

SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent,

v.

JOHNNY DUANE MILES,

Appellant.

CAPITAL CASE

Case No. S086234

San Bernardino County Superior Court Case No. FSB09438
Honorable James A. Edwards, Judge

RESPONDENT'S BRIEF

SUPREME COURT
FILED

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DEATH PENALTY

TABLE OF CONTENTS

	Page
Statement of the Case.....	1
Statement of Facts	3
I. Guilt phase	3
A. Prosecution case.....	3
1. Counts 1-5: The rape, torture, and murder of Nancy Willem.....	3
a. The crimes	3
b. The physical evidence implicating Miles	5
2. Counts 6-11: The rape and robbery of Christine C.	7
a. The crimes	7
b. The physical evidence implicating Miles	8
3. Counts 12-16: The robbery of Melvin Osburn and the robbery and rape of Carol D.....	9
a. The crimes	9
b. The physical evidence implicating Miles	10
B. Defense case.....	11
II. Penalty phase	11
A. Prosecution case.....	11
1. Miles's 1992 violent crime spree.....	11
a. The robbery of Paula Yenerall at gunpoint	11
b. The robbery of Janet Heynen at gunpoint	12

TABLE OF CONTENTS
(continued)

	Page
c. The robberies of Paul Crawford, Mary Crawford, and John Kendrick at gunpoint	12
d. The robberies of Arnold and Sharyn Andersen.....	13
e. The rape and robbery of Bridget E. and the beating and forced oral copulation of Steve H.	14
2. Miles’s prior felony convictions	15
3. Victim impact testimony	15
a. The Willem Family	15
b. Bridget E.....	16
B. Defense case.....	16
1. Miles’s testimony.....	16
2. Evidence regarding Miles’s mental health.....	17
C. Prosecution rebuttal	18
Argument.....	19
I. There was no <i>Batson/Wheeler</i> error.....	19
A. Proceedings below	19
B. Applicable law and standard of review	22
C. There was substantial evidence to support the trial court’s finding that the prosecutor’s reasons for challenging SG were valid	25
D. There was substantial evidence to support the trial court’s finding that the prosecutor’s reasons for challenging KC were valid.....	31
E. There is no other basis for reversal.....	36
II. The trial court properly excused two prospective jurors for cause because of their views on the death penalty	39

TABLE OF CONTENTS
(continued)

	Page
A. Proceedings below	40
1. Prospective Juror 44	40
2. Prospective Juror 63	42
B. Standard of review	43
C. The trial court's excusal of Prospective Jurors 44 and 63 was not error.....	44
1. Because the prospective jurors gave equivocal answers, the trial court's determination is binding here	44
2. The trial court did not abuse its discretion in any event	46
III. The substantial impairment standard for determining juror bias in capital cases does not violate the federal and state Constitutions	49
IV. The trial court properly denied Miles's motion to suppress the blood and handwriting evidence	50
A. Proceedings below	50
1. Detective Lore's affidavit in support of the search warrant	50
2. Detective Lore's testimony at the suppression hearing	52
3. The trial court's ruling	54
B. Standard of review	56
C. There was substantial evidence to support the trial court's findings and Miles failed to satisfy either prong of the <i>Franks</i> test.....	57
V. The jury instructions on motive and murder by torture were proper	60
A. Proceedings below	60
B. Standard of review	61

TABLE OF CONTENTS
(continued)

	Page
C. The motive instruction did not eliminate an element of the murder by torture offense	61
D. The motive instruction did not eliminate an element of the penetration by foreign object offense.....	63
E. Miles was not prejudiced by any error in the instructions.....	64
VI. The instruction on the torture-murder special circumstance was proper.....	67
A. Proceedings below	67
B. The jury was properly instructed regarding intent to kill.....	68
VII. California’s felony murder special circumstance is constitutional.....	70
VIII. The trial court properly permitted cross-examination of defense counsel during the competency trial	73
A. Proceedings below	73
B. Standard of review	76
C. The trial court did not abuse its discretion in allowing the prosecutor to cross-examine Canty about the potential benefits of an incompetency finding.....	77
1. The evidence was relevant.....	77
2. The evidence was not unduly prejudicial	78
D. The evidence was not privileged	79
E. Miles was not harmed by any error	82
IX. The Eighth Amendment does not bar evidence of juvenile crimes at the penalty phase	83
X. Admission of eyewitness testimony regarding uncharged crimes under Penal Code section 190.3, factor (b), did not violate Miles’s constitutional rights	86

TABLE OF CONTENTS
(continued)

