

SUPREME COURT COPY

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

DOUGLAS E. DWORAK,

Defendant and Appellant.

CAPITAL CASE

Case No. S135272

**SUPREME COURT
FILED**

OCT - 3 2014

Frank A. McGuire Clerk

Deputy

Ventura County Superior Court Case No. 2004016721
The Honorable Kevin J. McGee, Judge

RESPONDENT'S BRIEF

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DEATH PENALTY

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STATEMENT OF THE CASE

In a two-count indictment presented by the Ventura County Grand Jury, appellant was charged with the murder (Pen. Code,¹ § 187, subd. (a); count 1) and rape (§ 261, subd. (a)(2); count 2) of Crystal Nichole Hamilton. As to count 1, a special circumstance was alleged that appellant committed the murder while engaged in the commission of a rape (§ 190.2, subd. (a)(17)(C)). As to both counts 1 and 2, it was alleged that appellant had suffered two prior serious and/or violent felony convictions within the meaning of the Three Strikes Law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). (1CT 1-4.) Appellant pleaded not guilty to the charges and denied the special allegations. (1CT 8; 4RT 450-451.)

Appellant withdrew his denial of the prior conviction allegations, waived his right to jury trial on the allegations, and admitted suffering convictions for rape (§ 261, subd. (a)(2)) and sexual penetration with a foreign object while using a weapon (§ 289, subd. (a)(1)). (3CT 684-691, 694-696; 8RT 1130-1141.)

Appellant was tried by jury. (See 3CT 711; 9RT 1628-1629.) Following the guilt phase, the jury found appellant guilty as charged and found the special circumstance to be true. (3CT 799-802, 823.1-823.2; 16RT 2917-2933.) Following the penalty phase, the jury returned a verdict of death. (4CT 995, 999.1; 18RT 3362-3365.) On count 1, appellant was sentenced to death. On count 2, appellant was sentenced to a term of 75 years to life in state prison, which was stayed pursuant to section 654. (4CT 1065-1068, 1075-1076; 17RT 3414-3416.)

¹ Unless indicated otherwise, all further statutory references are to the Penal Code.

STATEMENT OF FACTS

I. GUILT PHASE EVIDENCE

A. The Prosecution's Case

1. Appellant's Prior Rape of Cynthia W.

On October 25, 1986, Cynthia W. lived at a home located off a private road in Napa, California. The home had a gravel driveway. (10RT 1856-1858; Peo. Exhs. 1-A, 1-B.) After she went shopping at a mall, Cynthia W. returned home in the afternoon. (10RT 1856-1857.) Cynthia W.'s husband and son were not at home. (10RT 1864-1865.)

Cynthia W. parked her car in her driveway and began putting away the items she purchased at the mall. After she put away the first load, Cynthia W. returned to the trunk of her car. Cynthia W. heard footsteps on the gravel driveway. She turned around and saw appellant. Appellant asked her whether she knew a person named "Nichols or something" that lived down the road. Cynthia W. replied that she did not know anyone by that name and turned around. (10RT 1857-1860.)²

Cynthia W. went back to the trunk of her car. Appellant then grabbed Cynthia W. from behind and put a large, hunting knife to her throat. Cynthia W. screamed. A brief struggle ensued. During the struggle, Cynthia W.'s glasses fell off and she sustained a cut on her thumb. Appellant took Cynthia W. to the back of her car. (10RT 1861-1864, 1871-1872; Peo. Exs. 1-C, 3.)

² Although it appears that Cynthia W. did not recognize appellant before she was raped (see 10RT 1858-1860), appellant told police that he "had baby sat for and had a crush on" Cynthia W. (6CT 1798.) Appellant stated that Cynthia W. had been "in a sorority" with his mother and he "got all infatuated with her" (6CT 1773-1774.)

Appellant ordered Cynthia W. to lie down in the back seat of the car. Appellant entered the car with the knife. He got on top of Cynthia W. and told her to take off her pants. Appellant then took off Cynthia W.'s underwear and bra. Appellant ordered Cynthia W. to pull her sweatshirt over her face. Cynthia W. asked appellant whether he was going to kill her. Cynthia W. told appellant that she had a son and that her husband would be home soon. (10RT 1864-1866.)

