

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.

THOMAS BATTLE,

Defendant and Appellant.

CAPITAL CASE

Case No. S119296

SUPREME COURT
FILED

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San Bernardino County Superior Court Case No. FVI012605

The Honorable Eric M. Nakata, Judge

Deputy

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DEATH PENALTY

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STATEMENT OF THE CASE

On November 21, 2001, the San Bernardino District Attorney filed an information, alleging that Thomas Lee Battle murdered Andrew Demko (Pen. Code, § 187, subd. (a) -- count 1); murdered Shirley Demko (Pen. Code, § 187, subd. (a) -- count 2); committed first degree residential burglary (Pen. Code, § 459 -- count 3); committed first degree residential robbery (Pen. Code, § 211 -- count 4); kidnapped Andrew Demko (Pen. Code, § 207, subd. (a) -- count 5); and kidnapped Shirley Demko (Pen. Code, § 207, subd. (a) -- count 6). (1 CT 144–148.) It was alleged that Battle committed multiple murders within the meaning of Penal Code section 190.2, subdivision (a)(3), and that the murders alleged in counts 1 and 2 were committed during the commission of a burglary (Pen. Code, § 190.2, subd. (a)(17)(A)), a robbery (Pen. Code, § 190.2, subd. (a)(17)(G)), and kidnappings (Pen. Code, § 190.2, subd. (a)(17)(M)). (1 CT 149–151.) It was also alleged that during the commission of these offenses, Battle personally used a deadly and dangerous weapon, a knife (Pen. Code, § 12022, subd. (b)(1)). (1 CT 148.) The information further alleged that on February 14, 1995, Battle suffered a prior conviction for burglary (Pen. Code, § 459), a serious or violent felony (Pen. Code, §§ 667 & 1170.12), and that on April 15, 1997, Battle suffered a prior conviction for forgery (Pen. Code, § 470), which resulted in a prison term (Pen. Code, § 667.5, subd. (b)). (1 CT 148–149.)

On March 11, 2003, a jury trial began, and closing arguments concluded on April 7, 2003. (2 CT 437, 480.)

On April 10, 2003, the jury began its deliberations. (2 CT 589, 591–595; 3 CT 601, 604.) On April 22, 2003, the jury found Battle guilty on all counts and found true the weapon allegation and all the special circumstances. (3 CT 606–624, 632–633.) The defense and the People stipulated that the prior-offense allegations were true. (3 CT 699.)

On April 24, 2003, the penalty phase began. (3 CT 634.) On May 5, 2003, the parties presented their closing arguments and the jury was instructed. (3 CT 700.) The jury began its penalty phase deliberations that same day. (3 CT 701–703, 709, 718.) On May 9, 2003, the jury returned a verdict of death. (3 CT 718.)

On September 4, 2003, the trial court sentenced Battle to death on counts 1 and 2, and to a determinate term of a total of 30 years 4 months, for counts 3, 4, 5, and 6,¹ to be stayed pursuant to Penal Code section 654, and ordered Battle to pay victim restitution of \$10,000 pursuant to Penal Code section 1202.4. (3 CT 787–788.)

STATEMENT OF FACTS

A. Guilt Phase

1. Prosecution's case

In the early morning hours of November 13, 2000, Battle broke into an elderly couple's home, bound them with zip ties, and stuffed them in the trunk of their own car. He then drove them to the desert, where he stabbed and strangled the couple to death. Over the next several days, Battle returned to their home to steal their property and to conceal their disappearance. Battle was arrested nearly two weeks later.

¹ Specifically, the court deemed count 5 (kidnapping of Andrew Demko) to be the principal count and sentenced Battle to the upper term of 16 years and to an additional 1 year for personal use of a knife. The court stayed count 5, as well as the remaining counts, which were ordered to be served consecutively to count 5: one-third the middle term on count 6 (kidnapping of Shirley Demko), for a total of 3 years 4 months, with an additional 1 year for personal use of a knife; one-third the middle term on count 4 (residential robbery), for a total of 2 years 8 months, with an additional 4 months for personal use of a knife; the middle term of 4 years on count 3 (burglary), with an additional 1 year for personal use of a knife. The court also sentenced Battle to an additional 1 year for the prison prior.