	Page
A. Proceedings below	86
1. The missing photo lineups	86
a. Paula Yenerall.....	86
b. Janet Heynen.....	87
c. John Kendrick.....	88
d. Arnold Andersen.....	89
2. The trial court’s rulings	90
3. Cross-examination of the witnesses regarding their identifications at the penalty phase	92
B. Standard of review	92
C. The trial court’s ruling was proper	94
D. Any error was harmless	99
XI. Neither state law nor the federal Constitution bars impact testimony from “other crimes” victims.....	100
XII. Admission of the Willem family’s victim impact testimony did not violate state or federal law	103
XIII. The trial court properly denied Miles’s motion to discharge Juror 12	106
A. Proceedings below	106
B. Standard of review	107
C. Miles was not prejudiced	109
1. The newspaper headlines were not inherently likely to have caused bias in Juror 12	109
2. Juror 12 was not actually biased.....	111
XIV. The trial court’s instructions to the two alternate jurors did not violate Miles’s constitutional rights	113

TABLE OF CONTENTS
(continued)

	Page
XV. California’s death penalty statute adequately narrows the class of death-eligible defendants	114
XVI. California’s death penalty statute is constitutional	116
XVII. There was no cumulative error	117
Conclusion.....	118
Certificate of Compliance	119

TABLE OF AUTHORITIES

	Page
CASES	
<i>Adams v. Texas</i> (1980) 448 U.S. 38 [100 S.Ct. 252, 165 L.Ed.2d 581].....	44, 45, 46
<i>Arizona v. Youngblood</i> (1988) 488 U.S. 51 [109 S.Ct. 333, 102 L.Ed.2d 281].....	93, 96
<i>Batson v. Kentucky</i> (1986) 476 U.S. 79 [106 S.Ct. 1712, 90 L.Ed.2d 69].....	20, 24, 37, 38
<i>Brady v. Maryland</i> (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215].....	90
<i>Caldwell v. Mississippi</i> (1985) 472 U.S. 320 [105 S.Ct. 2633, 86 L.Ed.2d 231].....	110
<i>California v. Trombetta</i> (1984) 467 U.S. 479 [104 S.Ct. 2528, 81 L.Ed.2d 413].....	<i>passim</i>
<i>Chapman v. California</i> (1967) 386 U.S. 18 [87 S.Ct. 824, 17 L.Ed.2d 705].....	65, 66, 85, 99
<i>Cook v. LaMarque</i> (9th Cir. 2010) 593 F.3d 810	38, 39
<i>Enmund v. Florida</i> (1982) 458 U.S. 782 [102 S.Ct. 3368, 73 L.Ed.2d 1140].....	70, 71, 72
<i>Fireman's Fund Insurance Company v. Superior Court</i> (2011) 196 Cal.App.4th 1263	80
<i>Franks v. Delaware</i> (1978) 438 U.S. 154 [98 S.Ct. 2674, 57 L.Ed.2d 667].....	56, 57, 60
<i>Furman v. Georgia</i> (1972) 408 U.S. 238 [92 S.Ct. 2726, 33 L.Ed.2d 346].....	115
<i>Gardner v. Florida</i> (1977) 430 U.S. 349 [97 S.Ct. 1197, 51 L.Ed.2d 393].....	97, 98, 99

<i>Graham v. Florida</i> (2010) 560 U.S. 48 [130 S.Ct. 2011, 176 L.Ed.2d 825].....	83, 84, 85
<i>Gray v. Mississippi</i> (1987) 481 U.S. 648 [107 S.Ct. 2045, 95 L.Ed.2d 622].....	44, 45, 46
<i>Greene v. Georgia</i> (1996) 519 U.S. 145 [117 S.Ct. 578, 136 L.Ed.2d 507].....	47
<i>Hopkins v. Reeves</i> (1998) 524 U.S. 88 [118 S.Ct. 1895, 141 L.Ed.2d 76].....	71, 72
<i>Hovey v. Superior Court</i> (1980) 28 Cal.3d 1	19, 33, 34
<i>Illinois v. Gates</i> (1983) 462 U.S. 213 [103 S.Ct. 2317, 76 L.Ed.2d 527].....	58, 59
<i>In re Carpenter</i> (1995) 9 Cal.4th 634	<i>passim</i>
<i>In re Hamilton</i> (1999) 20 Cal.4th 273	108
<i>Johnson v. California</i> (2005) 545 U.S. 162 [125 S.Ct. 2410, 162 L.Ed.2d 129].....	22, 23
<i>Kennedy v. Louisiana</i> (2008) 554 U.S. 407 [128 S.Ct. 2641, 171 L.Ed.2d 525].....	72
<i>Miller v. Alabama</i> (2012) __ U.S. __ [132 S.Ct. 2455, 183 L.Ed.2d 407].....	83, 84, 85
<i>Miller-El v. Cockrell</i> (2003) 537 U.S. 322 [123 S.Ct. 1029, 154 L.Ed.2d 931].....	23, 24, 25
<i>Miller-El v. Dretke</i> (2005) 545 U.S. 231 [125 S.Ct. 2317, 162 L.Ed.2d 196].....	25, 29
<i>Payne v. Tennessee</i> (1991) 501 U.S. 808 [111 S.Ct. 2597, 115 L.Ed.2d 720].....	103, 104
<i>People ex rel. Herrera v. Stender</i> (2012) 212 Cal.App.4th 614	81