Appellant unzipped his pants. Appellant told Cynthia W. to grab his penis and "make him hard." Appellant put his finger inside Cynthia W.'s vagina. Appellant then told Cynthia W. to put his penis inside of her. Cynthia W. complied. Appellant then raped Cynthia W. Appellant ejaculated inside of Cynthia W. (10RT 1867-1868.) During the rape, Cynthia W. was afraid. She thought she was going to die. (10RT 1868.)³

After appellant ejaculated, he ran the knife over Cynthia W.'s thigh and body. Appellant got off Cynthia W. He told her to "stay put" or else he would come back and hurt her. Appellant then asked Cynthia W. how to get off the private road. Cynthia W. gave appellant erroneous directions to get off the road that actually led appellant to drive in circles. (10RT 1869-1871.)

Appellant left. Cynthia W. stayed in the back seat of the car until she heard appellant's vehicle depart. Cynthia W. ran inside the house and called her husband. Cynthia W.'s husband told her to call 911, which she did. (10RT 1871-1873.) Cynthia W. provided a statement to the police about the rape and identified appellant as the perpetrator. (10RT 1873-1874.)

³ The actual sexual assault was not painful to Cynthia W.'s vaginal region. (10RT 1869.)

Appellant was 20 years-old when he raped Cynthia W. (6RT 1774.) Appellant was convicted of the rape. (10RT 1877.) He was sentenced to 18 years in state prison and spent 9 years, 3 months, and 18 days in prison before he was paroled at 30 years-old. (6CT 1653, 1774, 1798-1800; 7CT 1801.)

2. Appellant's Parole to Ventura and His Marital Problems in 2001

On September 18, 1996, appellant was paroled to Ventura County because Cynthia W. asked that appellant not be paroled to Napa. (6CT 1742, 1775, 1799.)⁴ When appellant was first paroled, he lived in the Scandia Apartments (6CT 1750-1751) and "hung out" at the nearby bars (7CT 1825; see 6CT 1752-1753). Appellant lived in the Scandia Apartments for approximately one year. (6CT 1767.)

On October 17, 1999, appellant married Susannah Dworak ("Susannah"). (6CT 1775.) In 2001, they lived near Ventura, in Oak View. (6CT 1747.) That year, appellant and Susannah had a tumultuous relationship that almost ended in divorce. (6CT 1797.) They were fighting "all the time." (7CT 1819-1820.) They argued over money. (6CT 1772.) Moreover, Susannah had a difficult commute and was "just a raging bitch basically" when she got home. Susannah got on appellant's "case about everything" and would get mad at appellant when he went fishing with his friends. (6CT 1797; see 7CT 1818-1819.)⁵

Appellant and Susannah "were at a real bad state" (7CT 1810-1811.) Appellant was "sexually frustrated" and sought to have sex with

⁴ Appellant was on parole for three years. (7CT 1822.)

⁵ Appellant and Susannah later went to counseling and worked through their problems. (6CT 1758, 1775; 7CT 1813-1814.) Their relationship was a "lot better relationship" when appellant spoke to police in 2003. (7CT 1818-1819.)

prostitutes because there “just wasn’t any sex happening.” (7CT 1819-1820.) When appellant was sexually frustrated, he would go to Ventura to patronize prostitutes when he got off work at approximately 4:30 p.m. (6CT 1756, 1779; 7CT 1814-1815.)

3. Appellant’s Whereabouts from April 19 to April 21, 2001

In April of 2001, Susannah was an employee at an oral surgery group in Thousand Oaks. (11RT 1936-1937.) From April 21 to April 22, 2001, Susannah was scheduled to attend a certification course to become an oral surgery assistant in Irvine. (11RT 1944-1945.) Susannah’s employer had paid for the training. (11RT 1938, 1941-1942.) However, on Friday, April 20, 2001, Susannah called Betty Hosler, the director of administration at the oral surgery group, and informed her that she would not be going to work that day. Susannah was crying and upset. Hosler was concerned that Susannah would not attend the training. (11RT 1938-1942; see Peo. Exh. 11.)

Susannah attended the conference in Irvine. (11RT 1941, 1950-1951.) Beth Martin, a co-worker who also attended the conference, noticed that Susannah was very upset and emotional that weekend because she had “a rough day Friday.” (11RT 1941, 1943-1946.)

