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Raymond Jennings

SUPERIOR COURT OF STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. RAYMOND LEE JENNINGS, Defendant.	Case No. MA 033712 (Hon. William C. Ryan) NOTICE OF MOTION AND MOTION BY RAYMOND JENNINGS FOR FINDING OF FACTUAL INNOCENCE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JEFFREY I. EHRLICH; EXHIBITS Date: January 5, 2017 Time: 10:30 a.m. Dept. 56w

NOTICE IS HEREBY GIVEN that on January 5, 2017, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 56-W of the above-entitled Court, located at 210 W. Temple Street, Los Angeles, CA 90012, before the Hon. William C. Ryan, petitioner Raymond Jennings will seek a finding of factual innocence based on Penal Code sections 1485.5, 1485.55, and *In re Lawley* (2008) 42 Cal.4th 1231, 1240-1241.

The basis for the application is that the new investigation into the murder of Michelle O'Keefe conducted by the Los Angeles Sheriff's Department ("LASD") and the Office of the District Attorney ("DA") has caused the DA and the LASD to conclude that Jennings's conviction for the murder of Michelle O'Keefe should be vacated and that Jennings is factually innocent.

This application is based on the stipulation of the District Attorney, dated December 20, 2016, and filed with the Court on January 3, 2017; together with the letter to the Court from the District Attorney filed on May 22, 2016 (which is currently under seal); the confidential briefing provided to the Court by the DA and the LASD concerning the status of the ongoing investigation into the O'Keefe murder; the attached memorandum of points and authorities and declaration of Jeffrey I. Ehrlich and the exhibits thereto; and such other and further evidence and argument as the Court will allow.

Dated: January 4, 2017

Respectfully submitted,

THE EHRLICH LAW FIRM

By _____
Jeffrey I. Ehrlich
Counsel for Raymond Jennings

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INTRODUCTION

Michelle O'Keefe was murdered in a Park-and-Ride parking lot in Palmdale on February 22, 2000. Raymond Jennings was patrolling the parking lot as an unarmed security guard on the night of the murder.

Less than a month after the murder the LASD received an anonymous tip. It related that two gang members had been overheard stating that they had been in the Park-and-Ride lot on the night of the murder to steal hubcaps, rims, or items from parked vehicles. They saw Michelle O'Keefe get into her car, tried to "carjack it," and "things went bad and she was shot." The tip stated that the two gang members who were involved were concerned that there was a witness to the murder who could identify them — "an older male, possibly in his 30s."[1] Ray Jennings was 25 on the night of the murder.

The LASD detective in charge of the investigation, Sergeant Richard Longshore, was dubious of the anonymous tip, stating that its assertions "appeared to be far-fetched or improbable, based on the evidence at the scene, and the totality of the investigation conducted to date."[2] Indeed, in presenting the case for trial the LASD and the prosecutor, Michael Blake, had ruled out any potential gang involvement or the possibility of a potential robbery or a carjacking.

As Jennings' profiling expert, retired FBI agent Peter Klismet, explained in his report submitted to the Conviction Review Unit ("CRU") of the District Attorney's Office, "the investigators honed-in on Jennings, developed the theory that he was the killer, and then built a set of facts around Jennings rather than consider other, more viable suspects. It appears Jennings became the only suspect in their minds, and they made the

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[1] The anonymous tip is discussed at page 10 of the June 22, 2016 letter submitted by the District Attorney to the Hon. James Brandlin, which has been deemed a joint habeas petition in this matter (hereafter "letter/petition").

[2] Letter/petition at p. 10.

facts fit that theory, while there were other options available."[3] There is a name for this phenomenon in the literature of wrongful convictions — it is called "tunnel vision." [4]

Examples of tunnel vision in the Jennings prosecution abound. In a memo he wrote to his superiors about the case in April 2006 — five months *after* charges had been filed against Jennings — Blake wrote that, "Raymond Lee Jennings was the only known 'witness' to this crime." [5] This was false, but it accurately reflected Blake's mindset.

As the May 22, 2016 letter to this Court from the District Attorney, which is deemed to be Jennings' habeas petition ("letter/petition") explains in detail, within a month of the murder the LASD investigators knew that there were three other adults at the murder scene, including "John Doe."[6] Yet, neither the LASD investigators nor Blake sought to interview any of these people, nor did they even run a background check on them.

There was never any evidence that actually connected Jennings to the O'Keefe murder. The victim had male DNA under her fingernail — but it was not Jennings' DNA.[7] No witness claimed to have seen Jennings commit the crime.[8] There was no gunshot residue, hair, fibers, or any other trace evidence connecting Jennings to the victim, or vice versa.[9] Yet this absence of evidence was never considered to be exculpatory. Instead, the prosecution simply disregarded any fact that was not consistent

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[3] Report of Peter M. Klismet, p. 3. A copy of Mr. Klismet's report is attached as Exhibit 1 to the Ehrlich declaration.

[4] Findlay & Scott, *Tunnel Vision*, Univ. of Wis. L.Rev. (2006); Crime Classification Manual (2d Ed. 2006), p. 498. (See pp. 22, 33 of letter dated October 2, 2015 by Jeffrey Ehrlich to CRU, copy attached as Exhibit 2 to Ehrlich declaration.

[5] April 17, 2006 Memo authored by Michael Blake, p. 1, copy attached as Exhibit 3 to Ehrlich declaration.

[6] Letter/petition at pp. 7-9.

[7] Appellate Opinion in *People v. Jennings*, No. B222959, at p. *3 (copy attached as Exhibit 4 to Ehrlich declaration).

[8] *Id.*

[9] *Id.*

with its view and made no pretense of presenting an internally consistent theory of the case.

This was the essence of the prosecution case:

1. Jennings came to work on the night of February 22, 2000, without intending to commit any crime.[10] (He had no criminal record of any kind.) But for some (unexplained) reason, he wanted to have a gun with him, so instead of bringing his lawfully registered .380 pistol, he brought an unregistered 9mm pistol. (There was no evidence that Jennings ever owned or had access to such a pistol.)

2. Jennings saw Ms. O'Keefe in the parking lot as she returned to her car, and thinking that she was a prostitute because of how she was dressed, tried to sexually accost her. (There was no evidence that Jennings ever made any unwanted advances toward any woman, or had any connection with prostitutes.)

3. Michelle O'Keefe resisted his overtures. Jennings realized that she could easily identify him because he was wearing his security-guard uniform, but this only occurred to him *after* he had accosted her.[11] At that point, this realization sent him into a blind panic, so he struck Ms. O'Keefe in the head with the pistol and then shot her multiple times at point-blank range.

3. Despite his panic, immediately after the shooting Jennings calmly called in the "shots fired" report and waited at the scene for the police to arrive. He spoke to them voluntarily for hours, answering every question put to him. Nothing about his demeanor or appearance gave the deputies who responded to the shooting, nor the experienced homicide detectives assigned to the case, any reason to regard him as a suspect.

4. Then, he agreed to more interviews with the investigators — including a nine-hour cognitive interview — without declining to answer any question, and without asking for counsel.

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[10] 20 RT 7247:12-13 [Blake closing argument].

[11] 20 RT 7248:12-25 [Blake closing argument].

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In September 2004, Detective Longshore had a conversation with Deputy District Attorney Robert Foltz about the case. Longshore wrote, "'Knows in his heart' that Jennings is good for it, but can't prove it."[12] On February 23, 2005, Folz rejected the case, writing: "The suspect shoots victim in Park n Ride lot. He is the security guard who was at the lot on duty at the time of the shooting. No wits ee [sic] the event, no murder weapon is recovered, no cop out statements, no GSR of suspect. There simply is insufficient evidence to prove beyond a reasonable doubt that Jennings (susp) did the killing." [13]

Yet, *without any new evidence being developed,* Foltz filed the case in November 2005 on charges of first-degree murder. Six months after the charges were filed Blake wrote a memo to his superiors, stating, "Although his conduct and intimate knowledge of the crime scene, and many inconsistencies in statements to police and others are all *highly* suspicious, examinations of the physical evidence have yet to directly link Jennings to the murder of Michelle O'Keefe."[14]

The lack of evidence to support the prosecution theory is highlighted by the discussion of the case by the LASD criminalists working on the case at the time. One wrote, "They [the prosecutors] have no real evidence."[15] Blake's desperation in trying to find *something* to connect Jennings to the crime is reflected in the criminalist's description of Blake's request to him:

> Black security jacket looked at for blood. The DA would like microscopic examination. I suggested mapping followed by luminal but he wants the microscopic examination like they do on CSI. You know where they look at every square inch with a super sensitive microscope with the great

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[12] Homicide investigation note dated 9/30/04, copy attached as Exhibit 5 to Ehrlich declaration.
[13] LASD supplemental report dated March 11, 2005, copy attached as Exh. 6 to Ehrlich declaration.
[14] April 17, 2006, Blake memo, p. 2, emphasis in original (Exhibit 3 to Ehrlich declaration).
[15] April 14, 2006 email from Sewell to Gonzales, copy attached as Exhibit 7 to Ehrlich declaration.

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graphics, right down to the sub-atomic level. I digress. Needless to say, I will discuss this with him."[16]

The criminalist's account shows that Blake was reduced to asking the crime lab to employ procedures that existed only on a fictional television show in order to build his case against Jennings.

The weakness in the case was apparent to the first two juries that heard the case. Both juries hung. But the case was tried a third time — this time in the Antelope Valley, where the crime had occurred and Jennings had been vilified in the local press. In his closing argument Blake told the juror that they could *presume* that Jennings was guilty simply because he was present at the crime scene:

> What I do want you to understand is, if two people go into a room, [and] they are in there alone; no one knows what's happening between them. One of them walks out, and the other is inside dead. *Without knowing anything else the law presumes that to be a second degree murder.* That's an important concept in your law. The killing is presumed to be malicious and is *presumed to be murder, again, without knowing more.*[17]

After deliberating for almost a month, the jury rejected the first-degree murder charge, and convicted Ray Jennings of second-degree murder.

Jennings' request in October 2015 to the District Attorney's Office Conviction Review Unit ("CRU") prompted a re-examination of the case, and then an entirely new investigation by the LASD and the District Attorney's Office. That investigation is still ongoing, and Jennings and his counsel have not been advised of all of the material that it has uncovered. But the investigation has allowed the LASD and the District Attorney to *rule out* Ray Jennings as a suspect.

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[16] *Id.*

[17] 20 RT 7246: 8-15 [Blake closing].

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As the DA has advised the Court in its December 20, 2016 letter, which supplements the letter/petition: "Based on the investigation conducted to date, the Los Angeles County District Attorney's Office agrees [with the LASD] that Raymond Jennings is entitled to relief through habeas corpus based on newly discovered evidence point to his factual innocence."

Accordingly, the District Attorney has advised the Court that it has lost confidence in Jennings' conviction "and requests that this court grant the habeas corpus petition and set aside Jennings' conviction." The District Attorney has also stipulated that the facts uncovered in the ongoing investigation meet the burden of proof necessary for this Court to find that Jennings is factually innocent.

Jennings therefore respectfully joins the District Attorney in requesting that the Court grant the habeas petition, and make a finding that Jennings is factually innocent.

PROCEDURAL SUMMARY

Jennings was convicted on December 18, 2009 and sentenced to 40-years to life on February 18, 2010.

He submitted a request to the CRU to review his conviction on October 2, 2015.[18] Jennings supplemented his request with a follow-up letter to the CRU on March 4, 2016.[19] Jennings supported his submissions to the CRU with reports from four experts:

- Ron Scott, a firearms and ballistics expert;
- Peter Klismet, a criminal-profiling expert;
- Robert Gardner, a security expert; and
- Technical Associates, Inc. (TAI), a criminal laboratory. [20]

Based on Jennings' requests to the CRU, the District Attorney and the LASD agreed to re-open the investigation into the Michelle O'Keefe murder. Jennings is

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[18] A copy of that request is attached as Exhibit 2 to the Ehrlich declaration.
[19] A copy of the follow-up submission is attached as Exhibit 8 to the Ehrlich declaration.
[20] Copies of the Scott report, the Gardner report, and the TAI report, are attached as Exhibits 9 through 11, respectively, to the Ehrlich declaration. Klismet's report is attached as Exhibit 2.

informed that the investigation has been conducted by four LASD detectives, working with the District Attorney's "Hardcore Gang Unit."

On June 22, 2016, the District Attorney submitted the petition/letter to the Court. That document was filed under seal. On June 23, 2016, at the joint request of the District Attorney and Jennings, the Court ordered that Jennings be released from custody on his own recognizance, pending a final determination by the Court on his habeas petition. On January 3, 2017, the District Attorney filed an addendum to the June 22, 2016 letter/petition. The letter advises the Court that

- The new investigation has shown that Jennings is entitled to habeas corpus relief "based on newly discovered evidence pointing to his factual innocence";
- That the District Attorney will not retry Jennings for the O'Keefe murder; and
- That the District Attorney "stipulates that facts uncovered in the on-going investigation meets the burden of proof required for a finding of factual innocence."

ARGUMENT

A. The District Attorney has conceded that the newly discovered evidence in this case entitles Jennings to habeas relief under *In re Lawley*

The June 22, 2016 letter/petition was drafted by the District Attorney's Office. It explains that the petition was brought on the ground of newly-discovered evidence under *In re Lawley* (2008) 43 Cal.4th 1231. *Lawley*'s holding is two-pronged. That is, it recognizes that, "Habeas corpus will lie to vindicate a claim that newly discovered evidence demonstrates a prisoner is actually innocent." (*Id.*, 42 Cal.4th at p. 1238.) But it further holds that, in order to be entitled to habeas relief on this basis, the new evidence must cast "fundamental doubt on the accuracy and reliability of the proceedings. At the guilt phase, such evidence, if credited, must undermine the entire prosecution case and

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point unerringly to innocence or reduced culpability." (*Id.*, 42 Cal.4th at p. 1239, citations omitted.)

In the letter/petition, the District Attorney lays out the evidence in the case, including the newly-discovered evidence uncovered through June 2016, and informed the Court that it would not oppose the Court granting the petition on the ground of newly-discovered evidence if the new investigation did not produce any new evidence pointing to Mr. Jennings' involvement in the O'Keefe murder.

In the December 20, 2016 addendum to the letter/petition, the District Attorney informs the Court that, based on the new investigation, it has ruled Jennings out as a suspect in the O'Keefe murder, and that as a result, it "agrees that Raymond Jennings is entitled to relief through habeas corpus based on newly discovered evidence pointing to his factual innocence." Accordingly, the December 20, 2016 addendum states that the District Attorney "has lost confidence in the validity of the conviction and requests that this court grant the habeas petition and set aside Jennings' conviction."

B. The District Attorney has conceded that Jennings is entitled to a finding of factual innocence under Penal Code section 1485.5

The December 20, 2016 addendum further states that the District Attorney stipulates that the facts uncovered in the new investigation are sufficient to allow it to stipulate that Jennings can satisfy the burden of proof for a finding of factual innocence under section 1485.5 of the Penal Code. That section was added to the Penal Code in 2013, and has since been modified twice. It currently states:

> (a) If the district attorney or Attorney General stipulates to or does not contest the factual allegations underlying one or more of the grounds for granting a writ of habeas corpus or a motion to vacate a judgment, the facts underlying the basis for the court's ruling or order shall be binding on the Attorney General, the factfinder, and the California Victim Compensation Board.
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(c) In a contested or uncontested proceeding, the express factual findings made by the court, including credibility determinations, in considering a petition for habeas corpus . . . or an application for a certificate of factual innocence, shall be binding on the Attorney General, the factfinder, and the California Victim Compensation Board.

(d) For the purposes of this section, "express factual findings" are findings established as the basis for the court's ruling or order.

Section 1485.5 must be read in conjunction with its companion statute, section 1485.55, which was enacted at the same time. Section 1485.55, subdivision (b), authorizes a petitioner to request that a court that grants a petition for habeas corpus to move for a finding of factual innocence. It establishes that the standard for such a finding is a showing that, "by a preponderance of the evidence that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her."

Because they are relatively new statutes, sections 1485.5 and 1485.55 have not been the subject of extensive judicial analysis. But in *People v. Etheridge* (2015) 241 Cal.App.4th 800, 810, the court explained the purpose of the statute, and explained that, an applicant is entitled to relief by showing, "by a preponderance of the evidence that he or she was 'innocent' in the sense that he or she did not perform the acts 'that characterize the crime' or are elements of the crime, and was therefore 'wrongfully convicted and unlawfully imprisoned.'"

The District Attorney has stipulated that Jennings is entitled to relief under this standard.

C. There is no evidence that incriminates Jennings in the murder of Michelle O'Keefe

The District Attorney and the LASD will confidentially brief the Court on the status of the ongoing investigation into the O'Keefe murder. But while that investigation is ongoing, it has proceeded to the point where the LASD and the District Attorney can

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and have *eliminated* Jennings as a suspect. The clearest evidence of this is that, despite having access to the entire original investigation of the murder, the LASD and the District Attorney are seeking to build a case against a third party or third parties — not Jennings.

Rather, based on what the new investigation has revealed, the LASD and the District Attorney have agreed that Jennings's conviction should be vacated and he is entitled to a finding that he is factually innocent. The *Lawley* standard requires both that the new evidence unerringly point to the petitioner's innocence, but also that it completely undermines the prosecution's case. The material that has already been submitted to the Court under seal, and the additional information that will be provided in the confidential briefing, will explain to the Court the District Attorney's view of the evidence.

The balance of this application will focus on the second part of the *Lawley* standard — showing how the new evidence undermines the prosecution's case.

1. The prosecution's expert has recanted his testimony based on the newly discovered evidence

Jennings has obtained the declaration of Mark Safarik, who testified on behalf of the prosecution as an expert in the behavioral and forensic analysis of violent crimes in all three trials. Jennings has filed the declaration under seal because it discusses some of the new evidence set forth in the petition/letter.[21]

The Court of Appeal explained that Mr. Safarik's testimony was critical to the prosecution case: "Safarik was the only witness who testified that the killer's apparent motive was to commit a sexual assault that was poorly planned and quickly escalated to a homicide. This testimony may have been crucial to the prosecution's case because, without it, there was no evidence from which the jury might infer the motive or the perpetrator's intent in killing O'Keefe."[22]

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[21] A copy of Safarik's declaration is attached as Exhibit 12 to the Ehrlich declaration. A sealed copy is provided to the Court.

[22] *People v. Jennings*, at p. *11.

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Mr. Safarik explains in his declaration that he formulated his opinions about the case, and his testimony, based on his assumption and belief "that the investigators had interviewed all witnesses who were present at the scene when the murder occurred, and had evaluated the information they provided in light of all the facts, including their respective criminal backgrounds (or lack thereof). I assumed that because there was no information provided to me about these witnesses, and that the statement I had from Jane Doe was accurate, there was no information developed that was material to the case."[23]

Mr. Safarik acknowledges that, based on the information presented to the Court in the letter/petition, his assumption about the nature of the investigation was incorrect. Rather, he acknowledges that this portion of the investigation had not been done at the time the case against Jennings was filed in 2005, nor at the time that he prepared his report on the case in July 2007, or at the time that he testified in each of Jennings' three trials in 2009 and 2010.[24]

Mr. Safarik states in his declaration that, "Had I been aware in July 2007 that this portion of the investigation had not been conducted, I would not have been able to formulate a reliable opinion about the case or to have written a report about the O'Keefe murder, because I would not have had sufficient information to do so."[25]

Accordingly, he states that, "The information in Mr. Spillane's letter demonstrates to me that the LASD investigation was not, as I had assumed it had been, 'a comprehensive, thorough, and well-planned investigation.' Accordingly, just as the District Attorney's Office has lost confidence in the conviction of Raymond Jennings, in light of the incomplete investigation, if I had been provided with the entirety of the information that was available in 2007, I am not confident I would have reached all of the same conclusions or opinions that I expressed in my report or on the witness stand."

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[23] Safarik declaration, para. 17.
[24] *Id.*, para. 18.
[25] *Id.*, para. 19.

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These opinions and conclusions included testimony that the O'Keefe murder was the product of a sexual assault, not a robbery; that there was no evidence of any gang involvement in the crime; and that the crime was not the result of a failed carjacking.

In sum, Mr. Safarik's opinion was a critical pillar of the prosecution's case against Mr. Jennings. And based on some of the new information, Mr. Safarik has recanted his opinions and testimony.

2. The prosecution's case against Jennings was entirely circumstantial, and none of the inferences on which the case was based had evidentiary support

Jennings has provided a comprehensive analysis of the flaws in the prosecution's case against him in his two submissions to the CRU, together with four expert reports supporting his submissions.

This new evidence included the report from Technical Associates, Inc. (TAI) explaining that the absence of gunshot residue on the cuff of Jennings' jacket was proof that he had not fired a gun on the night of the murder; evidence from both TAI and Klismet, a retired FBI agent, disputing the prosecution's claim that Ms. O'Keefe's tube top had been pulled down; evidence from Mr. Klismet that the prosecution's profiling evidence (which Mr. Safarik has since recanted) was at odds with the facts of the case; evidence that the absence of "pseudo stippling" on Jennings' uniform pants demonstrated that he had not fired a shot into the ground at his feet as the prosecution argued that he had; and evidence that Jennings's initial refusal to join is supervisor as she examined the O'Keefe vehicle was completely consistent with the security-guard training that he had received just days before the murder.

The District Attorney has characterized the expert reports as "new and credible evidence that Mr. Jennings did not kill Ms. O'Keefe."[26]

The Court of Appeal relied on seven "incriminating circumstances" that it determined were sufficient to support Jennings' conviction. The flaws in the evidence

[26] Letter/petition at p. 11.

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underlying these "circumstances" was specifically addressed at pages 10 to 15 of Jennings' March 4, 2016 submission to the CRU, as well as in his original submission. In the interest of brevity, and in light of the District Attorney's stipulation that the conviction should be vacated and that Jennings is factually innocent, Jennings will not re-argue those points here.

CONCLUSION

The murder of Michelle O'Keefe was a senseless tragedy. That tragedy was compounded when the investigators and the original prosecutors who worked on the case developed "tunnel vision" concerning Ray Jennings, and concocted a flimsy case against him based entirely of inferences that were unreasonable, lacked evidentiary support, or suffered from both flaws. Ray Jennings lost 11 years of his life as a result.

To its credit, the District Attorney's Office agreed to take a new look at the case, and then re-opened the investigation into Michelle O'Keefe's murder when the flaws in the original prosecution became clear. The wrongful conviction of Raymond Jennings not only deprived him of his freedom, but allowed the real killer to go free.

The District Attorney and the LASD are now seeking to build their case against the real killer or killers. Their investigation continues, but it has progressed far enough to allow those agencies, and this Court, to conclude that Jennings' conviction should be vacated, and to find that he is factually innocent.

Dated: January 4, 2017

Respectfully submitted,

THE EHRLICH LAW FIRM

By _____
Jeffrey I. Ehrlich
Counsel for Raymond Jennings

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DECLARATION OF JEFFREY I. EHRLICH IN SUPPORT OF RAYMOND JENNINGS'S MOTION FOR A FINDING OF FACTUAL INNOCENCE

I, Jeffrey I. Ehrlich, state:

1. I am counsel for Raymond Jennings in this matter. I am an attorney licensed to practice in California. I have personal knowledge of the facts stated in this declaration, and could testify to those facts under oath.

2. Attached hereto as Exhibit 1 is a copy of an expert report of Peter Klismet, a retired FBI agent and criminal profiler, which I submitted to the District Attorney's Conviction Review Unit ("CRU") on behalf of Mr. Jennings in March 2016.

3. Attached hereto as Exhibit 2 is a copy of a letter dated October 2, 2015, which I submitted to the CRU on behalf of Mr. Jennings.

4. Attached hereto as Exhibit 3 is a copy of a memo dated April 17, 2006, by Deputy District Attorney Michael Blake, the prosecutor in the Jennings case. This memo was produced by the prosecution in the "murder books" for the Jennings case.

5. Attached hereto as Exhibit 4 is a copy of the Court of Appeal's opinion affirming Mr. Jennings' conviction.

6. Attached hereto as Exhibit 5 is a copy of a page from the handwritten notes of the homicide detectives in this case, dated 9/30/04. The notes were produced by the prosecution in the "murder books" for the Jennings case.

7. Attached hereto as Exhibit 6 is a copy of a LASD supplemental report dated March 11, 2005, which explains that the District Attorney had rejected the case on February 23, 2005, and which quotes the contents of the "Charge Evaluation Worksheet" rejecting the case. This report was produced by the prosecution in the "murder books" for the Jennings case.

8. Attached hereto as Exhibit 7 is a copy of an April 14, 2006 email from Kenneth L. Sewell of the LASD Forensic Biology Section to his colleague in the LASD crime lab, criminologist Christina Gonzales. This email was produced by the prosecution in the "murder books" for the Jennings case.

9. Attached hereto as Exhibit 8 is a copy of the March 2, 2016 submission I made to the CRU on behalf of Mr. Jennings.

10. Attached hereto as Exhibit 9 is a copy of an expert report by Ronald R. Scott, MA, MS, a firearms and ballistics expert, which I submitted to the CRU in March 2016.

11. Attached hereto as Exhibit10 is a copy of an expert report by Robert Gardner, a security expert, which I submitted to the CRU in March 2016.

12. Attached hereto as Exhibit 11 is a copy of an expert report by Technical Associates, Inc., a private criminal forensic laboratory, which I submitted to the CRU in March 2016.

13. Attached hereto as Exhibit 12 is a copy of a declaration dated August 3, 2016, by Mark Safarik, the prosecution's criminal profiling expert. I have submitted his declaration under seal because it discusses some aspects of the June 22, 2016 letter/petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of January, 2017 at Encino, California.

Jeffrey I. Ehrlich

THE EHRLICH LAW FIRM
16130 VENTURA BOULEVARD, SUITE 610
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EXHIBIT 1

Criminal Profiling Associates LLC
6260 Revelstoke Drive
Colorado Springs, CO 80924

Report by:.....Peter M. Klismet, Jr. BS, MS, MPA, FBI (Retired)

Date:.....March 3, 2016

Case Title:.....People of the State of California vs. Raymond Lee Jennings

Victim – Michelle O'Keefe.

Crime Involved:..... Section 187 of the California Penal Code (Murder).

Abbreviated version of facts: On February 21, 2000, eighteen-year old Michelle O'Keefe was found murdered in her car in a local Park and Ride in the Antelope Valley. Raymond Jennings was eventually convicted of second-degree murder after three trials.

Nature of my assignment: Counsel for Jennings in his habeas proceeding has retained me to analyze the case, and particularly the testimony of one of the prosecution's expert witnesses, former F.B.I. Special Agent Mark Safarik. I have been asked to evaluate Mr. Safarik's testimony and conclusions, and if my opinions and analysis differ from those of Mr. Safarik, to explain the basis for those differences of opinion. In the Summary of my Conclusions ("A." below), I point out a number of disagreements I have with Safarik's analysis. In text which follows my conclusions, I further explain my own analysis and opinions about how those facts could have been more properly interpreted.

Materials reviewed: I have reviewed the Court of Appeal's opinion affirming Jennings's conviction; a 34-page analysis of the case prepared by Jennings's counsel, Mr. Ehrlich; a summary of the 21-volume reporter's transcript prepared by Mr. Ehrlich's office; the closing arguments of the prosecution and defense, and the prosecution rebuttal; the report authored by Mr. Safarik and the motion made by the prosecution to qualify Mr. Safarik as an expert; Mr. Safarik's trial testimony; portions of the trial testimony of various witnesses; crime-scene photos; and the expert report of Ron Scott, a firearms and ballistics expert retained by Jennings's counsel.

A. Summary of my conclusions and points of disagreement with Safarik:

1. The evidence strongly suggests that Michelle O'Keefe's murder was precipitated by a robbery, not an attempted sexual assault as suggested by Safarik's analysis. I disagree with Safarik and believe this was a completed robbery.

2. Many of Mr. Safarik's conclusions — including his principal conclusion that the murder occurred in the aftermath of a failed sexual assault — are not supported by the evidence or by accepted principles of criminal profiling. Since all of Safarik's conclusions emanate from the 'sexual assault' theory, I believe that renders all of his opinions and testimony as inaccurate, much like the "Fruit of the Poisonous Tree" doctrine. Thus, after his sexual assault assertion is made, virtually everything which follows cannot be accurate.

3. There are a number of ways in which the victim's tube top could have become lowered, which is the crux of Safarik's profile. The victim had moved her car to a less well-lighted area to change clothes before school. Was she beginning this process? Another reason could involve the victim's probable reflex actions after she was struck in the head or shot in the chest. People who are wounded will by reflex action place a hand on that spot. Another way it could have occurred is if the victim raised her arms in response to seeing a gun. In all probability the top would have slipped down. It could have come down slightly as she fell backwards into the car. However, to use the tube top as the single indicator of sexual assault does not meet the standard of proper analysis of all of the facts. I contend Safarik was wrong in this conclusion, did not consider other options, and simply made an incorrect analysis.