<i>People v. Abel</i> (2012) 53 Cal.4th 891	103, 105
<i>People v. Anderson</i> (1987) 43 Cal.3d 1104	70
<i>People v. Anderson</i> (2001) 25 Cal.4th 543	116, 118
<i>People v. Aranda</i> (2012) 55 Cal.4th 342	64, 65
<i>People v. Arias</i> (1996) 13 Cal.4th 92	97, 114
<i>People v. Avila</i> (2006) 38 Cal.4th 491	25, 31
<i>People v. Ayala</i> (2000) 24 Cal.4th 243	110
<i>People v. Barnett</i> (1998) 17 Cal.4th 1044	102
<i>People v. Bell</i> (2007) 40 Cal.4th 582	36
<i>People v. Belmontes</i> (1988) 45 Cal.3d 744	70
<i>People v. Benavides</i> (2005) 35 Cal.4th 69	103
<i>People v. Bennett</i> (2009) 45 Cal.4th 577	79, 80
<i>People v. Benson</i> (1990) 52 Cal.3d 754	101
<i>People v. Bivert</i> (2011) 52 Cal.4th 96	84
<i>People v. Blakeley</i> (2000) 23 Cal.4th 82	83

<i>People v. Bolin</i> (1998) 18 Cal.4th 297	118
<i>People v. Boyd</i> (1985) 38 Cal.3d 762	66
<i>People v. Boyde</i> (1988) 46 Cal.3d 212	101
<i>People v. Boyette</i> (2002) 29 Cal.4th 381	103
<i>People v. Bradford</i> (1997) 14 Cal.4th 1005	118
<i>People v. Brady</i> (2010) 50 Cal.4th 547	100, 103, 104
<i>People v. Bramit</i> (2009) 46 Cal.4th 1221	84, 100
<i>People v. Breverman</i> (1998) 19 Cal.4th 142	82
<i>People v. Brown</i> (2004) 33 Cal.4th 382	103
<i>People v. Bryant</i> (2014) 60 Cal.4th 335	46
<i>People v. Burton</i> (1989) 48 Cal.3d 843	85, 100
<i>People v. Cain</i> (1995) 10 Cal.4th 1	113
<i>People v. Camarella</i> (1991) 54 Cal.3d 592	59
<i>People v. Capistrano</i> (2014) 59 Cal.4th 830	44, 49
<i>People v. Carrasco</i> (2014) 59 Cal.4th 924	116, 117

<i>People v. Carrington</i> (2009) 47 Cal.4th 145	60
<i>People v. Chism</i> (2014) 58 Cal.4th 1319	34, 38
<i>People v. Combs</i> (2004) 34 Cal.4th 821	81
<i>People v. Contreras</i> (2013) 58 Cal.4th 123	<i>passim</i>
<i>People v. Cook</i> (2007) 40 Cal.4th 1334	97
<i>People v. Cooper</i> (1991) 53 Cal.3d 771	118
<i>People v. Cowan</i> (2010) 50 Cal.4th 401	29, 34
<i>People v. Crew</i> (2003) 31 Cal.4th 822	65
<i>People v. Crittenden</i> (1994) 9 Cal.4th 83	114
<i>People v. Cummings</i> (1993) 4 Cal.4th 1233	108
<i>People v. Davis</i> (2005) 36 Cal.4th 510	61
<i>People v. Davis</i> (2009) 46 Cal.4th 439	100, 102
<i>People v. DeHoyos</i> (2013) 57 Cal.4th 79	27, 35
<i>People v. Dement,</i> (2011) 53 Cal.4th 20	36
<i>People v. Demetrulias</i> (2006) 39 Cal.4th 1	101

