

# SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Respondent,

v.

DONTE LAMONT McDANIEL,

Defendant and Appellant.

CAPITAL CASE

Case No. S171393

Los Angeles County Superior Court Case No. TA074274  
The Honorable Robert J. Perry, Judge

SUPREME COURT  
FILED

MAR 10 2016

Frank A. McGuire Clerk

Deputy

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# DEATH PENALTY



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## STATEMENT OF THE CASE

On March 26, 2008, the Los Angeles County District Attorney filed a second amended five-count information charging appellant with possession of a firearm by a felon (Pen. Code,<sup>1</sup> § 12021, subd. (a)(1); count 1), murder of Annette Anderson (§ 187, subd. (a); count 2), murder of George Brooks (§ 187, subd. (a); count 3), attempted willful, deliberate, premeditated murder of Debra Johnson (§§ 664/187, subd. (a); count 4), and attempted willful, deliberate, premeditated murder of Janice Williams (§§ 664/187, subd. (a); count 5). As to counts 2 through 5, it was alleged that appellant personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), personally and intentionally discharged a firearm, which proximately caused great bodily injury or death (§ 12022.53, subd. (d)), and personally used a firearm (§ 12022.53, subd. (b)), and that a principal personally and intentionally discharged a firearm (§ 12022.53, subds. (c) & (e)(1)), personally and intentionally discharged a firearm, which proximately caused great bodily injury or death (§ 12022.53, subds. (d) & (e)(1)), and personally used a firearm (§ 12022.53, subds. (b) & (e)). It was further alleged as to counts 2 through 5 that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang (§ 186.22, subd. (b)(1)). A multiple-murder special circumstance was also alleged as to counts 2 and 3 (§ 190.2, subd. (a)(3)). (3CT 568-575.) Appellant pleaded not guilty to all counts (see 3RT 443) and denied the special allegations (3CT 664).

Trial was by jury. (3CT 713.) Following the presentation of evidence at the guilt phase, the jury found appellant guilty as to each of the charged offenses, and found the special circumstance allegations true. The jury

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<sup>1</sup> Unless stated otherwise, all further statutory references are to the Penal Code.

found Anderson's and Brooks's murders to be first degree, and that the attempted murders were willful, deliberate, and premeditated. As to counts 2 through 5, the jury found true all of the firearm use enhancement allegations and gang enhancement allegations. (9CT 2238-2243, 2249-2253.)

Appellant's first penalty phase trial ended in a mistrial because the jury was unable to reach a unanimous verdict. (9CT 2289, 2292.) The penalty phase was retried a second time, and the jury fixed the punishment as death. (9CT 2378, 2469-2470, 2474.)

On March 20, 2009, the trial court denied appellant's motions for a new guilt phase trial and to modify the death penalty verdict pursuant to section 190.4, subdivision (e). (10CT 2532-2534, 2576-2578.) As to counts 2 and 3, the trial court sentenced appellant to death and also imposed consecutive terms of 25 years to life for the firearm use enhancements under section 12022.53, subdivision (d). As to counts 4 and 5, the trial court imposed consecutive life terms, plus consecutive terms of 25 years to life for the firearm use enhancements under section 12022.53, subdivision (d). As to counts 2 through 5, appellant was deemed ineligible for parole for 15 years pursuant to the section 186.22 gang enhancement. Finally, as to count 1, the court imposed a consecutive term of two years (the middle term). The remaining enhancements were stayed. Appellant was ordered to pay a restitution fine of \$200 pursuant to section 1202.4, subdivision (b), and restitution in the amount of \$7,000 to the victim compensation board pursuant to section 1202.4, subdivision (f). (10CT 2549-2551, 2553-2555, 2576-2589.)

This appeal is automatic. (§ 1239, subd. (b).)<sup>2</sup>

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<sup>2</sup> Appellant filed a notice of appeal on March 20, 2009. (10CT 2575.)

## STATEMENT OF FACTS

### A. Guilt Phase Evidence

#### 1. Prosecution evidence

##### The Nickerson Gardens shootings

##### a. Background

Kanisha Garner was George Brooks's sister.<sup>3</sup> (7RT 1488-1489.) In March or April 2006, about a week before Brooks was killed, Brooks told Kanisha that "Billy Pooh" (a.k.a. William Carey) might be looking for him because Brooks had taken some drugs that belonged to Carey. (7RT 1489-1490; 8RT 1627.) Brooks was at Carey's house. Carey was going to give drugs to Brooks. There was a shooting at the house, and Brooks left with the drugs but did not pay for them. Brooks took close to four ounces of drugs. He told Kanisha about the incident the morning after it happened. (7RT 1489-1493.) Kanisha told Brooks that the people he was dealing with were "bad" and that he needed to stay away from them. (7RT 1492.) Brooks told her that he was not going to deal with Carey anymore. (7RT 1495.)

##### b. Witnesses inside Annette Anderson's apartment

##### (1) Derrick Dillard and Elois Garner

Derrick Dillard (a.k.a. "Del-Winkie") had known Annette Anderson (a.k.a. "Nobe") his entire life. She was like an "auntie" to him. Anderson lived on 112th Street in the Nickerson Gardens. (5RT 1101-1102, 1134.) George Brooks (a.k.a. "G-Rail") was Dillard's cousin. (5RT 1102.)

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<sup>3</sup> Because Kanisha shares the same last name as Elois Garner, respondent will refer to Kanisha by her first name to avoid any confusion. Kanisha is not related to Elois Garner. (7RT 1489.)

Dillard and Brooks were “hanging out” at Anderson’s house on April 5, 2006, the night before Anderson and Brooks were murdered. (5RT 1102-1103.) Dillard and Brooks left Anderson’s house and went to “Kai’s”<sup>4</sup> house, which was also on 112th Street, about half a block from Anderson’s house. (5RT 1104.) Brooks had suggested they go to Harris’s house. Brooks and Harris spoke, but Dillard could not hear their conversation. After about 15 minutes, Dillard and Brooks left Harris’s house and headed back to Anderson’s house. Dillard and Brooks ran into some women outside of Harris’s house, including “Cat” (a.k.a. Kathryn Washington), “Angel,” and “Dee-Dee.” (5RT 1104-1105; 6RT 1270.)

As Dillard and Brooks walked down 112th Street, they ran into appellant. Dillard had known appellant for “a few years” from around the neighborhood. (5RT 1105-1106.) Appellant and Brooks spoke briefly. Appellant asked Brooks where he had been and told Brooks that Carey was looking for him. (5RT 1106-1107.)

Dillard and Brooks proceeded to Anderson’s house and arrived there around 2:00 a.m. “Prentice” walked with Dillard and Brooks to the house. Anderson, “Debbie,”<sup>5</sup> and “Janice”<sup>6</sup> were there. Dillard, Brooks, and Prentice went into the bedroom and used cocaine. The bedroom door was closed. (5RT 1102-1103, 1108-1110, 1149.) Anderson called out to Brooks and told him that someone was at the door for him. Brooks left the bedroom and closed the door behind him. (5RT 1111.)

Elois Garner had known Anderson for about 20 years and Brooks for about five or six years. Garner had children with Janice Williams’s brother.

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<sup>4</sup> Respondent assumes “Kai” is Kai Harris, appellant’s codefendant.

<sup>5</sup> Respondent assumes “Debbie” is Debra Johnson.

<sup>6</sup> Respondent assumes “Janice” is Janice Williams.