

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.

CARL EDWARD MOLANO,

Defendant and Appellant.

CAPITAL CASE

Case No. S161399

SUPREME COURT
FILED

FEB 06 2014

Frank A. McGuire Clerk

Deputy

Alameda County Superior Court Case No. H038118
The Honorable Allen Hymer, Judge

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DEATH PENALTY

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STATEMENT OF APPEALABILITY

This appeal is an automatic appeal following a judgment of death pursuant to Penal Code section 1249, subdivision (a).¹

INTRODUCTION

On June 15, 1995, appellant raped and strangled to death 34-year-old Suzanne McKenna in her home using her panties, bra, and a shoestring. The next day, McKenna's belongings were found on the street and friends went to McKenna's apartment to check on her welfare. A man matching appellant's description was inside McKenna's kitchen and fled upon their approach. He was not identified nor apprehended. McKenna's nude body was found on the floor of her bathroom.

The case went cold until May of 2001, when appellant's 13-year-old son Robert Molano and ex-wife Brenda Molano came forward implicating appellant in McKenna's killing. The Molanos were neighbors of McKenna. On the day McKenna's body was discovered, Robert described finding appellant hiding in a shed behind their apartment. Appellant told his son he would kill him if he told anyone where he was or what he was doing. Brenda relayed that on the night McKenna was murdered, appellant did not come home until the next morning. Appellant told Brenda that he had been partying with a "neighbor lady" and had seen another man kill her. Appellant told Brenda that the man would kill them if appellant reported the crime. Appellant left again on the day McKenna's body was discovered. When he returned to their apartment he told Brenda that he had gone back to McKenna's apartment to remove any evidence and was seen while in the apartment. Scared, appellant cut his hair, shaved his beard and mustache,

¹ All further statutory references are to the California Penal Code unless otherwise noted.

and drove with Brenda to the Marina to get rid of the clothes he was wearing.

After hearing from Robert and Brenda, police took DNA samples from Brenda and appellant. DNA recovered from a shoe left at the scene, identified Brenda as a contributor. DNA recovered from the shoestring left around McKenna's neck identified appellant as a contributor.

In speaking with police, appellant admitted having sex with McKenna and strangling her to death, but claimed the sex was consensual and that the strangulation had been done at McKenna's request, as part of "rough sex," and that her death had been accidental.

Evidence that appellant had previously raped and attempted to strangle two other women was admitted at trial. In addition, evidence that appellant had previously attempted to strangle his ex-wife was admitted as well.

During the penalty phase of the trial, the prosecution relied on the facts of the crime and the evidence of appellant's two prior rapes and prior spousal battery on his former wife as well as the impact of McKenna's death on her family.

Appellant presented the testimony of several friends and family members describing his fatherless childhood. Seven correctional officers testified regarding appellant's work quality. A jail chaplain testified to his spiritual life. A forensic psychologist presented his social history. A neuropsychologist with specialties in brain dysfunction and cognitive impairment testified regarding his impaired attention and executive functioning. An expert in prison security testified that prisoners with sentences of life-without-possibility-of-parole do not receive conduct credits and do not go outside of the prison walls.

STATEMENT OF THE CASE

On February 18, 2005, the Alameda County District Attorney filed an information charging appellant Carl Edward Molano with one count of murder in violation of Penal Code section 187, subdivision (a), and further alleged that the offense was a serious felony within the meaning of § 1192.7, subdivision (c), and a violent felony within the meaning of § 667.5, subdivision (c). (4 CT 931.) The information further alleged as a felony-murder special circumstance that the murder was committed while appellant was engaged in the commission of the crime of rape (§190.2, subd. (a)(17)(C)). (4 CT 932.)

It was further alleged that appellant had suffered two prior forcible rape convictions (§261, subd. (2)), and one prior conviction for inflicting corporal injury to a spouse or cohabitant with great bodily injury. (§273.5, subd. (a).) (4 CT 932-934.)² Finally, the information alleged three prior prison terms (§ 667.5, subd. (a)); and that each prior conviction constituted a third strike offense. (§1170.12, subd. (c)(2)(A); 667, subd. (e)(2)(A), as well as a serious felony (§667, subd. (a)(1)). (4 CT 936, 939.)

On April 5, 2005, appellant entered a plea of not guilty and denied the prior conviction allegations. (4 CT 941-943, 947.)

On June 16, 2005, appellant moved to set aside the information on the grounds that the magistrate had erroneously admitted testimony of his statements to investigating officers in violation of *Miranda v. Arizona*.³ (4 CT 950-971.) On August 5, 2006, the court heard and denied the motion. (4 CT 1024.)

² Appellant waived jury trial on the three prior conviction allegations. (19 RT 2859.)

³ *Miranda v. Arizona* (1996) 384 U.S. 336.

On August 20, 2007, the jury found appellant guilty of murder in the first degree and also found true the special circumstance allegation. (7 CT 1627.) On October 15, 2007, the jury returned a verdict fixing the penalty at death. (8 CT 1757-1758.)