At that time, appellant was employed at J.F. Da Pra, a general contracting company. On April 21 and 22, 2001, appellant was “on-call.” However, he did not work on those days. (11RT 1952-1956; see 6CT 1748.)

Margaret Esquivel lived near appellant and Susannah. Esquivel would socialize with the couple. (11RT 1887-1888.) Appellant would regularly stop by Esquivel’s home and talk to her. (11RT 1891.) Appellant often complained that Susannah nagged him. (11RT 1888-1889.) On the weekend that Susannah went to the conference, appellant stopped by and

spoke with Esquivel. (11RT 1903-1904.) Appellant told Esquivel that his wife was at a dental conference for the weekend. Appellant appeared to be “[g]lad, happy.” (11RT 1894-1895.) Appellant stated that he was “out living it up and playing pool and -- at the local bars and going down to Ventura and staying out late.” Appellant seemed to be in good spirits and stated, “[W]hen the cat’s away, the mouse will play.” (11RT 1895-1896.)

4. Crystal Hamilton’s Whereabouts from April 19 to April 21, 2001

In April of 2001, Crystal Hamilton⁶ was 18 years old. (11RT 2045.) She lived in Oxnard with her father, Air Force Lieutenant Colonel Michael Hamilton (“Lt. Colonel Hamilton”), sister Corianne (“Corianne”), and brother Robyn. (11RT 2044-2048.) Crystal had long brown hair. She was 5 feet, 6 inches tall, and weighed 117 pounds. (12RT 2214-2216.)⁷ She often did not wear make-up (11RT 2089, 2099) and typically wore petite jewelry and rings (11RT 2089-2090).

Matt Zoeber and Crystal were good friends. They had gone to school together and had known each other for approximately five to six years. (11RT 2048-2049, 2095.) On Friday, April 20, 2001, there was a small gathering at Zoeber’s home. (11RT 2101.) Zoeber lived in a condominium on Shenandoah Street in Ventura with his mother and sister. (11RT 2096-2097.) The Scandia Apartments were located nearby. (11RT 1971-1972; Peo. Exh. 6.)

That day, Crystal came over to Zoeber’s home to attend the gathering. (11RT 2100-2101.) She was wearing overalls, a long-sleeve thermal shirt,

⁶ Because Crystal Hamilton shares the same last name with other witnesses in the case, respondent will refer to her as “Crystal” for purposes of clarity. (See 4RT 487 [the trial court’s ruling that the prosecutor may refer to the victim as “Crystal” if the witnesses refer to her by that descriptor].)

⁷ Appellant was six feet, four inches tall. (6CT 1776.)

a brown, fleece coat, and tan Puma tennis shoes. (11RT 2088-2089, 2097-2099.) Crystal was also wearing a couple of small bracelets. (11RT 2099-2100.) She was not wearing any makeup. (11RT 2089.) Crystal did not have any bruises on her face, body, or wrist. (12RT 2120.)

During the gathering, Zoeber, Crystal, and some of their friends smoked marijuana and used methamphetamines. (11RT 2101-2102.) It was common for methamphetamine to be present at Zoeber's home. (12RT 2112, 2134.) Ingesting methamphetamine gives the user an "incredible amount of energy" and may occasionally affect the user's judgment. (12RT 2122-2123.) Afterwards, Crystal spent the night at Zoeber's home. She did not leave the home that night. (11RT 2102-2104, 2055-2056, 2065.)

The next day, on Saturday, April 21, 2001, Crystal and Zoeber "hung out" for most of the day. (12RT 2112.) In the afternoon, Crystal called her father because she wanted a ride home. Crystal appeared to be frustrated. (11RT 2106-2109; 12RT 2113, 2125-2126.)⁸ She wanted to go home to take a shower and change her clothes. (11RT 2105.) However, Lt. Colonel Hamilton and Corianne were in Corona visiting the family of Lt. Colonel Hamilton's girlfriend. Lt. Colonel Hamilton told Crystal that he could pick her up later that evening. (11RT 2056-2059.)

