

SUPREME COURT COPY

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In the Supreme Court of the State of California

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

Plaintiff and Respondent,

v.

LEE SAMUEL CAPERS,

Defendant and Appellant.

CAPITAL CASE

Case No. S146939

**SUPREME COURT
FILED**

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Deputy

San Bernardino County Superior Court Case No. FBA06284
The Honorable John M. Tomberlin, Judge

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DEATH PENALTY

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STATEMENT OF THE CASE

On March 19, 2004, the San Bernardino County District Attorney filed a first amended information charging appellant Lee Samuel Capers with first degree murder of Nathaniel Young (count 1; Pen. Code,¹ § 187, subd. (a)); first degree murder of Consuelo Patrida Young (count 2; § 187, subd. (a)); second degree robbery of Consuelo Patrida Young (count 3; § 211); second degree robbery of Nathaniel Young (count 4; § 211); arson causing great bodily injury (count 5; § 451, subd. (a)); felon in possession of a firearm (count 6; § 12021, subd. (a)(1)); and possession of a dagger in a penal institution (count 7; § 4502, subd. (a)). (2 CT 384-390.) As to count 3, the information alleged Capers personally used a firearm within the meaning of section 12022.53, subdivision (b). (2 CT 387-388.) As to counts 1 and 4, the information alleged Capers personally discharged a firearm causing great bodily injury or death within the meaning of section 12022.53, subdivision (d). (2 CT 388.) As to counts 1 and 2, the information alleged special circumstances that Capers committed multiple murders (§ 190.2, subd. (a)(1)), committed the murders during the commission of robbery (§ 190.2, subd. (a)(17)(A)), committed the murders during the commission of commercial burglary (§ 190.2, subd. (a)(17)(G)), and committed the murders during the commission of kidnapping (§ 190.2, subd. (a)(17)(B)). (2 CT 385-387.) Finally, the information alleged that Capers had 10 prior strike convictions within the meaning of section 1170.12, subdivisions (a) through (d), and section 667, subdivisions (b) through (i). (2 CT 389-390.)

On May 1, 2006, jury selection began. (3 CT 511.) On May 15, 2006, the jury was sworn. (31 CT 8875-8876.)

¹ All further unspecified statutory references are to the Penal Code.

On June 2, 2006—following the prosecution’s case-in-chief—the court granted the prosecution’s motion to dismiss count 6 (felon in possession of a firearm). (31 CT 8909.) On June 5, 2006, the court partially granted the defense’s section 1118.1 motion by amending count 5 to reflect a charge of simple arson in violation of section 451, subdivision (d). (31 CT 8934.) That same day, the court granted the prosecution’s motion to dismiss the kidnapping-murder special circumstance alleged as to counts 1 and 2. (31 CT 8935.)²

On June 7, 2006, the case was submitted to the jury for guilt-phase deliberations. (31 CT 8941.) On June 12, 2006, the jury found Capers guilty as charged in counts 1 through 6. (31 CT 8978, 8983, 8986, 8988, 8990-8991.) The jury found true the multiple-murder, robbery-murder, and burglary-murder special circumstances. (31 CT 8980-8982, 8984-8985.) The jury also found true each of the firearm-enhancement allegations. (31 CT 8979, 8987, 8989.)

On June 14, 2006—during a bifurcated bench trial—the court found five of the prior strike allegations true. (31 CT 9019.) The court found insufficient evidence supported the remaining five strike allegations and found them not true. (31 CT 9019.)

On June 26, 2006, the penalty phase began. (31 CT 9029-9030.) On June 29, 2006, the case was submitted to the jury for penalty-phase deliberations. (31 CT 9039.) The jury returned a verdict of death. (31 CT 9040.)

² The prosecution adopted these changes in a second amended information, which was filed, and on which defendant was re-arraigned, that same day. (31 CT 8927-8934.) In the second amended information, count 7 (possession of a dagger in a penal institution) became count 6. (31 CT 8927-8933.)

On September 22, 2006, the court imposed its sentence. As to the noncapital counts, the court sentenced Capers to 25 years to life in state prison. (32 CT 9120-9121.)³ As to the capital murders, the court sentenced Capers to death. (32 CT 9121.)

STATEMENT OF FACTS

A. Guilt Phase Evidence

1. Introduction – Nathaniel Young & Consuelo Patrida Young

In 1998, Nathaniel Young and Consuelo Patrida Young had been married for seven years. (5 RT 1073.)⁴ Shortly after they were married, they opened a t-shirt store in Barstow, California called “T’s Galore ‘N More.” (5 RT 1049, 1073-1074.) Nathaniel also worked as a financial analyst for the Marine Logistics Base in Barstow, California. (5 RT 1045.) Although Nathaniel and Consuelo both worked at and operated the t-shirt store, Consuelo would typically run the store during the day while Nathaniel was working his other job at the base. (See 5 RT 1074.)

