handgun on his person. On November 3, 1990, Nichols was released and met with defendant while wearing a wire monitored by law enforcement. In taped conversations, defendant said that he had "gotten rid of" the .38 caliber revolver before his parents returned home. He suggested Nichols lie about the gun to police and assured him that the police would not be able to find it and that as long as he stuck to his story, they would not have a case: "[i]f they still can't find it, I'm still going to blame it on the Dukes."

The gang unit of the Los Angeles County Sheriff's Department concluded that the murders were not gang related and that the graffiti found in the house and backyard did not appear genuine or written in the distinctive style of the ESD. It would be unusual to have graffiti hidden in the backyard or house rather than in a prominent place in front of the house to announce and identify their killings.

Defendant introduced his own testimony and evidence to claim that his relationship with his parents was good. He stated that he never spoke to others about killing his parents for financial gain. The ESD repeatedly threatened him. He suspected that one of Nichols' friends stole the .38 caliber gun.

On the night of the killings, he states that he left after talking to his aunt and took his parents' truck to get a hamburger but returned home after realizing that he left his wallet at home. When he arrived, he discovered hi parents' bodies and saw the spray-painted graffiti. No gunshot residue was found on his hands.

On December 2, 1991, a jury convicted defendant of the murder of his parents. The jury found true that he use a firearm to kill his father and a knife to kill his mother. The jury also found true special circumstances that th murders were intentionally carried out for financial gain and that defendant committed multiple murders. The trial court sentenced defendant to death after the jury recommended the same. Following an automatic appeal, the California Supreme Court affirmed the conviction and death sentence. People v. Staten (2000) 24 Cal.4th 434, 441-446. The defendant filed a federal petition for writ of habeas corpus, which was denied without an evidentiary hearing. Defendant appealed and the United States Court of Appeals, 9th Circuit affirmed the decision.

APPLICABLE LEGAL PRINCIPLES

Subdivision (a) of section 1405 provides, "[a] person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion, pursuant to subdivision (d), before the trial court that entere the judgment of conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing." The motion must be verified by the convicted person under penalty of perjury and:
(1) include a statement that he or she is innocent and not the perpetrator of the crime;
(2) explain why the identity of the perpetrator was, or should have been, a significant issue in the case;
(3) make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought;
(4) explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability th the person's verdict or sentence would be more favorable if the results of DNA testing had been available at th time of conviction;
(5) reveal the results of any DNA testing that was conducted previously; and
(6) state whether any motion for testing under this section previously has been filed and the results of that motion. (§ 1405, subd. (d).)

The court shall grant the motion for DNA testing only if it determines all of the following have been established:
(1) The evidence is available and in a condition that would permit the requested testing;
(2) The evidence has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect;
(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case;
(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of his identity as the perpetrator of the crime;
(5) The requested DNA testing results would raise a reasonable probability, in light of all the evidence, that the convicted person would have received a more favorable judgment if the DNA results were available at the time of conviction;
(6) The evidence sought to be tested was not tested previously, or was tested previously, but the requested DNA test would provide results that are reasonably more probative of the identity of the perpetrator;
(7) The testing requested employs a method generally accepted within the relevant scientific community; and
(8) The motion is not made solely for the purpose of delay. (§ 1405, subd. (g).)

DISCUSSION

In the second motion for DNA testing, defendant seeks the same testing as to three .38 caliber bullets, one .25 caliber casing, and blood samples that was requested in the first motion. As will be explained below, after the unfavorable ruling to the defendant, his remedy was to timely petition in the California Supreme Court pursuant to Penal Code section 1405(k) and not to file this second motion for DNA testing, which may contain some more specificity as compared to the first motion but ultimately fails for the same reasons.

The People's contention that the motion is collaterally estopped is well taken. The defendant has raised the same issues as in the prior motion, the issues were actually litigated, and the court issued a final ruling on the merits of the motion. Lucido v. Superior Court (1990) 51 Cal.3d 335, 341; Teitelbaum Furs, Inc. v. Dominion Ins. Co. Ltd. (1962) 58 Cal.2d 601, 604.

Defendant requested DNA testing in both motions as to the same bullets, casing and blood samples, as stated above. Cf. First motion, p. 9 and Second motion, p. 8. The same parties filed motions and oppositions on these same issues in the first motion and the court issued its ruling denying the motion on January 26, 2024.

As stated in that January 26, 2024 ruling denying the defendant's motion, explained in pertinent part below, the court explained why defendant could not avail himself of Penal Code section 1405. This is dispositive even if the court were not to consider the collateral estoppel issue at all.