That evening, Zoeber fell asleep in his room. Crystal was awake. (12RT 2112.) At approximately 8 p.m. to 10 p.m., Zoeber woke up. Crystal was drawing a picture for him. Crystal told Zoeber that she would be leaving soon. Crystal was happy. Zoeber fell back asleep. (12RT 2113-2114.) This was the last time Zoeber saw Crystal. (11RT 2096.)

⁸ Telephone records for April 21, 2001, indicate that Lt. Colonel Hamilton received an incoming call at 3:10 p.m. (13RT 2405-2407; Peo. Exh. 21, 24.)

When Zoeber awoke, Crystal was gone. Zoeber did not know what time it was, but the news show was on television. (12RT 2118-2120.) Crystal left him the drawing. On the back of the drawing, Crystal wrote, "Hi, Matt. You're sleeping right now. I drew this for you. I even put a swing in. Crystal." (12RT 2114-2117; Peo. Exh. 22.)

At approximately 10:30 p.m.,⁹ Crystal called Lt. Colonel Hamilton and asked him to pick her up. Lt. Colonel Hamilton was driving home and told Crystal that "that was fine, but since [he] was in Corona," he would pick her up later that evening. Crystal sounded frustrated and stated that she wanted to go home that night. (11RT 2056-2060; see 11RT 2091-2092.)

Lt. Colonel Hamilton stated that he would be able to pick Crystal up at about midnight. Crystal stated that she wanted to be picked up at the Ralph's grocery store ("Ralph's") that was approximately a block from Zoeber's home.¹⁰ Lt. Colonel Hamilton insisted on picking Crystal up at Zoeber's home. However, Crystal did not want to be picked up there because everyone was going to be asleep. Crystal told Lt. Colonel Hamilton, "Daddy, I just want to go home." Lt. Colonel Hamilton relented and stated that he would pick her up at the Ralph's. (11RT 2061-2062.)

When Lt. Colonel Hamilton arrived at the Ralph's, Crystal was not there. Lt. Colonel Hamilton drove around the parking lot looking for Crystal. After waiting a short while, he went to Zoeber's home. All the lights were off at the home. Because it did not appear as if anyone was

⁹ Telephone records for April 21, 2001, indicate that Lt. Colonel Hamilton received an incoming call at 10:35 p.m. (13RT 2405-2407; Peo. Exhs. 21 & 23.)

¹⁰ The walk from Zoeber's home to the shopping plaza where the Ralph's was located was under a mile. The walk would take approximately 11 to 15 minutes. (11RT 1973-1975.)

awake, Lt. Colonel Hamilton did not knock on the door. (11RT 2063-2065.)

Lt. Colonel Hamilton became concerned about Crystal and called his girlfriend. Lt. Colonel Hamilton then went home to look for Crystal. Crystal was not there. Lt. Colonel Hamilton called his girlfriend and informed her that Crystal was not at home. (11RT 2065-2070.)¹¹ Because Crystal had occasionally failed to meet up with him, Lt. Colonel Hamilton was not concerned with her safety and did not call the police. (11RT 2075-2076.)

Lt. Colonel Hamilton had never seen appellant prior to the trial. He had never seen appellant at his home. He did not know him from work. (11RT 2071-2072.) Corianne had never seen appellant with Crystal before, and Crystal never mentioned appellant by name. (11RT 2093.) Zoeber had never seen appellant. He did not know him by name. Appellant did not come over to his home that weekend. (11RT 2103.)

5. The Discovery of Crystal's Body

In the early morning hours of April 22, 2001, around dawn, Jorge Valdez went fishing at Mussel Shoals beach. (11RT 2006-2010, 2015-2016.) Valdez was the only person at the beach, although there was a van¹² parked nearby. (11RT 2010.) Approximately 20 minutes after arriving, Valdez spotted something "unusual" that "look[ed] like a body." Valdez gathered his belongings and went to a nearby fire station to report what he had seen. The firemen went to the area, but could not find the body. The firemen asked Valdez to accompany them to the scene. Valdez went back

¹¹ Telephone records indicate that Lt. Colonel Hamilton received an incoming call from his girlfriend at 11:50 p.m. on April 21, 2001, and made an outgoing call to his girlfriend at 1:11 a.m., on April 22, 2001. (11RT 2069, 13RT 2406-2407; Peo. Exhs. 21, 24.)

¹² The van left before Valdez went to the fire station. (11RT 2018.)