2. Nathaniel Young Does Not Appear For Work At The Marine Logistics Base

On Monday November 9, 1998, Nathaniel did not come in for his scheduled shift at the Marine base in the morning. (5 RT 1046.) This concerned his supervisor because in the six years Nathaniel had worked at the base he was a reliable employee who never missed work without first calling. (5 RT 1045-1047, 1056.) When Nathaniel again did not appear for

³ The 25-year-to-life sentence was for count 6. The court stayed the sentences on the remaining noncapital counts. (32 CT 9120-9121.)

⁴ For clarity, and with no intended disrespect to the victims, Nathaniel Young and Consuelo Patrida Young will be referred to by their first names.

work the following day, his supervisor called the Barstow Police Department to request a welfare check. (5 RT 1048-1049.)

Around the same time, two of Nathaniel's colleagues at the base went to the t-shirt store to check on him. (5 RT 1049-1051.) They noticed that the windows of the store appeared covered in soot which prevented them from seeing inside the business. (5 RT 1057.) The two employees returned to the base and informed Nathaniel's supervisor that it appeared there had been a fire at the store. (5 RT 1057.) This led Nathaniel's supervisor to again call the Barstow Police Department, in addition to the Provost Marshal's Office on the base, which is the equivalent of a police department for the military base. (5 RT 1050-1050.) Due to the suspected fire, the Provost Marshal's Office contacted the Barstow Fire Department. (5 RT 1051, 1061.)

3. Discovery At The T-Shirt Shop

On Tuesday November 10, 1998—the same day the fire was reported—a Division Chief from the Barstow Fire Department responded to the t-shirt store to check for signs of a fire. (5 RT 1064.) Standing outside the store, he noticed heavy soot on the inside of the store windows. (5 RT 1065.) The Division Chief checked the perimeter of the store and discovered that the back door was unlocked. (5 RT 1066.) He opened the back door and looked inside. (5 RT 1066.) As soon as he started opening the door, he could smell there had been a fire inside the building. (5 RT 1067.) Once the door was open, he saw two dead bodies. (5 RT 1067.) He closed the door, called law enforcement, and secured the store until police officers arrived. (5 RT 1067, 1071.)

Several officers from the Barstow Police Department arrived shortly thereafter. (5 RT 1071, 1087-1088.) The responding officers discovered the body of a deceased man lying face down in the rear of the store. (5 RT 1095-1096.) The body, later identified as that of Nathaniel Young, was

partially burned, had blood stains on and around it, and had duct tape wrapped around the throat and neck. (5 RT 1095-1096, 1120-1121.) The officers also discovered the “partial body” of another person lying nearby. (5 RT 1096.) The second body, later identified as that of Consuelo Patrida Young, was significantly burned. (5 RT 1096, 1100-1101.) All that remained of Consuelo’s body was ashes, soot, various bone fragments, and charred body part remains. (5 RT 1096, 1100-1101.) Officers also discovered a large amount of blood and blood spatter around the bodies, two metal golf clubs covered in blood, and one .45 caliber shell casing. (5 RT 1099, 1114-1120, 1123-1124.) The heads of the two metal golf clubs both contained human hair. (7 RT 1511.) That hair was later determined to be consistent with Consuelo’s head hair. (7 RT 1511-1512.) The officers contacted forensic evidence technicians to further process the scene. (5 RT 1102-1103.)

Within the crime scene, evidence technicians discovered five .45 caliber bullet projectiles. (5 RT 1134-1135.) But because only one shell casing was discovered at the scene, officers believed that the person or people involved made an effort to clean up the crime scene and remove evidence. (5 RT 1135, 1139.) Near Consuelo’s body was a film of water, soot, ash, and blood, leading the officers to believe someone tried to mop up blood and other evidence. (5 RT 1139; 6 RT 1264-1265.) A bloody mop was found outside, and there was a trash can with a mixture of water and blood inside. (5 RT 1139.) In a bathroom near Consuelo’s body, officers discovered a pair of women’s underwear that had been cut up and flushed in the toilet. (5 RT 1140-1145.) This also indicated to the officers that someone had attempted to destroy evidence from the crime scene. (5 RT 1145.)