Safarik does not appear to have factored into his analysis, or considered, lack of any marks above Michelle's breasts. If the tube top was forcibly pulled down by the assailant, there would be scratch marks from fingernails, or at a minimum finger markings (even bruising) to indicate force was used. There were none and this fact appears to have been overlooked by the prosecution and Mr. Safarik. This should not have been overlooked, because it would have been another critical factor to disprove the prosecution's theory of attempted sexual assault.

5. Mr. Safarik's conclusion that this killing did not show signs of being gang-related is incorrect and is not based on facts known to investigators. According to the Los Angeles Sheriff's Department, gang activity has been present in the cities of Lancaster and Palmdale for many years. In addition to the Bloods and Crips having

gained a foothold on the community, there are large numbers of Hispanic and Asian gang members. I worked both Hispanic and black gangs in Omaha, Nebraska for over five years. Because of this, I know gangs are often responsible for over fifty percent of violent crime in some cities. In fact, in heavily gang-controlled areas, the percentage is closer to ninety percent. People who are gang members commit far more crimes and violent acts than the average population. It goes without saying a gang member or associate is more inclined to be a dangerous and violent individual. This is another conclusion Safarik should have reached, but did not.

- One person who is a far more likely suspect than Raymond Jennings is closely-related to gangs. Victoria Richardson by her own admission on social media is a gang-associate and was in a nearby vehicle at the time the crime was committed. Also in the vehicle with Richardson were other likely gang members or associates. Any of these individuals would have been more viable suspects than Jennings. However, there was no serious effort made to locate and question them. This was a serious mistake in the investigation, and Safarik points this out in his report. In addition to her gang-affiliation, Victoria Richardson has had convictions for drugs and violent crime.

6. It is my opinion that the defendant, Raymond Jennings, did not commit this crime, but was the victim of a narrowly-focused investigation. I believe investigators honed-in on Jennings, developed the theory he was the killer, and then built a set of facts around Jennings rather than to consider other, more-viable suspects. It appears Jennings became the only suspect in their minds, and they made the facts fit that theory, while there were other options available.

7. Jennings had a predilection for black females. He was married to a black woman, and had previously been married to another. Several times he told one of his close friends that black women were his preference. He told this friend, (Michael Parker per transcript) that he had never been attracted to and had never dated a white girl. Michelle O'Keefe was white. Even if the victim had been black, the possibility of a sudden impulse to become so 'sexually overwhelmed' that he would be driven to commit a sexual attack is still unlikely. This fact alone should have created 'reasonable doubt' in a jury's mind(s) if nothing else. Not that Jennings couldn't have seen a white woman and found her attractive. Michelle was attractive from all accounts. But she was not black, and that is clearly Jennings's primary preference in females.

8. This was an impulsive crime. One would not expect an offender to see a young woman get out of one car and into another and, within a matter of seconds, form the intent to sexually assault the victim. To commit a robbery – likely. A sexual assault – very unlikely. And the objective of each would be anonymity and escape to avoid arrest/prosecution. Is it a fair assumption that a person in a security guard uniform who would be easily identified, would commit either of these crimes?

- The impulsiveness of the crime(s) is pointed out in Safarik's original report (profile). He mentions there was no planning involved by the offender, it was an impulsive act which went bad quickly, escalated and led to a homicide. I would completely agree with those conclusions. What he failed to point out in the report is an act this impulsive and lacking in planning is much more likely to be committed by a younger offender – most likely in the 17 to 21 year old range. At the time of the crime, Jennings was 25 years old. While that doesn't absolutely exclude him, the statistical likelihood favors someone with much less maturity.

- This fact (impulsive crime equals younger offender) is pointed out in the "Crime Classification Manual," essentially the "Bible" for criminal profilers. Safarik said he assisted with the revision of this manual. If so, his conclusions are not consistent with a manual he ostensibly helped to revise.

- An impulsive crime such as this could easily have been committed by someone under the influence of drugs. Marijuana would be such a drug. There is a high probability that at least three younger adults in Victoria Richardson's nearby car were under the influence of one or more drugs. I believe they were under the influence of marijuana and even other possible drugs. When they saw the victim go to her brand-new car, they could well have assumed she would be someone with money. At that point I believe one or more approached the victim and the crimes ensued.

- The Crime Classification Manual says that money left behind (the victim's money was not taken) at a crime scene indicates a 'situational felony murder.' This often will indicate a crime where the offender panics, kills the victim and flees.

- The Manual says other indications of this scenario may include:
    - Blunt force trauma.

- Contact or near-contact wounds from a firearm; and…
- An alarm sounding or some other outside trigger causing the killing to occur.

These three factors are present in this case. That would suggest, per the Manual, that the offender would be:

- Youthful and inexperienced.
- In the early stages of their criminal career.
- Abusers of drugs or alcohol.

All of these characteristics appear to fit Victoria Richardson, and likely people in her car.

9. In my opinion, the true killer remains free, and this person could easily be a female. If the killer is a female, the prosecution theory of attempted sexual assault cannot be correct and must be eliminated as a motive. The facts show that a stronger argument can be made against Victoria Richardson or one of the other parties in her car for being the killer. Since she was seventeen at the time of the crime, it is likely her companions fit into the age range listed above. Victoria Richardson's current behavior with drug and violent crime convictions appears to have had early beginnings, possibly involvement with the killing of Michelle O'Keefe.

10. Because of these factors and others listed below, the investigation remains incomplete and incorrect when identifying Jennings as the only suspect in the case. If the prosecution had retained me to analyze the case using accepted criminal-profiling techniques, I would not have concluded that Raymond Jennings was a likely suspect, much less the perpetrator of the crime.

B. Discussion and analysis:

It is abundantly clear that the State of California's case against Raymond Jennings rests solely on the presumption that the murder of Michelle O'Keefe was precipitated by an attempted sexual assault. Former FBI Special Agent Mark Safarik testified at trial and opined that after a review of the evidence, he believed an attempted sexual assault was what precipitated the murder of the victim. In a review of Safarik's report on the case, it is apparent that his belief in the victim's tube top being slightly pulled down is the critical piece of evidence to show a sexual assault was attempted. In fact, this is the only evidence Safarik found to indicate there had been an attempted sexual assault.

In conducting a valid analysis of evidence involving a crime, whether physical, circumstantial or behavioral, all factors must be considered to develop a legitimate motive. Regrettably, they were not in this case, and there were others to consider as will be pointed out. In fact, there appears to be a paucity of evidence for Jennings to even have been charged, let alone for a jury to convict Jennings.

1. Was this an attempted sexual assault or a robbery?

It is my opinion that this was not an attempted sexual assault, but was a robbery, and that the Unknown Subject (UNSUB) has yet to be identified. Set forth below is my analysis in arriving at these conclusions:

- This was an impulsive crime. One would not expect an offender to see a young woman get out of one car and into another and, within a matter of seconds, form the intent to sexually assault the victim. To commit a robbery – likely. A sexual assault – very unlikely. And the objective of each would be anonymity and escape to avoid arrest/prosecution. Is it a reasonable assumption that a person in a security guard uniform who could be easily identified, would commit either of these crimes?

- The impulsiveness of the crime(s) is pointed out in Safarik's original report (profile). He mentions there was no planning involved by the offender, it was an impulsive act which went bad quickly, escalated and led to a homicide. I would agree with those conclusions. What he failed to point out in the report is an act this impulsive and lacking in planning is much more likely to be committed by a younger offender – probably in the 17 to 21 year old range. At the time of the crime, Jennings was 25 years old. While that doesn't absolutely exclude him, the statistical likelihood favors someone with much less maturity.

- Michelle was described as someone who would fight if attacked. Since the hands and fingers are the most logical method of thwarting an attack, that's what would most likely have been used. There were no reports of the victim's fingernails being damaged. And skin, fabric or anything else the attacker would have been wearing would have been found beneath her fingernails. There was none, nor was there DNA found which was consistent with Jennings's DNA sample.

Additionally, no one noticed Jennings's uniform being mussed up in any way. There were no marks on his hands or face, and those are the first places a victim would attack. These are yet more important oversights by the defense in not bringing these facts to light.

- A DNA (blood) sample was found under one of the victim's fingernails. This was compared with known samples from Raymond Jennings. It was not found to be a match to Jennings. However, it was identified as coming from an unknown male, raising the possibility of another male having committed the crime.

- While it was dark (around 9:30 p.m.), Michelle's car was parked directly under one of the lights in the Park and Ride lot. Thus, she probably would have been able to see someone approaching. What is the likelihood of a person in a security guard's uniform approaching her car with the intention of committing a sexual assault? One thing overlooked in this trial is if a person commits a sexual assault, he doesn't want to be identified. If the UNSUB was wearing such a uniform and was going to commit a sexual assault, the chances of him being arrested are close to 100%. While Michelle was a 'low risk' victim, the UNSUB would have been committing an extremely 'high risk' crime if he was wearing a uniform. A robbery is of much lower risk to an offender than being in an open parking lot committing a sexual assault. A robbery could be committed in a matter of seconds. Not so with a sexual assault. But the likelihood of anyone being so foolish as to commit either crime in an easily-recognizable uniform simply defies all logic.

- Jennings had a predilection for black females. He was married to a black woman, and had previously been married to another. Several times he told one of his close friends that black women were his preference. He told this friend, (Michael Parker per transcript) that he had never been attracted to and had never dated a white girl. Michelle O'Keefe was white. Even if the victim had been black, the possibility of a sudden impulse to become so 'sexually overwhelmed' that he would be driven to commit a sexual attack is still unlikely. This fact

alone should have created 'reasonable doubt' in a jury's mind(s) if nothing else. Not that Jennings couldn't have seen a white woman and found her attractive. Michelle was attractive from all accounts. But she was not black, and that is clearly Jennings's primary preference in females.

- Jennings's clothing was meticulously tested under laboratory conditions. While the prosecutor argued that Jennings could easily have washed the clothing items at home before they were retrieved from Jennings's employer a few days later, that fails to meet the test of logic or truth. First, the examiner said there was no indication the items had been washed. They were soiled and showed wear. Secondly, and certainly of even more importance, is the fact that no gun shot residue (GSR) was found on Jennings's clothing. If the examiner said the clothes had not been washed, why was GSR not present a few days later? If Jennings had been the shooter, GSR absolutely would have been present. It was not. This is significant evidence which, by itself, could have exonerated Jennings with the assistance of capable counsel.

- The driver's window of the victim's car was down 4.5 inches. Let us assume an unknown person walks up to the window and appears to want to talk to the intended victim, and she can't hear him through the closed window. Most likely she would have slightly opened the window, which was the case. Let's now assume the security guard in his uniform approached the window, indicating he wanted to talk to her. To the victim, there would be a subconscious sense of safety in the latter scenario. Thus, it is probable she would have lowered the window much more than the bare minimum for an authority figure who appeared to present no threat. Once again, this was valuable information barely considered by the prosecution and Special Agent Safarik. Oftentimes things which were not done are equally as important as things which were done. This is a shining example of that being the case, i.e.: why didn't she lower the window further? It would appear the answer to that question is – the assailant presented a

threat to the victim. It is unlikely Jennings in his uniform would have presented such a threat.

2. **Evidence and behaviors which indicate robbery was the motive.**

- The victim's cell phone was stolen, and her glovebox was ransacked. While her purse was not taken, what would be the likelihood of the assailant wanting to carry around a large item which was easily recognizable? Her wallet was not taken because it was in a concealed place between the passenger's seat cushion and center console. This evidence and testimony would indicate the assailant came up to the car, displayed the gun and said words to the effect, "give me all your money." Realizing this, I believe Michelle was somehow able to get her wallet out and hide it so the assailant could not steal her money. If the crime was not a robbery, for what possible reason would the glove box have been ransacked by the assailant?

- And while Jennings was not a trained police officer or sheriff's deputy, anyone would know gunshots could be heard a considerable distance away, particularly by anyone who may have been in the parking lot. Victoria Richardson and her probable gang associates, by her own admission, were sitting within thirty yards of the victim's car. She claimed to have not heard gunshots. There is no likelihood of this, a fact which makes either her or someone in her car better suspects than anyone in the parking lot.

- If Jennings was the assailant, for what possible reason would he have taken the cell phone? Surely he would have known that if the cell phone could have been found on his person or hidden nearby (and that search was conducted with no cell phone found, he would immediately have risen to the level of suspect.

3. **Other exculpatory evidence and pertinent facts:**

- I have seen several cases where investigators developed a theory of how a crime occurred, and eliminated any facts which do not support

their theory. I believe that happened in this case. Because Jennings was the only person around, as they saw it, he became the only viable suspect. In fact, Jennings was not the 'only person' around. Victoria Richardson and some friends were in a car, in the parking lot about thirty yards from the victim's car. There were other people in the car with her, smoking marijuana and listening to music, just 'hanging out' as she described it. Since this car left the scene shortly after the crime occurred, it appears more likely that someone in that car committed the crime. However, that car was not searched for a weapon or other evidence, and was allowed to go on its way. In my mind, this is an egregious error by sheriff's deputies because there is a decent degree of probability that someone in Richardson's car was the assailant. Additionally, this lead was not investigated, such that other people in the car were not located and interviewed. In his report, Mark Safarik said he believes it was a serious error to not pursue this information. I am in complete agreement. Without this information, we do not have a complete investigation. This would be the most significant example of developing a theory and sticking with it, despite potentially conflicting and contradictory evidence.

- Investigators relied heavily on inconsistent statements by Jennings, which were not necessarily lies, but a lack of recollection by Jennings. Or an attempt by Jennings to impress investigators with facts not related to the murder. The passage of time between the crime and the interviews could also have clouded his recall of facts. Deputy Longshore testified at trial that the victim's wallet was found inside her purse on the center console. This testimony completely contradicts known evidence. The wallet was found between the passenger seat and the center console. Is there a reason why Longshore's inaccurate recollection should be less important than the recollections of Jennings?

- Also pointed out at trial was that statements by Jennings and Victoria Peterson did not match up with each other. It is not unusual for 'eyewitnesses' to have seen the same event in a completely different way. Or even for one witness to have seen something which another

completely missed. We have learned over the years that 'eyewitness' testimony may be the worst possible evidence of the truth for any matter.

- In trial testimony and the prosecutor's closing arguments, it is mentioned that Jennings remained at the crime scene, and did not want to approach the car until directed to do so by his superior. While the prosecutor made this appear noteworthy, there are equal and opposite arguments as to why Jennings did not immediately leave the scene:

    1. His training had instructed him to call police if there was a problem, and hearing gunshots were certainly signs of 'a problem.'
    2. If it was indeed Jennings who committed the crime(s), why did he not flee? There was no reason to stay at the scene and eventually become the primary suspect.
    3. He voluntarily remained at the scene for hours. It is very rare for that to happen at the scene of a murder if one is the killer.
    4. If there had been gunshots fired (and from his military service Jennings certainly would know that sound), it would have been foolish for him to go in the direction of the gunshots. In fact, he got as far away as possible, which would be the most probable reaction of anyone since he was unarmed.

- The fact that the victim was shot and killed with a 9mm weapon is indisputable. There is evidence Jennings owned a .380 caliber semi-automatic pistol, which he had owned for a number of years. There is nothing to indicate Jennings violated company policy and brought his weapon to work that evening. Even if he had a weapon with him, I would be confident it would have been his own .380. Why? We all like to be in 'our comfort zone' and use things we are comfortable with. He told investigators the .380 was the only weapon he owned. A search of his home confirmed that. A 9mm weapon is not the same as a .380. Jennings had used and practiced with a 9mm handgun in the

military. Thus he would certainly know how to shoot one. However, the fact a .380 was 'his' gun, in my opinion, would make it more likely he would bring the .380 to work if he brought any weapon at all.

In conclusion, it is my opinion that Raymond Jennings did not commit this crime. If the evidence and analysis submitted above were to be brought out in trial, I believe Reasonable Doubt would result in the jury's collective minds.

Respectfully submitted,

Peter M. Klismet, Jr.

STATEMENT OF EXPERIENCE AND EXPERTISE OF PETER M. KLISMET, JR.

I am retired from both the Federal Bureau of Investigation (FBI), and as a college professor/former Chair of the Department of Criminal Justice at Pikes Peak Community College in Colorado Springs, Colorado, where I currently reside. I am presently a consultant to law enforcement agencies in violent crime investigations, and have done such work on a case-by-case basis since my retirement from the college in 2013. I also have taught classes concerning "Criminal Profiling," which included segments dealing with the topic of Serial Killers. One of my sessions was a presentation to the 2014 Colorado District Attorney's at their annual conference in Steamboat Springs.

Prior to entering on duty with the FBI, I was a police officer, detective and sergeant with the Ventura (California) Police Department from 1970 to 1979. I finished first in my Police Academy class at the Ventura County Regional Police Academy in 1971. During my time with the police department, I investigated or assisted in the investigation of a considerable number of violent crimes, including murders. I also attended a number of training classes in the investigation of homicide and other violent crimes.

I hold a Bachelor of Science degree in Criminal Justice from Metropolitan State University in Denver, Colorado, with emphasis in Criminology, Sociology and Psychology. I also hold a Master's Degree in Administration of Justice from California Lutheran University in Thousand Oaks, California, with an emphasis in Criminology. I hold a second Master's Degree in Public Administration from the University of Southern California in Los Angeles, California, with additional graduate credits from Pepperdine University in Malibu, California.

While employed by the FBI, I was selected to be one of the original 'Profilers' in 1984. My FBI office selected me because of my past experience investigating violent crime as a police officer, plus my training and educational background. This initial training class was two weeks in length, with a considerable portion devoted to the study of numerous serial killers and their methods. Before my retirement from the FBI in 1999, I would estimate I attended ten more training sessions at the FBI Academy in Quantico, Virginia. In each of these sessions, we reviewed facts of recently uncovered serial murder cases, complex murder cases, and reviewed additional information gleaned from cases we had reviewed in previous sessions. We also received presentations from investigators who had been or were currently involved in serial

murder cases. In some of these sessions, we would be presented with the facts of an unsolved investigation and asked to 'brainstorm' to provide new behavioral clues.

Those of us who completed this intensive training returned to our FBI field offices and were designated as the "Profiling Coordinator" for their division. My field office at the time was Omaha, which covered the states of Nebraska and Iowa. One of our tasks was to provide information about the new concept of criminal profiling and serial killings to law enforcement officers. Consequently, I would estimate over a period of ten years, I may have done up to twenty such classes. Usually these classes would be two days in length and a sizeable portion would deal with criminal profiling and serial killers, including their methods. My other task was assisting local, state and federal law enforcement officers with violent crime. I would estimate I participated in about twenty of these investigations.

I was selected to be a Class Counselor for the 154th Session of the FBI National Academy in Quantico. This was a three month assignment. During this time, I had the opportunity to work directly in the Behavioral Science Unit at the FBI Academy. In this three months, I would estimate I assisted Special Agents assigned to the unit with over twenty cases.

In addition to the initial training I received through the FBI, I have conducted considerable research into the concept of criminal profiling, and easily researched over 100 serial killers. I have learned a serial killer is a predator, using stealth to stalk his victims, or if not, to commit his crimes by surprise. These are the most common methods of identifying and attacking a victim. Because of this, a serial killer is able to take a victim by surprise and more easily achieve his goal of having total control and domination of a victim. A younger or more disorganized, possibly mentally ill serial killer, will not devote the same amount of planning in his killings. The latter are far more rare, and are generally arrested in much less time than the more organized type of serial killer. This would be as a result of the meticulous planning and pre-thought put into the act by the organized killer. Notifying a victim in advance of his intentions would not enable this individual, or any other for that matter, to achieve his objective of kidnapping and killing the victim, for example.

The concept of criminal profiling (now more-commonly called 'Criminal Investigative Analysis'), is an eclectic process in which the profiler reviews all pertinent information concerning a violent crime and/or sexual assault, then extrapolates behaviors which may be consistent with the type of person who would commit such a

crime. It is a tool which is intended to assist investigators with the identification of an unknown offender by identifying characteristics of such offenders. This information can only be deduced by a person who has the proper training in criminal profiling, and it is helpful for the profiler to have experience with other cases. It is generally recognized this training can only be provided by the FBI, which has developed the concept of criminal profiling over the past forty years.

Some colleges and universities offer classes in criminal profiling, but generally these classes are taught by a professor with a degree in psychology or sociology, and no real-life experience in the field, actually investigating these types of cases. In my thirteen years of teaching in the Colorado Community College system, I was the first professor to develop such a class, and to have it approved by the State of Colorado. In so doing, I set forth the standards and expected outcomes for the classes to be taught, and established all of the curriculum. I taught a class in Criminal Personality Profiling at the Community College level for approximately ten years. This required me to conduct additional research into the concept of profiling and to study yet more serial killers. If one were to be labeled as an 'expert' in this area, I believe I would qualify because of my training, education and past experience.

My first book, "FBI Diary: Profiles of Evil," details some of my training and experience as an FBI criminal profiler. At least two community colleges and one university have adopted this book as a text for their own Criminal Profiling classes.

I am the founder and director of Criminal Profiling Associates LLC. I am also a member of the American Investigative Society for Cold Cases, and have been called upon to use my expertise in cases over the past three years. I have worked with the El Paso County District Attorney's office in Colorado Springs on a twenty year old case involving two murders. With my assistance, the Deputy D.A. was able to secure a conviction on a suspect I pinpointed in my analysis of the facts of the case. Recently, I was retained to assist with a then-unsolved, high-profile murder case of a thirteen year old boy in Durango, Colorado. Working with local authorities for approximately six months, we were able to identify a 'Person of Interest,' who in my opinion is the only viable suspect in the case.

My expertise was used in a best-selling book in Canada, "Camouflaged Killer." Other authors have contacted me over the past several years, requesting my opinion to be used in their books. As a result, I have been called upon by Canadian National Television numerous times to provide live commentary on various crimes in both

Canada and the United States. I am also a consultant to CNN, MSNBC, the Denver Post, Washington Post, Colorado Springs Gazette, and KRDO which is a local television station. No one has ever challenged or questioned my commentary or opinions on national, international or local television.

EXHIBIT 2

THE EHRLICH LAW FIRM

Jeffrey I. Ehrlich
Certified Appellate Specialist
California Board of Legal Specialization

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Please reply to the Encino Office

October 2, 2015

Ken Lynch, Assistant Head Deputy
Conviction Review Unit
Los Angeles County District Attorney's Office
320 W. Temple St.
Los Angeles, CA 90012

Re: *People v. Raymond Jennings,* LASC No. MA033712, Court of Appeal No. B222959

Dear Mr. Lynch:

I represent Sergeant Raymond Jennings, an Iraq-war veteran who has so far served 10 years of a life sentence for a murder he did not commit. On the night of the murder, Jennings was moonlighting as a security guard while studying to become a U.S. Marshal. As he was patrolling a park-and-ride lot in the Antelope Valley, he heard gunfire, took cover, and frantically radioed that shots were being fired. He would later learn that someone had murdered an aspiring actress, Michelle O'Keefe, as she sat inside the new car that her parents had just given her for her 18th birthday.

The unsolved murder of the popular teenager dominated local headlines, but all the evidence pointed away from Jennings: his clothes tested negative for gunshot residue, and his DNA did not match the blood found under the victim's fingernails. In a candid email, one crime-laboratory technician lamented that detectives "had no real evidence."

For years, tabloid-style media coverage portrayed Jennings as a craven killer, but the District Attorney's Office declined to pursue the case. Then, five years after O'Keefe's death, her father requested a meeting with Deputy District Attorney Robert Foltz, where he made a presentation that consisted of edited video clips of Jennings answering questions about O'Keefe's murder.

Before the meeting, Mr. Foltz did not believe there was sufficient evidence to charge Jennings, but he changed his mind after witnessing the presentation. "I can't put my finger on precisely what the difference is," Foltz told the Daily News, "but it was clear we had a fileable case."

At the trial in downtown Los Angeles, the jury hung 9-3. Prosecutors chose to retry Jennings, and once again jurors were unable to reach a verdict. The judge agreed to let the State try Jennings a third time — and to move the trial back to the community where the murder occurred — but warned prosecutors there would be no fourth trial.

Knowing that this was his final chance to obtain a conviction, Deputy District Attorney Michael Blake told jurors that a defendant's presence when a victim dies creates a *presumption of guilt*:

> What I do want you to understand is, if two people go into a room, [and] they are in there alone; no one knows what's happening between them. One of them walks out, and the other is inside dead. *Without knowing anything else, the law presumes that to be a second degree murder.* That's an important concept in your law. The killing is presumed to be malicious and is *presumed to be murder, again, without knowing more.* (20 RT 7246:8-15.)

Neither the trial judge nor Jennings' counsel corrected this erroneous explanation of the law. This statement was particularly prejudicial to Jennings because it provided the jury with a way to overlook the flaws in the State's case. According to the prosecutor, all they needed to know to convict Jennings was that he was in the parking lot when O'Keefe was shot.

Not only was there no physical evidence to tie Jennings to the murder, the physical evidence was actually exculpatory, since it showed that Jennings had neither fired a gun on the night of the murder, nor had any physical contact with O'Keefe. Mr. Blake told the jury that Jennings must have washed the clothes before they were submitted for testing. But this was false. The crime lab notes described the clothes as worn and dirty. Unfortunately, those notes were not brought to the jury's attention. And Mr. Blake suggested that the blood could have gotten under Ms. O'Keefe's nail from "incidental contact" with a drinking fountain or a door handle.

There was no reason to think that Jennings was a criminal, much less a killer. He was a seven-year veteran of the National Guard and held a "secret" security clearance. He was a married father of four, with no criminal record. The core of the State's theory was that Jennings volunteered information about the crime that the investigators had deliberately held back — details that "only the killer could know." If true, this would be powerful evidence. But this method of proof can only work if three basic conditions are met:

- The details of the crime related by the suspect must be accurate. If the suspect gets some details right and others wrong, it negates the idea that he has special knowledge.
- The suspect must actually know the information. Information that the suspect can easily guess, or that is imparted by the investigators through suggestive questions does not establish the suspect's "knowledge." And,
- There must be no way that the knowledge could be acquired through innocent means.

The State's case against Jennings failed each of these basic attributes. He got myriad details of the crime wrong. The investigators repeatedly attributed "knowledge" to Jennings based on his agreement with the premise of their questions (such was whether it sounded like all the shots came from the same gun). And since Jennings heard the shots fired and saw the crime scene, he was able to draw reasonable inferences from what he observed. For example, he could tell that O'Keefe had been shot at close range because he saw the powder burns on her torso.

In the pages that follow, I will first describe the evidence that proves Jennings' innocence. I will then address in detail the flaws in the State's case. As you will see, I have sought to support every factual assertion with a citation to the record. For your convenience, I have compiled all of the cited material into a consecutively-paginated appendix.

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FACTUAL SUMMARY

The shooting occurred on the night of February 22, 2000, in a park-and-ride lot in Palmdale. Earlier that day, Michelle O'Keefe, an 18-year old college student, had left her car in the lot and had driven to Los Angeles with her friend, Jennifer Peterson, to work as extras in a music video.[1] They returned from the video shoot around 9:20 p.m. Peterson dropped O'Keefe off next to her car, a blue Ford Mustang.[2] O'Keefe planned to change out of the "club attire" she wore in the video — a small tube top, knee-length skirt, and a leather jacket — and into an outfit more suitable to attend a college class that night.[3] The Mustang had been parked under a light post.[4] Evidently seeking a less well-lit location to change her clothes, O'Keefe moved the car to a darker area in the north portion of the lot.[5]

At the same time that O'Keefe returned to the lot, Victoria Richardson was sitting with three other people in a car parked in the lot.[6] They were smoking marijuana and listening to music.[7] Richardson and her friends would regularly go to the parking lot to "party" because the security was lax.[8]

February 22, 2000, was Ray Jennings' second day on the job as an unarmed security guard for All Valley Security.[9] He was assigned to the park-and-ride lot.[10] Jennings was 25 years old, married, with four children. He had enlisted at age 17 in the National Guard.[11] He had never been arrested or convicted of any crime.[12] He held a "secret" security clearance, and he was studying to be a U.S. Marshal.[13] He owned a .380 pistol, which was properly registered.[14] He did not bring the gun to work because All Valley Security did not allow its guards to carry guns.[15] The company told

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[1] 5RT 2107-2108, 2111, 2113 (RLJ1-RLJ4); the RLJ page numbers following the citations to the record are to the Bates stamped number in the center of the pages that are part of the Compendium of Exhibits accompanying this letter.
[2] 5RT 2136, 2110 (RLJ5-RLJ6).
[3] 5RT 2112, 2139 (RLJ7-RLJ8).
[4] 5RT 2116 (RLJ9).
[5] 17RT 6413-6414 (RLJ10-RLJ11).
[6] 6RT 2405-2406 (RLJ12-RLJ13).
[7] 6RT 2408-2409, 2436 (RLJ14-RLJ15).
[8] 6RT 2410 (RLJ17).
[9] Jennings Depo., Vol. 1, 6 (RLJ18).
[10] *Id.*
[11] Jennings Depo., Vol. 1, 278 (RLJ19).
[12] *Id.,* 29, 282 (RLJ20-RLJ21).
[13] Jennings Depo., Vol. 2, 334; 15RT 5790-5791 (RLJ23-RLJ25).
[14] 8RT 3654-3655 (RLJ26-RLJ27).
[15] Jennings Depo., Vol. 1, 286; 5RT 2169 (RLJ28-RLJ29).

him that guards who brought guns to work would be fired, and that it conducted random searches to ensure that the no-guns rule was followed.