Requirements of Section 1405

Reasonable Probability of a More Favorable Result

The court is authorized to grant a DNA motion only if it finds that the requested DNA testing results would raise a reasonable probability that, in light of all the evidence, Defendant would have received a more favorabl verdict or sentence if the results of DNA testing had been available at the time of conviction. (§ 1405, subd. (g)(5).) That is, the defendant must demonstrate that, had the DNA testing been available, there is a "reasonab chance" he would have obtained a more favorable result at trial. (Richardson, supra, 43 Cal.4th at p. 1051.) "I making this assessment, however, it is important for the trial court to bear in mind that the question before it is whether the defendant is entitled to develop potentially exculpatory evidence and not whether he or she is entitled to some form of ultimate relief such as the granting of a petition for habeas corpus based on that evidence." (§ 1405, subd. (g)(5).) As the Ninth Circuit observed in an analogous decision, "'Obtaining post-conviction access to evidence is not habeas relief.' [Citation.] Therefore, the trial court does not, and should not, decide whether, assuming a DNA test result favorable to the defendant, that evidence in and of itself woul ultimately require some form of relief from the conviction." (Ibid.) The court is obligated to "liberally apply the 'reasonable probability' standard to permit testing in questionable cases." (Jointer v. Superior Court (2013 217 Cal.App.4th 759, 769 (Jointer).)

Here, however, the court did not find a "reasonable probability" that any of the requested evidence recited in tl case either by the motion, the opposition, or past case decisions regarding this defendant, and DNA testing of i would support his version of the crimes. The overwhelming state of the evidence refutes his defense that the killings were gang related.[2] There is no showing or support, either at the time of the convictions and subseque appeals or in the current motions, for gang-related shootings, as was the defendant's theory of the case. The gang's motive is unexplained by the defendant in the motions.

Furthermore, the method of killing is inconsistent with defendant's claim that it was gang killings. The ESD graffiti was hidden in the house and in the backyard rather than announced and identified in a public area. There was no evidence of forced entry or robbery and no signs of entry in the backyard.

Lastly, and again, most importantly, no amount of DNA evidence would refute defendant's own words in tape conversations where he explicitly states that he would "blame [the crimes] on the Dukes."

Testing of the .25 caliber bullet casing has no relevance as the three fired bullets, including the one removed from Arthur Staten's head, were .38 caliber. Defendant has not explained the relevance of re-testing the 18 blood samples nor specified which of the 18 samples collected on the day of the crimes are available or releva for testing. Defendant has not demonstrated that, had the DNA testing been available, there is a "reasonable chance" he would have obtained a more favorable result at trial. Penal Code section 1405(d)(4), (g)(5).

Now in the second motion, defendant also has not explained how he is not collaterally estopped from advancir a second motion for DNA testing for consideration by this court. The defendant has raised the same issues as

the prior motion, the issues were actually litigated, and the court issued a final ruling on the merits of the motion. Lucido, supra, 51 Cal.3d at 341; Teitelbaum Furs, Inc., supra, 58 Cal.2d at 604.

DISPOSITION

For the foregoing reasons, Defendant's second motion for DNA testing is DENIED.

The Clerk is ordered to serve a copy of this order upon Annee Della Donna, Esq., as counsel for Defendant, and upon Deputy District Attorney Lee Ashley Cernok, as counsel for Respondent, the People of the State of California.

The order is signed and filed this date.

FOOTNOTES:

[1] The facts of the commitment offense are taken from the California Supreme Court opinion in People v. Staten (2000) 24 Cal.4th 434, 441-446, unless otherwise specified.

[2] See People v. Staten, supra, at pp. 460-462.

CLERK'S CERTIFICATE OF MAILING

I, David W. Slayton, Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served a copy of the above minute order of January 16, 2025 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: January 28, 2025

By: /s/ B. Perez
B. Perez, Deputy Clerk

Annee Della Donna, Esq.
Law Offices of Annee Della Donna
301 Forest Ave.
Laguna Beach, CA 92651

Office of the District Attorney
Forensic Science Section
Attn: Lee Ashley Cernok, Deputy District Attorney
320 W. Temple St., Rm. 1180
Los Angeles, CA 90012

PROOF OF SERVICE PEOPLE V. STATEN

STATE OF CALIFORNIA,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 301 Forest Avenue, Laguna Beach, Ca 92651.

On February 18, 2025 I served the foregoing document described as**:**

PETITION FOR WRIT OF MANDATE on the interested parties in this action by transmitting [] the original [X] a true copy thereof as follows:

LOS ANGELES DISTRICT ATTORNEYS' OFFICE
MARGUERITE RIZZO/LEE CERNOCK
320 West Temple Street, Suite 540
Los Angeles, Ca 90012
mrizzo@da.lacounty.gov
leecernok@da.lacounty.gov

ATTORNEY GENERAL'S OFFICE
300 SOUTH SPRING STREET, LOS ANGELES, CA 90013-1230

Superior Court of California
Judge William Ryan
Dept 100
Clara Shortridge
210 West Temple
Los Angeles, Ca 90012

X BY EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure sections 1010.6, et seq. and CRC 2.25, or based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from the email address delladonnalaw@me.com to the persons at the email addresses listed above. I did not receive within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

X BY MAIL: I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Laguna Beach, California in the ordinary course of business. I am aware that upon motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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_____/S/_Annee Della Donna_____

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **People v. Staten**
Case Number: **TEMP-MC5RPSWE**
Lower Court Case Number:

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Date

/s/Annee Della Donna
Signature

Della Donna, Annee (138420)
Last Name, First Name (PNum)

Law Offices of Annee Della Donna
Law Firm