Arson investigators could detect the odor of gasoline near the victims. (6 RT 1186.) The investigators concluded that two separate fires

were started with gasoline, one on each victim. (6 RT 1186, 1189.) There was also a thick, greasy substance on the floor near the bodies. (6 RT 1191-1192.) Investigators determined that this substance was melted human body fat from the victims. (6 RT 1191-1192.)

4. Autopsy Results

Nathaniel Young suffered from several gunshot wounds and also had moderate charring to his body from the fire. (7 RT 1544-1546.) At the outset of the autopsy, Nathaniel was wearing blood-stained clothing, there were two loops of duct tape around his jawline and neck, and there were several areas of his body that had been burned or scorched. (7 RT 1544-1548.) Nathaniel's body was not burned as badly as Consuelo's, but there were several large areas where his skin was scorched black. (7 RT 1544-1545.) He also had several abrasions on his face consistent with blunt force trauma. (7 RT 1553.) Nathaniel was shot approximately four or five times, with a total of eight entrance and exit gunshot wounds discovered on his body. (7 RT 1576.) He had been shot multiple times in the head, with one of the bullets cutting his brain stem in two and lodging in the base of his skull, and another bullet going through his neck and severing his first cervical vertebrae underneath his skull. (7 RT 1560-1575.) He was also shot in the chest; that bullet severed an artery and broke several of his ribs. (7 RT 1575-1576.) None of Nathaniel's injuries were consistent with having been hit with a metal golf club. (7 RT 1578.) Nathaniel's cause of death was determined to be multiple gunshot wounds to the head, neck, and chest. (7 RT 1581.)

Consuelo Patrida Young suffered from extensive blunt force trauma and significant burning of her body from the fire. (7 RT 1584.) Consuelo's body had been so badly burned that entire limbs were disconnected from the body because all of the skin and tissue surrounding the limbs had burned away. (7 RT 1584.) A majority of her central chest, abdominal,

and pelvic areas had burned down to the bone with entire organs missing because they had burned away. (7 RT 1584, 1600.) Specifically, her right lung, left kidney, spleen, and intestines had completely burned away. (7 RT 1600.) She also suffered multiple blunt force injuries to her body, many of which were to her head, and several of which shattered her skull and facial bones in various locations. (7 RT 1591-1598.) Unlike Nathaniel's body, Consuelo's body did not reveal any gunshot wounds, and no bullet fragments were discovered in her body. (7 RT 1585.) Consuelo's cause of death was determined to be multiple blunt force head injuries. (7 RT 1621.) Her injuries were consistent with having been repeatedly struck with the golf clubs, and the pathologist opined that she was alive during the attack. (7 RT 1600-1602.) The pathologist also opined that Consuelo could have still been alive when she was burned, and that the burning of her body could have been a contributing cause of her death. (7 RT 1621-1622.)

5. Information Not Revealed To The Public

Officers from the Barstow Police Department collaborated prior to the press release and decided to withhold certain information regarding the homicides from public disclosure. (6 RT 1364-1365.) Specifically, among other information, the officers decided not to reveal to the public: (1) the caliber of the firearm used; (2) that Nathaniel's cause of death was by a firearm; (3) that Nathaniel had been bound with duct tape; (4) the women's underwear found in the toilet; (5) the bloody golf clubs; and (6) the identify of certain people the police sought to speak with during the course of their investigation. (6 RT 1365.)

6. Capers's Statements And Confessions To Law Enforcement

Detective Leo Griego from the Barstow Police Department had several conversations with Capers throughout the course of his investigation into the double homicide of Nathaniel Young and Consuelo

Patrida Young. Each of those discussions are outlined in further detail below.

a. November 15, 1998

On November 15, 1998, Detective Griego received a telephone call from another Barstow police officer who informed him that Capers wished to speak with him (Detective Griego) about the murders. (6 RT 1380-1381.) Detective Griego made contact with Capers, first at Capers's residence and later that same day at the Barstow Police Department. (6 RT 1381.) At that time, Capers denied that he was involved in the murders, but claimed that he heard about the murders and knew two of the people involved. (6 RT 1382.)

b. January 14, 1999

By January 1999, Detective Griego's investigation had focused on Capers and his younger brother, Antonio Leatham ("Eagle"), as suspects for the double homicide. (6 RT 1382-1383.) For this reason, on January 14, 1999, Detective Griego contacted Capers at Chino State Prison to question him about the crimes. (6 RT 1382-1383.) At that time, Capers continued to deny his involvement in the murders. (6 RT 1383.)

c. December 9, 1999

On December 9, 1999, Detective Griego contacted Capers to collect various biological samples from him so they could be compared to samples discovered at the crime scene. (6 RT 1383-1384.)⁵

d. January 28, 2000

On January 28, 2000, Detective Griego contacted Capers while he was in custody to question him about the double homicide. (6 RT 1384-

⁵ The record does not indicate where this contact took place. (6 RT 1383-1384.)