Jennings spent most of his shift in his car, although he also walked around the lot on patrol.[16] At roughly 9:30 p.m., he heard a car- alarm go off and then heard a gunshot. He ducked down behind his car, and then about 10 seconds later he heard several more shots in quick succession.[17] He peered over the hood of his car and saw a blue Mustang about 400 feet away in a dark area of the lot.[18] It was rolling backwards, and came to rest in a planter. He was unable to get a glimpse of the shooter, who was shielded from view by a commuter van.[19]

Jennings had a radio, but not a phone.[20] He radioed his supervisor that he heard gunshots, and was patched through on his radio to the Sheriff's Department dispatcher.[21] He spoke to the officers and directed them to the correct parking lot.[22]

Jennings supervisor, Iris Malone, arrived in the lot about ten minutes later.[23] She told Jennings to get into her car and accompany her to the Mustang.[24] Jennings refused, fearing that the shooter might still be on the scene.[25] Malone then drove to the Mustang and illuminated it with her headlights and a spotlight. Malone saw O'Keefe's leg and foot outside the open driver's door.[26] She peered into the car with her flashlight, saw that O'Keefe was dead, and told Jennings to join her at the scene.[27]

Jennings walked to the Mustang.[28] As he approached it his foot kicked a shell casing, which he bent down to examine.[29] He saw that the driver's door was open and a woman was inside, slumped in the drivers' seat.[30] She had been shot in the lower chest and several times in the

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[16] 8RT 3636 (RLJ30).
[17] 8RT 3638; 15RT 5742 (RLJ31-RLJ32).
[18] 9RT 3929-3930 (RLJ33-RLJ34).
[19] 9RT 3920; Cognitive Interview, pp. 1289, 1320 (RLJ35-RLJ37).
[20] 8RT 3717 (RLJ38).
[21] 5RT 2164-2165, 2167 (RLJ39-RLJ41).
[22] 5RT 2236, 2237 (RLJ42-RLJ43).
[23] 5RT 2166 (RLJ44).
[24] 5RT 2171 (RLJ45).
[25] 8RT 3639 (RLJ46).
[26] 5RT 2173 (RLJ47).
[27] 5RT 2173-2175 (RLJ48-RLJ50).
[28] 5RT 2177 (RLJ51).
[29] 5RT 2178-2180 (RLJ52-54).
[30] Cognitive Interview, p. 1260; crime scene photos (RLJ55-RLJ57).

face.[31] He thought she might be about 30 years old, and based on the way she was dressed, he thought that she might have been a prostitute.[32]

Before the police arrived, Richardson and her companions drove up to Jennings and Malone and asked Jennings what had happened.[33] Jennings told her that he did not know, and she drove away.[34]

The first law-enforcement officer on the scene was Deputy Sheriff Billy Cox, who arrived at 9:49 p.m.[35] The Mustang's engine was running, the transmission was in neutral, and the emergency brake was disengaged.[36] The glove box was open.[37] O'Keefe's cell phone was missing and was never recovered.[38] O'Keefe had $111 in cash in her wallet, which was found in the gap between the driver's seat and the center console.[39]

The medical evidence established that O'Keefe had been struck in the forehead with some type of object.[40] The blow would have been sufficient to stun or daze her, but not to knock her unconscious.[41] She had been shot once in the chest point-blank, and then once in the neck and twice in the face.[42] Markings on her skin showed that these shots were fired from two-to-three feet away.[43]

Detectives Diane Harris and Richard Longshore arrived on the scene around 12:35 AM, about three hours after the shooting.[44] Jennings had agreed to stay on the scene to give them a statement.[45] They discovered two expended bullets and four shell casings at the scene, and recovered three more bullets during O'Keefe's autopsy.[46]

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[31] 3RT 1543-1544 (RLJ58-RLJ59).
[32] Cognitive Interview, p. 1306 (RLJ60).
[33] 6RT 2423 (RLJ61).
[34] 6RT 2425 (RLJ62).
[35] 6RT 2482 (RLJ63).
[36] 6RT 2468; 9RT 3908, 3914 (RLJ64- RLJ66).
[37] 5RT 2225 (RLJ67).
[38] 7RT 3306 (RLJ68).
[39] 7RT 3430, 3433-3434 (RLJ69- RLJ71).
[40] 3RT 1544, 1554-1555 (RLJ72- RLJ74).
[41] 3RT 1564 (RLJ75).
[42] 3RT 1543-1544, 1587 (RLJ76- RLJ78).
[43] 4RT 1821 (RLJ79).
[44] 7RT 3356 (RLJ80).
[45] 5RT 5733 (RLJ81).
[46] 7RT 3428 (RLJ82).

None of the officers on the scene that night thought that anything about Jennings' behavior or demeanor was suspicious.[47] He was never searched and none of his clothing was taken for forensic testing.[48] He simply gave them a statement and answered their questions.

Jennings liked Mustangs, and he told the detectives that he had noticed the blue one in the lot as he made his patrols.[49] But he had forgotten that during the day it had been parked in a spot near the light pole, and not in the north part of the lot near the planter. It was this "inconsistency" that first made the detectives suspicious of Jennings.[50]

A few weeks after the shooting, Victoria Richardson was arrested and held on juvenile charges.[51] While in custody, she spoke to detectives, and told them that she had been in the parking lot the night of O'Keefe's murder and had asked the security guard what had happened.[52] She also told them that immediately after the shooting she had seen a white male wearing a white t-shirt and a backwards red baseball cap flee the scene in a black Toyota Tercel.[53]

About a month after the shooting, Detectives Longshore and Harris interviewed Jennings again in his home.[54] He told them that he did not remember anything beyond what he had told them the night of the shooting, and he reiterated that he did not recall seeing anyone leave the parking lot after the shooting.[55] The detectives then told him about Richardson's statement that she had briefly spoken to him that night; he immediately recalled the conversation and described Richardson and her companions.[56]

Jennings had quit his job as a security guard three days after the shooting.[57] He turned in his uniform, which All Valley Security held.[58] Investigators later performed extensive forensic testing on it, but found no blood or gunshot residue whatsoever.[59] No hair or fibers recovered from his uniform matched O'Keefe or any of her possessions.[60] The lab technicians specifically

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[47] 8RT 3750, 3751 (RLJ83- RLJ84).
[48] 3RT 1509 (RLJ85).
[49] 8RT 3636 (RLJ86).
[50] 8RT 3628, 3743; 9RT 3916 (RLJ87- RLJ89).
[51] 6RT 2429-2430 (RLJ90- RLJ91).
[52] 6RT 2435, 2423-2424 (RLJ92- RLJ94).
[53] 6RT 2439-2440 (RLJ95- RLJ96).
[54] 8RT 3624 (RLJ97).
[55] 8RT 3626-3628 (RLJ98- RLJ100).
[56] 8RT 3631-3632 (RLJ101- RLJ102).
[57] 8RT 3718-3720 (RLJ103- RLJ105).
[58] 8RT 3723-3725 (RLJ106- RLJ108).
[59] 11RT 4518-4520, 4533; LASD Doc 3 at 262, Doc 2 at 110-111 (RLJ109- RLJ115).
[60] 11RT 4661-4662 (RLJ116- RLJ117).

noted in their report that the uniform jacket, pants, and shirt were "worn and dirty" when they tested them.[61]

About six weeks after the shooting Jennings agreed to participate in an eight-hour "cognitive interview" with the detectives, to go over everything that he could recall or deduce about the shooting.[62] These interviews are not designed for questioning suspects, but rather to help witnesses remember facts that they initially had forgotten.[63]

When the detectives presented their case to Assistant District Attorney Robert Foltz, he felt that he had no way to prove that Jennings was guilty and declined to file any charges. The O'Keefe family then filed a civil wrongful-death suit against Jennings. They deposed him on videotape in the civil suit, where he appeared without counsel.[64] He was questioned extensively in the civil case about the night of the shooting. An edited version of his testimony, with the questions omitted, was presented to ADA Foltz.[65] Based on this presentation, Foltz agreed to file charges against Jennings in 2005, for first-degree murder.[66] This, despite the concession by technicians at the Sheriff's crime lab that, "they [the detectives] have no real evidence."[67]At trial, portions of the video of Jennings' civil testimony were introduced against him.[68]

The case was tried twice in Los Angeles, resulting in a hung jury both times.[69] Over Jennings' objections, the case was moved back to the Antelope Valley for the third trial.[70]

During his closing argument in that trial, the prosecutor, Blake, told the jury that, if two people went into a room and one walked out alive and the other was dead, and that was the only information available, it was "presumed" to be second-degree murder.[71] Jurors initially felt there was reasonable doubt, but after almost of months of watching Jennings' "interviews again, again, [and] again," they convicted him of murder.[72]

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[61] LASD Doc 2 at 110, 113-114 (RLJ118- RLJ120).
[62] 15RT 5788 (RLJ121).
[63] 15RT 5781-5782 (RLJ122- RLJ123).
[64] 16RT 6012-6013 (RLJ124-125).
[65] Excerpt of transcript of interview with Foltz on NBC program *Dateline*; full transcript available at www.nbcnews.com/id/36920379/ns/dateline_nbc-crime_reports/t/girl-blue-mustang/#.Vg2PDvlVhBc (RLJ128- RLJ129).
[66] *Id.*
[67] 4/14/06 internal e-mail (RLJ130-RLJ130-10).
[68] 16RT 6012-6013 (RLJ126- RLJ127).
[69] *People v. Jennings*, B222959, 2011 WL 6318468, at *3 (RLJ150).
[70] 3CT 548-563; *People v. Jennings*, 2011 WL 6318468, at *3 (RLJ131- RLJ146, RLJ150).
[71] 20RT 7246 (RLJ147).
[72] RLJ147-1 to RLJ147-5.

He was sentenced to life in prison with a minimum term of 40 years.[73] He has already spent 10 years behind bars, and he will not be eligible for parole until he is 70 years old.

The conviction was affirmed on appeal in December 2011 in an unpublished opinion.[74] Jennings filed a *pro se* federal habeas petition in June 2013, which has thus far not been considered. I only became involved in the case in May 2015. My motion to have the federal court stay the habeas petition is under submission, and I plan to file a new, more comprehensive petition in the state court shortly.

DIRECT PROOF OF JENNINGS' INNOCENCE

In addition to the lack of any direct evidence tying Jennings to the crime, his innocence can be demonstrated by four critical pieces of evidence.

A. Gunshot-residue testing proved that Jennings was not the shooter

The gunshot-residue testing is the single most important piece of evidence in this case because it definitely proves that Jennings did not shoot O'Keefe.

It is undisputed that Jennings was wearing his uniform the night of the murder and that, if he fired a gun, his jacket would have been covered in gunshot residue.[75] When Jennings dropped off his uniform at All Valley Security, homicide detectives immediately seized it for testing.[76] But the laboratory determined that there was no gunshot residue on Jennings' jacket, which proved that Jennings did not shoot O'Keefe.[77]

At trial, the prosecutor argued that the gunshot residue must have been washed off of the jacket before it was tested. The State's own records show that was false. A technician at the crime lab wrote that the jacket "[d]id not look washed at the time [the] jacket was collected – per [Detective] Harris."[78] And when it was examined, the technician found that it was "worn and dirty."[79] Remarkably, Jennings' defense counsel did not present this evidence at trial. If any single fact likely accounts for Jennings' wrongful conviction, it was probably this failure.

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[73] 7CT 1536 (RLJ148).
[74] *People v. Jennings*, 2011 WL 6318468 (RLJ149- RLJ156).
[75] 13RT 5116-5117 (RLJ157-158).
[76] 8RT 3726-3727 (RLJ159- RLJ160).
[77] 11RT 4518-4520, 4533; LASD Doc 3 at 262 (RLJ161- RLJ165).
[78] LASD Doc 3 at 252 (RLJ166).
[79] LASD Doc 2 at 110 (RLJ167).

B. DNA testing proved that another man's blood was beneath the victim's fingernail

There is also DNA evidence that shows Jennings was not the killer. There was blood found beneath one of O'Keefe's fingernails, and DNA testing proved it could not have come from Jennings.[80]

The State brushed aside the DNA evidence by lying to the jury. The prosecutor said there was "[n]o blood belonging to someone else" beneath O'Keefe's fingernails — just a fragment of DNA, which could have drifted underneath her finger earlier in the day.[81] The prosecution claimed that O'Keefe probably picked up the DNA from incidental contact with something like a drinking fountain or dusty door handle.[82]

None of this was true. There *was* visible blood under O'Keefe's fingernail and that blood *was* subjected to DNA-testing, which showed that the blood came from an unidentified male and excluded Jennings as a possible match.[83] This is an objective, extensively documented fact. And it is a fact that eliminates the State's explanation for the DNA, because a man's blood does not randomly appear beneath a woman's fingernails. The obvious explanation is that O'Keefe scratched her killer.

If Jennings' blood had been found underneath O'Keefe's fingernail, the State would have treated that as conclusive evidence that Jennings was the man who attacked her. Logically, the presence of a different man's blood should be treated as equally strong evidence that she was attacked by a man other than Jennings.

C. The bullets the killer fired were the wrong caliber for Jennings' pistol

The killer's use of a 9mm pistol further demonstrates Jennings' innocence.[84] Jennings was the lawfully registered owner of only one firearm: a .380 pistol.[85] When police searched his home, they found no evidence that Jennings had ever owned another firearm.[86]

This created a huge inconsistency in the State's theory of the case: If Jennings legally owned a .380 pistol, why would he illegally acquire a 9mm gun and then bring that firearm to work?[87]

The State was never able to answer that question. It could not argue that Jennings obtained an untraceable firearm in order to commit a crime, because the prosecution conceded that, before

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[80] LASD Doc 1 at 48; 11RT 4556-4557, 4564-4565 (RLJ168- RLJ172).
[81] 3RT 1521 (RLJ173).
[82] *Id.*
[83] LASD Doc 1 at 48; 11RT 4556-4557, 4564-4565 (RLJ175- RLJ179).
[84] 12RT 4911-4912; LASD Doc 3 at 249 ((RLJ180-RLJ182).
[85] 8RT 3654-3655 (RLJ183- RLJ184).
[86] 14RT 5416, 5431-5432 (RLJ185- RLJ187).
[87] 3RT 1525 (RLJ188).

seeing O'Keefe, Jennings had no plans to do anything illegal.[88] So the prosecution took the position that Jennings must have chosen to carry a gun for self-defense, just as he had done when he lived in North Carolina. Yet Jennings was aware that it was illegal to carry an unregistered firearm in California.[89]

But the gun Jennings always carried for self-defense in North Carolina was his .380 pistol — the only firearm he owned. He was not permitted to carry it or any other gun while on duty as a security guard.[90] If he *had* brought a gun for protection, it would have been his .380 pistol. There was no conceivable reason for him to instead commit a felony by illegally procuring and carrying an unregistered 9mm pistol.

D. An eyewitness saw a different man flee the scene of the shooting

If Jennings had been the only potential suspect, it might have been easier to understand why the police focused on him. But he was not: Victoria Richardson — who was also a stranger to Jennings — testified that after she heard the gunshots, she saw a white male drive away in a black Toyota Tercel, wearing a white t-shirt and a backwards red baseball cap.[91]

Inexplicably, investigators failed to follow up on this lead. They did not even interview the other three people in the car with Richardson — any one of whom might have remembered more details about the black Toyota and the man in the red baseball cap.[92]

At trial, the prosecutor claimed that the man Richardson saw had nothing to do with the shooting. The only evidence he offered in support of that position was the fact that the man drove out of the parking lot's eastern exit, when it would have been more efficient to use the western exit.[93] According to the prosecutor, the real killer would have been in a hurry to flee the scene as quickly as possible.

The assumption about the exits is dubious. They are practically equidistant, and the panicked killer probably drove towards whichever one he saw first. But the prosecutor's assumption about the murderer is valid: the killer certainly would not have hung around the victim he'd just murdered, waiting for police to arrive and arrest him.

But Jennings made no attempt to flee. He reported that shots were being fired, he helped police arrive sooner by guiding them over the radio, and he voluntarily stayed at the scene with them for hours. These are not the actions of a killer.

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[88] 3RT 1522 (RLJ189).
[89] Cognitive Interview, p. 1426 (RLJ190).
[90] 5RT 2169; Jennings Depo., Vol. 1, 286 (RLJ191- RLJ192).
[91] 6RT 2439-2440 (RLJ193- RLJ194).
[92] 17RT 6335 (RLJ195).
[93] 6RT 2448-2449; 20RT 7322 (RLJ196- RLJ198).

The person who acted like a killer was the man in the red baseball cap. He was in the parking lot at the time of the shooting, so he must have heard the gunfire. But he drove away without calling 9-1-1 to report the shots. And he never came forward to speak with police, despite a high-profile media campaign pleading for help from anyone who saw or heard something that night.[94]

The straightforward explanation for the man's behavior is that he killed Michelle O'Keefe.

THE PROSECUTION'S FLAWED CASE

In order to overcome the lack of evidence that tied Jennings to the crime, as well as the evidence that affirmatively excluded him as the killer, the State relied on circumstantial evidence that can be grouped into four categories:

- Evidence that Jennings purportedly implicated himself by revealing details of the murder that only the killer could have known;
- Evidence that the *modus operandi* of the shooting demonstrated firearms skills indicative of military training;
- Evidence that the murder was a sexual crime committed by someone who worked at the Park-and-Ride; and
- Evidence that Jennings attempted to deceive the police by lying about what he witnessed before, during, and after the shooting.

Each of these pillars crumbles when the evidence is examined. The record shows that —

- Jennings had no special insight into the crime; his information was consistent with what he had observed or been told by the investigators, and he was wrong about many of the basic details of the crime. Any fact he was wrong about was simply ignored.
- The circumstances of the shooting were not indicative of military training. In fact, the killer appeared to be a novice with no firearms training. Jennings' military training should have been viewed as exculpatory, not incriminating.
- There was no evidence of a sexual assault and overwhelming evidence of a robbery. The profiler who testified for the State made up facts to support his theory and ignored any facts that did not implicate Jennings.
- The only "lies" Jennings told the police were exaggerations of his accomplishments and experiences, which had nothing to do with the murder. Even the State has admitted in its briefing that Jennings exaggerated because he wanted to impress the detectives.[95]

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[94] 15RT 5771 (RLJ200).
[95] Respondents' brief in *People v. Jennings*, at 51 (RLJ201).

A. The evidence established that Jennings did *not* have special knowledge of the crime

The prosecution claimed that Jennings knew details about the murder that only the killer would know. This can be a powerful form of evidence in many cases, particularly where the accused would be unlikely to know anything about the crime other than the details that the police had released to the media.

But this case is not like that. Jennings was a witness who heard the shooting, inspected the crime scene, and spent hours undergoing suggestive questioning by the investigators. The majority of his allegedly incriminating statements were his simple observations about the physical evidence. Others were inaccurate beliefs about the crime, which showed a *lack* of knowledge. And the rest were nonexistent statements the prosecution falsely attributed to him.

1. Statements that were merely Jennings' observations as a witness

a. Jennings logically assumed he had heard only one gun

Prosecution Claim: Jennings should not have known that each bullet was fired by the same gun, because detectives only determined that through ballistics testing.[96]

Fact: Detectives prompted Jennings for his opinion about whether it appeared the shots had all been fired by one gun, and he responded, "Yeah. To me it did."[97] This was nothing but a reasonable assumption, strengthened by the fact that he had seen the uniform appearance of the shell casings at the scene.

Detectives then asked if it sounded like only one gun had been firing, and Jennings responded, "Oh yeah. Definitely."[98] That was a reasonable conclusion for a military veteran to draw after hearing a sequence of non-overlapping shots, fired in quick succession.[99] (This was also the most likely assumption for *anyone* to make about the crime, since the alternative would have required either two assailants or one who wielded a gun in each hand.)

b. Jennings could infer that the murder weapon had been fired at close range because he saw the powder burns on the victim's body

Prosecution Claim: Jennings should not have known that the murder weapon was fired at point blank range, because detectives only found a shell casing inside the vehicle after O'Keefe's body had been removed from the car.[100]

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[96] 16RT 6051; 12RT 4912-4913 (RLJ202- RLJ204).
[97] Cognitive Interview, p. 1274 (RLJ205).
[98] *Id.*
[99] 8RT 3638; 15RT 5742 (RLJ207- RLJ208).
[100] 20RT 7264 (RLJ209).

Fact: Jennings did not know about the shell casing inside the vehicle. Rather, he recognized that the gun had been fired at close range because he saw powder burns around the gunshot wound in O'Keefe's chest.[101] These wounds are clearly visible in a photo of the crime-scene.[102]

The charring and powder burns on O'Keefe's wound are a clear indication that the weapon was fired at close range.[103] The first law-enforcement officer on the scene, Deputy Cox, also noticed these burns on O'Keefe when he arrived.[104]

c. Jennings logically assumed that the victim could not have been shot in the head before starting her car

Prosecution Claim: Jennings accurately described the sequence of bullets fired into the victim, yet investigators were only able to determine that information after the medical examiner had conducted an autopsy.[105]

Fact: The only opinion Jennings offered was that the very first shot he heard had probably been the one fired into the victim's chest, because she would not have been able to start the car if she had already been shot in the head.[106]

Jennings' guess was wrong. The shot he heard before the car started had actually been fired into the ground.[107] O'Keefe started her car *before* she was shot in the chest. Jennings did not know that, because he was not the killer.

d. Jennings inferred that the victim had not been raped

Prosecution Claim: Jennings should not have known that O'Keefe was not sexually assaulted, because detectives only determined that after receiving the results of her rape kit.[108]

Fact: Jennings said that he initially thought that O'Keefe might have been raped because when he first saw her in the car, a portion of one of her breasts was slightly exposed.[109] Then he saw that she was wearing the rest of her clothing, so he assumed she had not been raped.[110] Neither of those observations demonstrated any incriminating knowledge about the crime.

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[101] 6RT 2471, Cognitive Interview, p. 1274 (RLJ210-211).
[102] Cropped crime-scene photo (RLJ212).
[103] 3RT 1587 (RLJ213).
[104] 6RT 2471 (RLJ214).
[105] 20RT 7284 (RLJ215).
[106] Cognitive Interview, p. 1264 (RLJ216).
[107] 20RT 7284; 15RT 5742, 5778 (RLJ215, RLJ217-RLJ218).
[108] 20RT 7256 (RLJ219).
[109] 17RT 6307 Cognitive Interview, p. 1264 (RLJ220- RLJ221).
[110] *Id.*

2. Statements falsely attributed to Jennings by the prosecution

a. Jennings did not know the caliber of the murder weapon

Prosecution Claim: Without looking at the shell casings, Jennings knew that the murder weapon was a 9mm pistol.

Fact: Jennings' supervisor, Iris Malone, testified that he closely inspected a shell casing with her flashlight, but she could not remember which caliber he said that he thought it was.[111] Jennings filed a written report about the incident for All Valley Security the night of the shooting, which incorrectly said the casing were from a .45.[112] And Deputy Cox testified that Jennings asked him about the caliber of the murder weapon, and he told Jennings the shell casing appeared to come from a 9mm pistol.[113]

b. Jennings did not know the trajectory of the bullets

Prosecution Claim: Jennings was able to instantly determine the trajectories of the bullets, something that investigators only learned after months of exhaustive forensic analysis.[114]

Fact: Jennings never opined about the trajectories of individual bullets. He simply pointed out the obvious — that the killer must have been standing in front of the driver's side door, firing through the gap in the window.[115]

Jennings knew the shooter must have been standing towards the front of the car, because he witnessed the shots being fired as the Mustang rolled backwards, and he saw that all the bullet wounds were to the front of O'Keefe's body.[116]

He also saw that there were no bullet holes in the Mustang's windshield or door, so he logically assumed that the killer had been shooting through the rolled-down window. It did not take a crime-scene expert to make this deduction.

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[111] 5RT 2184-2185, 2235, 2237 (RLJ222- RLJ225).
[112] All Valley Security incident report completed by Jennings on the night of the murder (RLJ226-RLJ227).
[113] 6RT 2488-2489 (RLJ228-229).
[114] 20RT 7265, 7285, 7555 (RLJ230- RLJ232).
[115] Cognitive Interview, pp. 1267, 1304 (RLJ233- RLJ234).
[116] 15RT 5742 (RLJ235).

c. Jennings did not see the gouge mark in the asphalt

Prosecution Claim: Jennings should not have known that there was a mark in the asphalt from a bullet impact, because detectives had to scour the scene before noticing it.[117]

Fact: Jennings did *not* notice the mark in the pavement. He spotted a deformed *bullet* sitting on the asphalt and told detectives that he thought it had been fired into the ground, because he did not think it would have bounced off the Mustang.[118]

At trial, Sgt. Longshore testified that Jennings never mentioned the gouge mark.[119] Yet the prosecution repeated the gouge-mark claim in closing argument, and the Court of Appeal listed it as one of the facts that proved Jennings' guilt.[120]

d. Jennings did not know when O'Keefe was dropped off

Prosecution Claim: Jennings knew that O'Keefe arrived at the park-and-ride between 9:20 and 9:25, which proves that he saw her alive.[121]

Fact: When detectives interviewed Jennings after the shooting, he did not even know that O'Keefe had been dropped off — much less the time that event occurred.[122] All of his answers wrongly assumed that O'Keefe had been sitting in her Mustang during his entire shift, causing him to puzzle over why he did not see her earlier when he walked by the vehicle.[123]

Jennings later learned about O'Keefe's arrival from the investigators, although he was not clear which one told him.[124] Although he could not reliably remember which officer mentioned the information to him, it was probably Detective Harris or Longshore — who visited Jennings at his home to address the inconsistency between his memory of the Mustang's location and the fact that O'Keefe had moved the vehicle after being dropped off around 9:25.[125] Jennings was not a suspect, so detectives spoke to him for an hour without recording their conversation.[126]

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[117] 20RT 7262 (RLJ236).
[118] 8RT 3639-3640; Cognitive Interview, p. 1266 (RLJ237- RLJ239).
[119] 16RT 6020 (RLJ240).
[120] 20RT 7313; *People v. Jennings,* 2011 WL 6318468 at *8 (RLJ241; RLJ153).
[121] 20RT 7302 (RLJ242).
[122] Cognitive Interview, p. 1391 (RLJ243).
[123] 15RT 5739;8RT 3636-3637 (RLJ244- RLJ246).
[124] 20 RT 7302 (RLJ247).
[125] 8RT 3628, 3743 (RLJ248- RLJ249).
[126] 8RT 3628 (RLJ248).