<i>People v. DePriest</i> (2007) 42 Cal.4th 1	97
<i>People v. DeSantis</i> (1992) 2 Cal.4th 1198	113
<i>People v. Duff</i> (2014) 58 Cal.4th 527	93
<i>People v. Edwards</i> (1991) 54 Cal.3d 787	103, 104, 105
<i>People v. Edwards</i> (2013) 57 Cal.4th 658	<i>passim</i>
<i>People v. Enraca</i> (2012) 53 Cal.4th 735	114
<i>People v. Eubanks</i> (2011) 53 Cal.4th 110	56, 57, 58
<i>People v. Farnam</i> (2002) 28 Cal.4th 107	47
<i>People v. Flood</i> (1998) 18 Cal.4th 470	65
<i>People v. Floyd</i> (1970) 1 Cal.3d 694	104, 105
<i>People v. Freeman</i> (1994) 8 Cal.4th 450	94
<i>People v. French</i> (2011) 201 Cal.App.4th 1307	59
<i>People v. Frye</i> (1998) 18 Cal.4th 894	95
<i>People v. Garceau</i> (1993) 6 Cal.4th 140	101
<i>People v. Gonzalez</i> (2012) 54 Cal.4th 1234	49, 83

<i>People v. Hamilton</i> (2009) 45 Cal.4th 863	103
<i>People v. Hamlin</i> (2009) 170 Cal.App.4th 1412	62
<i>People v. Harrison</i> (2005) 35 Cal.4th 208	113
<i>People v. Hartsch</i> (2010) 49 Cal.4th 472	30, 31, 36
<i>People v. Hawthorne</i> (1992) 4 Cal.4th 43	117
<i>People v. Hill</i> (1998) 17 Cal.4th 800	117
<i>People v. Hillhouse</i> (2002) 27 Cal.4th 469	62, 63, 77, 110
<i>People v. Holloway</i> (2004) 33 Cal.4th 96	101
<i>People v. Holt</i> (1984) 37 Cal.3d 436	117
<i>People v. Holt</i> (1997) 15 Cal.4th 619	41
<i>People v. Horning</i> (2004) 34 Cal.4th 871	43
<i>People v. Huggins</i> (2006) 38 Cal.4th 175	31
<i>People v. Hung Thanh Mai</i> (2013) 57 Cal.4th 986	23, 37
<i>People v. Jablonski</i> (2006) 37 Cal.4th 774	118
<i>People v. Jackson</i> (2014) 58 Cal.4th 724	43

<i>People v. Jennings</i> (2010) 50 Cal.4th 616	67, 69
<i>People v. Jones</i> (1997) 15 Cal.4th 119	114
<i>People v. Jones</i> (2003) 30 Cal.4th 1084	115
<i>People v. Jones</i> (2011) 51 Cal.4th 346	29, 36
<i>People v. Jones</i> (2012) 54 Cal.4th 1	43, 47, 49
<i>People v. Jones</i> (2013) 57 Cal.4th 899	65, 66, 72
<i>People v. Karis</i> (1988) 46 Cal.3d 612	101
<i>People v. Kennedy</i> (2005) 36 Cal.4th 595	70
<i>People v. Lee</i> (2011) 51 Cal.4th 620	84
<i>People v. Lenart</i> (2004) 32 Cal.4th 1107	56
<i>People v. Lenix</i> (2008) 44 Cal.4th 602	<i>passim</i>
<i>People v. Letner</i> (2010) 50 Cal.4th 99	70, 72
<i>People v. Lewis</i> (2006) 39 Cal.4th 970	103, 105, 117
<i>People v. Lewis</i> (2008) 43 Cal.4th 415	<i>passim</i>
<i>People v. Lightsey</i> (2012) 54 Cal.4th 668	117

<i>People v. Love</i> (1960) 53 Cal.2d 843	104
<i>People v. Lucas</i> (2014) 60 Cal.4th 153 [177 Cal.Rptr.3d 378]	64, 93, 94, 95
<i>People v. Lynn</i> (1984) 159 Cal.App.3d 715	62, 63
<i>People v. Maciel</i> (2013) 57 Cal.4th 482	113
<i>People v. Manibusan</i> (2013) 58 Cal.4th 40	23
<i>People v. Maurer</i> (2008) 32 Cal.App.4th 1121	63
<i>People v. McCurdy</i> (2014) 59 Cal.4th 1063	78, 79
<i>People v. McKinnon</i> (2011) 52 Cal.4th 610	39, 43, 48
<i>People v. McKinzie</i> (2012) 54 Cal.4th 1302	22
<i>People v. McPeters</i> (1992) 2 Cal.4th 1148	97
<i>People v. McWhorter</i> (2009) 47 Cal.4th 318	46
<i>People v. Medina</i> (1990) 51 Cal.3d 870	117
<i>People v. Mendoza</i> (2000) 24 Cal.4th 130	101
<i>People v. Merriman</i> (2014) 60 Cal.4th 1	<i>passim</i>
<i>People v. Mickle</i> (1991) 54 Cal.3d 140	101