1385.) Capers did not reveal any new information about the crimes at that time. (6 RT 1384-1385.)⁶

e. February 1, 2000

On February 1, 2000, Detective Griego contacted Capers while he was in custody at the San Bernardino County Sheriff's Department jail in Barstow to talk with him about the double homicide. (6 RT 1385.) Capers again did not reveal any new information about the crimes at that time. (6 RT 1385.)

f. January 5, 2001

Capers was interviewed twice on January 5, 2001, first by Detective Steve Shumway with the Riverside Police Department, and second by Detective Griego. (6 RT 1386-1387.) The interviews came about because one of Capers's cellmates in Riverside County Jail indicated that Capers had shared information with him about the double homicide. (6 RT 1386.)

Detective Steve Shumway interviewed Capers at the Riverside Police Department. (6 RT 1387, 1390.) Detective Griego watched the interview, which was videotaped, on a video screen in an adjoining room. (6 RT 1387-1388.)⁷ At the outset of the interview, Capers acknowledged that he had requested to speak with law enforcement about the murders because it was "something that ha[d] been weighing [him] down . . ." (32 CT 9212.) Capers also stated that he wrote a letter detailing the murders, but that he wished to speak with Detective Griego about the crimes. (32 CT 9213-9214.)

⁶ The record does not indicate where Capers was in custody at the time of this contact. (6 RT 1384-1385.)

⁷ A portion of the video of Detective Shumway's interview with Capers was played for the jury. (6 RT 1390; Ex. 78.) A transcript of that portion of the videotape appears at 32 CT 9210-9214.

Shortly thereafter, Detective Griego came in and talked with Capers about the crimes. (6 RT 1391-1393.) Following their brief discussion, Detective Griego transported Capers to the Barstow Police Department, where he and another officer conducted a formal, videotaped interview. (6 RT 1393-1394.)⁸

During that interview, Capers admitted that he and three other people committed the crimes. (32 CT 9219.) Capers, who was 24 years old at the time of the murders and went by the moniker “Oso,” claimed that he committed the crimes with “Bam-Bam” (identified as 22-year-old Carlos Loomis), “Wino” (identified as 15-year-old Ruben Romero), and “another guy.” (32 CT 9219; 6 RT 1407-1408.) Capers did not identify the fourth person in his group, but was adamant that it was not his younger half-brother “Eagle” (identified as 16-year-old Antonio Leatham). (32 CT 9219; 6 RT 1383, 1408.)

Initially during the interview, Capers claimed that he was only the lookout, while Wino and Bam-Bam were chiefly responsible for the murders. (32 CT 9219.) Capers stated that he had a “long time rivalry” with Wino, and that if law enforcement later talked to Wino, he would likely try to pin the crimes on Capers. (32 CT 9293.)

At the start of the interview, Capers claimed that he never went inside the store when Consuelo and Nathaniel were murdered. (32 CT 9229.) When pressed further, Capers admitted that he was inside the store and that he helped force the victims into the back of the store. (32 CT 9236-9237.) Specifically, Capers stated that he “grabbed [Consuelo’s] leg and I pushed her through the door because she was resisting . . .” (32 CT

⁸ A portion of the video of Detective Griego’s interview with Capers was played for the jury. (6 RT 1398-1399; Ex. 79.) A transcript of that portion of the videotape appears at 32 CT 9215-9299.

9237.) Capers also grabbed Nathaniel “by his throat” and “threw him in there.” (32 CT 9237.)

Capers discussed how he and the others beat Consuelo and Nathaniel and how he personally punched Nathaniel several times. (32 CT 9243-9244.) In addition, Bam-Bam hit Consuelo with a long stick-like object that was about three to four feet long. (32 CT 9242-9248.) During the beating, Consuelo was pleading: “Stop please. Don’t hurt me, don’t hurt us. Don’t hurt us.” (32 CT 9242, 9263.) Nathaniel was trying to protect Consuelo, which led Capers to beat him more. (32 CT 9242-9244.)

As Consuelo was lying on the ground—beaten and severely injured, but still alive and “barely” moving—Bam-Bam raped her. (32 CT 9256-9258, 9265.) During the rape, Consuelo was screaming “for a little while.” (32 CT 9268.) Nathaniel, who was still alive and watching as his wife was being raped, was yelling and screaming, but Capers beat him more to keep him quiet. (32 CT 9260, 9268-9269.)

