

SUPREME COURT COPY COPY

No. S143531

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

_____)
PEOPLE OF THE STATE OF CALIFORNIA,)
))
Plaintiff and Respondent,) Riverside County
) Superior Court
v.) No. RIF109916
))
JOSE LUIS LEON,)
))
Defendant and Appellant.)
_____)

SUPREME COURT FILED

FEB 20 2014

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Deputy

APPELLANT'S OPENING BRIEF

Automatic Appeal from the Judgment of the Superior Court
of the State of California for the County of Riverside

HONORABLE CHRISTIAN F. THIERBACH, JUDGE

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DEATH PENALTY

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)	S143531
)	
Plaintiff and Respondent,)	Riverside County
)	Superior Court
v.)	No. RIF109916
)	
JOSE LUIS LEON,)	
)	
Defendant and Appellant.)	

APPELLANT'S OPENING BRIEF

INTRODUCTION

Appellant was convicted of the murder of Hope Ragland, who was his girlfriend Veronica Haft's grandmother; the murder of Austin Perez, Veronica's brother; and the attempted murder of Marion Ragland, Veronica's grandfather. The only special circumstance alleged was multiple murder. It was the prosecution's theory that appellant had gone to the Ragland residence planning to kill Hope because he thought she had persuaded Veronica to break up with him; that he then killed Austin when he walked in; and that he attempted to kill Marion when he in turn came home. Conceding murder as to Austin, the defense maintained appellant did not plan or intend to kill Hope, who had come at him with a knife and who appellant believed was practicing witchcraft, and that he was at most guilty of manslaughter on this count.

The centerpiece of the prosecution's case was appellant's confession,

given during the second of two videotaped custodial interrogations and followed by a crime scene re-enactment or “walk through.” Appellant’s statements should have been suppressed for want of a knowing and intelligent waiver of his *Miranda* rights. (*Miranda v. Arizona* (1966) 384 U.S. 436.) The record, including un rebutted expert testimony and other undisputed evidence, establishes that appellant’s limited intellectual and cognitive functioning, inexperience with the criminal justice system, immaturity and poor acculturation, among other factors, rendered him incapable of understanding or waiving his *Miranda* rights.

Compounding the *Miranda* violation, the trial court instructed the jurors, pursuant to CALJIC No. 2.71.7, that appellant’s statement to Veronica, who was giving him mixed signals about their relationship, that he would always love her, no matter what happened, was a pre-offense statement of intent, plan, motive or design. By giving this instruction the court usurped the jury’s role as fact finder and lightened the prosecution’s burden to prove appellant guilty of at least one count of first degree murder.

At the penalty phase the court erred prejudicially in denying defense counsel’s request to give exclusively CALCRIM instructions, which were the official state jury instructions at the time of appellant’s trial. (Cal. Rules of Ct., Rule 2.1050; former Cal. Rules of Ct., Rule 855.) Of these, CALCRIM No. 766 would correctly have instructed the jurors that in weighing the aggravating and mitigating circumstances their ultimate task was to determine the appropriate sentence for appellant. The court erred as well in refusing to give three specially-drafted instructions, all of which were legally mandated, had been incorporated in CALCRIM No. 763 and would properly have guided the jurors in their consideration of the evidence presented.

These errors, individually or in combination, were highly prejudicial. The case against appellant, absent his statements to the police and the mischaracterization of his statement to Veronica, was weak. There were no eyewitnesses to the homicides, Marion did not identify his assailant, and no fingerprints or other forensic evidence clearly linked appellant to the crime. Appellant's conviction, special circumstance finding and judgment of death should be reversed.

STATEMENT OF APPEALABILITY

This appeal from a final judgment imposing a verdict of death is automatic under Penal Code section 1239, subdivision (b).

STATEMENT OF THE CASE

Appellant Jose Luis Leon was arraigned May 20, 2003, on a three-count felony complaint: count one, the murder of Hope Ragland (Pen. Code, § 187, subd. (a)); count two, the murder of Austin Perez (Pen. Code, § 187, subd. (a)); and count three, the attempted murder of Marion Ragland (Pen. Code, §§ 664, 187, subd. (a)). (1 CT 1, 4.)¹ The complaint further charged, as to count three, that appellant inflicted great bodily injury (Pen. Code, §§ 1202.7, subd. (a), and 1192.7, subd. (c)(8)), and alleged a multiple murder special circumstance (Pen. Code, § 190.2, subd. (a)(3)). (*Ibid.*) The crime was alleged to have occurred May 1, 2003. (*Ibid.*)

The information, filed December 4, 2003, charged the same three counts and related enhancements and allegations as set forth in the complaint. (1 CT 102-103.) On December 23, 2003, the prosecutor filed a notice of the People's intention to seek the death penalty. (1 CT 108.)

¹ "CT" refers to the Clerk's Transcript, "Supp. CT" to the Supplemental Clerk's Transcript and "RT" to the Reporter's Transcript.

Appellant was arraigned January 30, 2004, and pled not guilty to all charges and denied all enhancements and allegations. (1 CT 111.)