<i>People v. Mills</i> (2010) 48 Cal.4th 158	26
<i>People v. Montes</i> (2014) 58 Cal.4th 809	26, 31, 33, 94
<i>People v. Moon</i> (2005) 37 Cal.4th 1	46
<i>People v. Morales</i> (1989) 48 Cal.3d 527	65
<i>People v. Nesler</i> (1997) 16 Cal.4th 561	107, 108, 109, 111
<i>People v. Panah</i> (2005) 35 Cal.4th 395	103
<i>People v. Pearson</i> (2012) 53 Cal.4th 306	66, 67, 68, 69
<i>People v. Pollock</i> (2004) 32 Cal.4th 1153	103
<i>People v. Posey</i> (2004) 32 Cal.4th 193	61
<i>People v. Price</i> (1991) 1 Cal.4th 324	101
<i>People v. Pride</i> (1992) 3 Cal.4th 195	83, 84
<i>People v. Ramos</i> (2004) 34 Cal.4th 494	109, 110, 112
<i>People v. Ray</i> (1996) 13 Cal.4th 313	114, 116, 117
<i>People v. Reynoso</i> (2003) 31 Cal.4th 903	24
<i>People v. Riccardi</i> (2012) 54 Cal.4th 758	<i>passim</i>

<i>People v. Richardson</i> (2008) 43 Cal.4th 959	61
<i>People v. Riggs</i> (2008) 44 Cal.4th 248	66, 110
<i>People v. Robinson</i> (2005) 37 Cal.4th 592	103
<i>People v. Rodrigues</i> (1994) 8 Cal.4th 1060	95, 97, 98
<i>People v. Rodriguez</i> (1999) 20 Cal.4th 1	77
<i>People v. Roldan</i> (2005) 35 Cal.4th 646	103
<i>People v. Roybal</i> (1998) 19 Cal.4th 481	94
<i>People v. Salcido</i> (2008) 44 Cal.4th 93	31
<i>People v. Schmeck</i> (2005) 37 Cal.4th 240	<i>passim</i>
<i>People v. Scott</i> (2011) 52 Cal.4th 452	56, 57, 59, 79
<i>People v. Smithey</i> (1999) 20 Cal.4th 936	70
<i>People v. Stanley</i> (1995) 10 Cal.4th 764	78, 103
<i>People v. Stanley</i> (2006) 39 Cal.4th 913	70, 108, 110, 111
<i>People v. Stewart</i> (2004) 33 Cal.4th 425	47, 118
<i>People v. Streeter</i> (2012) 54 Cal.4th 205	31, 61, 113

<i>People v. Taylor</i> (2009) 47 Cal.4th 850	37
<i>People v. Taylor</i> (2010) 48 Cal.4th 574	30, 36, 85
<i>People v. Thomas</i> (2011) 51 Cal.4th 449	23, 24
<i>People v. Thomas</i> (2012) 53 Cal.4th 771	46, 116
<i>People v. Thomas</i> (2012) 54 Cal.4th 908	96
<i>People v. Thompson</i> (2010) 49 Cal.4th 79	114
<i>People v. Trinh</i> (2014) 59 Cal.4th 216	103
<i>People v. Vines</i> (2011) 51 Cal.4th 830	23, 26, 103
<i>People v. Virgil</i> (2011) 51 Cal.4th 1210	100, 101, 102
<i>People v. Visciotti</i> (1992) 2 Cal.4th 1	70
<i>People v. Wader</i> (1993) 5 Cal.4th 610	114
<i>People v. Wagner</i> (1975) 13 Cal.3d 612	117
<i>People v. Walker</i> (1988) 47 Cal.3d 605	96
<i>People v. Wash</i> (1993) 6 Cal.4th 215	41
<i>People v. Watson</i> (1956) 46 Cal.2d 818	82

<i>People v. Watson</i> (2008) 43 Cal.4th 652	82, 83
<i>People v. Webb</i> (1993) 6 Cal.4th 494	96
<i>People v. Wharton</i> (1991) 53 Cal.3d 522	99
<i>People v. Wheeler</i> (1978) 22 Cal.3d 258	20
<i>People v. Whisenhunt</i> (2008) 44 Cal.4th 174	60, 62, 63
<i>People v. White</i> (1986) 179 Cal.App.3d 193	64
<i>People v. Whitham</i> (1995) 38 Cal.App.4th 1282	64
<i>People v. Wilkinson</i> (2004) 33 Cal.4th 821	32
<i>People v. Williams</i> (2010) 49 Cal.4th 405	83, 85
<i>People v. Williams</i> (2013) 56 Cal.4th 630	117
<i>People v. Williams</i> (2013) 58 Cal.4th 197	25, 39, 44, 48
<i>People v. Wilson</i> (2008) 43 Cal.4th 1	63
<i>People v. Yeoman</i> (2003) 31 Cal.4th 93	97
<i>People v. Zamudio</i> (2008) 43 Cal.4th 327	79
<i>Romano v. Oklahoma</i> (1994) 512 U.S. 1 [114 S.Ct. 2004, 129 L.Ed.2d 1].....	110