77-year-old Andrew Demko and 72-year-old Shirley Demko had been married for 22 years. (7 RT 1612–1613.) They both used walkers and canes to get around. (7 RT 1613–1614.) Mr. Demko had lost nearly all his hearing. (7 RT 1613.) Mrs. Demko had a glass eye. (7 RT 1614.) The couple lived with their two dogs in a house in Apple Valley in San Bernardino County. (7 RT 1612–1613, 1619.)

On November 18, 2000, a man and his son were hunting in the San Bernardino desert when they found a man lying dead on the ground. (6 RT 1364, 1369–1370.) Police arrived and, with the assistance of a highway-patrol aircraft, also found the body of a dead woman about 200 yards away from the man's body. (6 RT 1373, 1375–1376.) Police later found zip ties and blood-stained duct tape in the area. (10 RT 2508–2509, 2511–2512.) The man's body was later identified as belonging to Mr. Demko and the woman's as belonging to Mrs. Demko. (9 RT 2251, 2260; 10 RT 2650.)

Mr. Demko was wearing blue pajamas, a blue bathrobe, and a single blue slipper. (6 RT 1395.) There was blood on his pajama shirt. (6 RT 1395.) The matching slipper was found in a nearby area amongst disheveled ground consistent with scuffling and dragging through the dirt. (6 RT 1421–1422.) An autopsy revealed that Mr. Demko died from strangulation and from a stab wound to the neck. (10 RT 2338.) Mr. Demko also had abrasions and bruising to the forehead, which were caused by blunt force, as well as injuries to his hands, wrists, knees, feet, and arms. (9 RT 2303–2310.) Some of the injuries appeared to have been caused by Mr. Demko's having been bound and others by his having been dragged. (9 RT 2322–2327.)

Mrs. Demko was found on her stomach. (7 RT 1432.) She was wearing pajamas with a small purple floral print. (7 RT 1432, 1456.) The ground near her body was saturated in blood. (7 RT 1432, 1434–1435, 1469.) From the waist up, Mrs. Demko's body had been eaten by wild

animals; all the flesh and muscle meat from the upper torso was missing, and there were only a few internal organs remaining inside the body cavity. (7 RT 1456; 10 RT 2353.) Mrs. Demko's right shoulder was detached and her skull was devoid of any skin. (7 RT 1456.) Mrs. Demko's hands were duct-taped together and therefore remained intact. (7 RT 1456–1457.) The cause of Mrs. Demko's death was homicidal violence of undetermined etiology. (10 RT 2352.) Because much of Mrs. Demko's body was missing, the specific mechanism of death could not be determined. (10 RT 2353.)

The Demkos' adult children, Denise Goodman and Richard Demko,² accompanied police to inspect the Demkos' house. (7 RT 1623.) They found a burnt cigarette; an open newspaper dated November 13, 2000; reading glasses; and a cup of coffee on the kitchen table. (7 RT 1647, 1653–1654, 1661, 1679.) Denise explained that Mr. Demko was a “creature of habit” and, ever since she was a little girl, would wake up early, read his newspaper, and drink a cup of coffee. (7 RT 1617–1618.) Seven other unwrapped newspapers were also found stacked in the dining room: six Los Angeles Times (dated November 14–19, 2000) and a Desert Dispatch (dated November 14, 2000). (7 RT 1656–1657.) In the kitchen trash can, there were also two FedEx notes, one of which was dated November 21, 2000. (7 RT 1651.) Because the Demkos' bodies were found on November 18, 2000, and these FedEx notes and newspapers were found inside the house, police deduced that someone had been in the house after the murders. (7 RT 1651.)

On November 25, 2000, a week after the Demkos' bodies were discovered, police pulled over a woman who was driving the Demkos' car,

² Denise and Richard were Mr. Demko's children and Mrs. Demko's stepchildren.

a blue Mercury Sable. (7 RT 1631, 1694, 1697–1698.)³ Following an inspection of the car, police found blood stains on the inside of the trunk lid. (7 RT 1525.) The woman told police that she had borrowed the car from Battle, who was at the home of Jessica McCune, a close friend of his. (7 RT 1697; 8 RT 1715, 1730.) Police went to McCune’s home and arrested Battle. (8 RT 1797.) Following his arrest, Detectives Michael Gilliam and Derek Pacifico took Battle to the police station to begin interviewing him. (3 RT 521.)

