

# SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff/Respondent, )

v. )

EDWARD MATHEW WYCOFF, )

Defendant/Appellant. )

Automatic Appeal  
Supreme Court No. S178669

(Contra Costa Superior Court  
Case No. 5-071529-2)

SUPREME COURT  
**FILED**

JUL 06 2015

Frank A. McGuire Clerk  
Deputy

## APPELLANT'S OPENING BRIEF

On Automatic Appeal from a Judgement of Death  
Rendered in the State of California, Contra Costa County Superior Court

Honorable John W. Kennedy, Presiding

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DEATH PENALTY

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	)	
Defendant/Appellant.	)	
_____	)	

APPELLANT’S OPENING BRIEF ON APPEAL

I.  
STATEMENT OF THE CASE AND APPEALABILITY

A two count information was filed against Edward Wycoff in the Contra Costa County Superior Court on October 5, 2007. Count One alleged the first degree murder of Paul Rogers. Count Two alleged the first degree murder of Julie Rogers. Each of the two murder counts alleged the same three enhancements: use of a dangerous weapon - knife (Penal Code section 12022(b)(1); use of a dangerous weapon - “Wheel Barrel” (Penal Code section 12022(b)(1); and being armed with a firearm (Penal Code section 12022(1)(1). A single special circumstance allegation of multiple murder, Penal Code section 190.2(a)(3), was also alleged in connection with each of the two murder counts. (2CT 260-262.)

Wycoff was arraigned in the Superior Court on October 9, 2007 and pled not guilty to both counts and all of the enhancements. (2CT 263.) On January 9, 2008, a motion to dismiss the two firearm enhancements was granted. (2CT 295.)

Throughout the course of 2008, Wycoff filed and the court heard a number of *Marsden* motions seeking to relieve appointed counsel.<sup>1</sup> (2 CT 303-328, 346-379.) These proceedings culminated in an order from the court dated November 14, 2008, granting Wycoff's request for self-representation. (2 CT 412.) On December 29, 2008, David Briggs was appointed as Wycoff's advisory counsel. (2CT 461-462.) Wycoff remained self-represented during the remainder of the Superior Court proceedings up to and including sentencing.

On June 26, 2009, Wycoff's case was assigned to Judge John W. Kennedy for all purposes. (3CT 679.) Trial started with jury selection on September 14, 2009. (4CT 733.) A jury was sworn on October 8, 2009. (5CT 1307.) Opening statements were presented on October 14, 2009. (5CT 1326.) The prosecution rested its guilt phase case on October 20, 2009. (5CT 1341.) The defense rested its guilt phase case on October 22, 2009. (5CT 1342.) Closing arguments were presented on October 26, 2009. (5CT 1344.) The jury began its deliberations the next day, October 27, 2009. The jury reached its verdicts in one hour and forty minutes. (5CT 1347.) Wycoff was found guilty of both counts of first degree murder. The jury also found true the enhancements and the

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3rd 118.

multiple-murder special circumstance allegation. (5CT1349.)

The penalty phase of trial began the next day, October 28, 2009. (5CT 1479-1480.) Closing arguments for the penalty phase were presented on November 4 and 5, 2009. (5CT 1503-1505.) Jury deliberations took place on the afternoon of November 5. The jury deliberated for less than two hours before returning verdicts of death on both counts. (5 CT 1506-1508; 21RT 4626.)

A sentencing hearing was held on December 8, 2009. Wycoff made a verbal motion for new trial which was denied by the court. (21RT 4643.) The court then denied an automatic motion for modification of the death verdicts. (6 CT 1579-1587; 21 RT 4653.) The court imposed judgments of death on Count One, the murder of Paul Rogers, and Count Two, the murder of Julie Rogers. (6CT 1633-1636; 21RT 4721.)

This appeal is an automatic appeal following judgments of death which lie within the original jurisdiction of this Court. Cal. Const., art. VI, section 12; Penal Code section 1239.