Then, the shooting happened. Capers claimed during this interview that Wino had the gun and was the shooter. (32 CT 9238-9239.) Capers was certain that the gun was a .45 caliber. (32 CT 9286.) Capers stated: “I know my guns . . . I’ve been messing with guns for a long time, [so I] knew the caliber . . . right off the top.” (32 CT 9286.) Capers was not specific about who was shot where or how many times, only that Wino was the shooter and that he had a .45. (32 CT 9238-9239, 9286.) Capers stated: “I was there when the murder happened. I was right there.” (32 CT 9252.)

After the rape and the shooting, the group used gasoline to light Consuelo and Nathaniel on fire. (32 CT 9254, 9255.) Capers stated that some of the others “lingered” in the store after the fire was set. (32 CT 9270-9271.) But when Capers was asked whether anybody tried to clean up any of the blood at the crime scene, he responded: “Naw, clean the blood up, that draws a blank dude, right there.” (32 CT 9255.) Capers did

state that someone from the group, he thought Bam-Bam, gathered up the .45 caliber shell casings and later disposed of them. (32 CT 9280-9282.)

Following the crimes, the group stole a Camaro that was parked at the store and drove it to a nearby Motel 6, where they then went their separate ways. (32 CT 9220, 9229-9230, 9271.)

At the conclusion of the interview, Capers agreed to go to the crime scene with the officers the following day to “walk [them] through” the crime “step by step.” (32 CT 9296-9297.)

g. January 6, 2001 [Crime Scene Reenactment]

The following day, Detective Griego and other officers took Capers to the crime scene where Capers participated in a videotaped reenactment of the crimes. (6 RT 1413-1416.)⁹ During the reenactment, Capers essentially reiterated what he told officers during the interviews the previous day, but he added some additional details. Specifically, Capers stated that during the attack Nathaniel “wouldn’t shut up” so they bound his mouth. (32 CT 9311, 9351-9352.) At the end of the reenactment, Capers stated his belief that he was just as guilty as the others and that he was “expecting a conviction out of this . . .” (32 CT 9360.)

h. January 25, 2001

On January 25, 2001, Detective Griego contacted Capers’s half-brother Eagle and talked with him about the murders. (6 RT 1438.) Detective Griego also transported Eagle to the Riverside Police Department and allowed him to speak with Capers. (6 RT 1437-1438.)

⁹ Portions of the videos of Capers’s crime scene reenactment were played for the jury. (6 RT 1415-1417, 1432-1433; Exs. 80 and 81.) Transcripts of those portions of the videotapes appear at 32 CT 9300-9330 [Ex. 80 – part one of reenactment] and 32 CT 9331-9361 [Ex. 81 – part two of reenactment].

Following that, Detective Griego conducted another videotaped interview with Capers. (6 RT 1439.)¹⁰ During that interview, Capers took full responsibility for the crimes, admitting that he was the one who was “calling the shots.” (32 CT 9373, 9382-9383.) Capers also admitted that he was the one who had the gun and was the one who fired the fatal shots. (32 CT 9375-9377, 9382.) Capers stated that he disposed of the gun by throwing it out by some railroad tracks because he was “just trying to cover it up.” (32 CT 9371-9372, 9378.) Capers also admitted disposing of the shell casings collected from the crime scene. (32 CT 9372.)

Capers explained that Bam-Bam poured gasoline on the victims, and “Wino lit them on fire and he was feeding the fire with uh, whatever, some type of, throwing stuff on them to burn them, you know.” (32 CT 9376.) Capers also admitted that Eagle was the fourth member of the group, but claimed that Eagle stayed outside during the time of the murders. (32 CT 9378.)

i. April 16, 2002

Detective Griego next interviewed Capers on April 16, 2002. (6 RT 1441.) The initial interview took place at North Kern State Prison, after which Detective Griego transported Capers to the Barstow Police Department where the interview continued and was videotaped. (6 RT 1441-1442.)¹¹

During the interview, Capers provided yet more details about the crimes. Specifically, he discussed how he and the others met ahead of time

¹⁰ A portion of the video of Detective Griego’s interview with Capers was played for the jury. (6 RT 1439; Ex. 82.) A transcript of that portion of the videotape appears at 32 CT 9362-9383.

¹¹ A portion of the video of Detective Griego’s interview with Capers was played for the jury. (6 RT 1443; 7 RT 1446; Ex. 83.) A transcript of that portion of the videotape appears at 32 CT 9384-9422.