During the course of multiple interviews,⁴ Battle told several versions of what happened. In the initial interview following Battle’s arrest, Battle said that he had borrowed the Demkos’ car from someone else and knew nothing about the Demkos’ murders. (3 CT 873, 891–892.)⁵ During that same interview, he later changed his story, telling police that he went along with the burglary of the Demkos’ home with four others, but had no idea they were planning to kill the Demkos and was not present for the killings themselves. (4 CT 903, 910–914, 924.) More than 24 hours later, when

³ She mistakenly testified that it was a Ford Taurus, but on redirect examination clarified that a Ford Taurus and a Mercury Sable look a lot alike. (4 RT 1694, 1701–1702.)

⁴ A more detailed discussion of the interviews is found in Argument Section II, which addresses Battle’s challenge of the interviews.

⁵ The citations in this paragraph are to the transcripts of the redacted versions of the tape recordings that the jury heard. (See 8 RT 1803–1805, 1811–1812, 1900, 2004, 2012–2013; 9 RT 2077–2079.) The jury was also provided with copies of these transcripts. (See 8 RT 1805 [Exhibit 256f, at 3 CT 868–4 CT 940]; 8 RT 1900 [Exhibit 257d, at 4 CT 955–966]; 8 RT 2004 [Exhibit 258g, at 4 CT 1083–1164]; and 9 RT Exhibit 2078 [Exhibit 259h, at 5 CT 1316–1462].) The content of the recordings themselves were not transcribed.

talking to another interviewer,⁶ Battle changed the story again, this time admitting that he knew there was a plan to kill the Demkos but maintaining that he was neither involved nor present when they were killed. (4 CT 1099–1104.) After the interviewer directly accused Battle of killing the Demkos, Battle admitted not only being present at the murders but also actually stabbing the Demkos himself. (4 CT 1155–1158.) He claimed, however, that he stabbed the Demkos only because one of his four cohorts ordered him at gunpoint to do so. (4 CT 1155–1158.) When the original officers interviewed Battle a final time and pointed out some inconsistencies in Battle's story about four other accomplices, Battle changed his story again. (5 CT 1390–1393.) This time, Battle said that he alone burglarized the Demkos' home, later told another man, Perry Washington, and then Washington went back by himself and killed the Demkos. (5 CT 1398–1399, 1400, 1412.) When the police did not believe that Battle was not present or involved in the actual killings, Battle changed his story a final time, this time saying that both he and Washington went back to the Demkos' house and Washington forced him at gunpoint to stab the Demkos. (5 CT 1424–1425, 1430.)

Despite all the variation in his stories, the details Battle recounted during the interviews matched the other evidence of how the burglary and murders took place. Battle accurately described where the house was located and the details of the house's interior layout, such as the location of the garage, the existence of double doors, and the location and layout of the Demkos' bedroom. (4 CT 911–917; 7 RT 1623–1651; 9 RT 2106–2107.) Battle also said that when he arrived at the house in the early morning,

⁶ This interview was part of a polygraph examination, but the recordings and transcripts were redacted so the jury was unaware of that fact.

Mr. Demko was sitting at the kitchen table reading the newspaper (5 CT 1419); this matched Denise's description of her father's daily routine and was corroborated by the open newspaper, reading glasses, and cup of coffee found on the kitchen table. (7 RT 1617, 1647, 1653–1654, 1679.) Battle also noted that Mr. Demko was hard of hearing. (4 CT 919; 7 RT 1613.) Battle further admitted that he had returned to the Demkos' home at least once to collect the newspapers and the FedEx slips from the front of the house and put them inside so that no one would detect the Demkos' disappearance. (4 CT 936–937; 7 RT 1651–1652, 1655–1657.)