///



## II. STATEMENT OF THE FACTS

### A. **Guilt Phase Evidence**

#### 1. **Introduction**

Acting as his own attorney, Edward Wycoff freely admitted that he killed his sister, Julie Rogers, and her husband, Paul Rogers, in the early morning hours of January 31, 2006. At the guilt phase of trial, Wycoff testified that he intended to kill Julie and Paul and that he planned the killings for months. (16 RT 3590.) He was proud of what he did. During the penalty phase, Wycoff said that he was “the hero” for killing Julie and Paul and that he deserved a reward for doing so.<sup>2</sup> (19RT 4247.)

The facts presented at the guilt phase addressed three time periods. First, Wycoff described the events and his thoughts leading up to the night he killed Julie and Paul Rogers. Second, Wycoff, the two children of Julie and Paul who witnessed the killings, and the police described the events in the early morning hours of the killings. Third, Wycoff and various police officers described his arrest that same morning, evidence seized after his arrest, and statements Wycoff made about the killings to police and others after his arrest.

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<sup>2</sup> Although not presented as evidence at trial a psychologist appointed by the court prior to trial found that Wycoff was suffering from “Paranoid Schizophrenia” and was “a paranoid man suffering from severe mental illness.” The psychologist concluded that Wycoff’s decision to kill Julie and Paul Rogers was the product of his mental illness. (1CT 418, 427.)

No legally meaningful defense was presented at trial. Instead, Wycoff argued to the jury that he had not only a legal and moral right to kill Julie and Paul Rogers, but a moral duty to do so. He argued that when “some rotten people hate you and are about to destroy you, whether it be a moral destruction, a financial destruction, or a destruction of your family or property...you especially have the right to destroy them before they destroy you, but if you choose not to destroy those bad people, then you are a bad person yourself who believes in evil and you deserved to be destroyed.” (17RT 3775-3776.) Wycoff believed that Julie and Paul Rogers were going to destroy him, “the rest of my family,” and “steal my portion of my dad’s inheritance.” Therefore, Wycoff “owned them” and he believed that “not only do I have the right to destroy Julie and Paul but it was expected.” (17RT 3776.)

Wycoff testified that Julie and Paul hated him and were determined to destroy him. The prosecution presented evidence that Wycoff planned and killed Julie and Paul Rogers. The jury deliberated for less than two hours before it found Wycoff guilty of two counts of first degree murder. (17RT 3808.)

## **2. Prior to the Killing of Julie and Paul Rogers**

The background information about the events prior to the killing of Julie and Paul Rogers came almost entirely from Wycoff himself. He testified on direct examination in the form of a rambling narrative that often jumped from one subject to another. His

narrative was frequently vague and often the product of his paranoid delusions.

During Wycoff's narrative, the court told the jury that "as to all this testimony, I'm permitting Mr. Wycoff to testify with a broad scope with the understanding that you may consider his testimony as evidence relating to his state of mind, that being his intent, his motivations...I'm not admitting it for the truth of the matters asserted by Mr. Wycoff, so please don't understand it for the truth of the matters asserted but only as to his state of mind." (16RT 3412.) Unless indicated, the evidence described below is taken from Wycoff's narrative "as evidence of his state of mind."

Wycoff's sister, Julie Rogers, was almost eleven years older than Wycoff. They never really had a brother and sister relationship. (16RT 3387.) Wycoff always viewed Julie as an adult and not a sister. (16RT 3447.) Julie left for college when Wycoff was eight. A few months later Wycoff's other older sister, Debbie, died of an epileptic seizure. (16RT 3385.)

Wycoff described himself as having many problems during his childhood. He hated school. He was not loving, but hateful. He took drugs for hyperactivity. If he failed to take his drugs he would go "bonkers." However, he claimed he eventually outgrew his childhood problems. (16RT 3384, 3388.)