3. Statements that demonstrated Jennings' ignorance of the crime

The contention that Jennings "knew too much" also ignored observations by Jennings about the crime scene that were wholly incorrect. These errors confirmed Jennings' innocence, because he was unaware of basic information that the killer would have known.

a. He mistook the blunt-force trauma for a fatal gunshot wound

Jennings incorrectly identified the wound on O'Keefe's forehead as a fatal gunshot wound, and told investigators that he thought he had seen brain matter from the wound inside the Mustang.[127] In reality, the wound was not a gunshot wound at all; it was caused by blunt-force trauma.[128] And Jennings was also wrong about brain matter. There was none in the Mustang.[129]

This exposed another problem with the State's theory of the case: How could Jennings have been wrong about the basic nature of the wound if he had been the assailant who inflicted it? The prosecution's theory was that, when O'Keefe stepped out of the Mustang, Jennings pistol-whipped her and *mistakenly* believed that he felt the gun go off against her forehead.[130]

This theory required the jury to believe that a seven-year veteran of the U.S. military *imagined* that his gun fired — even though there was no sound of a gunshot, no recoil, no muzzle flash, no movement of the slide, and no ejection of the spent casing.[131] And once the killer saw O'Keefe reenter the Mustang and begin driving away, he would have been instantly disabused of the notion that he had just accidentally shot her in the forehead.

b. He described twitching and a pulse, which were medically impossible

A related contention is that Jennings told the investigators that when he first saw O'Keefe in the car, he thought he saw a faint pulse and her hands twitching.[132] The prosecution's theory was that Jennings could not have seen these things when he first looked into the car roughly fifteen minutes after the shooting. Hence, he was inadvertently describing what he had seen when he had supposedly fired the shots.[133]

This claim is inconsistent with both the prosecution's timeline of the shooting and with the medical evidence that the prosecution introduced. It was undisputed that the first shot was fired into the ground. The second shot was fired into the chest, and the rest into the victim's head and neck.[134] Jennings stated that he heard the first shot (i.e., the one fired into the ground), and then

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[127] 17RT 6306-6307 (RLJ250- RLJ251).
[128] *Id.*
[129] *Id.*
[130] 20RT 7263 (RLJ252).
[131] 12RT 4892-4893 (RLJ253- RLJ253-1).
[132] Cognitive Interview, pp. 1269-1270, 1310 (RLJ254- RLJ256).
[133] 20RT 7288-7289 (RLJ257- RLJ258).
[134] LASD Doc 3 at 256 (RLJ259).

about 10 seconds later heard the rest of the shots fired in quick succession.[135] The medical testimony indicated that the shots to the head and neck severed the spinal cord, paralyzing O'Keefe from the neck down.[136] She would not have shown any visible pulse and movement in her arms would have been impossible, much less her hands.[137]

In short, because of the speed in which the shots were fired after the first shot was made into the ground, whoever fired them would not have seen a pulse or any twitching. Jennings' statement that he thought he saw a faint pulse or a twitching was simply wrong, and not indicative of some kind of "guilty knowledge." Nor was Jennings alone in making this mistake. The EMT on the scene also incorrectly thought that he saw a faint pulse.[138]

This point illustrates how the prosecution would ascribe conduct by Jennings as incriminating, and yet would not draw the same inference when other people exhibited the identical conduct. When Jennings thought he saw a faint pulse, it meant he was the killer; when the EMT thought *she* saw a pulse, the prosecution called that "wishful thinking."[139]

c. He was wrong about the victim's age

Jennings told the investigators that he thought the victim in the car was about 25 to 30 years old.[140] This is consistent with the fact that the only time that he saw O'Keefe was after she had suffered multiple gunshot wounds in the face, so he was unable to ascertain how young she was.

The real killer would have seen her before the shooting, and therefore known that she was a teenager.

d. He was wrong about the victim's height

Jennings was puzzled by his failure to notice O'Keefe's silhouette during his patrol, so he incorrectly opined that she must have been extremely short.[141] (In reality, the Mustang had been empty when he walked by it.)

The killer would have known that O'Keefe was 5'6'' — slightly above average for a woman — because she stepped out of the car after her assailant approached her door.[142] Jennings' false belief about her height confirmed that he had never seen her standing up.

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[135] 8RT 3638; 15RT 5742 (RLJ260- RLJ261).
[136] 13RT 5197-5198 (RLJ262- RLJ263).
[137] 13RT 5202-5204 (RLJ264- RLJ266).
[138] 6RT 2562-2563 (RLJ267- RLJ268).
[139] 20 RT 7289 (RLJ269).
[140] 20RT 7256 (RLJ270).
[141] 8RT 3637 (RLJ271).
[142] 4RT 1887 (RLJ272).

B. The evidence indicated that the crime was *not* a sexual assault

1. All of the evidence suggested a robbery — not a sexual assault

The prosecution's theory that Jennings had attempted to sexually assault O'Keefe was based on the testimony of Mark Safarik, a retired FBI profiler. According to the Court of Appeal, Safarik's testimony was "crucial to the prosecution's case because, *without it, there was no evidence* from which the jury might infer the motive or the perpetrator's intent in killing O'Keefe." (*People v. Jennings, supra,* B222959, 2011 WL 6318468, at *11, emphasis added.)

Unfortunately, Safarik's opinion had no evidentiary value, because it was based on "facts" that were untrue:

- Safarik excluded robbery as a motive, because O'Keefe's wallet had not been taken.[143] In reality, the wallet had fallen into the gap between the right side of the driver's seat and the center console, and therefore would have been very difficult to see in the dark car.[144] And it appeared that the killer had been searching for the wallet, since the glove compartment was open.[145]
- Safarik theorized that the crime started as a sexual battery, because he thought that O'Keefe's tube top was pulled down.[146] In reality, the low-cut top was in place, with a portion of her right breast only slightly peeking out.[147] It was so clear that the top had not been pulled down that the prosecution was forced to argue in closing argument that O'Keefe *pulled it back up* to preserve her dignity.[148]
- Safarik said that the park-and-ride was not a location where anyone came to hang out or loiter. In reality, Victoria Richardson testified that she and her friends were hanging out in the parking lot, smoking marijuana and listening to music, because security guards rarely patrolled the area.[149]
- Safarik claimed no one was seen leaving the scene of the shooting.[150] In reality, Victoria Richardson testified that she saw a white male flee the scene in a black Toyota Tercel, wearing a white t-shirt and a backwards red baseball cap.[151]

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[143] 17RT 6406-6407 (RLJ273- RLJ274).
[144] 7RT 3433-3434 (RLJ275- RLJ276).
[145] 7RT 3407 (RLJ277).
[146] 17RT 6407-6408 (RLJ278- RLJ279).
[147] 5RT 2226-2227 (RLJ280- RLJ281).
[148] 20RT 7287 (RLJ282).
[149] 6RT 2410(RLJ283).
[150] 17RT 6429 (RLJ284).
[151] 6RT 2439-2440 (RLJ285- RLJ286).

Safarik also ignored the most important evidence of motive — i.e., the fact that the suspect stole O'Keefe's cell phone. Common sense dictates that a perpetrator who steals something of value is a robber or thief — not a rapist.

But if the crime were a robbery, it would have been difficult to pin on Jennings. So the prosecution strained to invent explanations for the missing phone: maybe the victim threw it at her attacker, maybe the killer inadvertently touched it, or maybe it was taken as a trophy.[152]

Safarik worked equally hard to explain the absence of evidence to support his theory. O'Keefe had not been raped, nor was there any evidence of physical contact with Jennings — no saliva or other bodily fluids, no blood, no hair, and no clothing fibers.[153] Safarik theorized that O'Keefe had resisted, so no intimate physical contact occurred.[154] But there were no defensive wounds on her body, so Safarik opined that O'Keefe must have successfully used "passive resistance" to end the sexual battery.[155]

It is clear that Safarik started with his conclusion and then worked backwards to account for the evidence. His theory directly contravened the Crime Classification Manual, a text developed by supervisory special agents at the FBI's National Center for the Analysis of Violent Crime, which sets forth the standard diagnostic criteria used by criminal profilers.

In court, Safarik testified under oath that there were no characteristics of the crime scene that suggested a robbery — especially because the victim's money was not taken.[156] In reality, the Crime Classification Manual says that money left behind at a crime scene indicates a situational felony murder — i.e., a robbery in which the offender panics, kills the victim, and then flees.[157]

The Manual says other indications of that scenario include:

- Blunt force trauma;
- Contact or near-contact wounds from a firearm; and
- An alarm sounding or some other outside trigger for the killing.[158]

All of those factors are present in this case, which strongly suggests a situational felony murder. According to the Manual, the typical offenders would be:

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[152] 20RT 7250 (RLJ287).
[153] *People v. Jennings*, 2011 WL 6318468 at *3 (RLJ150- RLJ151).
[154] 17RT 6439 (RLJ289).
[155] 17RT 6440 (RLJ290).
[156] 17RT 6406 (RLJ291).
[157] Crime Classification Manual (Second Ed.) § 108.02, *Crime Scene Indicators Frequently Noted* (RLJ293).
[158] *Id.*, *Common Forensic Findings* (RLJ293)

- Youthful and inexperienced;
- In the earlier stages of their criminal career; and
- Abusers of drugs or alcohol.[159]

Victoria Richardson and her friends certainly matched those criteria, given that she was a 17-year-old with a criminal record who was getting high in a car with three other people, barely 30 yards from the crime scene.[160] In her social-media posts after the incident, Richardson identifies herself as interested in wanting to date only members of the "Bloods" gang.[161] At the time of Jennings' third trial, she was serving time on weapons possession charges, and she is now serving a new prison term for assault with a deadly weapon.[162]

Safarik himself testified, "it would be incumbent upon the police to go and interview all of the adults that were in that vehicle."[163] Yet investigators never even interviewed the other people in her car, despite Safarik admitting that their statements would have been important to his analysis.[164]

Richardson's gang affiliation and criminal record certainly made her and the people in her car at the time of the shooting more plausible suspects than Jennings. The prosecution's focus on Jennings to the exclusion of Richardson and her passengers is a stark example of investigative tunnel vision — the tendency of investigators to seize on an early piece of evidence that appears to implicate the defendant, and to hold on to their belief in his guilt even as other evidence points to his innocence.

In its chapter on wrongful convictions, the Crime Classification Manual explains investigators can make mistakes in investigations, leading to wrongful convictions, when "when they become afflicted with tunnel vision on one theory of the case and may ignore cautions about the procedures they use." (Crime Classification Manual (2d Ed. 2006) p. 498.) As I am sure you are aware, social-science research suggests that tunnel vision is a pervasive cause of wrongful convictions. (*See, e.g.* Findley & Scott, *Tunnel Vision*, Univ. of Wis. Law Rev. (2006).

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[159] *Id.*, *Investigative Considerations* (RLJ293- RLJ294).
[160] 6RT 2436, 2410, 2407-2408 (RLJ295- RLJ298).
[161] Screen capture from Victoria Richardson Myspace page (RLJ299).
[162] California Criminal Records search for Victoria Richardson (RLJ300- RLJ300-3).
[163] 17RT 6450 (RLJ301).
[164] 17RT 6365, 6445 (RLJ302- RLJ303).

2. None of Jennings' statements supported the sexual-assault theory

a. There was nothing incriminating about Jennings' theory that the murder arose from prostitution

Investigators tried to tie Jennings to the alleged sexual assault based on the fact that he said he thought O'Keefe was a prostitute.[165] At trial, the prosecution portrayed this as a virtual confession from Jennings that he assaulted O'Keefe because he thought she was a prostitute.[166]

In reality, Jennings had simply made a logical observation about the crime scene. When the detectives asked him to speculate about the killer's motive Jennings said that when he approached the car and saw the victim's provocative clothing he assumed that she was a prostitute who had been murdered by one of her clients.[167]

Jennings' comment was textbook criminal profiling — not a confession. In fact, Safarik testified that profilers consider whether a victim was a prostitute because prostitutes are often murdered.[168] And he recognized that O'Keefe's outfit could be mistaken for the clothing worn by a prostitute.[169] There was nothing incriminating about Jennings making similar observations at the behest of investigators.

b. Nothing Jennings said demonstrated that he had seen O'Keefe without her clothing

In a civil deposition two years after the murder, Jennings said that he thought that O'Keefe's breasts and shoulders had been exposed when he arrived at the crime scene.[170] In reality, they had been covered — so the prosecution argued that Jennings must have seen them when he was sexually assaulting O'Keefe.[171]

This theory would have made sense if Jennings had described some feature of O'Keefe's body that only her attacker could have seen, such as a tattoo or a birthmark. But Jennings never mentioned any such incriminating details. He simply misremembered the crime scene, which he had seen two years earlier.

Jennings specifically said that his memory had faded, and he encouraged the lawyers to consult his original interviews if they wanted accurate information.[172] The statements that prosecutors

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[165] Cognitive Interview, pp. 1264, 1306 (RLJ304- RLJ305).
[166] 20RT 7244, 7256 (RLJ306- RLJ307).
[167] Cognitive Interview, p. 1306 (RLJ308).
[168] 17RT 6378, 6412 (RLJ309- RLJ310).
[169] 17RT 6438 (RLJ311).
[170] 20RT 7287-7288 (RLJ312- RLJ313).
[171] *Id.*
[172] Cognitive Interview, p. 1377 (RLJ314).

relied on were not even about Jennings' independent recollection of the crime scene, but rather his memory of the photos of O'Keefe's body that he had been shown by detectives.[173]

C. The evidence indicated that the killer did *not* have military training

The prosecution claimed that the murder was committed in a manner indicative of military training. In reality, the evidence indicated that the killer was probably an amateur who lacked any skill or training with firearms.

1. The killer accidentally shot the first bullet into the ground

The prosecution argued that the shooting was committed by someone who was highly skilled with firearms, such as someone like Jennings, who had years of military training.[174] Yet the killer accidentally discharged his pistol while it was pointed at the ground. This lack of "trigger discipline" is the hallmark of amateurs who lack firearms training. They instinctively place their index finger on the trigger of the gun, and then something causes them to feel tense and tighten their grip — which pulls the trigger back and fires the weapon.[175]

This was not a mistake that Jennings would have made. At the time of the shooting, he was a seven-year veteran of the U.S. military[176] who had extensive experience carrying a pistol.[177] Soldiers are specifically taught to avoid negligent discharges by keeping their index fingers outside of their weapon's trigger guard until they are ready to fire. Whoever killed O'Keefe clearly lacked that training.

2. The way the ammunition was loaded did not suggest military training

The prosecution asserted that the killer's use of two different kinds of ammunition demonstrated military training.[178] In reality, it showed that the killer was someone who lacked the resources or expertise to properly load his pistol.

The first two rounds in the magazine were hollow-point rounds — which flare upon impact.[179] The other three were full-metal-jacket rounds — which have less stopping power.[180] The prosecution claimed that Jennings had learned to use this combination of ammunition in the military for maximum tactical effectiveness.[181] But the firearms examiner from the Sheriff's

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[173] 16RT 6043-6044 (RLJ315- RLJ316).
[174] 20RT 7560 (RLJ317).
[175] "Trigger discipline" is one of the fundamental skills taught in basic firearms safety courses. *See, e.g.,* NRA Basic Pistol Shooting course, http://shootingsafellc.com/basic-pistol.php.
[176] 4RT 1514, 1515 (RLJ318- RLJ319).
[177] 18RT 6641-6642, 8RT 3641-3642 (RLJ320- RLJ323).
[178] 20RT 7284 (RLJ324).
[179] 12RT 4904-4905 (RLJ325-RLJ326).
[180] *Id.;* 13RT 5135-5136 (RLJ327, RLJ329).
[181] 20RT 7284-7285 (RLJ231, RLJ328).

Department testified that he regularly sees a mix of ammunitions recovered from a crime scene.[182] Furthermore, the military did not teach soldiers to load a combination of hollow-point and jacketed rounds because, until 2015, the military did not use hollow-point rounds. They were outlawed by the Hague Convention of 1899. (Declaration (IV, 3) concerning Expanding Bullets, The Hague, 29 July 1899.) This ban was lifted only this year.

Nor did the testimony from the prosecution's firearms expert support this theory. He testified that he would only use full-metal-jacket ammunition for teaching and grading shooting proficiency, and referred to them as "practice rounds."[183]

The prosecution tried to obscure this fact by asking the firearms expert a hypothetical: *If* he only had two hollow-point rounds and three full-metal-jacket rounds, what order would he load them in? The expert said he would load the full-metal jacket rounds at the bottom of the magazine, because in a firefight the only ammunition he would want to use was hollow-point.[184]

If the killer had tactical training, he would have loaded the entire magazine with hollow-point ammunition. In California, anyone who is over 18-years-old can walk into a store and purchase a box of hollow-point rounds. The fact that the killer had to mix in full-metal-jacket rounds suggests a juvenile with limited access to ammunition.

The same theory was used to solve the 1997 murder of pizza deliveryman Robert Lexa in Palm Beach, Florida. The killer had fired both hollow-point and full-metal-jacket rounds from the same gun, so FBI-trained criminal profiler Dayle Hinman accurately surmised that the murderer was a juvenile. She explained, "The fact that there were two different kinds of bullets in the gun suggested that the killer was either youthful or that he had randomly obtained bullets from any source that he could." She was proved correct when a 15-year-old confessed to the murder.[185]

Hinman's success illustrates a deeper flaw in the prosecution's theory. If the *same evidence* can relied on to suggest either that the killer was highly skilled, *or* an untrained amateur, that evidence cannot reliably show at trial that a particular defendant committed the crime.

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[182] 13RT 5136-5137 (RLJ329- RLJ330).
[183] 14RT 5481 (RLJ331).
[184] 14RT 5483, 5484 (RLJ332- RLJ333).
[185] Hinman's work on the Lexa murder was detailed in her television show, *Body of Evidence: From the Case Files of Dayle Hinman*, air date: March 15, 2010. A transcript of the show, including Hinman's explanation of the significance of the ammunition, is available at http://tv.ark.com/transcript/body_of_evidence__from_the_case_files_of_dayle_hinman-%28deadly_delivery%29/5712/TRUTVP/Monday_March_15_2010/250514/.

3. The shots were fired from point-blank range, so they did not require great skill

The prosecution claimed that training and practice was required to inflict the head wounds that O'Keefe suffered because she was a moving target as the Mustang rolled backwards. But the prosecution's own medical experts testified that the shots were fired from less than 3 feet away.[186] And the prosecution's firearms expert conceded that someone who had never fired a gun before could have made the shots.[187]

4. The location of O'Keefe's wounds did not indicate military training

The prosecution claimed that the sequence of one shot into the torso and three in the head demonstrated tactical proficiency consistent with military training. But once again, the actual testimony of their firearms expert did not support that theory.

The expert was never asked whether he believed that the sequence of shots suggested some degree of tactical expertise. Instead, he provided an abstract description of where on the human body soldiers are taught to aim their pistols. He said that the head is known to be the most lethal target, but that it is difficult to hit from a distance, so soldiers are taught to aim at the torso.[188] They are only supposed to aim for the head if their adversary is wearing body armor that makes the initial shots to the torso ineffective.[189]

O'Keefe's killer did not employ those tactical principles. After firing the first shot into the ground, the next shot was fired with the weapon pressed against her body.[190] At point-blank range, a trained soldier would have known to fire into the head for maximal lethality.[191] Instead, the killer stuck the weapon into the victim's torso, inflicting a potentially survivable wound. And O'Keefe obviously was not wearing body armor, so the progression from torso to head did not demonstrate any tactical insight.

D. Jennings' account of the incident was never discredited

1. Jennings' account of his movements remained consistent

The prosecution claimed that there were inconsistencies in Jennings' story that demonstrated he was lying.[192] In reality, Jennings' story was remarkably consistent. But because he could not remember the *exact time* he finished his patrol, the prosecution branded him a liar.

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[186] 4RT 1821, 1868 (RLJ334- RLJ335).
[187] 14RT 5490 (RLJ336).
[188] 14RT 5479-5480 (RLJ337- RLJ338).
[189] 14RT 5481 (RLJ339).
[190] 13RT 5188 (RLJ340).
[191] 14RT 5480 (RLJ341).
[192] 20RT 7317 (RLJ342).

When he was first interviewed, Jennings said that he began his patrol by walking around the south perimeter of the lot, then the west perimeter, and then once he reached the northernmost driveway he began walking eastbound, back in the direction of his vehicle.[193] He thought he remembered seeing the Mustang around 9:00 p.m. and then spent about 30 minutes slowly walking up the hill to his car.[194]

At least, that was what detectives thought Jennings had told them. When they re-interviewed him two months later, he clarified that his estimate of "30 minutes" referred to his entire patrol — not merely the portion after he saw the Mustang.[195] Having learned that the vehicle was actually parked further east than he remembered, Jennings estimated that he passed it around 9:20 or 9:25.[196] Then two years later, during his civil deposition, Jennings estimated that he finished his patrol around 9:15.[197]

Those are the "inconsistencies" the prosecution relied on to accuse Jennings of murder. Because he had been wearing a watch, the prosecutor argued that he should have known the exact times that things occurred.[198] That was not a reasonable demand, because human beings rarely have the ability to indefinitely recall the precise timing of traumatic events. Nothing about the minor variations in Jennings' memory suggested that he was lying.

Nor did Victoria Richardson say anything that contradicted Jennings' account of his movements. The Court of Appeal's opinion says that Richardson testified that she saw Jennings walk by her car immediately before the shooting. This is inaccurate. Richardson struggled to remember her conversation with Detective Harris, and ultimately testified that she saw Jennings walk by at *some* point earlier in the evening.[199] That was consistent with the path that Jennings described to detectives. Nothing Richardson said placed Jennings near the Mustang at the time of the shooting.

2. The evidence supported Jennings' claim that he could not see the shooter

One of the points that the prosecution pressed hardest was that Jennings should have seen the shooter because he had an unobstructed view of the parking lot.[200] In other words, because he did not see the shooter, he must be the shooter.[201]

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[193] 15RT 5738 (RLJ343).
[194] 15RT 5739-5740 (RLJ344- RLJ345).
[195] Cognitive Interview 1312-1313 (RLJ346- RLJ347).
[196] *Id.*
[197] Jennings Depo. Vol. 1, p. 77 (RLJ348).
[198] 20RT 7300 (RLJ349).
[199] 6RT 2411-2412, 2449 (RLJ350- RLJ351, RLJ197).
[200] 20RT 7314, 7315 (RLJ354- RLJ355).
[201] *Id.*, at 7315 ("The reason he didn't see it is because he is shooting.") (RLJ355).

This contention was illogical and at odds with the facts, because there were a host of reasons why Jennings might not have seen the shooter.

When Jennings heard the shots, the Mustang was in a dimly lit parking spot over 400 feet away.[202] Jennings' view was blocked by a large white passenger van, which was parked next to the Mustang.[203] He said that he never saw the shooter, because the shooter never stepped out from behind the van.

The prosecution tried to show that the killer had walked into plain view. But it failed.

First, it called an expert in bullet trajectories, who was able to establish the position of the pistol relative to the Mustang.[204] But that information was useless without knowing how far the Mustang had rolled when the shots were fired. On cross-examination, the expert admitted that she could not determine where in the parking lot the shooter had been standing.[205]

Second, the prosecutor argued that the jury should assume that when the shooting started, the killer was standing at the point where the gouge mark was left in the asphalt.[206] That was an unreasonable assumption, because the killer probably did not shoot directly downwards into the spot between his feet. Without knowing the trajectory of the bullet that caused the gouge mark, it was impossible to use the mark to derive the shooter's position.

Even if the shooter momentarily stepped out from behind the van, Jennings easily could have missed him, because Jennings is near-sighted and had poor night vision.[207] This was confirmed by the testimony at trial of his squad leader in Iraq, who testified that Jennings had to wear glasses or contact lenses on any combat-type mission.[208] On the night of the shooting, Jennings was not wearing glasses or contacts.[209]

Moreover, when he first heard the shots Jennings crouched behind his car for cover, and then poked his head above the car later to see if he could get a glimpse of what was happening, while fumbling with his radio.[210] The whole series of events occurred in a matter of seconds, during which Jennings was understandably fearful and lost all sense of time.[211]

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[202] 9RT 3929-3930 (RLJ356- RLJ357).
[203] 9RT 3919-3920 (RLJ358- RLJ359).
[204] 12RT 4844-4845 (RLJ360- RLJ361).
[205] 12RT 4879 (RLJ362).
[206] 20RT 7555-7556 (RLJ363- RLJ364).
[207] Cognitive Interview, p. 1363 (RLJ365).
[208] 18RT 6651-6652 (RLJ366- RLJ367).
[209] 5RT 2180; Cognitive Interview, p. 1363 (RLJ368- RLJ369).
[210] 8RT 3638-3639 (RLJ370- RLJ371).
[211] Cognitive Interview, pp. 1280-1282, 1365 (RLJ372- RLJ375).

Given these circumstances, the fact that Jennings did not report seeing a shooter supports only one reasonable inference: that he was not willing to make up a lie about seeing a shooter. This is an exculpatory fact, not one that incriminates Jennings.

By contrast, inferences about what a person "should" have seen in a given circumstance are necessarily speculative, given the well-documented frailties of human perception, particularly when under stress. Eyewitness testimony is frequently unreliable. An attempt to infer guilt from a witness's failure to see something at a crime scene based on the assertion of what the person "should" have seen is, at best, highly speculative, and fails to satisfy the rigorous standard of CalCrim instruction 225 concerning the use of circumstantial evidence in criminal prosecutions.

3. Jennings knew the Mustang was running, because he heard it start

The prosecution argued that Jennings must have been close to the Mustang when the shooting occurred, because Jennings knew that the Mustang was running when Iris Malone arrived at the scene.[212] The prosecutor claimed that it would have been impossible for Jennings to hear the Mustang running from his vantage point, based on testimony from detectives who stood at that position and were unable to hear a car idling at the scene of the shooting.[213]

This test proved nothing, because Jennings heard O'Keefe *start* the Mustang — which obviously produces a louder sound than an idling engine. The fact that Jennings heard the roar of the engine suggests that O'Keefe slammed on the accelerator in her haste to escape her attacker, causing the engine to rev while the car was in neutral.[214] And even if Jennings had not heard the engine, he still would have been able to infer that the car had been started when the alarm stopped sounding at the same moment that the headlights turned on and the vehicle began to move out of the parking space.

4. Jennings' behavior was consistent with his fear of the shooter

The prosecution argued that Jennings' initial refusal to accompany Iris Malone to the scene of the shooting demonstrated that he murdered O'Keefe. It claimed that Jennings hung back because he was afraid that O'Keefe might still be alive and able to identify him as her killer.[215]

In reality, Jennings did exactly what an unarmed security guard is supposed to do: observe, report, and wait for police.[216] The person who acted inappropriately was Malone, who made a terrible mistake by charging into the area where the armed killer was last seen. She was lucky to escape with her life, and Jennings cannot be faulted for his refusal to join in her reckless endeavor.

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[212] 20RT 7272 (RLJ376).
[213] 6RT 2468-2470; 15RT 5773 (RLJ377- RLJ380).
[214] Cognitive Interview, p. 1280 (RLJ372).
[215] 20RT 7308 (RLJ381).
[216] Cognitive Interview, p. 1423 (RLJ382).

The prosecution argued that Jennings could not really have been in fear for his life, because after Malone radioed him from the Mustang he walked to the crime scene without taking "tactical" action or cover.[217] But Jennings' behavior made perfect sense. Before Malone reached the crime scene he was afraid the shooter might still be lurking near the Mustang. Once she drove down and illuminated the area with the spotlight on her vehicle, it was clear that the shooter had left, so Jennings agreed to walk to her location.[218]

There are three flaws in the prosecution's version of events. First, if Jennings was O'Keefe's killer, he would have known that she was dead — because 10 minutes earlier she had been executed with three shots to the head. Second, if Jennings had been afraid that O'Keefe was alive, he would have tried to stop *anyone* from approaching the Mustang, because in order to implicate him O'Keefe merely needed to say "security guard." Third, if Jennings was afraid of being identified, he would not have voluntarily walked down to the Mustang just five minutes after he initially declined to accompany Malone.

5. Jennings never withheld information from investigators

The prosecution argued that it was significant that Jennings initially told the detectives that he did not see anyone leave the parking lot after the shooting, even though it was later established that a female driver in a sedan with three passengers briefly stopped and asked him what happened.[219] That woman was later identified as Victoria Richardson.

The prosecution theorized that Jennings' deliberately withheld the information about the encounter with Richardson to hamper the investigation.[220] But Malone also witnessed Richardson's sedan exit the parking lot, and she failed to mention it to investigators.[221] This suggests that detectives were asking the wrong questions or that they misinterpreted Malone and Jennings' answers.

One possibility is that Jennings was only talking about what he witnessed immediately after the shooting. During his recorded interviews and depositions, Jennings said multiple times that he did not see anyone leave the parking lot after the shooting — and in each instance, it is clear that he is only referencing the ten-minute period before Malone arrived.

Detectives probably misunderstood what Jennings meant when he said the same thing on the night of the shooting. They did not ask him to list everything that happened to him that night, so it is not as if he omitted the encounter from a narrative that he told them. As soon as they asked him about whether he talked to anyone in the parking lot, he gave them all the details about his

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[217] 20RT 7309 (RLJ383).
[218] 5RT 2174-2175 (RLJ384- RLJ385).
[219] 18RT 7291-7292 (RLJ386- RLJ387).
[220] *Id.*
[221] 5RT 2186-2187; 6RT 2517-2518 (RLJ388- RLJ391).

encounter with Richardson.[222] If he had been trying to hide something, he would not have been so forthcoming and cooperative.

6. Jennings did not fabricate suspects

Although the prosecution faulted Jennings for failing to mention his interaction with Richardson, it also faulted him when he did volunteer information.

A few days after the shooting, two men in a pickup truck approached him in the parking lot and asked him probing questions about the incident,[223] Jennings felt uncomfortable, so he lied to the men and said another guard had been on duty when the shooting occurred.[224] He radioed in the encounter, and spoke to a deputy, whom he provided with a partial license-plate number for the truck.[225] Jennings said that the deputy later returned and told Jennings that his interrogators had just been some harmless, nosy kids.[226]

The prosecution argued that this entire account was a fiction, because there were no records of Jennings making a report to the Sherriff's Department.[227] The prosecution theorized that Jennings fabricated the story to misdirect detectives into believing that the two males in the red pickup might have been involved in O'Keefe's murder.[228]

This accusation makes no sense: If Jennings wanted to give detectives a false lead to investigate, why would he tell them that the Sheriff's Department had already determined that the red pickup had nothing to do with the murder? And why would he lie about contacting the Sherriff's Department, instead of simply calling them and providing the false information?