<i>Roper v. Simmons</i> (2005) 543 U.S. 551 [125 S.Ct. 1183, 161 L.Ed.2d 1].....	83, 84, 85
<i>Snyder v. Louisiana</i> (2008) 552 U.S. 472 [128 S.Ct. 1203, 170 L.Ed.2d 175].....	26, 32, 37, 38
<i>State v. Ornelas</i> (Idaho Ct.App. 2014) 330 P.3d 1085	38
<i>Sullivan v. Louisiana</i> (1993) 508 U.S. 275 [113 S.Ct. 2078, 124 L.Ed.2d 182].....	64
<i>Tison v. Arizona</i> (1987) 481 U.S. 137 [107 S.Ct. 1676, 95 L.Ed.2d 127].....	70, 71, 72
<i>United States v. Leon</i> (1984) 468 U.S. 897 [104 S.Ct. 3405, 82 L.Ed.2d 677].....	59
<i>Uttecht v. Brown</i> (2007) 551 U.S. 1 [127 S.Ct. 2218, 167 L.Ed.2d 1014].....	43, 47, 49
<i>Wainwright v. Witt</i> (1985) 469 U.S. 412 [105 S.Ct. 844, 83 L.Ed.2d 841].....	<i>passim</i>
<i>Webster v. Chappell</i> (E.D. Cal., June 4, 2014) 2014 WL 2526857	115, 116
<i>Witherspoon v. Illinois</i> (1968) 391 U.S. 510 [88 S.Ct. 1770, 20 L.Ed.2d 776].....	39

STATUTES

Code of Civil Procedure

§ 2018.030, subd. (a) 79

Evidence Code

§ 210 78
§ 351.1, subd. (a) 32
§ 352 76, 77, 78
§ 711 73
§ 773 73
§ 954 79

Penal Code

§ 187, subd. (a) 1
§ 189 61
§ 190.2, subd. (a)(17)..... 70, 71
§ 190.2, subd. (a)(17)(A)..... 1
§ 190.2, subd. (a)(17)(C) 1
§ 190.2, subd. (a)(17)(G)..... 1
§ 190.2, subd. (a)(18)..... 1
§ 190.3 *passim*
§ 190.3, subd. (c) 85
§ 211, subd. (a) 1
§ 236 1
§ 261, subd. (a)(2)..... 1
§ 289 63
§ 289, subd. (a) 63, 1
§ 459 1
§ 647.6 63
§ 995 90
§ 1054.6 79
§ 1203.06, subd. (a)(1)..... 1
§ 1239, subd. (b) 2
§ 1368 2, 76, 81
§ 1538.5 50
§ 12021, subd. (a)(1)..... 1
§ 12022.3, subd. (a) 1
§ 12022.5, subd. (a) 1

CONSTITUTIONAL PROVISIONS

California Constitution
 Article I, § 16.....22

Fourth Amendment56

Sixth Amendment.....49

Eighth Amendment*passim*

Fourteenth Amendment.....22

OTHER AUTHORITIES

CALJIC

No. 2.5161, 62, 65, 66

No. 2.9064

No. 8.2461, 62

No. 8.81.1865, 67, 68, 69

No. 8.85114, 117

No. 17.51.1113

STATEMENT OF THE CASE

On February 1, 1999, the San Bernardino County District Attorney filed a 19-count information against Miles arising from three separate incidents in February 1992.¹ (14 CT 4012-4024.) The information charged Miles with one count of murder in violation of Penal Code² section 187, subdivision (a) (count 1), five counts of forcible rape in violation of section 261, subdivision (a)(2) (counts 2, 8, 10, 16, 17), four counts of second degree robbery in violation of section 211, subdivision (a) (counts 3, 6, 11, 13), one count of commercial burglary in violation of section 459 (count 4), four counts of false imprisonment by violence in violation of section 236 (counts 5, 7, 12, 15), two counts of anal or genital penetration by a foreign object in violation of section 289, subdivision (a) (counts 9, 14), and two counts of being a felon in possession of a firearm in violation of section 12021, subdivision (a)(1) (counts 18, 19). (14 CT 4012-4024.)