After Debbie died, Wycoff's family moved to a house on Matheny Way in the Citrus Heights neighborhood of Sacramento. Wycoff's grandmother, Irene Galloway, moved into the house with them. Wycoff described his grandmother as the worst person

in the world. He hated her. One day in 1986, Wycoff and his father were moving heavy furniture. Galloway didn't want the furniture moved. She argued with Wycoff's father. The next thing Wycoff knew, Galloway was on the floor and injured. (16RT 3468.) Wycoff believed that his father was drunk and that he knocked Galloway down. (16RT 3461.) Her hip was broken and she left the house in an ambulance. She never returned. Wycoff thought Galloway's departure from the house was one of the greatest things in the world. It brought peace to the house. (16RT 3389-3390.)

Julie married Paul Rogers after they met in law school. Wycoff didn't want Julie to get married. He saw no reason for it. (16RT 338.) Wycoff said that Julie only married Paul because he was rich. She did not love Paul. Paul wanted children while Julie did not. But Julie did not like working as an attorney so she decided to have children as a way to get out of work. (16RT 3453-3454.) According to Wycoff, Julie sold herself out by getting married and sold herself out a second time by having children. (16RT 3455.)

Wycoff thought that Paul was a communist, a socialist, and "very much a leftist." (16RT 3493.) Paul hated guns while Wycoff was a member of the National Rifle Association. (16RT 3554.) Wycoff believed that gun control was "hitting what you shoot." (16RT 3487.)

Julie and Paul had three children. Eric Rogers was 17 at the time of his parent's death. (14RT 2967.) Laurel Rogers was 12. (14RT 3106.) Eric and Laurel testified. Another son, Alex, did not testify and was not home when Wycoff killed Julie and Paul.

In 1993, Wycoff became a long haul truck driver. (16RT 3393.) Also in the early 1990s, Julie and Paul began showing disrespect for Wycoff. It started with little things. Eventually, Wycoff concluded that Julie and Paul hated him and “wanted to destroy me.” (16RT 3489.) Wycoff believed that gave him the right to kill his sister and her husband. (16RT 3589.)

The disrespect and hatred that Julie and Paul had for Wycoff arose in many situations. For instance, the Christmas or birthday presents that Wycoff bought for Eric, Laurel, and Alex were not good enough. (16RT 3394.) Julie and Paul made the gifts from Wycoff “just disappear.” (16RT 3397-3398.)

Right after Christmas in 1998, Wycoff went to a park with Paul, Eric and Alex. Wycoff noticed that Eric was getting “a bit hyper.” Paul gave Eric a Ritalin pill. Wycoff had taken Ritalin as a child and didn’t like it. He argued with Paul about giving Ritalin to Eric. Wycoff said that Paul “was over-prescribing the Ritalin because the kid was just standing there in a daze.” Wycoff thought that Paul was doing this so “he didn’t have to deal with the kid.” (16RT 3402.)

In 2000 or 2001, Wycoff learned that Julie and Paul were also giving Ritalin to Alex. When the children came over to the house on Matheny Way that Wycoff shared with his father, they did not do anything but “sit there” because they were taking Ritalin. Wycoff realized what Julie and Paul were doing. (16RT 3404.) Julie and Paul wanted

the kids to be well mannered around Wycoff and Julie's father "to try and make a good impression on Dad." (16RT 3405.) Wycoff concluded that Julie and Paul were bad parents. (16RT 3447.)

Another instance of disrespect occurred in 2004. Julie and Paul knew that Wycoff did not like salad dressing. While in the kitchen Julie, Paul, and Wycoff discussed putting a bowl of salad on the table without dressing. Everyone could then choose which dressing to put on their own salad. However, after leaving the kitchen for a minute, Wycoff returned to see Paul pouring a whole bottle of salad dressing over the entire bowl of salad. Wycoff "knew it was outright disrespect of me from Julie and Paul." (16RT 3415-3416.)

In November, 2004, Wycoff's Aunt Lu, who was nearly a hundred years old and had dementia, was in a car accident near Reno. Julie and Paul had her placed in an assisted living community near Walnut Creek, California. Wycoff thought that Julie and Paul just wanted to get control over Aunt Lu and her assets. (16RT 3416.)