The answer is that the encounter was real.

During his first two trials, Jennings was able to call a Sheriff's Department employee who corroborated his story. She explained that she had seen a "hot sheet" about the suspicious red pickup.[229]At the third trial, Jennings' state-appointed counsel failed to call this witness, because he incorrectly believed that he would be permitted to elicit the same information from one of the Sheriff's detectives. The judge sustained a hearsay objection to that line of questioning, so the jury in the third trial never heard about the hot sheet.[230]

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[222] 8RT 3631-3632; 9RT 3928 (RLJ392- RLJ394).
[223] 15RT 5758; 16RT 6068 (RLJ395- RLJ396).
[224] Cognitive Interview, p. 1419 (RLJ397).
[225] Cognitive Interview, pp. 1379-1380 (RLJ398- RLJ399).
[226] Cognitive Interview, p. 1399 (RLJ400).
[227] 20RT 7316 (RLJ401).
[228] 20RT 7294 (RLJ402).
[229] 17RT 6358-6361 (RLJ403- RLJ406).
[230] *Id.*

And if Jennings had actually wanted to mislead the investigators, he would have made up a generic description of the shooter.

7. Jennings' failure to carry his flashlight was not incriminating

Jennings was not carrying his flashlight when Malone arrived,[231] so the prosecution claimed that he used the flashlight to inflict the blunt-force wound on O'Keefe's forehead and was then forced to conceal the evidence.[232] There are numerous problems with this theory.

First, it is likely that O'Keefe was struck with the 9mm pistol used to shoot her — not a flashlight. The prosecutor admitted as much in closing argument when he said that Jennings must have thought his gun went off at the moment that he used it to strike O'Keefe in the forehead.[233] The wound itself was consistent with being pistol whipped, and it was never clear why an assailant armed with a gun would resort to using a flashlight as a weapon. Only someone with three hands could hold the pistol and the flashlight while simultaneously pulling down O'Keefe's top, as the prosecution claimed.

It was normal for Jennings not to carry the flashlight on patrol. Guards were not even issued flashlights; Jennings had simply chosen to bring one from home.[234] Most regions of the parking lot were fairly well lit, so he left the flashlight in his car.[235] Nor was this a departure from his "habits," since it was only his second day of work at the parking lot.

8. Jennings' gloves did not tie him to the crime

The prosecution claimed that, after shooting O'Keefe, Jennings removed the outer shells of his gloves so that police would not test them for gunshot residue. There was no reliable evidence to support this theory.

Jennings said that he removed the exterior shells when he was sitting inside a warm police car with Deputy Cox, exposing the wool inserts he was wearing underneath.[236] Cox said that he remembered Jennings wearing the wool inserts before he got in the cruiser.[237] But Cox's recollection of that night was proven unreliable when he misremembered that Jennings was using a flashlight to examine the scene when he arrived. Specifically, Malone testified that the only time the Jennings used a flashlight at the scene was when he borrowed Malone's and then gave it back to her — which occurred before Cox arrived.[238]

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[231] 5RT 2180 (RLJ407).
[232] 20RT 7295-7296 (RLJ408- RLJ409).
[233] 20RT 7263 (RLJ410).
[234] 5RT 2166 (RLJ411).
[235] 9RT 3913; Cognitive Interview, p. 1318 (RLJ412- RLJ413).
[236] Cognitive Interview, p. 1395 (RLJ414).
[237] 6RT 2461 (RLJ414-1).
[238] 5RT 2180, 2184; 2204 (RLJ415- RLJ417).

At the time, Cox had no reason to focus on what kind of gloves Jennings was wearing. That issue was not even raised until years after the incident. No one other than Cox remembered anything about Jennings' gloves. It stretches credibility to believe that Cox remembered not just *that* Jennings had been wearing gloves, but *which material* the gloves were made of, as well as *precisely when* he saw them.

The prosecution's theory also involved unreasonable assumptions about the motivations for Jennings' behavior. Jennings was wearing his security jacket, so removing the exterior of his gloves would not have prevented police from detecting the presence of gunshot residue on his clothing. Of course, there was, in fact, no evidence of any gunshot residue.

CONCLUSION

The State's case against Ray Jennings was implausible from the start. It posited that a married family man who enlisted in the National Guard at 17, and who had no prior criminal history, would bring an illegal handgun to work and would try to accost a stranger because of how she was dressed. It required the jury to believe that Jennings panicked so severely when Michelle O'Keefe rebuffed him that he repeatedly shot her, and yet was preternaturally calm after the shooting as he called his supervisor and spoke to the investigating officers. It required the jury to ignore the absence of direct evidence to link Jennings to the crime, and to ignore physical evidence that proved he had not fired a gun on the night of the shooting. And it required the jury to accept strained web of circumstantial inferences, none of which had factual support, and all of which were contrary to the physical evidence.

The only way that Jennings's conviction makes sense is if the jury took Mr. Blake's misstatement of the law to heart, and presumed that Jennings was guilty simply because he was in the parking lot when Michelle O'Keefe was shot.

The Crime Classification Manual's chapter on Wrongful Convictions ends with this paragraph, which explains why conviction-integrity units are necessary:

> Sometimes law enforcement authorities, believing they have the right person, will do anything to obtain a conviction. In some of the cases cited in this chapter, as well as many other exoneration cases, authorities still maintain they had the right person in the face of overwhelming evidence to the contrary. But rationalizing, playing with the facts, or lying in the name of justice cannot be condoned and can lead to unintended consequences that may tarnish the name of law enforcement and the sanctity of the justice system. An innocent person imprisoned for a crime he or she did not commit used to be the stuff of novels and dramas. As technology advances, it is the reality of the twenty-first century, and it is up to law enforcement authorities to prevent it. (Crime Control Manual, p. 508.)

Even in Los Angeles, innocent people are sometimes convicted of serious crimes, which is why the Conviction Review Unit was created. Ray Jennings is one of those people. Please, help him.

Respectfully yours,

THE EHRLICH LAW FIRM

Jeffrey I. Ehrlich
Counsel for Raymond Jennings

EXHIBIT 3

MEMORANDUM
(Attorney Work Product)

2nd DRAFT

TO: KERRY WHITE
Head Deputy District Attorney
Antelope Valley Branch Office

JOHN NANTROUP
Assistant Head Deputy District Attorney
Antelope Valley Branch Office

FROM: MICHAEL BLAKE
Deputy District Attorney
Antelope Valley Branch Office

SUBJECT: **Ongoing Investigation and Request for Additional Forensic Testing**
People v. Raymond Lee Jennings (MA033712)

DATE: April 17, 2006

Procedural Posture

This case was filed for warrant on November 15, 2005 when the defendant was deployed with the Army National Guard in Iraq. After returning to the U.S., he was arrested here in the Antelope Valley on December 13, 2006.

In January 2006, the Los Angeles County Public Defender, and then the Alternate Public Defender, both conflicted in the matter. Attorney David Houchin was appointed to the case in late February of this year.

At arraignment, a preliminary hearing setting date was scheduled for mid-March in the Los Angeles Superior Court's North District, Department A2 (Judge Christopher Estes). When Mr. Houchin asked for more time, the matter was set for April 24, 2006 as day seven of ten, with a continuous preliminary hearing waiver from the defendant.

Last week I telephoned opposing counsel to discuss a potential conflict in my trial schedule, and to arrange delivery of 25 videotapes and hundreds of pages from a related civil lawsuit. Mr. Houchin has known about these materials since March, but naturally he wanted time to review them before the preliminary hearing. He told me that he intends to continue the preliminary hearing to a mutually agreeable date in May. If for some reason Judge Estes denies that motion we must be ready to proceed on April 24.

Ongoing Investigation and Request for Additional Forensic Testing

On February 21, 2000, eighteen year-old co-ed Michelle O'Keefe was found murdered in her car at a local Park and Ride. Raymond Lee Jennings was the only known "witness" to this crime.

0[illegible]2-2602-011

= coroner's report

Michelle was shot four times at extremely close range, three in the face and once in the chest. This is a very complex and voluminous case, complicated by six years of criminal and civil investigation and an intervening civil lawsuit that was intensely litigated, with numerous depositions. Although his conduct and intimate knowledge of the crime scene, and many inconsistencies in statements to police and others are all *highly* suspicious, examinations of the physical evidence have yet to directly link Jennings to the murder of Michelle O'Keefe.

But the physical evidence has not been fully evaluated. Many items examined years ago may still yield valuable information if subjected to new or different tests. I am convinced that several items with forensic potential may still exist and that other items not yet in our possession should be vigorously sought out. All of these things should be subjected to every appropriate scientific test, whether ultimately they point to Raymond Lee Jennings or not.

Last week I received a summary of evidence collected and testing already performed. After discussions with Assistant Head Deputy Nantroup and our case investigators, I spoke with LASD Crime Lab Division Chiefs Ken Sewell (Biological) and Lew Bolf (Physical) to request specific forensic testing on specific items of evidence. On Friday April 14 these and other items were collected from LASD Central Property, transported by Detective Diane Harris and personally delivered to Sewell and Bolf.

Here is a summary of the key physical evidence with recommendations for further action:

1. **Projectiles (5 Items)**
    a. Evidence Items #1 and #4 — Luger - 9mm
        i. Two (9mm?) projectiles recovered from scene
            1. One associated with an asphalt strike mark
            2. One passed through victim
    b. Evidence Item #20 — Luger 9mm
        i. Three (9mm?) projectiles recovered during autopsy
            1. Four GSW documented
                a. Three GSW to Victim's Head and Neck
                b. One GSW to Victim's Chest
    c. Prior Testing
        i. Ballistics and Toolmarks
            1. Unsolicited report from LAPD re: TEC 9
                a. Excluded as possible source on 11-15-05
    d. Recommendations
        i. Ballistics and Toolmarks
            1. Determine if all projectiles are from the same weapon
            2. Determine if projectiles could be .380 caliber — no
            3. No reference weapon presently to test against
                a. Locate missing firearm
        ii. Reports
            1. Need LASD Lab Reports with projectile profiles

2. **Cartridge Casings (4 Items)**
    a. Evidence Items #2, #3, #5 and #8
        i. Four 9mm Casings recovered from scene
            1. Pattern tracks with backward movement of victim's car

b. One Missing casing (?)
    i. Five (?) shots fired—four casings recovered
        1. One in strike mark in the asphalt
        2. Four documented GSW at autopsy
c. Prior Testing
    i. Prints
        1. Dusted for prints during initial investigation
        2. Negative Results
    ii. Ballistics and Toolmarks
        1. Unsolicited report from LAPD re: TEC 9
            a. Excluded as possible source on 11-15-05
        2. Between 3 and 18 possible weapons of various manufacture
            a. Based on Ejection and Firing Pin characteristics
d. Recommendations
    i. Determine if one cartridge casing is actually missing
        1. Locate it
    ii. Prints
        1. Atomized Glue
            a. Limited results expected due to previous dusting
    iii. Ballistics and Tool Marks
        1. Determine if all casings are from the same weapon
        2. Narrow number of possible manufacturers
        3. Defendant's Lorcin L380
            a. Locate this weapon
            b. Determine if this L380 has been modified to accept a standard 9mm round
            c. Determine if a 9mm round can be modified to fire in this L380 without altering the cartridge casing
        4. Compare ballistics to expended projectiles
    iv. Reports
        1. Need LASD Lab Reports with cartridge casing profiles

3. **Victim's Clothing and Personal Effects (14 Items)**
    a. Evidence Item #6: Left Sandal
        i. Gravity Blood on upturned sole
        ii. Prior Testing
            1. DNA Match to Victim
        iii. Recommendations pending outcome of other testing

    b. Evidence Item #7: Post Earring Back
        i. Found inside scene but outside victim's car
        ii. Appears to have separated from Post Earring (#18) due to shooting
        iii. Prior Testing unknown
        iv. Recommendations pending outcome of other testing
    c. Evidence Item #9: Green Plastic Wristband
        i. Rubber-like material removed from victim's right wrist
        ii. Prior Testing unknown
        iii. Recommendations
            1. DNA profile for any other donors
            2. Microscopic Hair and Fiber Analysis

d. Evidence Item #10: Black Denim Jeans
    i. Passenger seat next to victim with defect from the projectile that passed through the victim and struck the inner passenger door panel
    ii. Prior Testing unknown
    iii. Recommendations pending outcome of other testing

e. Evidence Item #11: Plastic Bag (Av College Bookstore)
    i. Rear seat with miscellaneous photos of the victim, her casting cards and a red plastic wristband.
    ii. Prior Testing unknown
    iii. Recommendations pending outcome of other testing

f. Evidence Item #12: Disposable Camera
    i. Found in victim's purse between front seats
    ii. Prior Testing
        1. Film developed
            a. Photos of victim and friends
    iii. Recommendations pending outcome of other testing

g. Evidence Item #13: Green Plastic Card (Teen Choice Awards VIP)
    i. Fell out of car when victim was moved by Coroner Investigator
    ii. Prior Testing unknown
    iii. Recommendations pending outcome of other testing

h. Evidence Item #14: Scrap Paper (Rosario)
    i. Front passenger seat with phone number
    ii. Prior Testing unknown
    iii. Recommendations pending outcome of other testing

i. Evidence Item #15: Small Silver Spiral Notebook
    i. Front center console
    ii. Prior Testing unknown
    iii. Recommendations pending outcome of other testing

j. Evidence Item #16: Leather Cell Phone Wallet
    i. Cell Phone missing
        1. When last seen alive by a friend who dropped her off, victim was in her car and on her cell phone at the Park and Ride
        2. Check Records and Devide ID # to see if used since murder
    ii. $111.30 and credit cards still inside with CDL and various papers
    iii. Prior Testing unknown
    iv. Recommendations pending outcome of other testing

k. Evidence Item #17: Scrap of Blue Plastic Material
    i. Thin plastic material with visible fingerprints on floor behind victim
    ii. Prior Testing unknown
    iii. Recommendations
        1. Identify finger prints
        2. Identify source of material

l. Evidence Item #18: Yellow Metal Post Earring
   i. Found inside victim's car
   ii. Appears to have separated from Post Earring (#7) due to shooting
   iii. Prior Testing unknown
   iv. Recommendations pending outcome of other testing

m. Evidence Item #19: Remote Car Alarm Control
   i. Removed from victim's key ring by police
   ii. Prior Testing unknown
   iii. Recommendations
      1. Prints
         a. Victim activated alarm but it was off when first responders arrived
            i. Was defendant the only witness to alarm?
         b. Check for prints by the most productive method
      2. Hair and Fiber
         a. Search for possible fibers
      3. DNA
         a. Swab to obtain profile
      4. Operability
         a. Duration
         b. Automatic or Manual shut-off

n. Evidence Item #33: 2000 Ford Mustang (Blue)
   i. Car was sold but recently located and is available for further testing
   ii. Prior Testing
      1. Printed and Released
         a. Negative results
   iii. Recommendations
      1. Blood
         a. Luminol * **(see Luminol discussion below)**
            i. Interior and exterior
      2. Reconstructions
         a. Alarm Function and Horn
         b. Engine noise
         c. Transmission and Clutch (Car found in Neutral)
         d. Positions of Victim and Shooter at various points
         e. Speed of backward roll
         f. Interior lighting and visibility with muzzle flash
         g. Preserve for jury view

4. **Victim's Remains and Items Recovered by the Coroner's Office (9 Items)**

a. Evidence Item #23: Fingernail Kit
   i. Acrylic Nails and scrapings
   ii. Prior Testing
      1. None
   iii. Recommendations
      1. Hair and Fiber
         a. Transfer during struggle
      2. DNA

a. Tissue or Hairs deposited during struggle

b. Evidence Items #24 and 25: Hair and Pubic Hair Kits
   i. Coroner samples
   ii. Prior Testing
      1. None
   iii. Recommendations
      1. Hair
         a. Compare to hairs found on Jennings clothing
      2. DNA
         a. Reference sample from Jennings *after* DNA typing

c. Evidence Item #26 and #27a : Victim Clothing
   i. Clothing (#27a was collected during autopsy)
   ii. Prior Testing
      1. None
   iii. Recommendations
      1. Hair and Fiber
         a. Collect and analyze
         b. Subject to DNA testing
      2. DNA
         a. Identify source

d. Evidence Item #27: Envelope with Hair
   i. Two (foreign?) hairs collected from victim's clothing
   ii. Prior Testing
      1. None
   iii. Recommendations
      1. Hair
         a. Physical comparison to victim hair
      2. DNA
         a. Depends on results of physical comparison

e. Evidence Items #27b: Reference Blood Sample
   i. Coroner samples
   ii. Prior Testing
      1. None
   iii. Recommendations
      1. DNA for use Reference

f. Evidence Items #28: Sexual Assault Kit
   i. Coroner samples
   ii. Prior Testing
      1. None
   iii. Recommendations
      1. Hair and Fiber

a. Search for any foreign matter
2. DNA
a. Possible bite mark swabbed at autopsy? — ?
b. Search for foreign profile
c. If MALE profile is obtained
i. Court Order
ii. Obtain Reference and Compare

g. Un-sequenced Evidence Item: Excised Bone Sample
i. Sample excised beneath blunt force injury above victim's left eyebrow
ii. Prior Testing
1. None
iii. Recommendations
1. Toolmark
a. Distinctive scoring in the bony surface
b. Attempt identification by comparison to
i. Angle and Characteristics of the blow
ii. ID type of weapon using toolmarks
1. Flashlight?
2. Firearm?
iii. Defendant's flashlight
1. determine what type he used
2. Locate flashlight
iv. Firearm muzzle
1. Locate firearm
2. Compare to Lorcin L-380
2. Medical Opinion
a. How incapacitated from this blow (reconstruction?)

h. Un-sequenced Evidence Item: Spiral Notebook
i. Originally sent to lab with victim's clothing in 2000 or 2001
ii. Prior Testing
1. None
iii. Recommendations
1. Review contents to determine origin
2. Print if warranted

5. **Defendant's Clothing (3 Items)**

a. Evidence Item #21: Security Guard Uniform (Jacket, Pants and Shirt)
   i. Prior Testing
      1. Jacket Sleeves
         a. Blood
            i. Visual examination with negative results
         b. GSR
            i. Negative results
      2. Pants
         a. Blood
            i. Visual examination with negative results
      3. Shirt
         a. Hairs removed from shirt
            i. Not Tested
         b. Blood
            i. Stain sampled with negative results
            ii. Visual examination with negative results
   ii. Recommendations

High Velocity Blood Spatter occurs when a gunshot impacts the victim at close range. Atomized blood particles erupting from the wound travel in a mist, up to 18" to 48" from the impact site. These particles create a conical pattern that expands outward along the bullet path, back toward the shooter. This is commonly known as "back spatter." The area where this spatter is deposited is known as the "target." Individual blood particles are never larger than 1mm in diameter and often cannot seen on clothing with the naked eye. The higher the velocity of a firearm, the smaller the individual spatter will be.

The amount of blood deposited can vary greatly from scene to scene, sometimes in a clearly defined pattern, sometimes just a few particles. Because it travels in a mist, this spatter can sit on top of and sink down into the weave and fibers of a shooter's clothing, deposit inside gun barrels, in gaps and crevices. Microscopic bits of tissue--yielding DNA--can also be deposited on the target with the blood. Due to the minute size of these atomized particles, high velocity spatter will dry within a few seconds. Transfer and smearing are extremely unlikely because of fast drying time. DNA extraction from single particles is difficult, if not impossible.

Luminol is a water-based chemical that enhances the visibility of blood. It can be used on very faint bloodstains (e.g., a cleaned up or painted over scene)causing the bloodstains to glow in the dark. If a stain is so faint or thin that it is not visible to the naked eye, it can be visualized with Luminol, but no further confirmatory testing is possible. Luminol can give false positive readings because it also reacts to copper and iron compounds, bleach, and certain plants, such as potatoes. *See H.C. Lee "Identification and Grouping of Bloodstains" in Forensic Science Handbook (1982)*

Because Jennings was only one the job for a couple of days before the shooting and his uniform was most likely worn before it was issued to him, the mere presence of blood on this clothing--even in atomized particles--will not answer the ultimate question of whether Raymond Jennings killed

Michelle O'Keefe. If blood is found on Jennings' clothing we must be able to collect it, preserve it and compare it to Michelles' DNA.

If it does exist, we may have only one opportunity to collect and type this fragile blood evidence. I am worried that Luminol, if it is used used to visualize a high velocity deposit, could significantly dilute or hopelessly impair genetic markers in any microscopic blood particles we may find. *See D.L. Laux "Effects of Luminol on the Subsequent Analysis of Bloodstains" in Journal of Forensic Sciences v.36, No.5 (Sep.1991). Also see R.R.J. Grispino "The Effects of Luminol on the Serological Analysis of Dried Bloodstains" in Crime Laboratory Digest v.17, No.1 ((Jan.1990)*

I am also troubled that Luminol could disturb any GSR that may still be present on this clothing. Because of these concerns I have asked the Crime Lab to conduct a microscopic grid search of Raymond Jennings' uniform for any blood or gunshot residue that may be there.

1. Jacket
    a. Blood: High Velocity Blood Spatter
        i. Microscopic Grid Search
            1. Jacket Cuffs and Sleeves
            2. Zipper
            3. Pockets
                a. Blood transfer if any
    b. GSR
        i. Review prior GSR test on Sleeves
        ii. Pockets
        iii. Inner pockets and jacket lining
    c. DNA
        i. Type any genetic material
    d. Hair and Fiber
        i. How much contact between victim and defendant at scene?
        ii. Compare any found material to the victim, her car, clothing or home
2. Pants
    a. Blood: High Velocity Blood Spatter
        i. Microscopic Grid Search
            1. Front of Legs
            2. Zipper
            3. Pockets
                a. Blood transfer if any
    b. GSR
        i. Pockets
        ii. Waistband
    c. DNA
        i. Type any genetic material BEFORE obtaining sample from defendant to avoid O.J. planting suggestions by the defense

ii. DNA samples ever collected from defendant?

d. Hair and Fiber
   i. How much contact between victim and defendant at scene?
   ii. Compare any found material to the victim, her car, clothing or home

3. Shirt
   a. Hair and Fiber
      i. How much contact between victim and defendant at scene?
      ii. Compare two hairs found to the victim, her car, clothing or home
   b. Blood: High Velocity Blood Spatter
      i. Results of Hair and Fiber comparison
      ii. Microscopic Grid Search
         1. Shirt collar and front
            a. Cold and windy
            b. Short sleeve shirt under jacket
   c. GSR
      i. Pockets (missing casing?)
   d. DNA
      i. Type any genetic material

I will provide copies of this request to crime lab representatives from the Physical, Biological and Firearms sections today, and will request a meeting at the lab tomorrow morning with case detectives present. Obtaining even preliminary results from the tests on the clothing, hair evidence and cartridge casings is my top priority.

Also, while exploring alternatives last week, I spoke with a representative from the FBI National Law Enforcement Technology Center in El Segundo. Though not a "certified crime lab" or even a crime lab in the traditional sense, this government space shuttle group uses some of the most advanced technology in the world and makes it available to law enforcement agencies free of charge, but this is high-end testing and there is a limited budget for it. NLETC is capable of testing materials and fibers at the molecular level, and they excel at tool mark analysis. This option should be considered as a last resort if our local lab is unable to arrive at any conclusive results.

I hope this update is useful. Please let me known if there are any questions.

mb

c: LASD Detectives Richard Longshore and Diane Harris
LASD Crime Lab (Biological, Physical and Firearms Representatives)

EXHIBIT 4

2011 WL 6318468
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal, Second District,
Division 8.

The PEOPLE, Plaintiff and Respondent,
v.
Raymond Lee JENNINGS,
Defendant and Appellant.

No. B222959. | (Los Angeles County Super. Ct. No. MA033712). | Dec. 19, 2011.

APPEAL from a judgment of the Superior Court of Los Angeles County. Lisa M. Chung, Judge. Affirmed.

Attorneys and Law Firms

Stephen Temko, under appointment by the Court of Appeal, for Defendant and Appellant.

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Opinion

RUBIN, J.

***1** Raymond Lee Jennings appeals from the judgment following his conviction for the second degree murder of Michelle O'Keefe. We affirm.

FACTS AND PROCEEDINGS

In the afternoon of February 22, 2000, 18–year–old Michelle O'Keefe and her friend, Jennifer Peterson, drove together from Palmdale to Los Angeles. Their destination was a film shoot for a music video in which they were appearing as extras. O'Keefe left her Mustang parked underneath a light post at a Park–and–Ride commuter parking lot in Palmdale, and drove to Los Angeles with Peterson in Peterson's car. The film shoot lasted about six hours, after which O'Keefe and Peterson returned to Palmdale. O'Keefe's cell phone records established that they got back to the largely empty Park–and–Ride lot at 9:22 or 9:23 p.m. Peterson stopped next to O'Keefe's Mustang. O'Keefe got out and moved her belongings from Peterson's car to her Mustang. Among her belongings, O'Keefe carried a change of clothing because the "club" clothing she had worn for the video—a tube top and knee-length skirt—was not suitable for her evening college class which she had planned to attend after the video shoot. O'Keefe got into her car and started the engine and Peterson drove away. O'Keefe then apparently moved her car from under the light post near the center of the lot to a more remote parking space on the lot's northern edge.

At 9:32 p.m., appellant Raymond Lee Jennings, who was the parking lot's security guard on duty that night, radioed his supervisor, Iris Malone, to report that gunshots were being fired in the lot. Supervisor Malone drove to the lot, arriving at 9:42 p.m. She stopped near appellant's car next to the parking lot's entrance, but did not see appellant. After two or three minutes, appellant emerged and approached Malone's car; although she did not explicitly say so, the implication of her testimony is he emerged from behind his car. (A. "I stopped and waited for him to proceed to come out wherever he was at. Q. When he came out, what did he do? A. He approached the patrol unit.") Appellant pointed to O'Keefe's Mustang, which was resting with its rear wheels in a planter about 400 feet away. Appellant told Malone the Mustang's lights were on and its engine running; Malone could see the lights but could not hear the engine. A sheriff's investigator later established with acoustic tests at the parking lot that where Malone and appellant had been standing he could not hear a car engine running at the Mustang's location. Malone directed appellant to get into her patrol car and accompany her to the Mustang. Appellant refused. Malone therefore drove to the Mustang alone, while appellant remained at the parking lot entrance. Drawing near the Mustang, Malone saw O'Keefe's leg and foot outside the open driver's door. Using her flashlight, Malone peered at O'Keefe but saw no signs of life. Malone radioed appellant, told him to call the police, and instructed him to join her at the Mustang.

***2** In the meantime, Victoria Richardson was sitting with three other people in a parked car near the parking lot's northwest corner. They were smoking marijuana and listening to music. As Richardson partied with her companions, she noticed a security guard walk past her car. She then heard a

car alarm sounding and "tapping" sounds. About four minutes later, a security car with flashing lights drove past. At that time, she decided to leave the parking lot. As she and her companions began driving out of the lot, she saw O'Keefe's Mustang up on a planter and O'Keefe slumped over the steering wheel. Noticing appellant, Richardson stopped and asked him what had happened. He answered he did not know. Richardson and her companions then left the lot.

Appellant walked to the Mustang as directed by Malone. When he got there, he kicked a shell casing, which he picked up. Because he did not have his work flashlight with him, he borrowed Malone's. Inspecting the shell, he told Malone it was a nine millimeter shell casing. Waiting for law enforcement, appellant and Malone remained near the Mustang. At 9:49 p.m., Deputy Billy Cox arrived. He got out of his patrol car and spoke to Malone, who was standing about 15 or 20 feet from the Mustang. Malone reported someone had been shot. Cox approached the car, at which point he could hear the engine running. The Mustang's manual transmission was in neutral and the emergency brake was disengaged. One of O'Keefe's breasts was partially exposed.

Deputy Cox checked O'Keefe for a pulse, but found none. He also checked her pupils, which were unresponsive to light. A later autopsy established O'Keefe had suffered multiple wounds. The first was blunt force trauma to her forehead, likely caused by an object other than a fist. The blow to O'Keefe's forehead probably stunned or dazed her, but did not knock her unconscious. O'Keefe then suffered four gunshot wounds. The first shot was to her chest through her upper left breast. When O'Keefe's killer fired this first fatal shot, the gun was touching O'Keefe's jacket which she was wearing over her tube top. In less than one minute she would have lost consciousness, and died within five minutes. While she remained conscious, she could have moved her hands and fingers. However, O'Keefe's hand movement would have stopped and her pulse become undetectable upon suffering her second and third gunshot wounds to her left cheek and neck—the sequence is unclear—fired from two or three feet away. The fourth and final shot was to the inner corner of O'Keefe's left eye.

