

# SUPREME COURT COPY

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In the Supreme Court of the State of California

PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Respondent,

v.

TUPOUTOE MATAELE,

Defendant and Appellant.

CAPITAL CASE

Case No. S138052

SUPREME COURT  
FILED

FEB 13 2015

Frank A. McGuire Clerk  
Deputy

Orange County Superior Court Case No. 00NF1347  
The Honorable James A. Stotler, Judge

## RESPONDENT'S BRIEF

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DEATH PENALTY



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## STATEMENT OF THE CASE

On September 12, 2002, the Orange County District Attorney filed an information charging Appellant Tupoutoe "T-Strong" Mataele and codefendant Minh Nghia Lee in count 1, with the murder of Danell Johnson by means of lying in wait (Pen. Code, §§ 187, subd. (a) & 190.2, subd. (a)(15)), in count 2, with conspiracy to commit murder (Pen. Code, §§ 182, subd. (1) & 187, subd. (a)), and in count 3, with the willful, deliberate and premeditated attempted murder of John Masubayashi (Pen. Code, §§ 664/187, subd. (a) & 664, subd. (a)). It was further alleged that Appellant Mataele was personally armed with a firearm in the commission of all three counts (Pen. Code, §12022.5, subd. (a)), had a prior strike conviction (Pen. Code, §§ 667, subs. (d) & (e)(1), & 1170, subs. (b) & (c)(1)), and a prior serious felony conviction (Pen. Code, §§ 667, subd. (a)(1) & 1192.7, subd. (c)). It was also alleged that codefendant Lee was armed with a firearm in the commission of all three counts (Pen. Code, § 12022, subd. (a)(1)). (1 CT 19-23.)

Appellant Mataele and codefendant Lee were jointly tried. (4 CT 934.) On August 3, 2005, the jury found Appellant Mataele and codefendant Lee guilty on all counts as charged, and found the special circumstance and enhancement allegations were true. (5 CT 1379-1386.) The trial court subsequently found Appellant Mataele's prior allegations true. (6 CT 1443.)

After the presentation of penalty phase witnesses, on September 12, 2005, the jury returned a verdict of death. (6 CT 1480, 1483.) The trial court sentenced Mataele to death for the murder of Danell Johnson (count 1), stayed sentence on conspiracy to commit murder (count 2), and imposed an additional sentence of life imprisonment plus nine years for the attempted murder of Masubayashi (count 3), the gun enhancements and prior convictions. (7 RT 1705.)

## STATEMENT OF FACTS

### A. Prosecution Case-In-Chief

Mataele and codefendants James Chung, Minh Lee and Ryan Carrillo decided to kill John Masubayashi and Danell Johnson after there was a falling out over bank fraud activity. Lee, Chung, Mataele and Carrillo drove to the apartment complex in Anaheim where Masubayashi and Johnson were staying. Mataele and Carrillo went upstairs to the apartment and lured Masubayashi and Johnson out of the apartment and to Masubayashi's car under the pretense of going out to a bar or to shoot pool. Mataele then directed Masubayashi to drive to the car where Chung and Lee were hiding. Mataele got out of the backseat of Masubayashi's car and shot Johnson in the head, killing him. Mataele then shot Masubayashi in the chest and continued to fire at him. Masubayashi ran and collapsed in the street, but survived.

#### 1. Illegal Activities

Beginning in the spring of 1997, Peter Song ("Peter") managed a crew of guys involved in identity theft and bank fraud out of Takahisa Suzuki's apartment in Anaheim. (14 RT 3483, 3514, 3540-3541; 15 RT 3604; 17 RT 3992-3393.) Peter was the brains behind the operation and paid individuals for use of their identities or bank accounts to process fraudulent checks. (14 RT 3540-3542; 15 RT 3591, 3604; 17 RT 4003, 4007-4012.) David Song ("David," Peter's brother), John Masubayashi<sup>1</sup>, Ryan Carrillo<sup>2</sup>,

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<sup>1</sup> At the time of trial, John Masubayashi, the surviving victim, was living in Japan and had an outstanding warrant for his arrest concerning charges unrelated to this case. (15 RT 3582-3586.) Masubayashi returned to the United States and testified under subpoena with immunity from arrest or process under Penal Code section 1334.4. (15 RT 3587.)

<sup>2</sup> Ryan Carrillo was initially charged as a codefendant in this case. He pled guilty to the reduced charges of voluntary manslaughter and

(continued...)

James Chung<sup>3</sup> and Tweeney Mataele ("Baby," Mataele's brother), were also living in Suzuki's apartment and involved in the fraudulent activity. (15 RT 3589-3590, 3592-3594.)

After living at Suzuki's apartment for about three months, Peter, Masubayashi, Chung, Carrillo and Baby moved into an apartment on Kingsley Street in Los Angeles, referred to as the "Penthouse." (15 RT 3595-3597.) Around October 1997, Danell Johnson and Mataele also moved in. (13 RT 3303; 15 RT 3597, 3600.) Minh Lee<sup>4</sup>, a good friend of Chung's, lived a few blocks away, was also involved in the fraud, and spent time at the Penthouse. (15 RT 3603; 21 RT 4951, 4957.) The group continued the bank fraud, and also began purchasing methamphetamine, which they cooked into a more potent substance called "glass," and then sold. (15 RT 3605; 17 RT 4017, 4019-4021.)

Although the entire group lived and worked together, there were cliques among them. For instance, Baby, Carrillo, and Chung were all members of the Pinoy Real criminal street gang. (13 RT 3194; 15 RT 3600.) Mataele was a member of the Sons of Samoa gang, but spent most of his time with Pinoy Real gang members, and the group trusted Mataele with their gang-related activity. (21 RT 4950; 23 RT 5356.) Lee was Chung's closest friend, but a member of the Asian Mob Assassins (AMA)

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(...continued)

attempted murder and received a six-year prison sentence in exchange for his testimony. (21 RT 2942; 22 RT 5011-5012.)

<sup>3</sup> James Chung was charged separately from the other defendants and tried alone. A jury found Chung guilty of first degree murder with a special circumstance, conspiracy to commit murder, and attempted murder. He was sentenced to life in prison without the possibility of parole. (21 RT 4824.) His conviction was affirmed in case number G031964.

<sup>4</sup> Minh Lee was tried with Mataele, convicted, and sentenced to life in prison without the possibility of parole. His conviction was affirmed in case number G036136.