In 2005, Wycoff and Julie's father was in the hospital. He died on July 13, 2005. While their father was in the hospital he would rarely talk to Wycoff. (16RT 3420.) Julie "was totally in control of Dad." (16RT 3422.) Julie did not want their father talking to Wycoff. She wanted "to make sure she would be the last person to talk to Dad." (16RT 3424.) Julie arranged for hospice care for their father back at

the Matheny Way house. (16RT 3422.)

According to Wycoff, Julie wanted their father to die at home for several reasons. Julie wanted their father to die “in the middle of that house, so it would freak (Wycoff) out and creep (Wycoff) out and make (Wycoff) not want to live there any more, make (Wycoff) want to move out because someone died in that house.” Julie intended to “add misery” to Wycoff’s life. (16RT 3423.) Indeed, Wycoff said the house “was haunted after that. Things happened.” However, Wycoff still “loved that house” and it was Julie who “got creeped out in that house, a scary feeling.” (16RT 3423-3424.)

Julie controlled their father’s medicine the day he was brought home from the hospital. She immediately began giving him morphine patches to make him sleep. (16RT 3425.) She wanted their father drugged “so he won’t wake up.” He died that night. (RT 3425-3426.)

According to Wycoff, Julie wanted their father to die because she had a vacation planned in August. “And Julie did not want Dad to die or have problems with Dad while she was on vacation. Julie wanted Dad to die before she went on vacation. So she set up the hospice thing so that dad would stop eating and die before Julie would go on vacation in August.” (16RT 3423.)

After their father’s death, Julie “made it perfectly clear that she was the executor of (his) estate. She was calling the shots, even though I lived at the house

and everything.” (16RT 3426.) According to Wycoff, Julie agreed that she would go through everything in the house and anything she wanted to keep “she would run it through (Wycoff).” Wycoff claimed, however, that Julie and her children came to the house one day when Wycoff was not home. Julie let her children take whatever they wanted without discussing it with Wycoff. Even their mother’s expensive jewelry was missing. When Wycoff returned home, he called Julie on the telephone. She didn’t want to talk about it. Eventually, however, she admitted that she took their mother’s jewelry. (16RT 3430-3431.)

At their father’s funeral, photographs of Wycoff’s hated grandmother, Irene Galloway, with their father were put on display. Wycoff realized what Julie was doing. He argued with Julie about the photos and then he “corrected that.” (16RT 3433.)

The obituary for their father was late. Paul was supposed to have it done by the day of the funeral. “And a few people were actually blaming (Wycoff) for that, for the obituary, but it was Paul that was supposed to take care of that.” (16RT 3433.)

Julie and Paul were supposed to bring Aunt Lu to the funeral. She never arrived. Julie said Aunt Lu was too upset to attend. Wycoff thought that was a lie. Wycoff believed that Julie wanted to keep Aunt Lu away from him. (16RT 3448.) Wycoff believed that Julie and Paul were taking over Aunt Lu’s life and assets.



Julie put all of Aunt Lu's things into storage. She wanted to sell Aunt Lu's house. Julie made Aunt Lu's "oldest will" just "disappear." The oldest will included assets for Aunt Lu's step-daughters. Julie said she was going to "create" a new will that only included "herself more than other family members." (16RT 3449-3450, 3452-3453.)

After their father's funeral Julie came over to the Matheny Way house. She told Wycoff that half the house belonged to her. She wanted Wycoff to pay her rent. Wycoff insisted that they had agreed that he would take complete ownership of the house and Julie would get "all of these investments, 401Ks, and all this (sic) bank accounts, checking accounts." According to Wycoff, "this wasn't the same Julie." (16RT 3434.)

Julie, Paul and their family lived in El Cerrito, just north of Berkeley. After their August vacation, they began to remodel their house. On or about September 10, 2005, Wycoff drove down from Citrus Heights in his father's pickup truck to help Julie and Paul move their furniture from their house into a rental house about three blocks away. (16RT 3435-3436.) Wycoff saw a lot of bad things that day.