Sheriff's Detectives Diane Harris and Richard Longshore arrived about three hours after the shooting. The detectives discovered in the Mustang O'Keefe's wallet containing credit cards and $111 in cash. They also discovered two expended projectiles and three shell casings on the ground between the parking spot where O'Keefe had moved her car after her friend Peterson left and the car's resting place in the planter. A firearms expert later concluded the five objects came from the same nine millimeter handgun.

***3** In interviews with sheriff's investigators the night of O'Keefe's murder, appellant stated he had been on foot patrol in the parking lot at 9:34 p.m. when he heard a car alarm followed by a gunshot. Crouching behind his car to take cover, he looked up and saw O'Keefe's Mustang rolling backward toward the planter. He heard five more shots and could hear the engine as the car moved, but he did not see the shooter. When the shooting stopped, he did not see anyone leave the area by foot or by car. He radioed supervisor Malone, who arrived about eight minutes later. Instead of going to the Mustang with Malone, he remained by his car because he did not know whether the shooter was still in the parking lot. When he saw O'Keefe for the first time after joining Malone at the Mustang, he noticed O'Keefe had a pulse and saw her hands twitch. Appellant's statements to investigators the night of the murder were the first of several interviews he had with sheriff's detectives between February 2000 and his arrest for O'Keefe's murder in 2005. We discuss those additional interviews in greater detail in the Discussion section of this opinion, *post.*

Three days after O'Keefe's murder, appellant quit his security guard job. He told the security company he was quitting because he had another job promoting a musical band. He did not tell the company he was worried about his safety.

In 2005, detectives arrested appellant and the People thereafter filed a one-count information charging appellant with O'Keefe's murder. Appellant pleaded not guilty. He was tried by jury three times. The first two trials, each of which took place "for administrative reasons" in downtown Los Angeles at the direction of superior court officials after appellant unsuccessfully moved for a change of venue from the Antelope Valley because of publicity surrounding O'Keefe's murder, resulted in mistrials. The first trial took place in the spring of 2008, with the jury hanging 9–to–3 in favor of guilt. The second trial took place in February 2009, with the jury hanging 11–to–1 for conviction. Following the two mistrials, the matter was returned to Antelope Valley for a third trial. After 12 days of deliberations, the Antelope Valley jury convicted appellant of second degree murder. The court sentenced appellant to state prison for 40 years. This appeal followed.

DISCUSSION

1. Sufficiency of the Evidence

Citing the absence of direct evidence tying him to O'Keefe's death, appellant contends the evidence was insufficient to permit a rational jury to find beyond a reasonable doubt that he murdered Michelle O'Keefe. He notes, for example, that no eye witness identified him as O'Keefe's killer. Investigators never recovered the murder weapon. A sexual assault kit did not find appellant's DNA on O'Keefe, and unidentified DNA found under her fingernails was not appellant's. Investigators did not find on appellant's security guard work uniform any gunshot residue, blood, or fibers from O'Keefe's clothing. Hair found on O'Keefe's body was not appellant's, and hair discovered on appellant's uniform was not O'Keefe's.

***4** "When a defendant challenges the sufficiency of the evidence, ' "[t]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citation.]' [Citations.] 'Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence. [Citation.]' [Citations.] We ' " ' "presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." ' " [Citation.]' [Citation.]" (*People v. Clark* (2011) 52 Cal.4th 856, 942–943.)

Appellant sees a "striking resemblance" between his case and the facts in *People v. Blakeslee* (1969) 2 Cal.App.3d 831 (*Blakeslee*). In *Blakeslee,* a teenage girl was convicted of murdering her mother. Investigators never recovered the murder weapon. Additionally, investigators could not link the girl to a murder weapon, nor could they establish the caliber and type of gun the girl allegedly used. (*Id.* at p. 840.) The *Blakeslee* court summarized the absent evidence as follows: "[T]he missing evidence is not peripheral but is central to the charge of murder. It consists of (1) evidence of a murder weapon, which we do not have; (2) evidence linking the bullets which caused the victim's death to a particular weapon, which we do not have; (3) in the absence of the first two items, evidence of the type or caliber of weapon used for the murder, which we do not have; (4) evidence to establish a connection between a murder weapon and the defendant, either tangible evidence such as fingerprints, palm prints, or powder burns, or testimonial evidence linking the defendant in some manner to a weapon, which evidence we do not have." (*Id.* at pp. 839–840.)

To counter the lack of direct forensic evidence, *Blakeslee's* prosecutor argued the daughter was guilty based on her having had the opportunity to kill her mother: The daughter had been in the mother's house five or ten minutes before the killing and, after leaving briefly, returned to the home about ten minutes after her death. The prosecutor also relied on the daughter's conflicting and inaccurate statements to police. (*Blakeslee, supra,* 2 Cal.App.3d at pp. 838–839.)

Blakeslee found the evidence against the daughter was insufficient because it pointed with equal force to the daughter's teenage brother since he, too, had an opportunity to kill the mother. Moreover, the daughter's conflicting and inaccurate statements to police were, in the appellate court's view, credibly explained as the daughter's misguided attempt to draw police attention away from her brother based on her plausible suspicion that he had killed their mother. (*Blakeslee, supra,* 2 Cal.App.3d at p. 840.) As in *Blakeslee,* where the daughter had an opportunity to kill her mother and made conflicting and inaccurate statements to police, appellant concedes he had the opportunity to murder O'Keefe because he was in the area when she was killed. Also as in *Blakeslee,* appellant acknowledges conflicting and inaccurate statements to sheriff's investigators. Based on what he perceives as the similarities between *Blakeslee* and the strictly circumstantial case against him, appellant contends that, as in *Blakeslee,* we should reverse his conviction.

***5** We find *Blakeslee* not particularly helpful because "[w]hen we decide issues of sufficiency of evidence, comparison with other cases is of limited utility, since each case necessarily depends on its own facts." (*People v. Thomas* (1992) 2 Cal.4th 489, 516.) "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) We find the evidence against appellant was sufficient to permit the jury to convict him of murdering O'Keefe. (*People v. Bean* (1988) 46 Cal.3d 919, 933 [conviction may rest on circumstantial evidence alone].) As we shall explain, relying on circumstantial evidence and appellant's evolving and, at times, inconsistent statements to sheriff's investigators, the prosecution presented a case in which appellant's likely sexual approach toward O'Keefe went badly wrong, resulting in her death. The prosecution's

theory was appellant's motive was not robbery because appellant left behind O'Keefe's wallet containing credit cards and $111 in cash. His motive was not, the prosecution argued, car jacking or auto theft because he did not take the Mustang. Appellant's motive was instead sexual because O'Keefe was found with her breasts exposed. And, indeed, appellant himself reinforced a sexual context to O'Keefe's murder by telling his wife that O'Keefe was a prostitute based on her attire.

The prosecution relied on appellant's evolving and inconsistent statements to sheriff's investigators to support the prosecution's theory of the case. About two hours after the shooting, appellant told deputies that he had been patrolling the parking lot when he heard a car alarm go off at 9:34 p.m. Turning in the alarm's direction, he heard a gunshot and saw the Mustang rolling backwards. As the car rolled toward the planter, appellant heard five more gunshots. Appellant told deputies that he saw no one leave the parking lot after the shooting.

About two hours after speaking with deputies, appellant spoke with Sheriff's Detective Longshore. Appellant told Detective Longshore that he (appellant) had been on foot patrol in the parking lot when he heard at about 9:30 p.m. the car alarm and then a single gunshot. Taking cover behind his car, he looked up to see the Mustang rolling backwards. He then heard five more gunshots. He could also hear the Mustang's engine. He stayed by his car after the shooting ended because he did not know if the shooter remained in the parking lot. He told Detective Longshore he did not see anyone leave the parking lot by foot or car.

About one month later on March 23, 2000, Sheriff's Detectives Longshore and Harris interviewed appellant at his home. Appellant told them he did not remember any details about the murder that he had not already disclosed to them. He reiterated that he did not see anyone leave the parking lot after the shooting. Detective Harris told appellant that investigators had received in the weeks since the shooting a statement from Victoria Richardson who had reported speaking to him in the parking lot that night. In response, appellant for the first time told the detectives that immediately after the shooting a female driver had stopped to ask him whether gunshots had been fired. His description of the driver matched Richardson, and his recounting of what he and Richardson said to each other coincided with her statement to detectives.

***6** About two weeks later on April 7, 2000, appellant voluntarily participated in a day-long cognitive interview with sheriff's detectives to go over everything he remembered or could deduce about events involving O'Keefe's murder. He told the detectives that he had checked his watch at 9:20 or 9:25 p.m. when the Mustang's car alarm sounded. He started to walk toward the Mustang, but within 30 or 40 seconds he heard a single gunshot. He hid behind his car and the alarm stopped. Appellant suggested to the detectives that O'Keefe had silenced the alarm, started the engine, and put the car into reverse after sustaining her first gunshot wound. Standing up from behind his car, appellant saw the Mustang rolling backward when he heard additional gunshots about 10 or 15 seconds after the first shot had sounded. Appellant dropped back behind his car and radioed his supervisor.

Supervisor Malone arrived about five minutes later. She drove to O'Keefe's car and then summoned appellant to join her by the Mustang. As he walked toward Malone, a gray sedan stopped and its driver (Victoria Richardson) asked him if someone had been shot. He told the driver he did not know. The reason he had belatedly remembered only two weeks earlier that the driver had stopped to speak with him was that detectives had triggered his memory of the encounter when they told him the driver had contacted the police about the shooting and had reported speaking to a security guard. He told the detectives it did not cross his mind to ask the driver to stay until deputies arrived. Upon arriving at the Mustang, appellant borrowed Malone's flashlight to search the ground, where he found a bullet casing and slug that appeared to be .38 caliber. Looking at O'Keefe, he saw a faintly detectable pulse, her hands were twitching, and her breasts "were hanging out." His initial impulse was to remove O'Keefe from the car in order to administer first aid, but decided not to because he did not want to disturb a crime scene. He surmised that the bullet wound to O'Keefe's chest was her first gunshot wound because it appeared to have been fired at close range. Based on her other wounds, he believed the shooter had fired through the partly-open driver's side window and was a good shot because there were no bullet holes in the car itself. He also stated all the wounds appeared to have been from the same gun. Additionally, he told detectives, O'Keefe's attire indicated she was a prostitute, but she had not been raped. Finally, he told detectives that he "had seen death" during his National Guard training and service in which he had observed a soldier accidentally killed by machine gun fire when the soldier had panicked during a training exercise, and had witnessed a drill sergeant die in a mishap involving a grenade. Appellant confessed, however, two years later during his civil

deposition in the O'Keefe family's wrongful death lawsuit against him and others that he had fabricated the two military deaths in order to impress the detectives.

*7 Drawing from appellant's multiple and varying statements to investigators, the prosecution argued the following incriminating circumstances proved appellant's guilt. First, the prosecution argued the implausibility of appellant's not seeing the shooter. Appellant reported watching the car roll back toward the planter, yet he never saw the shooter who was walking alongside the car firing repeatedly at close enough range to hit O'Keefe with each shot without hitting the car itself.

Second, appellant repeatedly stated he saw no one leave the parking lot after the shooting, only to be contradicted by Victoria Richardson's statement to investigators about her encounter with appellant.

Third, he claimed he stayed next to his car, and refused to accompany supervisor Malone to the Mustang, because he feared the shooter might still be in the parking lot after the shooting. However, when Malone ordered him to join her at the Mustang he walked to her without taking cover or other evasive action from the shooter that he supposedly feared might still be nearby.

Fourth, he recounted an unsubstantiated encounter with occupants of a pick-up truck a few nights after the shooting. According to appellant, two men drove up to him during his shift at the parking lot and questioned him about the shooting. Because their curiosity alarmed him, he claims he called the sheriff's station to report them. Appellant claimed a sheriff's deputy visited him at the parking lot in response to his call. Appellant further claimed he gave the deputy a partial license plate for the truck, which allowed the deputy to locate the truck and speak to its occupants. After talking to the occupants, the deputy supposedly returned to the parking lot to tell appellant the occupants were harmless kids. However, the sheriff's department had no record of appellant calling the station or of a deputy responding to a call, even though the department would ordinarily have records if such had taken place. The prosecution theorized that appellant fabricated the story about the truck to misdirect detectives into believing its occupants might have been involved in O'Keefe's murder.

Fifth, appellant claimed to have seen O'Keefe's faint pulse and twitching hands when he joined supervisor Malone near the Mustang. Medical experts testified all of O'Keefe's outward signs of life would have ceased no later than a minute or two after the shooting. It was medically impossible, according to medical expert testimony, for appellant to have seen O'Keefe's hands twitching and her pulse by the time he joined Malone at the Mustang more than 10 or 15 minutes after the shooting. The prosecutor theorized that appellant saw O'Keefe's ebbing signs of life as he fled from her after shooting her. Those images are what he reported seeing, and his awareness that she did not die instantly, and his concomitant fear she might still be alive and thus able to identify him minutes later, explained, the prosecution argued, his resistance to approaching the Mustang with supervisor Malone.

*8 Sixth, O'Keefe had been struck in the forehead with a blunt object. Appellant ordinarily carried a flashlight while walking his rounds of the parking lot at night in the dark. He did not, however, have his flashlight when he joined Malone at O'Keefe's Mustang. The absence of appellant's flashlight was consistent with his having hidden it so that investigators could not find it after he used it to strike O'Keefe.

Seventh, detectives held back from public disclosure certain details about O'Keefe's murder, but appellant knew those details. He knew, for example, the time O'Keefe arrived at the parking lot upon her return from the video shoot in Los Angeles. He knew that one gun fired all the shots. He knew the murder weapon's caliber. He correctly identified a gouge in the asphalt near the Mustang as caused by an errant, perhaps unplanned, misfire by the shooter before the shooter took aim at O'Keefe. He accurately described the sequence of bullets as later established by the autopsy. He knew O'Keefe had not been raped. Based on appellant's ability to "read" the crime scene with an uncanny accuracy despite having no law enforcement training, the prosecution argued appellant implicated himself by revealing that he knew things only O'Keefe's murderer would know.

Finally, the shooter displayed skilled marksmanship. O'Keefe's three head wounds particularly required skill because O'Keefe was a moving target as the Mustang rolled backward. A firearms expert testified training and practice was required to inflict those wounds, the type of training and practice appellant received in his National Guard service. Additionally, the type and sequence of bullets used showed sophistication involving firearms. The shooter used two types of bullets: The first two, the first of which was apparently misfired into the ground and the second into O'Keefe's chest, were hollow point bullets, which flare out upon impact to

cause greater incapacitating trauma than a full metal jacket bullet, which does not flare out; the last three, which were aimed at O'Keefe's head, were full metal jacket bullets. Members of the military are taught to shoot first at a target's upper body because it offers a large surface area to hit. If shots to the upper body do not incapacitate the target, members of the military are taught to shoot at the target's head. For someone experienced with guns through military training, the sequence of two hollow point shots, one of which was aimed at O'Keefe's chest, followed by three full metal jacket shots to her head, was not by chance.

In sum, although the evidence against appellant was circumstantial supported by his statements to investigators, we find the prosecution presented a case of sufficient strength that a rational jury could conclude beyond a reasonable doubt that appellant murdered Michelle O'Keefe. (Contrast *Blakeslee, supra,* 2 Cal.App.3d at p. 840["[W]e have a conviction for murder based on defendant's presence at the scene of the crime five to ten minutes before and five to ten minutes after the crime, and on the fact that [the defendant] told a false story to the police about her movements that night. This evidence does not reasonably inspire confidence in defendant's guilt, and we think it insufficient to constitute proof beyond a reasonable doubt."].)

2. Testimony of Forensic Behavioralist Mark Safarik

***9** Mark Safarik is an expert consultant in behavioral and forensic analysis of violent crimes. Appellant contends Safarik's testimony was not proper expert testimony because Safarik did not testify about anything beyond the understanding of lay jurors. We find that regardless of whatever merits may apply to appellant's contention, no reversible error occurred.

In late 2006 following appellant's arrest and more than six years after O'Keefe's murder, the prosecution asked Safarik to analyze the killing. In his testimony, Safarik told the jury that the prosecution directed him to consider two questions: First, "what happened" as the crime unfolded; second, the murderer's "motive" in the hope of understanding why the crime took place. He explained his analysis involved a "two-part process.... Every crime tells a story and sometimes the stories are very complex. They're very hard to understand because you have so much going on and ... sometimes it's behavior that is not often seen. So what we're trying to do is figure out what is that story? What is being told by what happens at this crime scene?"

He told the jury that the "first part of that process is an analytical part and what I'm doing there is I'm looking at the crime—not only the crime scene, but the crime, so what's going on before, during, and after the crime and then I'm looking at the crime scene." The data on which he relied for the first step in his analysis included initial crime reports, including crime scene photographs and other representations of the scene, such as diagrams and sketches; the autopsy report and photographs; and initial witness statements. He testified "I really am looking for everything that's associated with the initial crime scene." He told the jury he did not look at "anything that is related to suspects." He also did not consider anything found or generated "years later" because his interest is in the crime scene as it existed when the crime took place.

Relying on the crime scene data that he had described, Safarik identified several topics he analyzed in determining "what happened ." He considered "victimology," hoping to understand why O'Keefe, and not someone else, was murdered that night at that parking lot. For example, was there something about her or what she was doing that contributed to her death? He also considered the cause of her death, including her injuries, their number, and their severity. He considered any weapon used, where it came from, and where it went. He studied any evidence of planning or organization by the perpetrator with the aim of determining whether the perpetrator murdered O'Keefe impulsively. He also considered the perpetrator's motive, and whether the perpetrator maintained or lost control of O'Keefe, thereby suggesting escalation in the confrontation between the perpetrator and O'Keefe. After identifying the foregoing factors, he told the jury he considered them in their entirety. He explained, "So all of these things, all of these components, among other aspects both behaviorally and forensically, I'm looking at all of this. Not as a single piece of the puzzle.... Everything has to be looked at in the totality of the circumstances. [¶] Everything that is happening, this dynamic between the offender and the victim and the scene, are all working in concert. And when you look at all of this together in totality, you generally can start to understand what happened. What is going on here? What is the story the crime scene tells us? That's the first part, the analytical part." Safarik then testified about the second step of his two-part analysis. He told the jury the "second part is the interpretative part ... to interpret what all of this means, this totality of the circumstance...."

***10** The prosecutor's examination then moved toward inviting Safarik's description of how O'Keefe's murder

occurred. Defense counsel objected to the proposed line of questioning to the extent Safarik was proposing to "reconstruct" the states of mind or "personalities" of O'Keefe and her killer. Defense counsel did not object, however, to Safarik testifying "about the physical aspects of the case, things that you can glean from the physical aspects of this case." In response, the prosecutor told the court outside the presence of the jury that Safarik was not going to engage in profiling appellant or the perpetrator. The prosecutor assured the court that Safarik is "not going to be offering any opinion about a suspect.... He's not going to be offering any profile of the suspect. He's not going to profile [appellant] Raymond Lee Jennings." The court permitted Safarik's testimony to continue.

Safarik resumed testifying. He told the jury that O'Keefe was at low risk for being a crime victim given her personality, background, and behavior. She had no drugs or alcohol in her system at the time of death, and had no history of interpersonal conflict or romantic entanglement that might have motivated someone to kill her. In contrast to O'Keefe's low risk of being a victim, Safarik noted that O'Keefe's murderer assumed a high risk in choosing the parking lot to commit a crime. Because the parking lot was a commuter park-and-ride, most commuters who used the lot came and went in groups of two or more, thereby assuring some measure of safety in numbers. Also, a uniformed security guard patrolled the lot.

After assessing the relative risks faced by O'Keefe and her killer, Safarik testified to his reconstruction of events in the minutes before O'Keefe's murder. Relying on O'Keefe's cell phone records to establish the time O'Keefe returned to the parking lot and on appellant's radio call to supervisor Malone to mark the outer time limit of her murder, Safarik described a narrow window of time for the perpetrator to have acted. Within that window he described a scenario consistent with the prosecution's theory of how the murder unfolded. He testified that his analysis led him to conclude that the perpetrator contacted O'Keefe at her car, at which time she got out and stood next to her open door. The perpetrator then initiated a sexual assault by pulling down her tube top. The perpetrator then delivered a blunt force blow to O'Keefe's forehead, she retreated to her car to try to escape, the assault escalated to gunfire, and her Mustang rolled back until it rolled up onto the planter. Safarik excluded financial gain, such as robbery or car jacking, or gang activity as the reason for O'Keefe's murder. Instead, based on O'Keefe's tube tope having been pulled down, there was "a sexual assault piece to this homicide." Under the prosecutor's questioning, Safarik testified, "Q. Based on your entire analysis in this case, did you arrive at a conclusion about what was going on between the offender and Michelle O'Keefe when this crime occurred? ... A. I believe that the motive for this crime was sexual assault; that the offender intended a sexual assault. It wasn't well thought out and it escalated. It went bad quickly and it escalated into a homicide."

***11** A trial court may allow expert opinion testimony when it will help the jury understand evidence or matters beyond the jurors' common experiences. (*People v. Torres* (1995) 33 Cal.App.4th 37, 45.) "Expert opinion is not admissible if it consists of inferences and conclusions which can be drawn as easily and intelligently by the trier of fact as by the witness." (*Ibid.*) Appellant contends the court erred in allowing Safarik's testimony because his testimony amounted to little more than his "expert opinion" that no one but appellant could have been O'Keefe's murderer. Appellant did not, however, object to Safarik's testimony as improper expert opinion. [1] Appellant's objection at trial was to any testimony about O'Keefe's and her killer's states of mind. A ground for objection not raised at trial is not preserved for appeal. (*People v. Ward* (2005) 36 Cal.4th 186, 211.) Accordingly, appellant cannot now complain that Safarik should not have testified as an expert.

1 Appellant did move during his first trial in 2008 to bar experts "from offering speculative testimony regarding the type of crime committed or intended" but the record contains no indication that appellant made any similar motion during his third trial which is at issue here.

In any event, we are not persuaded that the court abused its discretion in allowing Safarik's testimony. Safarik was the only witness who testified that the killer's apparent motive was to commit a sexual assault that was poorly planned and quickly escalated to a homicide. This testimony may have been crucial to the prosecution's case because, without it, there was no evidence from which the jury might infer the motive or the perpetrator's intent in killing O'Keefe. (*People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1550–1551 ["The law does not disfavor the admission of expert testimony that makes comprehensible and logical that which is otherwise inexplicable and incredible."].) Alternatively, even if the court erred in allowing Safarik to testify, the error was not prejudicial because testifying to reasonable inferences drawn from the evidence is not prejudicial. (*People v. Prince* (2007) 40 Cal.4th 1179, 1222 [review erroneous admission of evidence for abuse of discretion].)

Appellant also contends Safarik's testimony was improper profiling evidence. His contention fails because Safarik's testimony was not profiling. "A profile is a collection of conduct and characteristics commonly displayed by those who commit a certain crime." (*People v. Robbie* (2001) 92 Cal.App.4th 1075, 1084.) Profiling is an unsound method of reasoning which moves from the general characteristics of a type of criminal, say a drug courier, to the specifics of the defendant's conduct to argue the defendant, by having those general characteristics, is that type of offender. (See *Robbie* at pp. 1084–1085.) Safarik's method of analysis did not constitute profiling because he did not opine about the general characteristics of murderers (with or without sexual overtones) to argue appellant was a murderer. Instead, Safarik described his deductions about how O'Keefe's murder unfolded. Safarik offered no opinion about whether appellant or anyone else was the murderer, which would have constituted improper profiling.

DISPOSITION

***12** The judgment is affirmed.

WE CONCUR: BIGELOW, P.J., and GRIMES, J.

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EXHIBIT 5

09-30-04

SPOKE WITH DDA BOB FOLTZ (661) 974-7700.

"KNOWS IN HIS HEART" THAT JENNINGS IS GOOD FOR IT, BUT CAN'T PROVE IT.

SENT EMAIL TO COUNTY COUNSEL RICK KEMALYN

09-30-04

JENNINGS WAS GUEST AT A LOCAL CHURCH FOR A "SUPPORT OUR MILITARY" EVENT.

DID NOT SPEAK OF POSSIBLE MOBILIZATION.

ASSIGNED TO: 956TH TRANS CO. 155 E. AVE I, LANCASTER

10-08-04

REC'D CALL FROM RETIRED DEPUTY SHERIFF GREG COLLINS, WHO WITH ANOTHER DEPUTY, IS A ~~REP~~ PVT. INV. (661) 296-8088

R. REX PARRIS HAS RETAINED THEM TO WORK ON O'KEEFE CASE.

10-08-04

PER ATTY. RICK KEMALYN, NEW DATE FOR CIVIL COURT HEARING IS 1-11-05

EXHIBIT 6

COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY REPORT

DATE: MARCH 11, 2005 FILE NO.: 000-02442-2602-011

C: MURDER - 187 PC
ROBBERY - 211 PC

ACTION: D.A. REJECT ISSUED

V: O'KEEFE, MICHELLE THERESE FW/18
DOB: 10/11/1981 CC #2000-01462

D: 02/22/2000 (TUESDAY) @ APPRX. 2135 HRS

L: PARK & RIDE PARKING LOT,
100 EAST AVENUE "S", PALMDALE

S: UNK.

On February 23rd, 2005, after reviewing the investigative file on this matter for 2 years, the District Attorney's Office issued a 5 line reject, citing insufficient evidence. The Charge Evaluation Worksheet was prepared by DDA Robert B. Foltz, and read:

> "The suspect shoots victim in Park n Ride lot. He is the security guard who was at the lot on duty at the time of the shooting, no wits ee the event, no murder weapon is recovered, no cop out statements, no GSR of suspect. There simply is insufficient evidence to prove beyond a reasonable doubt that Jennings (susp) did the killing."

End of report.

By: Sergeant Richard Longshore, #054719
Approved: Sergeant Paul Mondry
Homicide Bureau, Detective Division

SEE-EN

EXHIBIT 7

Gonzalez, Cristina C.

From: Sewell, Ken L.
Sent: Friday, April 14, 2006 4:54 PM
To: Gonzalez, Cristina C.
Cc: Taylor, Robert W.
Subject: 000-02442-2602-011

Cris,

Det Harris came in this afternoon and brought several items of evidence. They have no real evidence and a window of 30 minutes unaccountable. You were involved in this case in 2000. I know you have other cases going. I don't have a hard date for the analysis, but I think they have scheduled a prelim date.

The box of evidence is on the table in the exam room. Evidence was closed by the time Harris got all her receipts done so the evidence is in my name in ETS. The case file is on my desk

They would like the following items examined:

1. SA E kit collected from victim examined. Sue Sherman might be able to do this. She needs a coroner's kit to look at. She might be able to do the screening if she had a little supervision by an experienced examiner with knowledge of the case. (Hint, Hint.)
2. Bl ack security jacket looked at for blood. The DA would like a microscopic examination. I suggested mapping followed by luminal but he wants the microscopic examination like they do on CSI. You know where they look at every square inch with a super sensitive microscope with the great graphics, right down to the sub-atomic level. I digress. Needless to say I will discuss this with him.
3. Hai rs and fibers collected from jacket. Physical will handle. Lou was present and talked to Det. Harris
4. F ingernail scrapings for foreign DNA.
5. F ibers collected from victim's clothing. Hair collected from under victim's index finger. Hair collected from chest. Physical will look at these. If we have a root they might come back to us.
6. Bl oodstain from victim's sandal.

I looked at the scene photos. The interior of the mustang is light grey. No sights of high velocity spatter on the seats, door panels or windows. Windows are intact. Manuel Munoz was at the scene. There is no mention of any patterns in this report.

Kenneth L. Sewell
Forensic Biology Section
Scientific Services Bureau
(213) 989-2160
klsewell@lasd.org

EXHIBIT 8

THE EHRLICH LAW FIRM

Jeffrey Isaac Ehrlich
Certified Appellate Specialist
California Board of Legal Specialization

jehrlich@ehrlichfirm.com
www.ehrlichfirm.com

Please reply to the Encino Office

March 2, 2016

Via First Class Mail and
Email: CRU@da.lacounty.gov

Mr. Ken Lynch
Assistant Head Deputy District Attorney
Los Angeles County District Attorney's Office
Conviction Review Unit
211 W. Temple St.
Room #1125
Los Angeles, CA 90012

CONVICTION REVIEW REQUEST FOR RAYMOND JENNINGS

Dear Mr. Lynch:

On October 2, 2015, I sent you a letter requesting that Conviction Review Unit (CRU) review the conviction of my client, Raymond Jennings. The letter was 34 single-spaced pages long, and was supported by a separate compendium of evidence ("compendium") that provided the documentation for the factual statements in the letter.

I have received in response to the letter the CRU's "Conviction Review Request" form. I have re-typed the 23 questions posed on the form below, and have answered each question. Accordingly, please consider this letter to be Jennings's response to the form, and consider my earlier letter as a supplement to his request for review of his conviction.