Additionally, the autopsy and forensic analysis were consistent with the details Battle gave about the killings: he accurately described Mr. Demko as wearing blue pajamas and a blue robe, and he noted that Mrs. Demko was wearing pajamas at the time of the murder (4 CT 931; 5 CT 1372; 6 RT 1395; 7 RT 1432); his statements that the Demkos were bound with zip ties and duct tape were consistent with the abrasions on their bodies and the discovery of zip ties and duct tape at the murder scene (5 CT 1344–1345, 1359, 1406–1408; 7 RT 1457; 10 RT 2357, 2359–2365, 2508–2509, 2511–2512); blood found inside the lid of the trunk of the car was consistent with Battle's statements that the Demkos were wounded and shoved inside it (5 CT 1357–1359; 7 RT 1525); Battle's description of the route from the Demkos' house to the desert where the killings took place was accurate (5 CT 1363–1364; 8 RT 1929–1932); and the physical evidence corroborated Battle's statements that the Demkos were strangled and stabbed with a kitchen knife. (5 CT 1365–1366, 1432; 9 RT 2253–2254, 2301–2306.)

In addition to the police interviews, other evidence linked Battle to the Demkos' murders. At the time of the murders, Battle lived less than two miles away from the Demkos in a home run by a Christian outreach program. (8 RT 1927; 11 RT 2692, 2812.) He lived there with other people, most of whom were parolees, including William Kryger, his

roommate, and Washington. (9 RT 2196, 2217; 10 RT 2439; 11 RT 2812.) Around the time of the murders, Kryger saw Battle in a black sweatsuit holding duct tape and zip ties. (10 RT 2443–2444.) When Kryger asked Battle what he was doing, Battle told him not to worry about it and then left. (10 RT 2444.) Before the murders, Battle told Matthew Hunter, one of his friends, that he was going to acquire a car and that the people from whom he would get the car would “come up missing” in the desert. (9 RT 2198–2199.) Battle also told Hunter that he could bury a body in the desert and nobody would ever find it. (9 RT 2199.) Battle told Anthony Bennett, another acquaintance, that he could get him cars “real cheap.” (9 RT 2178.)

Around the day of the murders, Kryger saw Battle unloading cleaning supplies, videocassettes, and a television set from a car that matched the description the Demkos’. (7 RT 1606; 10 RT 2445–2446.) Pawn slips and fingerprints confirmed that two days after the murders, Battle pawned videocassettes. (9 RT 2237–2246, 2255–2257.) Battle told police that some of the videocassettes he pawned belonged to the Demkos. (3 CT 893–894.) Four days after the murders, Battle pawned the Demkos’ television set and VCR, along with some of his own property. (9 RT 2237–2246; 12 RT 3028.) More of the Demkos’ property—including a VHS cassette with Mrs. Demko’s name on it, gas cards, calling cards, credit cards, a check, stereo speakers that fit the dimensions of impressions made in the Demkos’ carpet—was discovered hidden both in Battle’s room and at Jessica McCune’s home, where police ultimately found and arrested Battle 12 days after the murders. (9 RT 2098–2099; 10 RT 2479, 2481–2488, 2513–2514, 2521.) Directly following the murders, Battle had control of the Demkos’ Mercury Sable. (7 RT 1606, 1694–1697, 1701–1702; 9 RT 2199–2201, 2411; 10 RT 2445.) When friends and acquaintances asked about Battle’s newly acquired property, Battle lied about it, either saying it

belonged to his sister or claiming he bought it himself. (See, e.g., 8 RT 1719–1720; 11 RT 2819.)

Anticipating Battle's defense that Washington was the actual murderer, the prosecution presented evidence that Washington was at work at the time Battle said the killings took place. (10 RT 2523–2531; 4 CT 1253.)