Julie told Wycoff that one of her neighbors was trying to build a house on a vacant lot. Julie and other neighbors had the building project stopped. The house was half-built and remained that way for several months. Wycoff came to the conclusion that Julie and Paul wanted their privacy and "they were willing to

destroy this other person that was trying to build the house..." According to Wycoff, "Julie and Paul told this person you cannot build your house. You cannot do this, and shut them down. And then (Julie and Paul) turned around and started building their own house, started working on their own house. It just - - you know, it just seemed so messed up." (16RT 3439.)

While they were moving furniture to the rental house, Eric would not help. Paul talked to Eric nicely trying to get him to help, but "it just wasn't working." (16RT 3440.) Wycoff thought "this was weird." Paul told Wycoff that he could not "make Eric do anything he doesn't want to do." Wycoff thought that Paul was being "so weak, so wimpy." In Wycoff's view, "you can make people do things they don't want to do...cause I've made people do plenty of things. Now, it's now always pleasant. It's not always nice, but there is (sic) ways to put on the pressure, turn up the heat, and make people get things done, make people do things." (16RT 3441.)

After moving furniture that day, Wycoff left his father's pickup truck with Julie and Paul. He had Julie drive him back to Citrus Heights. During the drive Julie called Rosemary Swart. Swart then spoke to Wycoff. She invited him over for dinner the following day. Wycoff thought that was unusual. (16RT 3444.)

The next day, while Wycoff was at Swart's house for dinner, Wycoff believed Julie went into his house and took their father's financial papers. He

noticed later that the grant deed to the house was missing. Other receipts for the house, like a receipt for a new roof, were also missing. At about the same time Wycoff noticed that his mother's jewelry was missing. Julie later confirmed that she had the documents and the jewelry. (16RT 3445-3446.)

Up until this time, the tax bill for the house had come in the name of their father. After the dinner with Swart, the tax bill came in the name of "Wycoff trust." Wycoff surmised that Julie got the grant deed to the house while he was a dinner with Swart. As executor of her father's estate she then put the house into a trust. According to Wycoff, she basically owned the house and she intended to take it away from him despite their agreement to the contrary. (16RT 3456.)

Wycoff asked Julie why she did this. Julie said she wanted to buy a house that bordered a park so that "it would be as if she had this huge backyard." When Wycoff thought about Julie's statement he realized that he already had what Julie wanted. The house on Matheny Way bordered a county flood plain that could not be built upon. He "already had that house that bordered on a park, basically." Julie, he thought, "was willing to take that away from me so that she could have that." (16RT 3456-3457.)

On January 5, 2006, Wycoff realized that he had not seen Aunt Lu for awhile. He knew she was in a nursing home in Walnut Creek, but he didn't know which one. He got in his van and drove to Walnut Creek. However, he couldn't

find Aunt Lu. (16RT 3458.) When he couldn't find Aunt Lu, Wycoff called Julie on the telephone.

Wycoff described his telephone conversation with Julie as "appalling." (16RT 3459.) Julie would not tell Wycoff where Aunt Lu was living. When he asked why, Julie said that she didn't want Wycoff to "bully" Aunt Lu. Wycoff could not believe she said that to him. (16RT 3460.)

The Wycoffs had always arranged to get together for Christmas. After their father died, Wycoff had hinted to Julie that he wanted to be invited to her house for Thanksgiving and Christmas. He was not invited for either holiday. During his January 5<sup>th</sup> telephone conversation with Julie, he learned for the first time that all of Paul's brothers, all uncles to Julie's children, had been at Julie's house for Christmas. Yet Wycoff, who considered himself the favorite uncle of the children, was not invited. (16RT 3459.)

After the telephone call with Julie on January 5, 2006, Wycoff "absolutely decided (he) had to kill Julie and Paul." The date was significant. Exactly 28 years earlier Wycoff's other sister, Debbie, had died. It "sort of blew (him) away" that he decided to kill his one living sister on the 28th anniversary of the death of his other sister. Wycoff also realized "that January 31<sup>st</sup> was coming up, the 20<sup>th</sup> anniversary of my dad getting drunk and knocking grandma (Galloway) down." (16RT 3461.) He decided that killing his sister on that day, January 31<sup>st</sup>, "would be the best day, it