1. *Convicted person's name*: Raymond Lee Jennings
2. *Convicted person's date of birth*: May 8, 1974
3. *Is the convicted person incarcerated:* Yes.
4. *Information about incarceration location and identification:*
    a. CDC Number: AD0123
    b. Prison: California State Penitentiary Centinela
    c. Cell location: D5-210
    d. PO Box: 931
    e. City, State, Zip: Imperial, CA 92251
5. *Court where Jennings was convicted and sentenced*: Los Angeles County Superior Court, Antelope Valley Courthouse, 42011 4th St., Lancaster, CA 93534

6. *LA Superior Court case number*: MA033712

7. *Convicted of violating following Penal Code sections*: 187(a); 12022.53(b), (c), and (d).

8. *Date of conviction*: December 18, 2009

9. *Date of sentencing*: February 18, 2010

10: *Sentence imposed*: 40-years to life

11. *Expected release date*: Not before February 2045

12 *How was person convicted?*

a. Jury trial. (Case was tried 3 times, ending in a hung jury the first two times.)

13. *Is the conviction currently being challenged on appeal?* No. The conviction was affirmed on appeal, in an unpublished opinion in case no. B222959, dated Dec. 19, 2011.

14. *Is there a habeas corpus petition currently pending before a court?* Yes. U.S. District Court for the Central District of California, *Jennings v. Miller,* Case No. CV 13-4692-SJO (AGR)

15. *Has a habeas corpus petition ever been filed regarding the conviction?* Yes. U.S. District Court for the Central District of California, *Jennings v. Miller*, Case No. CV 13-4692-SJO (AGR)

16. *Did the person who was convicted give a statement to law enforcement when arrested?* No. Jennings voluntarily spoke at length with Sheriff's investigators about the case before he was arrested. He has, at all times, maintained his innocence and has denied any involvement in the crime.

17. *Did the person who was convicted testify at trial?* No. However excerpts from his testimony in a civil deposition were played to the jury, as were excerpts of his interrogation/interviews with the Sherriff's investigators.

18. *What new evidence, if any, exists that was not known at the time of trial.*

18(a) New evidence concerning the absence of gunshot residue on Jennings on the night of the shooting.

(1) Evidence concerning the state of Jennings' uniform jacket:

The victim, Michelle O'Keefe, was shot in a Park-and-Ride parking lot in Palmdale, at approximately 9:30 p.m. on February 22, 2000. The night of the shooting was cold and blustery. Three days after the shooting, Jennings quit his job and turned in to his employer the security-guard uniform that he had worn on the night of the shooting. It was collected by the employer and provided to the Sheriff's Department for testing that day. The Sheriff's Department Scientific Services Bureau notes concerning the uniform jacket specifically state that when it was examined, it was "worn and dirty" and did not

look like it had been washed. (Compendium pp. RLJ 166, 167.) Likewise, the uniform pants collected from Jennings were also described as "worn and dirty" by the criminalist who examined them.(*Id.* p. 167). There is no evidence that Jennings washed his uniform jacket or pants after the night of the incident before releasing them to All Valley Security, which then provided them to the sheriff.

Yet, in closing argument, the prosecutor told the jury that, because Mr. Jennings had been in possession of the uniform jacket for a few days before it was collected, "that destroys any value any evidence of this forensic evidence could have ever had. Okay? Big surprise, there is not a lot there. He had it for six days." (20 RT 7290.) Mr. Blake later argued that, "the type of evidence that we were searching for is the type of evidence that could be easily destroyed or rendered undetectable or even brushed or washed away. You are talking about blood evidence. You are talking about hair, fiber. You are talking about gunshot residue. There is no surprise that there is none of this stuff in this case that points anywhere on either side." (7 RT 7290, 7291.)

Unfortunately, Jennings's defense counsel appears to have been unaware that the crime lab's notes showed that the clothing, and the jacket in particular, had not been washed. He therefore failed to present that evidence to the court or to the jury during the trial. Accordingly, the fact that the jacket had not been washed — and hence that no GSR had been washed off — is new evidence.

(2) New expert testimony concerning the significance of the absence of gunshot residue on Jennings's uniform jacket

As part of my investigation of the case for Mr. Jennings's habeas petition, I have retained Technical Associates, Inc. (TAI), a company that provides criminalistics services, including DNA analysis, gunshot-residue (GSR) analysis, and crime-scene examination and reconstruction. The President and Lab Director for TAI, Marc Taylor, has reviewed the evidence in the case concerning the gunshot residue, and will be providing me with a report. I do not yet have the final report, but will forward it when it is complete. Mr. Taylor's conclusions will include the following new information concerning the absence of GSR on Mr. Jennings's uniform jacket:

"During the trial, one of the Sheriff's criminalists who worked on the case, Ms. Gonzales, testified on behalf of the prosecution that she had examined the uniform jacket that Mr. Jennings was wearing on the night of the shooting, and that all of her tests for blood spatter were negative. She also testified that the jacket had been collected from Mr. Jennings six days after the shooting, and that two GSR stubs were collected, one from each of the jacket sleeves, though she made no mention of whether or not those GSR stubs were ever tested using Scanning Electron Microscopy/Energy Dispersive Spectroscopy (SEM/EDS) analysis. She did state that no evidence of gunshot residue was observed using low power light microscopy.

"Ms. Gonzales also testified that gunshot residue can be removed from clothing by rubbing the clothing or washing it. She further testified that, "after a certain amount of time, you just can't -- can't detect the G.S.R. [gunshot residue] if it was deposited." But she further elaborated that lightly brushing might be sufficient to remove gunshot residue that had been deposited on someone's hands. She added that brushing could "possibly" remove it from clothing, but that because of the weave of the material in the jacket that Jennings was wearing on the night of the shooting, the residue was more likely to adhere to the jacket than to his hands.

"Based on my training and experience, and the information that I have reviewed in this case, I have formulated the following opinions concerning the absence of gunshot residue on the uniform jacket and its relevance to the case.

a. I agree with Ms. Gonzales' testimony that the fabric nature of the uniform jacket that Mr. Jennings was wearing on the night of the shooting would have made it likely that gunshot residue would have adhered to it if Mr. Jennings had fired a gun while wearing the jacket.

b. I strongly disagree with the prosecutor's statements to the jury that the fact that the uniform jacket had been in Mr. Jennings's possession for six days before it was collected for testing "destroys any value" of gunshot residue testing; specifically that the absence of gunshot residue sheds any light on Mr. Jennings' guilt.

c. The Sheriff's Department Scientific Services Bureau notes concerning the uniform jacket specifically state that when it was examined, it was "worn and dirty." Likewise, the uniform pants collected from Mr. Jennings were also described by the criminalist who examined them as "worn and dirty." Accordingly, there is no evidence that Mr. Jennings washed his uniform jacket or pants after the night of the incident and prior to releasing them to Sheriff's possession.

d. In light of the Sheriff's Department's notation of the condition of the uniform jacket and pants as "worn and dirty," I would expect that, if Mr. Jennings had fired a gun while wearing the jacket on the night of the shooting — particularly if he had fired a gun multiple times as the assailant did in this case — that GSR would have been deposited on the jacket, and likely would have been detectable six days later if the jacket was not washed in the interim. Accordingly, the absence GSR on the jacket is evidence that Mr. Jennings did not fire a gun on the night of the shooting, while wearing the jacket.

18(b) New evidence undermining the prosecution theory that the shooting was committed by someone with tactical firearms training and expertise

During the trial, the prosecution's theory was that various aspects of the shooting suggested that it had been committed by someone who was highly trained and proficient in handling a firearm. As the Court of Appeal explained it in its opinion:

> Finally, the shooter displayed skilled marksmanship. O'Keefe's three head wounds particularly required skill because O'Keefe was a moving target as the Mustang rolled backward. A firearms expert testified training and practice was required to inflict those wounds, the type of training and practice appellant received in his National Guard service. Additionally, the type and sequence of bullets used showed sophistication involving firearms. The shooter used two types of bullets: The first two, the first of which was apparently misfired into the ground and the second into O'Keefe's chest, were hollow point bullets, which flare out upon impact to cause greater incapacitating trauma than a full metal jacket bullet, which does not flare out; the last three, which were aimed at O'Keefe's head, were full metal jacket bullets.
>
> Members of the military are taught to shoot first at a target's upper body because it offers a large surface area to hit. If shots to the upper body do not incapacitate the target, members of the military are taught to shoot at the target's head. For someone experienced with guns through military training, the sequence of two hollow point shots, one of which was aimed at O'Keefe's chest, followed by three full metal jacket shots to her head, was not by chance. (2011 WL 6318468, at p.*8.)

Putting aside for the moment that the trial record did not actually support the court's statement, Jennings's trial counsel did not retain any type of firearms expert to evaluate or comment on the state's theory and evidence. I have retained firearms expert, Mr. Ronald R. Scott, the owner of Forensic Firearms & Ballistics, in Phoenix, Arizona. Mr. Scott was a 25-year veteran of the Massachusetts State Police, and spent half his career in the Ballistics Section. He was the Commanding Officer of the main and sub labs, supervising 7 forensic examiners. Accordingly, he is extraordinarily qualified to render opinions relating to firearms use. Mr. Scott has completed his report, and I have enclosed a copy with this letter. His report provides the following new evidence that was not presented or considered at trial:

(1) The first shot fired by the shooter was into the ground, at his feet, but there was an absence of the forensic evidence on Jennings or his clothing that should have been present if he had fired such a shot. At pages 8 to 10 of his report, Mr. Scott explains that if Jennings had fired this shot into the ground, there would have been forensic evidence on his clothing. But there was none, which demonstrates that he was not the shooter.

(2) *Nothing* about the shooting suggested that it had been committed by someone with firearms expertise or tactical training. To the contrary, the evidence suggested that the shooter had no training or expertise. Hence, Jennings's training was exculpatory, not incriminating. At pages 3-7 and 10-13, Mr. Scott explains that virtually every aspect of the State's theory about the nature of the shooting

indicating that the shooter had been well-trained and proficient with firearms was wrong.

The facts that the shooter loaded his gun with two different types of ammunition, and fired the first shot into the ground, strongly indicated that the assailant was completely inexperienced with firearms. Anyone 18 years old can walk into a gun shop and legally purchase a box of bullets. Hence, the fact that the assailant used two different types of ammunition suggests someone too young or otherwise lacking the resources to simply purchase hollow-point ammunition. Mr. Scott explains that not only would no one with firearms training or expertise load two different kinds of ammunition into the same magazine; but that, contrary to the prosecution's theory, the particular combination used was not indicative of tactical training. He also disagreed with the State's theory that the order in which the shots were fired into the victim (chest first, then the head) was consistent with the kind of tactical training that Jennings received in the National Guard, or that anything about the way the shooting occurred demonstrated that the shooter was skilled with firearms or either had or employed any type of tactical training.

In sum, the fact that Mr. Jennings was well-trained and proficient with firearms was actually *exculpatory* evidence that suggested that he was *not* the shooter. Unfortunately, Mr. Jennings's trial counsel failed to present that argument, or any critique of the state's theory on these points to the jury.

18(c) New evidence that Jennings acted consistently with his security-guard training after the shooting

After Mr. Jennings radioed his supervisor and the police that there had been shots fired in the parking lot, and while he was waiting for the police to arrive, his supervisor, Iris Malone, arrived on site and told him to accompany her to the shooting scene at the other end of the parking lot. Mr. Jennings declined to accompany her, because he was concerned that the shooter was still at large. Ms. Malone then drove directly to the crime scene and illuminated it with her vehicle's headlights. She then got out and directed Mr. Jennings to join her. He then walked to the scene. At trial, the prosecution argued that his reluctance to accompany Ms. Malone was incriminating, because it suggested that he was fearful of being identified by the victim (whom, if he had been the shooter, he would have known had been shot point blank in the chest and three times in the face).

At trial, Mr. Jennings's trial counsel did not call any experts of his own. As part of my investigation, I have retained an expert on security-guard training, Robert A. Gardner, with offices in California, Nevada, and Arizona. Mr. Gardner will be providing me with a report that shows that, before he began work for All Valley Security, Mr. Jennings received the California-mandated 4-hour training course for unarmed security guards. He watched the material on video, passed an exam on it, and was waiting for issuance of his permanent credential. This training instructed Mr. Jennings that, if an incident occurred while he was on duty, he was *not to get involved.* Rather, he should find a safe spot,

observe, and report to his supervisor and the police. Mr. Jennings acted in complete conformity with his training on the night of the incident. Ms. Malone, however, grossly violated the standards of care for security guards when she drove directly to the crime scene before the police had secured the site. I will provide the CRU with a copy of the final report when it has been completed.

Mr. Gardner's opinion illustrates how the prosecution was so focused on its conclusion that Jennings was guilty that it viewed anything that he did as incriminating and ignored any exculpatory explanations for his behavior.

18(d) New profiling evidence that shows that the crime was not a sexual assault, as the prosecution theorized, and that demonstrates that the prosecution's profiling expert ignored critical evidence in formulating his opinion

As the Court of Appeal's opinion explains at pages *9 through *11, the prosecution relied extensively on the testimony of Mark Safarik, an expert consultant in behavioral and forensic analysis of violent crimes. Mr. Safarik purported to explain in his testimony how and why the killer had acted during his encounter the victim. He concluded that the crime was an attempted sexual assault, and when the victim resisted, the killer panicked and shot her because he was afraid she would report him.

As the Court of Appeal acknowledged in its opinion, "[Safarik's] testimony may have been crucial to the prosecution's case because, without it, there was no evidence from which the jury might infer the motive or the perpetrator's intent in killing O'Keefe." (2011 WL 6318468, at *8.)

Mr. Jennings's trial counsel did not expose the myriad ways in which Mr. Safarik's testimony was at odds with the actual facts in the record. This information is detailed at pages 20 through 22 of my prior letter to the CRU. But I have also retained a profiling expert, Peter Klismet, who had a 20-year career with the FBI as a special agent. Mr. Klismet, like Safarik, did criminal profiling for the agency. He has not yet completed his final report, but he is highly critical of Mr. Safarik's methodology and conclusions. I will provide the CRU with a copy of his final report when it has been completed.

Mr. Klismet's opinions include the following points:

1. Contrary to Mr. Safarik's conclusion, Mr. Klismet believes that the record clearly demonstrates that Ms. O'Keefe's murder was the result of a robbery, not an attempted sexual assault. He believes that Safarik based his entire theory on his belief that Ms. O'Keefe's tube top had been pulled down before she was shot. Mr. Klismet points out that it not clear that it was pulled down at all; rather, given its small size and the physical trauma that Ms. O'Keefe sustained in the attack, it may have simply slipped downward slightly. He notes that if the top had actually been pulled down, there would likely have been scratch marks on the victim's chest, or a DNA transfer -- but there were none.

2. Mr. Safarik's opinion seems to ignore the fact that the assailant actually took the victim's cell phone. Likewise, his reliance on the fact that her wallet and cash were not

stolen fails to recognize that the wallet was found wedged between the seat and the center console, out of view in the darkened car.

3. Mr. Klismet finds it difficult to believe that anyone wearing an easily-identified security-guard uniform would be likely to attempt either a sexual assault or a robbery in the parking lot they were hired to guard.

4. He notes that the crime appeared to be highly impulsive, which suggests that the person who committed it was most likely a younger offender, in the range of 16 to 20 years old. Jennings was 25, and therefore the statistical likelihood favors someone with much less maturity as the assailant.

5. Mr. Klismet believes that Mr. Safarik overlooked the testimony that Jennings had a predilection for black women. The testimony was that he dated black women exclusively; he was married to a black woman, and even now currently engaged to a black woman. The transcript reflects that he told his friend, Michael Parker, that that he had never been attracted to and had never dated a white woman. Of course, Michelle O'Keefe was white. This makes Safarik's sexual-assault theory less plausible.

6. The fact that Ms. O'Keefe's window had been rolled down only 4.5 inches before the shooting suggests that she had not been approached by Jennings in the parking lot. If she had been approached by someone wearing a security-guard uniform, she would likely have rolled her window down much further.

7. Mr. Klismet believes that the investigation and prosecution of the case against Jennings exhibits the hallmarks of tunnel vision. In particular, he is deeply troubled by the way that the prosecution failed to subject Victoria Richardson, or her companions in the car on the night of the shooting, to the same type of scrutiny as Jennings. The State's case proceeded as though Jennings had been the only person in the parking lot at the time of the shooting other than the victim, and yet there is no dispute that Richardson and her companions were present as well, and left immediately after the shooting. He notes that even Safarik referred to this as a "serious error," and he agrees with Safarik on this point.

Likewise, he notes that investigators relied heavily on inconsistent statements by Jennings, which were not necessarily lies, but a lack of recollection by Jennings. The passage of time between the crime and the interviews could easily have clouded his recall of facts. For example, Deputy Longshore testified at trial that the victim's wallet was found inside her purse on the center console. This testimony completely contradicts known evidence. The wallet was found between the passenger seat and the center console. Whenever Jennings failed to recall anything about the night of the murder clearly, the prosecution treated that as evidence of his guilt.

8. Mr. Klismet believes that Safarik failed to acknowledge that the circumstances of the murder closely meet the criteria for a "situational felony murder" described in the Crime Classification Manual, which is the gold-standard for criminal profiling. The Manual says that a murder occurring when the victim's money is not stolen indicates a

situational felony murder. This type of crime often includes blunt force trauma to the victim, and/or contact wounds from a firearm. Often, it can be triggered if a robbery is interrupted, such as when an alarm is triggered. Here, the record shows that the victim's car alarm sounded, and then turned off when she started her car. The manual explains that typical offenders involved in a situational felony murder would be "youthful and inexperienced" and abusers of drugs or alcohol. Victoria Richardson was a juvenile at the time of the shooting, and it appears that her companions were, as well, and they were in the parking lot to smoke marijuana. The fact that Richardson self-identified as a gang-member in her social-media posts, and later went on to be convicted of serious felony offenses, strongly suggests to Mr. Klismet that the likely killer was someone in Richardson's car.

18(e) New evidence showing that, between the time of the shooting and the arrival of the police, a car driven by a gang-related individual left the scene

Much of the State's case proceeds as though Ray Jennings was the *only* person in the parking lot where Ms. O'Keefe was shot at the time of the shooting. But in reality, it is undisputed that there were at least three other people in the lot at that time, all in one car. Victoria Richardson testified that she was in a rented car in the lot, with her friend, Kensasha; Kensasha's boyfriend, Andrew; and her godson. They were smoking marijuana and listening to music. Richardson drove out of the lot after the shooting, but before the police arrived.

What was not presented at trial was that, in the 15 years since the shooting, Richardson has been convicted of two serious felonies and served prison time for both: one for a role in a major heroin-trafficking scheme, and another for assault with a deadly weapon (which was originally charged as attempted murder and pled down.) In addition, on her social-media posts, Richardson self-identified as a member of the "Bloods" gang, stating that she only wanted to date "Bloods." The fact that Richardson was involved with the Bloods suggests that her friends in her car at the time of the shooting were also gang affiliated. But for reasons unknown the Sheriffs never took a DNA sample from "Andrew" to see whether it matched the blood under Ms. O'Keefe's fingernail. It would be interesting for the District Attorney's Office to check at this point to see whether the passengers in Richardson's car went on, like Richardson, to commit serious felonies.

19. *Please state the reasons the conviction should be reviewed.*

My earlier letter of October 2, 2015, can be seen as a comprehensive answer to this question. I respectfully request that the CRU consider that letter as part of Jennings's response to this question. But to assist the CRU in its work, I will summarize below the main reasons why Mr. Jennings's conviction should be reviewed.

Preliminary Statement

Ray Jennings is innocent. He did not kill Michelle O'Keefe. The jury that convicted him was never made aware of critical exculpatory evidence, and never received a clear explanation of the myriad logical and factual flaws in the State's case. In light of the new exculpatory information that has been developed, which is summarized in the answer to paragraph 18, above, and the glaring flaws in the prosecution's case, which are outlined below and are explained in greater detail in my prior letter, the CRU cannot have any confidence that Jennings was guilty or that his conviction was valid.

A. The absence of physical evidence both fails to tie Jennings to the crime, and is exculpatory

Deputy DA Michael Blake, who tried the case for the District Attorney's Office, drafted and circulated a memo to his superiors on April 17, 2006 — six years after the murder, and five months *after* the District Attorney's Office had filed the case — which flatly admits that none of the physical evidence in the case implicated Jennings. Specifically, Mr. Blake wrote that, although he viewed Jennings's conduct and statements to the police as "highly suspicious, examinations of the physical evidence have yet to directly link Jennings to the murder of Michelle O'Keefe." (A copy of this April 17, 2006 memo is attached as one of the documents provided in response to question 20, below.)

Mr. Blake's memo details the painstaking forensic evaluation made of all the physical evidence recovered at the scene from the victim, from her car, and from Jennings. Despite the detailed scrutiny of all the evidence, no physical evidence, and no direct evidence ever linked Jennings to the crime. In other words, no evidence gathered from the crime scene pointed to Jennings, no witness claimed to have seen him commit the crime, no witness claimed to have heard him admit to the crime, and Jennings himself has at all times adamantly maintained his innocence.

What Mr. Blake's memo fails to mention (and what Mr. Blake appears not to have appreciated) is that the absence of evidence is exculpatory. If Jennings had fired a gun on the night of the murder, he would have GSR on his jacket. Its absence means that he did not fire a gun that night. Likewise, if Jennings had fired a gun into the asphalt at his feet, as the shooter had, then there would have been evidence of pseudo stippling on his shoes or pants. There was none. Finally, there was evidence of blood and DNA from an unidentified male (but not Jennings) under the victim's fingernail.

B. The core inferences that underlie the State's case are circular and unreasonable

Because of the absence of any physical evidence to tie Jennings to the murder, the State's case against Jennings was completely circumstantial; that is, it is based entirely on *inferences* drawn from various facts. But all of the inferences underlying the State's case

are flawed because they are either without factual support, wholly unreasonable, or there are competing inferences that are far more likely.

The defects in the State's case become clear at the outset. The victim was shot with a 9mm pistol in the Park-and-Ride lot that Jennings patrolled as a security guard. Hence, the State's case proceeds from the premise that Jennings brought a 9mm pistol to work on the day of the shooting, and then used it to shoot the victim.

What evidence supports this inference? That is, what basis is there to believe that (a) Jennings owned or otherwise had access to a 9mm pistol; and (b) he brought that pistol to work on the day of the shooting? Other than the fact that the victim was shot with a 9mm pistol in the lot where Jennings patrolled, there is none. But the *conclusion* that the State wants to prove (that Jennings brought a 9mm gun to work and shot the victim with it) cannot provide the *evidence* that supports the inferences the State's case relies on. There must be other evidence to support these inferences, or the case must fail.

One confounding fact for the State's theory is that Jennings owned a lawfully registered .380 pistol; not a 9mm pistol. There is no evidence that Jennings ever owned, or had access to, a 9mm pistol. The State's case therefore *infers* that he must have, because that was the type of weapon used to shoot the victim. But this is not a reasonable inference. There are only two reasons that Jennings would bring a pistol with him to work: (1) for self-protection; or (2) to commit crimes.

If Jennings' motivation for bringing a gun to work was self-protection, he would have brought his lawfully-registered .380 pistol. That way, if he was required to use it for self-defense, or to protect a third party, he would not face potential criminal liability for using an unregistered gun.

The State therefore must assume that Jennings brought a gun to work to commit crimes. But this theory is unreasonable for several reasons: (1) Jennings was not a criminal. He was a married 25-year old man with a wife and 3 children he was supporting. He had *no* criminal background; no arrests, no convictions. He had enlisted in the National Guard when he was 17 to serve his country. He held a security clearance. He was studying to become a federal marshal. (2) Even if Jennings had some criminal intent, the State's theory assumes that he would have committed his crimes at his place of work, while wearing an easily-identified security-guard uniform.

In short, the basic premises that underlie the entire case make no sense. There is no evidence that Jennings owned or had access to a 9mm pistol, that he would have brought an unregistered weapon with him to work, or that he would have used it to commit crimes at his place of work while wearing his security-guard uniform.

A second confounding fact: The State's case proceeds as if Jennings had been the only other person in the parking lot at the time of shooting. But it is undisputed that he was not. Richardson and the occupants of her car were in the parking lot when the shooting occurred. They were admittedly using drugs, and fled the scene before the police arrived.

Since Richardson was gang-affiliated, it is likely that her friends in the car were as well. Richardson went on to be convicted of two major felonies, including assault with a deadly weapon. Hence, Richardson and her companions should have been potential suspects.

Moreover, according to Richardson, she saw another person in the lot at the time of the shooting: a white male, wearing a red baseball cap backwards, who was driving a black 1997 or 1998 Toyota Tercel, with tinted windows, a spoiler on the trunk, and stock wheels. This man left the lot between the time of the shooting and the time that Richardson left.

Based on these facts, the most reasonable inference is that the killer was either someone in Richardson's car or the person driving the black Tercel. By contrast, the inferences necessary to conclude that Jennings was the killer are neither supported by the facts nor reasonable.

C. The State's case was tainted by tunnel vision

I am sure that the CRU is familiar with the concept of "tunnel vision" — the tendency of investigators to seize on an early piece of evidence that appears to implicate the defendant, and to hold on to their belief in his guilt even as other evidence points to his innocence. Social-science research suggests that tunnel vision is a pervasive cause of wrongful convictions. *See e.g.* Findley & Scott, *Tunnel Vision,* Univ. of Wis Law Rev. (2006).

The State's case against Jennings is replete with examples of tunnel vision. These include the way that the absence of physical evidence against Jennings was not considered to be exculpatory, and the failure to follow up on other potential leads — like running DNA samples on the occupants of Richardson's car. But perhaps the clearest examples of tunnel vision are the inconsistencies in the State's theory of the case.

- The State's theory was that Jennings shot the victim "in a panic" after attempting to accost her, because he was fearful that she would identify him. This theory attributes a logical fear of being identified based on his security-guard uniform to Jennings — but only *after* he had supposedly committed a crime. It then concludes that he panicked so badly that he shot the victim multiple times point blank, but then radioed in the "shots fired" call, stayed on the scene to speak to the police for hours, and maintained a demeanor that gave the investigating officers no cause to suspect him.
- The State argued that the man in the red baseball cap, driving the Tercel, could not possibly be the killer because he did not drive out of the parking lot through the closest exit to him. The prosecutor argued that it was not reasonable to believe that the driver of the Tercel was involved because "if you just committed that crime, that atrocious crime, would it makes sense that you would drive around the northern lot . . . . No. You drive out the lower exit, the west end of the lot. It makes no sense at all." (20RT 7322.) Hence, the prosecutor argued that the rational thing

for the killer to have done was to flee immediately — yet Jennings stayed at the scene and made no effort to leave.

- The State argued that the crime was committed by someone with firearms training and expertise, like Jennings. Yet the State ignored the fact that the shooter fired the first shot into the ground, which is not something that someone with firearms skill or training would have done.

In sum, the State made no effort to harmonize the positions that it took in the case, beyond consistently arguing that whatever Jennings did was incriminating, and that any evidence that was not congruent with its theory should be disregarded. This approach is the hallmark of tunnel vision.

D. The seven "incriminating circumstances" relied on by the State did not establish Jennings's guilt

According to the Court of Appeal opinion, the State relied on seven "incriminating circumstances" as the key circumstantial evidence that proved that Jennings was guilty:

(1) It was implausible that if Jennings was standing 400 feet away from the scene when the shooting occurred, that he would not have seen the shooter. But at trial, the prosecution's key ballistics witness admitted that, although she could determine the path of the bullets fired into the victim, *she could not determine where the shooter had been standing when he fired the shots.* The State failed to call any other witness who supplied this information. In light of its inability to prove where the shooter was standing as the shots were fired, the State had no basis to attack Jennings's explanation that he could hear but not see the shooter because the shooter was screened from view by a large commuter van parked next the victim's car. (Jennings's appellate counsel failed to explain this to the appellate court.)

(2) Jennings told the investigators that he did not see anyone leave the parking lot after the shooting, yet he was contradicted by Richardson's statement that she asked him "what happened?" as she was leaving, and he said, "I don't know." The problem here is that the investigators were often imprecise in their questioning. Both Jennings and Malone saw Richardson leave the scene, but neither of them told the investigators about her. This suggests that the way the investigators framed their questions was unclear. Even after Jennings told the investigators about the encounter with Richardson, during his cognitive interview he continued to omit any reference to her in answering their questions. Plainly, Jennings believed that their questions referred to the time that he was alone in the parking lot after hearing the shots — before either Malone or the police had arrived.

(3) Jennings stayed near his car after the shooting, refusing to accompany Malone to the crime scene. As noted above, this was consistent with how Jennings was trained. It was unreasonable for the State to argue that Jennings incriminated himself by acting in accordance with his security-guard training.