On January 5, 2006, appellant filed a motion to suppress his post-arrest statements to the police on the grounds that he had not knowingly and intelligently waived his *Miranda* rights. (Eight Supp. CT 1-12;² 2 CT 303-310; *Miranda v. Arizona, supra*, 384 U.S. 436.) On January 9, 2006, following an evidentiary hearing, the court denied the motion. (B RT 616-618.) The court then heard and denied appellant's motion to suppress his post-arrest statement on the grounds that he had not been notified of his right under the Vienna Convention on Consular Relations and Penal Code section 834c to contact the Mexican consulate and consult with its representatives. (1 CT 249-275; B RT 649-650.)

Jury selection began January 30, 2006 (2 CT 351-352), and the jury was sworn on February 8, 2006 (8 CT 2346). On February 9, 2006, counsel gave opening statements. (8 CT 2347.) The prosecution called its first witness February 9, 2006, and rested its case on February 22, 2006. (8 CT 2348; 9 CT 2517.) The defense called its first witness on February 22, 2006, and rested on February 23, 2006. (9 CT 2517; 10 CT 2733.) The prosecution presented its case in rebuttal on February 23, 2006. (10 CT 2733.) The parties rested on February 23, 2006, and counsel gave closing arguments on February 23 and 27, 2006. (10 CT 2734, 2735.) On February 27, 2006, the court instructed the jury, and the jurors began deliberations. (10 CT 2735.)

The jurors returned verdicts on February 28, 2006, finding appellant

² Because of a clerical error, the record on appeal includes both an "Eight Supplemental Clerk's Transcript" and an "Eighth Supplemental Clerk's Transcript," containing different materials.

guilty on all counts and finding the enhancements as to count three and the multiple murder special circumstance true. (10 CT 2840.)

On March 6, 2006, counsel gave penalty phase opening statements. (10 CT 2872-2873.) The prosecutor presented the state's case in aggravation on March 6 and 8, 2006. (10 CT 2872-2873.) The defense began its case in mitigation on March 8, 2006, and rested on March 15, 2006. (10 CT 2875; 11 CT 2929.) On March 15, 2006, counsel gave closing arguments and the jurors began their deliberations. (11 CT 2929.) On March 21, 2006, the jurors returned their verdict of life imprisonment without possibility of parole as to count 1 (Hope Ragland) and death as to count 2 (Austin Perez). (11 CT 2968-2969.)

By order filed May 12, 2006, the court denied appellant's automatic motion, pursuant to Penal Code section 190.4, subdivision (e), to modify the sentence of death. (11 CT 3013-3015.) Judgment was entered May 12, 2006. (11 CT 3002-3004, 3005-3007.) Appellant was sentenced to life without possibility of parole on count 1 (Hope Ragland), to death on count two (Austin Perez), and to four years plus life with the possibility of parole on count three (Marion Ragland, with enhancements). (11 CT 3002-3005.) Appellant was also ordered to pay a restitution fine, pursuant to Penal Code section 1202.4, subdivision (b), in the amount of \$10,000, and an additional parole revocation fine, pursuant to Penal Code section 1202.45, in the amount of \$10,000, suspended pending revocation of probation. (*Ibid.*)

STATEMENT OF FACTS

I. Guilt Phase Evidence

The prosecutor called lay witnesses who saw appellant the night of the homicides; but none who saw what occurred inside the Ragland

residence. Marion³ testified he was struck on the head the moment he entered the house; but it was dark and he did not see his assailant. Veronica testified about her relationship with appellant and his relationship with her family. Law enforcement personnel described the crime scene and their recovery and analysis of evidence. A forensic pathologist described the homicide victims' wounds, and opined on the manner and cause of death.

The prosecutor also introduced three videotaped statements appellant made while in custody: the initial custodial interrogation, where appellant denied any wrongdoing; a second interrogation, where he confessed to stabbing Hope and Austin and assaulting Marion; and a crime scene walk-through, where he further described what occurred inside the Ragland residence the night of the homicides. These statements were admitted over defense counsel's objection that appellant had not knowingly and intelligently waived his *Miranda* rights, and that he had been denied his right, as a Mexican national, to consular notification. Appellant's statements are the only direct evidence of what allegedly occurred at the Ragland residence the night Hope and Austin were killed.

A. Appellant's Relationship With Veronica and Her Family

Veronica lived with her grandmother, Hope, her grandfather, Marion, and her younger brother, Austin, in a gated housing development in Corona, California. (5 RT 1319, 1326, 1444.) Hope had raised Veronica since childhood and was like a mother to Veronica, who called Hope mom. Veronica, like Hope, was fluent in Spanish. (5 RT 1331.)

Veronica met appellant in February 2001. (5 RT 1330-1331.) She

³ Marion Ragland and Hope Ragland, who share a last name, are referred to by their first names.

was 16 and in high school. (5 RT 1333.) Appellant told her he was 19, but she later learned he was older. (*Ibid.*) She called him Luis because she had a former boyfriend named Jose. (5 RT 1331.) Soon she became appellant's girlfriend. (5 RT 1334.)