On February 21, 2008, appellant filed a motion for a new trial. (8 CT 1867-1892.) On February 29, 2008, the court denied the new trial motion as well as the automatic motion for modification of the death penalty. (§190.4.) (9 CT 2079.)

On February 29, 2008 the court sentenced appellant to death. The court also imposed a \$10,000 restitution fine (§1202.4, subd. (b)), and a \$20 court security fee (§1465.8). (9 CT 2080.) Appellant was awarded custody credits of 1,797 days. (9 CT 2080.)

STATEMENT OF FACTS

I. THE GUILT PHASE

A. The Murder of Suzanne McKenna in June 1995

In June 1995, Suzanne McKenna was a 34-year-old woman living by herself in a small cottage located on Vallejo Street in Hayward. (12 RT 1674.) At the time, Suzanne was working as a waitress at Carrow's restaurant in Castro Valley. (12 RT 1676.)

On June 15, 1995, in the early afternoon, neighbor Paulette Johnson, knocked on the door to Suzanne McKenna's cottage to retrieve some houseplants. McKenna answered the door, let Johnson in, but had to leave quickly to get to work. This was the last time Johnson saw McKenna alive. (15 RT 2165-2166.)

The next day, June 16, 1995, at approximately 11:30 a.m., Alameda County waste collector Robert Ocon found an empty purse, a plastic shopping bag containing a glass bottle, and an old cigar box inside a curbside bin of yard clippings near an apartment complex on Vallejo Street.

(15 RT 2091-2092, 2095, 2097, 2100.) Before emptying the bin, Ocon placed the other items in the purse and left the purse on top of the compost bin. (15 RT 2101.) Later that day, ten-year-old Ashton Sheets was playing hide and seek with other neighborhood children when they found the purse, some photographs, and a glass bottle containing amber liquid near the bins. (12 RT 1661-1663.)

On the same afternoon, between approximately 1:30 and 2:00 pm., Victor Perry spotted a wallet lying on the ground on Western Boulevard, in close proximity to McKenna's address. (11 RT 1628-1629.) Perry found the name "Suzanne McKenna" on a number of items inside the wallet and decided to try and contact the owner. Perry reached McKenna's sister, Patti, and explained what he had found. (11 RT 1631-1634.)

At approximately 3:00 p.m., after being unable to reach McKenna, Patti attempted to contact McKenna's best friend, Judy Luque, concerned for McKenna's welfare. Judy's husband, Jeff Luque, took the call and relayed the concern to Judy when she returned home. (12 RT 1673, 1682, 1741.) After Judy Luque attempted unsuccessfully to reach McKenna several times by phone, she asked her husband to drive her to McKenna's cottage. (12 RT 1681-1683, 1742, 1760.)

Judy and Jeff arrived at McKenna's cottage at approximately 3:40 p.m.. They first noticed that McKenna's brown Mazda was parked in front of her cottage in its normal location. (12 RT 1684-1685, 1691.)

Judy went to the front door and knocked but there was no response. (12 RT 1685-1686.) She then went to the side door of the cottage located off the kitchen. Judy noticed that the bathroom window was closed. (12 RT 1687.) The kitchen door was near the bathroom window, but the blinds on the kitchen door were closed, and she could not see into the kitchen. (12 RT 1688.)

Judy returned to the front of the house without knocking on the side door. (12 RT 1688.) Judy again knocked on the front door, and noticed that the kitchen blinds were open slightly. She peered through the blinds and saw a man in McKenna's kitchen. (12 RT 1689-1690.) The man was a heavysset Mexican with brown hair dressed in a blue Pendleton shirt. (12 RT 1691.) The two made eye contact. (12 RT 1694.) Judy later identified appellant as the man she saw in the kitchen. (12 RT 1707-1711.) Judy observed appellant trying to open the back door, which she knew from experience to be difficult. (12 RT 1692.)

Shocked, Judy screamed to her husband Jeff that there was a man in McKenna's house. (12 RT 1692, 1746.) Jeff saw a man with a dark complexion, approximately 5'8" weighing 140-150, carrying something and walking quickly away from the cottage. (12 RT 1748.) Jeff shouted at him to stop and started chasing him. (12 RT 1749.) The pursuit was unsuccessful and Jeff lost sight of him. (12 RT 1750.) During the chase, Jeff came upon a neighbor pruning in his yard. (12 RT 1750-1751.) Jeff stopped to explain the situation to the neighbor when a little girl came out of a house and said that she had seen a man run across the driveway. (12 RT 1753.) Jeff and the neighbor followed the girl's direction but did not find anyone. (12 RT 1753.) On the way, Jeff found a pair of socks with individual toes draped over some bushes, later identified by Judy as belonging to McKenna. (12 RT 1706, 1754; 17 RT 2422.)

While Jeff pursued the man in the Pendleton shirt, Judy returned to the back door of McKenna's house and looked into the kitchen. Garbage lay all over the floor. (12 RT 1696.) Judy entered the cottage and detected the smell of feces. She walked into the main living room, observing it to be ransacked. (12 RT 1698.) After yelling for McKenna and hearing no response, Judy went back outside. (12 RT 1699.)