As to count 1, the information specially alleged that Miles committed the murder while engaged in the commission of a rape, robbery, or burglary (Pen. Code, § 190.2, subd. (a)(17)(A), (a)(17)(C) & (a)(17)(G)) and that the murder was intentional and involved infliction of torture (Pen. Code, § 190.2, subd. (a)(18)). Regarding counts 6, 7, 11, 12, 13, and 15, the information specially alleged that Miles personally used a firearm (Pen. Code, §§ 1203.06, subd. (a)(1), 12022.5, subd. (a)). With respect to counts 8, 9, 10, 14, 16, and 17, the information specially alleged the use of a firearm (Pen. Code, § 12022.3, subd. (a)). (14 CT 4012-4024.)

¹ The district attorney initially filed a 35-count information against Miles relating to seven separate incidents, but the trial court granted Miles's motion to sever some of the counts. (5 CT 1312-1338; 13 CT 3620.)

² All further statutory references are to the Penal Code unless otherwise noted.

On March 17, 1999, a jury convicted Miles of counts 1 through 9 and 11 through 16 and found true the special allegations relating to those counts.³ (13 RT 4619-4625; 14 CT 4012-4024; 15 CT 4203-4231.)

After the guilt phase and before the penalty phase, the trial court suspended the proceedings for a competency hearing under section 1368. (13 RT 4749, 4751; 15 CT 4433.) On July 19, 1999, a jury was empaneled to determine Miles's competency and, on August 19, 1999, the jury found Miles competent. (16 CT 4510-4511, 4549; 17 RT 5919-1.)

The penalty phase began on August 30, 1999, in front of the original jury, with two of the original jurors having been excused and replaced by two of the alternates. (16 CT 4599-4600.) On October 4, 1999, the jury reached a verdict of death. (16 CT 4682.)

On February 8, 2000, the trial court denied Miles's motion to modify the death penalty verdict. The trial court sentenced Miles to death on count 1 and to a total determinate term of 60 years on counts 2, 8, 9, 14, and 16. The trial court stayed the sentences on the remaining counts. (16 CT 4711-4714, 4717-4720, 4724-4726.)

This appeal is automatic. (Pen. Code, § 1239, subd. (b).)

³ Four of the counts (10, 17, 18, and 19) did not go to the jury and the trial court later dismissed them on the prosecutor's motion in the interest of justice. (12 RT 4374-4375; 16 CT 4718.)

STATEMENT OF FACTS

I. GUILT PHASE

In three separate incidents, Miles (1) raped, robbed, tortured, and murdered Nancy Willem, (2) raped and robbed Christine C., and (3) robbed Melvyn Osburn and Carol D. and raped Carol D. His modus operandi was to hunt for victims who were alone after business hours in commercial offices and tie them up with telephone cords. At each scene, Miles left behind telltale blood, semen, and DNA.

A. Prosecution Case

1. Counts 1-5: The Rape, Torture, and Murder of Nancy Willem

a. The Crimes

On the evening of February 4, 1992, Nancy Willem was working alone in the reception area of the Rialto Behavioral Services Clinic. (8 RT 2327; 9 RT 3359, 3361.) When Willem was late coming home that night, her roommate, Kristen Schutz, got worried. (8 RT 2326-2327.) Schutz started calling the clinic around 9:30 p.m. but the lines were busy, which was unusual since the clinic was closed to the public at that hour. (8 RT 2327.)

Eventually, Schutz drove to the clinic. (8 RT 2328.) Schutz let herself into the building through an unlocked back door, went down a hallway, and found the door to the clinic slightly ajar. (8 RT 2329-2330.) The door from the hallway into the clinic had been forced open. (9 RT 3415-3416.)

Schutz entered the clinic and saw that the reception area was in disarray, with open drawers and items scattered around. (8 RT 2330-2331; 9 RT 3390.) There was a pool of blood on the floor with a tooth and some hair in it. (8 RT 2331; 9 RT 3390, 3396, 3418.) Schutz followed a trail of

blood from the reception area to the office of one of the doctors who worked at the clinic. (8 RT 2331-2332.)

Inside the doctor's office, Schutz discovered Willem's naked body lying face-up on the floor between a couch and a coffee table. (8 RT 2332.) There was a sweater wrapped tightly around Willem's neck, a telephone cord tied to her right wrist, and a handwritten note left on her abdomen that read: "Feed the poor. Down with the government [*sic*]." (8 RT 2334-2335; 10 RT 3659.) Willem's ATM card was missing, and was later used to withdraw \$1,160 from ATM's in Pomona and Glendora. (8 RT 2335, 2337; 9 RT 3603-3606.)

Upon seeing Willem's body, Schutz immediately tried to call the police, but the phone cords that connected the handsets to the receivers were missing. (8 RT 2333; 9 RT 3416-3417.) Schutz was finally able to locate a cord and call 911. (8 RT 2333.)