Appellant was from Mexico and spoke only limited English, so he and Veronica, and Hope, spoke in Spanish to one another. (5 RT 1388, 1331, 1332.) Marion did not speak Spanish. (5 RT 1332, 1402.) Appellant developed a close relationship with Hope, but he and Marion never got along well. (5 RT 1341, 1336.) Appellant nonetheless became a member of the family and was at the Ragland residence often. (5 RT 1317-1318, 1335-1336, 1399-1405.)

Veronica testified in detail about her own relationship with appellant: that it was good the first year, then up and down; that he became jealous and possessive (5 RT 1337); and that he feared Hope was urging her to break up with him, when in fact she herself was having second thoughts about their relationship (5 RT 1364-1365). The summer after high school graduation Veronica discovered she was pregnant. (5 RT 1369.) She had an abortion, but told appellant she had miscarried. (5 RT 1369-1370, 1396.) Although her relationship with appellant was "on and off," she remained committed to the relationship and dated no one else. (5 RT 1334.)

Appellant and Hope got along very well at first. She welcomed him into their home, cooked meals for him, and she, Veronica and appellant went on outings together. (5 RT 1334, 1402, 1419, 1860.) Hope helped appellant buy a car, with the understanding he would reimburse her every month for the car payment and insurance. (5 RT 1359, 1858.) Even when Hope and appellant were not getting along, appellant continued to come to the house, and she still cooked for him. (5 RT 1402, 1419.)

Over time, Hope and appellant began to “bicker” more. (5 RT 1398.) Sometimes they quarreled when appellant failed to make a timely car payment. (5 RT 1398.) Veronica described a scene that took place in the parking lot of the church Hope and Veronica attended. (5 RT 1343-1348.) Appellant had been taunting Hope and calling her names. (5 RT 1344-1346.) Hope tried to slap appellant, but he backed away. (5 RT 1346.) Hope chased after him, yelling and wielding her purse. (5 RT 1347-1348.) Hope carried a small knife in her purse; she like to eat fruit, but needed to use a knife because she wore dentures. (5 RT 1348-1350.)

When Veronica first met appellant he was living with his parents, who were from Mexico. (10 RT 1845.) When they returned to Mexico appellant became more “unstable” and wanted to spend more time with Veronica and her family. (5 RT 1360.) He moved into a house owned by a woman named Maria, who “did witchcraft” there, according to Veronica. (5 RT 1353, 1352.) Hope went there once a week to have Maria read her tarot cards. (5 RT 1353.) Appellant suspected Hope of practicing witchcraft on him. (5 RT 1377.) Marion acknowledged that Hope, a Catholic, was also involved in some other “religious thing,” but denied it was witchcraft. (5 RT 1419-1420, 1423.) However, a defense investigator testified that Marion had told him, on two occasions, that Hope had been “in and out” of witchcraft over the years, and that he was sure Hope had gotten involved in it again shortly before her death. (7 RT 1581-1582.)

Veronica began attending the University of California at Riverside, and in January 2003 was awarded a scholarship to study in England, at Oxford. (5 RT 1328-1329.) She described the argument that ensued at the Ragland residence between Hope, who was encouraging Veronica to accept, and appellant, who did not want her to go. (5 RT 1355.) When

Veronica and appellant stepped outside, Hope followed them and the argument continued. (5 RT 1357-1358.) Hope bent down as though to pick up a brick and Veronica had Austin call the police; but she regretted the decision, as nothing happened. (*Ibid.*) The officer who responded to the call testified that appellant chose not to press charges. (7 RT 1573.)

When Veronica left for England, in February 2003, she told appellant it was “probably best” they break off their relationship, or “give it a breather.” (5 RT 1354, 1362.) But she and appellant stayed in touch while she was away. He phoned her often (5 RT 1360-1361) and she sent him cards and love letters, telling him she loved him, missed him and wanted to be with him forever (8 RT 1614-1622). Appellant called Veronica one evening, shortly before the homicides, when she was out with friends, and told her that no matter what happened, he would always love her. (5 RT 1366.) Veronica said “whatever,” and hung up. (*Ibid.*)

Veronica left England and returned home when a Corona police officer phoned her, at “3:00 in the morning back home,” and told her “we have witnesses . . . that Luis killed your mother and your brother.” (10 RT 1812-1813.)

B. Appellant’s Whereabouts the Night Of the Homicides

Two employees of a video rental store near the Ragland residence, Monique Perez and Yvette Alvarez, testified that appellant, who they knew as Elias,⁴ and his girlfriend Veronica, were frequently patrons. (4 RT 1267-

⁴ Appellant’s full name is Jose Luis Leon Elias. (1 RT 1.) He is a Mexican national. (Seventh Supp. CT 55-56; 9 CT 2419-2420.) Thus, as is customary, appellant’s father’s surname (Leon) is followed by his mother’s surname (Elias).