2. Defense

The defense maintained that Washington was the actual killer and that Battle was not involved at all in the Demkos' murders. In support of its argument, the defense sought and was granted judicial notice of Washington's prior robbery convictions (12 RT 3057–3058), elicited testimony from Kryger about a residential burglary orchestrated by Washington earlier in the same month of the Demkos' murders (10 RT 2458, 2460–2462), and had a lawyer testify that under the three strikes law, Washington would face a sentence of 25 years to life if convicted of another burglary (12 RT 2998–3000). The defense also elicited testimony from Battle's friends and acquaintances that Battle had peculiar interactions with Washington around the time of the murders: namely, that on the day of his arrest, Battle appeared to be having a telephone conversation with Washington, and it appeared that Washington was directing Battle's behavior, and Battle was afraid (9 RT 2136–2137); that whenever Battle was in the Demkos' car, Washington was also there (11 RT 2816–2836); and that Washington and Battle were seen together engaging in cryptic behavior (12 RT 2979–2989). In addition, the defense presented evidence that Washington had used some of the Demkos' property. (10 RT 2648–2660; 11 RT 2681–2689; 12 RT 3163–3164.) Finally, the defense called Johnney Prowse, Washington's former fellow inmate, who testified that Washington told him that he "got away with a couple of hot ones" for which Battle was accused. (11 RT 2839.) Prowse "believe[d]" he told law

enforcement about Washington's comments. (11 RT 2840–2844, 2845–2846.)

3. Prosecution's Rebuttal

On rebuttal, law enforcement officers testified that Prowse never told them about a fellow inmate having confessed to a crime for which someone else was being framed. (11 RT 2844; 12 RT 3005–3025.)

B. Penalty Phase

1. Prosecution's case in aggravation

In addition to relying on the facts and circumstances of the killings themselves, the prosecution presented further evidence in aggravation. The prosecutor introduced the fact that Battle was previously convicted of two prior felonies: a residential burglary on March 7, 1995 and a forgery on April 15, 1997. (15 RT 4000–4001.) The prosecution also presented evidence that Battle, while serving time for the forgery conviction, participated in a prison riot in 1999. (13 RT 3482–3492, 3500–3509.)

In addition, the prosecution called Matthew Hunter and Anthony Bennett, who had previously lived with Battle in another recovery home. (13 RT 3515, 3529.) The two testified that one night Battle got drunk and twice struck Hunter on the head with a brandy bottle, knocking him to the ground and causing lacerations. (13 RT 3517–3519.) Battle told Bennett that he did it because Hunter was hitting on his girlfriend and further elaborated that he tried to kill Hunter. (13 RT 3531–3532.)

Denise Goodman and Richard Demko testified about the loss of their father and stepmother. Denise told the jury how she was a “daddy’s girl,” had great memories of her father, and how he taught her she could do anything she set her mind to. (13 RT 3543.) She described the horror of learning her father and stepmother were killed and having to learn at trial about the details of how they were killed. (13 RT 3554–3557, 3571.)

Following her parents' murder, Denise became cynical and distrusting, was scared of shadows, constantly locked doors behind her, and suffered nightmares. (13 RT 3558–3560.) Richard considered his father his mentor and the biggest fan of his music career. (13 RT 3565.) His teenage daughter also loved the Demkos, and they adored her. (13 RT 3567, 3572.) Richard talked about how his parents' murder took away his sense of security and made him afraid to let his daughter ride her bike out on her own. (13 RT 3570.) He also described how hard it was to know what his parents experienced, having been put in the trunk of a car and taken out to the desert to be butchered. (13 RT 3572.)

Finally, Denise and Richard shed light on the Demkos' lives. They explained how Mr. Demko married Mrs. Demko after their mother died of a brain tumor. (13 RT 3554.) The couple traveled, golfed, watched movies, went out dancing, and enjoyed each other's company. (13 RT 3547–3552, 3566.) They had a wonderful relationship and would do anything for each other. (13 RT 3552, 3567.) The Demkos came from humble means. (13 RT 3538.) Mr. Demko was raised in a rough neighborhood in Chicago; in order to escape poverty and attain an education, he joined the armed services and served in World War II where he suffered back and ear damage in an explosion. (13 RT 3538–3540.) Mrs. Demko also had a tough childhood; her mother died in childbirth, and Mrs. Demko grew up moving between various foster care homes. (13 RT 3547, 3566.)

2. Defense's case in mitigation

As mitigating evidence, Battle introduced evidence about his early childhood and adolescence, expert psychological analysis of the effects of his upbringing, and information about prison conditions for inmates serving life without parole. (14 RT 3608–15 RT 3957; 6 CT 1649–1686.) Specifically, Battle presented the testimony of his biological father, three of his biological aunts, his biological grandmother, and two biological half