The police arrived, confirmed that Willem was dead, and secured the scene. (8 RT 2344; 9 RT 3370.) Blood and other bodily fluids were all over the ransacked office suite. (9 RT 3367, 3390-3400, 3415-3429.) Willem was attacked in the reception area and then dragged to the office where her body was found. (9 RT 3391, 3399, 3418, 3425-3426.) There was semen on the carpet near Willem's body and in her vagina. (9 RT 3426; 10 RT 3765.)

Willem was killed by a combination of multiple blunt force injuries and manual strangulation. (10 RT 3668, 3672-3673, 3681, 3688-3690.) She was savagely beaten before she died. (10 RT 3663, 3666, 3670, 3673, 3678, 3680, 3682, 3684-3685.)

Willem's injuries were as bad as if she had been in a car accident and were very painful for as long as she was conscious. (10 RT 3687-3689.) Externally, Willem had lacerations on her scalp, severe bruising from head to toe, a broken lower jaw, a missing tooth, defensive injuries on her hands

and arms, an apparent cigarette-type burn on her breast, and redness in her vagina. (10 RT 3660-3663.) Internally, Willem had general bruising, subcutaneous hemorrhaging, hemorrhaging in her scalp and brain, hemorrhaging in her eyes, hemorrhaging in her neck, a broken hyoid bone and related injuries in her neck caused by fighting the strangulation, eight broken ribs, bruised lungs, a punctured left lung, a bruised heart, and a laceration of her liver. (10 RT 3663-3680.)

b. The Physical Evidence Implicating Miles

The police determined that the non-victim blood and semen collected at the crime scene came from a type AB secretor (someone whose blood type is secreted into bodily fluids besides blood) who was probably of African-American heritage.⁴ (10 RT 3767-3769, 3773-3774, 3787.) Miles is African-American, has type AB blood, and is a secretor.⁵ (9 RT 3631-3632; 10 RT 3803, 3807.)

The police compared a sample of Miles's blood to the non-victim blood and semen from the crime scene. (10 RT 3798-3799, 3803.) A serological analysis revealed that 12 genetic markers in Miles's blood matched 12 genetic markers in the crime-scene blood, which would be expected in only 1 in 10 million African-American people. (10 RT 3804.) Genetic markers in Miles's blood also matched genetic markers in the crime-scene semen, which would be expected in only 3 in 1 million African-American men. (10 RT 3787, 3804.) Finally, Miles's genetic markers matched the combined genetic markers from the crime-scene blood

⁴ Willem was a type A non-secretor. (10 RT 3768.)

⁵ On June 16, 1992, Miles was arrested in Torrance in connection with a robbery, rape, and kidnapping that are not the subject of this appeal. (16 CT 4743-4744.) Following Miles's arrest, the police obtained a sample of his blood. (11 RT 4168.)

and semen – i.e., assuming the crime-scene blood and semen came from the same person – which would be expected in just 1 in 333 million African-American males.⁶ (10 RT 3806-3807; 11 RT 3949-3951.)

The police also performed a DNA analysis of the crime-scene samples and Miles's blood. (11 RT 3990, 3992-3993, 3999.) Miles's DNA profile matched the crime-scene DNA profile. (11 RT 4023, 4026.) Only 1 in 180-280 million African-American people would be expected to have the DNA profile from the crime scene.⁷ (11 RT 4034-4035, 4037- 4040.)

Miles's connection to the crime did not stop with the genetic evidence. There was also the "Down with the government [*sic*]" note found on Willem's body. The police compared the note to known samples of Miles's handwriting. (11 RT 4179.) There were similarities between the handwriting on the note and Miles's handwriting samples such that Miles could not be eliminated as the author of the note. (11 RT 4180-4181.) Moreover, Miles refused to comply with a court order to provide additional handwriting samples that could aid in determining whether he wrote the note. (11 RT 4184-4186, 4203.)

Lastly, the police discovered a handwritten document in Miles's truck when he was arrested. (11 RT 4213.) The document appeared to be poetry

⁶ Although 12 genetic markers could be determined from the crime-scene blood sample, two more were indeterminable. The semen sample was used to fill in the missing two markers from the blood sample, for a combined total of 14 genetic markers. Miles's blood matched each of the 14 markers.

⁷ Miles tries to denigrate the sheriff's crime lab, where the 1992 DNA analysis was done, based on a 1995 American Society of Crime Lab Directors accreditation report (Exhibit 148) that was not admitted into evidence. (AOB 20-21; 10 RT 3894; 11 RT 4208, 4220.) Accreditation is a voluntary, not mandatory, process and the crime lab ultimately received the accreditation (10 RT 3894, 3934.)