(4) Jennings told the police that the next time he was on duty after the shooting, he was approached by two men in a red truck, who asked him about the shooting. He said that this made him nervous, and he reported the encounter to the sheriff's department. He claimed that a deputy checked out his story, spoke to the men, and returned to the lot to assure Jennings that they were no threat. But at trial, the sheriff's witnesses claimed to have no record of such a call by Jennings. Hence, the State argued that Jennings made up the encounter to somehow re-direct suspicion away from him. It is unclear how, even if Jennings had made a false report about being contacted the day after the shooting, this would mean he had been the shooter. The prosecution seemed wholly untroubled by and uninterested in Richardson's claim that she saw a man leave the lot immediately after the shooting.

More importantly, in his prior trials, Jennings successfully called as a witness a sheriff's department employee who corroborated that she had seen the "hot sheet" about Jennings's report. So in those trials, this point would not have been an issue. But in the third trial, Jennings's trial counsel failed to call this witness, and instead tried to elicit the testimony that she had given through other Sheriff's Department witnesses. This effort was thwarted by Mr. Blake's hearsay objections.

(5) Jennings told the investigators that he thought that when he saw the victim's body, he saw a faint pulse, and that her hands twitched. The State argued that Jennings had seen this occur when he shot Ms. O'Keefe, and he gave himself away by recounting this information in his statements to the investigators. In reality, Jennings was simply wrong. The medical evidence introduced by the State demonstrated that the shots fired into the victim would have prevented her from having a pulse or twitching as Jennings described. Given this evidence, Jennings's wrong information could not have been incriminating. He was simply mistaken about what he saw at night, in a dark parking lot, after a traumatic event.

(6) The victim had been struck in the head by a blunt object. This might have been Jennings's flashlight, which he did not have with him when he came to the crime scene with Malone. The problem with the flashlight theory is that the shooter took the victim's phone after the shooting. So it was unclear how he could have held a gun in one hand, a flashlight in the other, and then also grabbed the phone. The prosecution abandoned this theory at trial, arguing instead that the wound was inflicted by the shooter's pistol.

(7) The detectives supposedly "held back" from public disclosure certain details of the crime that would only be known by the person who committed the crime. And Jennings supposedly knew this information. The reality is that the record shows that Jennings did not know critical information that "only the killer would know."

One piece of information that had supposedly been "held back" was that the murder weapon had been a 9mm pistol. But at trial, the first Sheriff's Deputy on the scene, Deputy Cox, testified that he *told* Jennings that the shell casings on the ground were from a 9mm pistol. Another piece of vital information was that all the shots came from the

same gun. But Jennings heard the shots fired, and could tell as a result that they all sounded the same, and that there were no simultaneous shots — hence a single gun. He knew that the victim had been shot at close range because he saw her body and the obvious close-contact wound in her chest, which had powder burns around it. In sum, there was not a single piece of information that Jennings knew that could only have been acquired if he had been the killer.

Again, these points — and every element of the prosecution's case — was examined and refuted in my October 2, 2015 letter. Simply put, the conviction should be reviewed because there is no reason to believe, based on the new evidence and on the exceptionally weak circumstantial evidence presented by the State, that Jennings was the killer.

20. *Attached documents.* As noted above, I have attached a copy of the report by the firearms expert, Mr. Scott. Other reports will be provided as the experts deliver them to me in final form. I would ask the CRU to consider the evidence in the compendium of evidence that was provided in support of the October 2, 2015 letter. I have also attached a copy of the April 17, 2006 memo by Assistant District Attorney Blake.

22. *Has the person who was convicted provided written permission to seek review of his conviction?*

Yes. I have been retained by Mr. Jennings as his counsel to represent him in his habeas-corpus proceedings and to seek review of his conviction by the CRU.

23. *Contact information for person submitting this request:*

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Based on the foregoing, I urge the CRU to review Ray Jennings' conviction.

Respectfully yours,

Jeffrey I. Ehrlich
Counsel for Raymond Jennings

EXHIBIT 9

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Firearms ▪ Ballistics ▪ Police Shootings ▪ Shooting Reconstruction & Investigations Toolmarks & Comparison Microscopy ▪ Dynamics of Shooting Incidents ▪ Crime Scenes ▪ Gunshot Distance ▪ Daubert Consultation ▪ Gunshot Wounds ▪ Hunting & Firearms Safety ▪ Trajectory Analysis

January 15, 2016

Attorney Jeffrey I. Ehrlich
16130 Ventura Blvd.
Suite 610
Encino CA 91436

Re: Raymond Jennings

Dear Sir:

1. Purpose

The purpose of my involvement in this case is to review source materials which have been provided to me regarding issues involving evidence and testimony which contributed to the conviction of Mr. Raymond Jennings.

The scope of my investigation is related to firearms, ballistics, shooting reconstruction, shooting incident dynamics, crime scene analysis, and any related factors.

2. Credibility of Facts and/or Witnesses.

It is to be understood that the credibility of facts or witnesses alleged as true in any case is determined by the finder of fact.

3. Qualifications.

I am a 25-year plus retired Commissioned Officer of the Massachusetts State Police with over half my career in the MSP Ballistics Section and was the Commanding Officer of the main and sub-labs with 7 forensic examiners; I conducted, supervised, and trained personnel in forensic investigations, shooting reconstruction, and the dynamics involved in shooting incidences. I have also conducted criminal investigations related to shooting incidences and other crimes. The lab provided crime

scene investigation and forensic examination services to 350 cities and towns, all State agencies, all Federal agencies except the FBI, and the military services in Massachusetts.

I was appointed a member of the MSP Firearms Review Board which evaluated departmental officer involved shooting incidences. As a member of the Staff Inspections Unit, I conducted agency shooting investigations, claims of excessive force and/or police misconduct, and violations of Policy & Procedure and Rules & Regulations.

I have investigated approximately 400 police involved shootings including incidents of friendly fire, involuntary accidental discharge, and inappropriate use of firearms.

I have personally conducted thousands of forensic investigations, including crime scenes, attended post-mortems, trained with prominent forensic pathologists in gunshot wounds, attended the Bureau of Alcohol, Tobacco, Firearms National Firearms Investigation course, FBI courses, state law enforcement courses, medico-legal death seminars, thousands of hours of in-service training at the State Police Academy, numerous crime scene shooting reconstruction courses, forensic seminars, etc.

As an expert witness I have testified approximately 280 times in the areas of firearms, ballistics, shooting reconstruction, crime scene analysis, and shooting dynamics at all levels of the court system including Federal Court and Military Hearings. Testimony has been given before the Massachusetts Legislature and consultation provided to Massachusetts Congressmen to assist with legislative issues.

U.S. Army active duty career was within the Ordnance Corps and included extensive training and assignment in the testing, evaluation, repair and research of small arms and training in Explosive Ordnance Reconnaissance. I attended the U.S. Army Ordnance School at Ft. Dix and Small Arms Repair School, at Aberdeen Proving Ground, MD.

I have trained with the MSP Special Tactical Operations (STOP) team and with the 10th Special Forces Group at Fort Devens, MA for purposes of familiarization with special weapons and tactics.

For over 20 years I competed at the professional level in several shooting sports including Precision Pistol Competition (PPC) for police officers, shotgun trap and skeet, long range rifle, and metallic silhouette; I conducted extensive research and development by custom loading of various projectile designs, weights, and propellants. I have won numerous competitions and awards and was the 1980 World Champion of the IHMSA Competition held at Camp Curtis Guild in Wakefield, MA.

In 2002 I became an independent forensic consultant and provide services including firearms, ballistics, shooting reconstruction, ballistic testing, gyroscopic stability; internal, external, and terminal ballistics; reaction time, analysis of time and motion in a shooting incident, trajectory and drag model analysis and other specialized services. I have been retained by the U.S. Military, engineers, insurance companies, attorneys, prosecutors, authors, architects, Innocence Projects, and conducted work for both sides in legal issues. Since 2002 I have been involved in over 500 investigations requiring shooting reconstruction and/or forensic investigation in approximately 45of the U.S. states, and in Haiti, Virgin Islands, United Kingdom, Israel, Afghanistan, Iraq, Canada, Nigeria, the Philippines, and Pakistan.

My forensic training, education, and experience are over 35 years, and my overall experience with firearms, ballistics, etc., exceeds 53 years.

I am a member or former member of several professional organizations.

4. Source Materials.

A. Letter (34 pages) dated October 2, 2015 from Attorney Jeffrey Ehrlich to Mr. Ken Lynch at the Conviction Review Unit of the Los Angeles County District Attorney's Office.
B. Transcript of the testimony of Prosecution Firearms Instructor Deputy Sheriff Michael Winter, Los Angeles County Sheriff's Department at trial, date unknown.
C. Transcript of Prosecution Closing Statement.
D. Crime Lab Report on Examination of Security Guard Uniform.
E. Transcript of Firearms Examiner James Carroll.
F. Transcript of Medical Examiner, Dr. Scholz.

5. Brief Summary.

Raymond Jennings was convicted in the third trial after jurors in trials held in 2008 and 2009 could not reach a verdict.

The victim, Michelle O'Keefe, was shot in the darkened area of a parking lot which Raymond Jennings had been assigned to as a security guard.

She was shot at close range in the chest and several times in the head which were determined to be within two to three feet.

6. Testimony of Deputy Sheriff Michael Winter.

Deputy Winter testified that he was primarily a firearms instructor; that he repaired and researched weapons for the Sheriff's Department, and that he taught tactics. It does not appear that this training is for forensic shooting reconstruction, firearms identification, ballistics (internal, external, terminal), or shooting dynamics as it relates to the elements of time and motion in a shooting incident. The testimony of Deputy Winter was apparently conducted in an attempt to connect Mr. Jennings experience in the National Guard with the prosecution theory that the defendant possessed an exceptional degree of skill and proficiency which would have been required by the shooter in this incident.

In reality, the issues which were presented to the jury were just the opposite and some of the testimony was purely inaccurate and misrepresented the known generally accepted training methodology and scientific principles.

The following areas are addressed:

- Raymond Jenning's purported National Guard training which allegedly provided a high degree of tactical training.

- That Jenning's National Guard signified that he possessed exceptional marksmanship skills with a 9mm pistol that was loaded with mixed types of ammunition.

- That the type of hollow point ammunition used in the shooting, Federal Hydra-Shok, is designed with a post in the center of the hollow nose so that the projectile will maintain a straighter wound path in the body.

- Purported National Guard training that would have provided Jenning's with significant skill and proficiency that would enable him to load a pistol so that the type of ammunition (full metal jacket and hollow nose projectiles) was stacked in a specific manner that would provide a greater degree of fatal wounding.

- That it is common training methodology for both the police and military to aim at the head and shoot to stop the threat if the shots to the main upper torso (center mass) are not successful.

Since there are several overlapping issues for each area it will be more efficient and effective to address these matters in the aggregate.

Testimony suggesting that the military conducts the same type of training as that of the Los Angeles Sheriff's Department is clearly not accurate since police are using P.O.S.T. training modules and the military has completely different mission objectives.

Police officers carry handguns as their primary weapon, the military carries hip or shoulder fired weapons as the standard issue. The average trained police officer does not perform police duties carrying a long arm; that is usually reserved for special tactical teams such as SWAT.

On the issue loading different types of ammunition so that the shooter could fire the first shots that had the most wounding effect, this contradicts the overwhelming recommended procedure of using the same make, design, weight of bullet, velocity and kinetic energy. This is directly related to the areas known as internal, external, and terminal ballistics and forms the foundation of producing replicated accuracy for each and every shot fired.

Mixing different ammunition risks jams occurring in the pistol and since the bullet weight, velocity, shape, and propellant are different it causes problems in accuracy. The generally accepted practice for all experienced shooters, police departments, and the military is to qualify with the same ammunition that you intend to carry. This provides for consistent firearms operation and consistent accuracy with each shot.

It is also important to note that hollow point ammunition is designed to expand and lose its velocity and energy in the body soft tissue so that there is less chance of an exit wound which could permit a projectile to strike a second person.

The post in the center of the hollow cavity of the projectile's nose has absolutely no relationship to the bullet going straight. The post is designed and stated by Federal Cartridge Co as being for the purpose of forcing soft tissue outwards toward the serrated edges of bullet's copper jacket which will then result in more uniform expansion.

The wounding effect of ammunition is not based on the fact that hollow point has expanded, it is based on the velocity and kinetic energy produced by any projectile; a full metal jacket projectile

with greater velocity and energy will produce a larger temporary wound cavity than a heavier projectile with less velocity and energy, and it is this large cavity which pulverizes and shreds tissue and vital organs.

An experienced shooter would never mix ammunition from different manufacturers. When shooting crimes are committed and evidence is recovered which shows that different makes and types of ammunition came from a single firearm, it is a clear and convincing sign that the person simply loaded whatever they could get their hands on.

Persons who cannot legally purchase ammunition and use the same brand and design with the same consistent velocity and energy will acquire whatever they can from other sources. Typically these are persons affiliated with street gangs where resources involving firearms can be shared.

There is no secondary target selection process involving "head shots" for the police, military, or civilian areas as an alternative to standard center mass targeting in general firearms training.

The reason this is not an accepted practice is because the legs, arms, hands, and head are too small and capable of rapid motion while center body mass is the least mobile.

Of interest is the fact that Jennings actually responded to the type of training that would be received regarding cover and concealment. Instead of standing up in the open to be seen and possibly become a target, he reacted like a police officer or soldier is trained – take cover and conceal yourself until the situation is assessed.

7. Shooting Reconstruction Issues and Gunshot Wounds.

The crux of the prosecution's case in the testimony of Deputy Winter is suggesting that there was some extraordinary proficiency involved by the shooter due to the movement of the vehicle, the door being open, the window down four and one half inches, and the type of ammunition being used.

However, based upon evidence that the victim's wounds were the result of the firearm being approximately 2 to 3 feet away, this negates any such super skill and proficiency since there is no evidence that gunshot residue was tested for on the exterior side of the driver door window, nor the interior side to determine the density of the pattern to even conclude that these gunshots were even fired in a manner that the projectile passed through the four and one half inch open window space.

If they had then the firearm would have had to be within the 2 to 3 foot distance and if the shooter was firing while standing in front of the open driver door then there would have been little to no skill involved since there would have been a distance of approximately 2 to 3 feet from the door to the victim's head. If the shooter had been further back then the evidence on the skin would not have been present.

My perception of the testimony of Deputy Winter on the proficiency issue and what the prosecution was presenting to the jury was that the gunshots to the head were accomplished at a distance that would have required superior skill and proficiency in shooting accuracy, but there is a major opposing scientific element that cannot be overlooked. It is not possible to have distance in a gunshot while simultaneously having evidence that they were at 2 to 3 feet. This is completely contradictory from both a logical and scientific perspective.

As a sub-topic of this, the uniform of Mr. Jennings was tested for gunshot residue and the results were negative. Apparently the prosecution wanted the jury to believe the uniform had been washed despite the crime lab indicating that they had knowledge that it did not appear to be. This should have been challenged by defense counsel instead of leaving the jury with the inference that there had been an intentional attempt by Jennings to remove evidence when in fact it apparently was never there to begin with.

8. Dr. Stephen Scholz, Medical Examiner (Pathologist).

Chest wound (Wound D):

Dr. Scholz testified that the sequence of shots into the victim likely started with the gunshot to the chest which had the appearance of a close gunshot due to the searing/charring of the wound area from the flame of the firearm.

The distance from the firearm would be "no more than a couple of inches".

This was also the first shot because it diminished blood pressure which indicated to him that the other gunshot wounds came after the contact gunshot.

Left side of mouth (Wound B):

Heavy concentration of stippling within a inch and a half of the entry wound.

Other stippling was beyond that well up onto and above the eyebrow.

Concludes the firearm was within about two and half feet when fired.

Left side of neck (Wound C):

Note: I am unable to accurately discern testimony as to presence of stippling for purposes of distance.

Corner of left eye (Wound A):

Note: I am unable to accurately discern testimony as to presence of stippling for purposes of distance.

In the aggregate, depending on the overall elapsed time of the gunshots and the speed at which the victim's vehicle was rolling backwards (it was found in neutral gear), it appears that all the shots occurred with the driver door open and the shooter located with the open driver door to his rear.

In the alternative, if the shooter was on the exterior side of the door with a four inch window opening it appears that the firearm would be protruding through the window opening or it could be

fired in the V-shaped open space between the windshield A-pillar and the driver door A-pillar, however, this would have to be evaluated in conjunction with the wound paths in the victim to ascertain whether the horizontal angle is possible.

Remaining within the area of the open door is most consistent with the stippling (tattooing) on the victim's facial area and would be within the two and one half foot distance that Dr. Scholz opines would deposit the pattern which he observed and documented.

Note: Firearms examiner James Carroll testifies separately that stippling would normally be found at a distance of less than two feet.

Since Dr. Scholz is opining that the two and one half foot distance is his estimate of the maximum distance, the possibility exists that it could be less which would increase the improbability that the shooter was on the opposite (exterior) side of the door.

The logic of the shooter being other than within the area next to the driver seat with the driver door open and located behind him is addressed in a separate section of this report.

9. <u>Firearms Examiner James Carroll.</u>

Through the transcript of this witness it is learned that the ammunition recovered at the scene was not only of different bullet design but there were different manufacturers involved.

Of interest is that two /2/ of discharged cartridge cases were Federal Cartridge Company consisting of brass with a nickel plating while the remaining three /3/ were of CCI (Cascade Cartridge Industries) cartridges from their "Blazer" line of ammunition which utilizes aluminum cartridge cases.

The Blazer line of ammunition is an economy grade cartridge since the substitution of aluminum reduces the cost where brass is more expensive.

Mr. Carroll testifies to the process of hot gases that exit the muzzle will expand outward very rapidly and to how hollow point ammunition is designed to expand due to its passage through soft tissue.

As part of the prosecution theory concerning the specific design of bullet and how it was loaded into a firearm, Mr. Carroll opines that it would be depend upon the purpose they were being used for and claims that if a shooter was to fire at a person through some type of barrier that it would be prudent to have the full metal jacket projectiles being fired first if you have that type of ammunition and that hollow points would not be the first choice.

Note: What is critical to consider here is that hollow points are designed to expand in soft tissue, they normally do not expand when perforating substrates such as sheet metal, wood, plaster, etc. They will flatten slightly as the nose of the bullet gets pinched inward, not outward.

The fact is that hollow points will usually not expand striking objects other than soft tissue because the hollow cavity fills with the substrate and prevents expansion. In effect, it fills the hollow cavity and actually causes the nose of the bullet to become

indented inward – just the opposite of the mushrooming effect because the serrated copper petals do not peel backward.

The importance of this is that Mr. Carroll is claiming that hollow points would be fired first if no barrier was involved and full metal jackets would be fired first if a barrier was involved when the scientific proof of the matter is that the design of the bullet is insignificant and the kinetic energy is the most important.

This issue goes to the claim that the order in which the ammunition was loaded was related to the skill and training of the shooter, which it is not. There was no testimony about kinetic energy that supports this theory.

10. <u>Jennings Allegedly Fired A Gunshot Into The Ground Near His Feet For The First Shot But There Is Total Absence Of Forensic Evidence Known As Pseudo-Stippling.</u>

According to the evidence and statements made by the prosecutor to the jury, the first shot was fired by Mr. Jennings downward to the ground directly where his feet were located.

The second shot was fired at contact or near contact to the victim's chest.

For the second shot to have been fired at the distance of contact or near contact then the shooter would have to be located so that the open driver door was to the shooter's rear or to the left rear since he/she would have had full access to the victim and since the prosecution claims that the other shots were fired through the window opening as the vehicle was moving backward.

This presents two distinct problems:

A. Since the door was open the shooter would have to aside out of the way as the door moves backward along with the motion of the vehicle. The shooter then would have to make a return side step in order to be back in alignment with the window opening to complete the sequence of shots.

B. Of greatest evidentiary value is the fact that the shooter's first shot into the ground would be extremely limited to a very restricted area since he is standing next to the driver seat with the open driver door behind him. The first gunshot is fired which strikes the ground at the shooter's feet and the second shot is then the contact shot to the victim's chest area.

The dominant forensic issue which I will address is the gunshot which strikes the ground at the shooter's feet.

In the prosecutor's closing statement to the jury, he focused on the location of the gunshot strike mark stating that this was where the assailant fired the first shot into the ground directly at his feet.

He stated that the gunshot strike mark to the asphalt happened when the shooter was in the open driver door area and that the muzzle flash would have been so bright that "it's like a camera flash going off down there. It would illuminate the entire base of the lot".

Note: The muzzle flash from a 9mm is a dull orange red glow. It would not provide any significant illumination. The 9mm cartridge does not allow for much volume of propellant and the majority of it has already burned prior to leaving the muzzle.

The pistol used in this shooting was not found; there is no ability to exclude it as having with a muzzle brake or a flash suppressor which merely redirects the hot gases and flash through ported openings at the muzzle.

The propellant was not examined to see if it was low flash type which is made specifically for a reduced muzzle flash.

The prosecutor's claim is factually and scientifically unsound. This should not have been presented to the jury

There is abundant published and video data available refuting the prosecutor's statement.

Uniform Clothing of Raymond Jennings:

The uniform clothing of Raymond Jennings was seized as evidence and examined in the Los Angeles County Sheriff's Department Crime Laboratory (see laboratory examination notes, pages 109-115, dated 4-19-06).

These notes indicate that the clothing was examined in detail using ambient light, magnifying light and high intensity light in conjunction with instrumentation including both macroscopic and stereoscopic methods.

The clothing had the pants cuffs opened and examined, the pockets turned inside out, and the pants legs examined to a length of 12" above the cuffs without and finding or documentation of perforations, foreign material related to asphalt, copper jacket, or lead core fragments. The pants are noted as being "worn and dirty".

The examination did not find any embedded asphalt (trace evidence), or the presence of small to medium fabric damage which should also have caused punctuate wounds to Mr. Jennings.

The source of this trace evidence and/or damage and punctated wounds (marked with points or dots; having minute spots or depressions) is the fragmentation of the asphalt surface when struck by a high velocity projectile, specifically like that from a gunshot.

In addition, the projectile itself can fragment with pieces of the copper jacket, the lead core, or both bonded together, and result in significant lacerations, abrasions, or punctate wounds.

9mm Luger Ammunition:

There are many major manufacturers of this ammunition both in the U.S. and foreign. It is by far the most common and extensively utilized caliber in semi-automatic pistols in the world. It is not only available in different bullet shapes and weights, but there is also a wide velocity scale.

Commercially available 9mm ammunition velocity can range between 1000 feet per second (fps) to 1650 fps.

A gunshot fired downward into asphalt will create a concentric crater. The projectile strikes the surface from a very short distance at its maximum velocity and kinetic energy. The asphalt surface and any bullet fragments disintegrates into innumerable missiles of varying size which explode outward in a cone shaped pattern at close to the same velocity as the bullet strikes.

It is these asphalt, metallic copper and lead particulates which expand away from crater like water when a rock has been dropped into it. The closer the person is, the greater the energy of the fragments with the resulting appearance of damage (perforations or embedding into clothing) and the development of punctate wounds in what is known as pseudo-stippling.

It is absolutely critical to interpret pseudo-stippling correctly so that it is not mistakenly assumed to be actual gunshot propellant stippling. This is because gunshot propellant stippling is the basis for determining the distance at which a firearm was from the target material when it was fired.

Pseudo-stippling occurs with other materials such as glass, wood, and materials which can fragment as the bullet passes through and carry foreign materials along with fragments of the bullet into the victim essentially at the same velocity as the bullet strikes the surface.

The fragments/particulates which cause wounding such as pseudo-stippling are called "secondary missiles" in forensic science.

Summary Conclusion of Gunshot Fired Into Ground:

One of the foremost evidentiary issues in this case is the complete and total absence of any evidence of high velocity foreign matter in the form of asphalt, copper jacket fragments, or lead core fragments being found during the detailed trace evidence examination of the uniform pants. There were no perforations reported and Mr. Jennings did not exhibit any signs of injury.

This is scientific evidence which refutes the prosecutor's statement that Mr. Jennings fired a gunshot into the ground while at the driver door of the victim's vehicle.

In the science of shooting reconstruction there is a phrase "The absence of evidence is as important as the abundance of evidence".

If Raymond Jennings fired a 9mm bullet downward into the surface of the parking lot, then his clothing and footwear and likely some injuries should have displayed evidence of that action. There were none.

11. Firing A Gunshot Into The Ground Is Indicative Of An Inexperienced and Untrained Person.

"Trigger discipline" is a firearms safety training factor which teaches that your finger must remain off the trigger until you actually make the decision to shoot. This is taught in all firearms safety classes.

It is taught to police and military personnel and by the NRA and other shooting sports organizations.

This is taught to the extent that it is beyond a conscious effort. Qualified and experienced shooters practice this until it becomes natural reflex regardless of whatever firearm is picked up and is committed to muscle memory.

The person who fired the shot into the parking lot surface had to have his finger on the trigger and had to pull the trigger while it was pointed down at his own feet which is an egregious violation of trigger discipline training and firearms safety.

The person who fired the shot into the ground at the parking lot was lacking the most basic safety acumen; it is the act of an untrained, inexperienced, and unpracticed novice.

12. Projectile Found in Parking Lot.

This item of evidence is fundamental in conjunction with the impact on the park lot surface.

Projectiles exhibit specific characteristics when striking a surface like a parking lot and these can be used to determine Angle of Incidence and Angle of Departure.

Very often fragments of the projectile itself, including that of the copper jacket and/or lead core will become embedded in objects (clothing, shoes, etc) that are in close proximity. In some instances they will perforate these items and cause actual wounding with the fragments becoming embedded into the skin and tissue.

This would also have been exculpatory evidence related to the absence of pseudo-stippling or damage to the uniform, footwear, and leg of Mr. Jennings.

It would have been imperative for defense counsel to raise this through cross-examination or to present it as part of the defense case.

13. Mixed Ammunition in Pistol that Fired Shots.

The mixing of ammunition, whether it be by brand, bullet characteristics, shape, and design; or anything other than the exact same brand, bullet weight, shape, characteristics, design, and even from the same box of ammunition is a strong sign of a person who lacks the most basic knowledge in firearms operations.

One of the most common reasons for firearms malfunctions and poor accuracy is the failure to use ammunition which has been manufactured on or about the same day due to the possibility of changes in the propellant, type of primer, and non-uniform crimping of the cartridge case onto the projectile.

The mixing of ammunition results in a significant decrease in accuracy since the aerodynamics are not consistent from shot to shot. There are issues with consistent velocity, different propellants in each cartridge that have various burning rates, the propellant itself can be different in shape and coated with chemicals to retard or increase burning, and bullet weight is important.

Informed and trained shooters like police officers and the military do not use one type of ammunition to qualify (like Winter testified) and then get issued a different type of ammunition to carry on duty. That policy and procedure was dropped decades ago when it became an issue in civil litigation.

Police departments like the Los Angeles Sheriff's Department who may not have moved into the mainstream of police training place themselves at risk in civil matters where it can be shown that the failure to train and qualify with the same ammunition is the basis for negligence.

In a civil case which I was involved in several years ago it is my recollection that officers train and qualify with the same ammunition and that all firearms are the same and issued by the department.

It is my professional opinion that anyone mixing ammunition in a firearm is untrained and ignorant of the many problems with malfunctions and accuracy that can be expected. Every trained shooter will state that it is important to shoot the same ammunition you intend to carry so that you are aware of its interaction in the firearm that you use.

I am in complete and total disagreement with Deputy Winter's testimony that there is any tactical advantage as he claims and there are no known peer reviewed publications which support his view.

14. Gunshot Acoustics.

During the course of an investigation it is common for investigators to canvass the area for eye and ear witnesses when it involves gunshots.

While Mr. Jennings may have some knowledge of firearms, the fact that part of his assumption that there was only one shooter based upon what he heard is of no surprise despite what the prosecution would suggest as being indicative only of a person with some intricate knowledge of the incident.

Over the past 10 years I have been involved in approximately 500 shooting cases of which multiple dozens or more involved reading police reports that questioned ear witnesses on how many shots they heard fired and whether it sounded like the same gun or more than one gun.

It is not difficult to conclude that a shooting incident likely involves one firearm because there is a maximum speed at which the trigger can be pulled and this averages approximately 4 to 5 shots per second for the average trained police officer and 2 to 3 shots per second for a relative novice or with little experience.

When multiple guns are involved there are overlapping shots with some occurring simultaneously.

From an acoustic perspective, it is logical and reasonable to be able to make an informed decision that a series of gunshots appear to be coming from the same gun especially when the firearm is pointed in the same direction and all the shots are of the same caliber.

The most common error made by ear witnesses is how many shots were fired, not how many guns were being fired.

15. Victim Could Have Been Shot by Other Than Through Window Opening..

In determining the shooter's location and proficiency there are more key elements that were missed since the shots would not have had to be fired only through the opening of the window.

When the front doors of a vehicle are open there is a significant V-shaped gap formed by the A-Pillar of the windshield and the A-Pillar of the door (if present). If the door does not have an A-Pillar then it would be the furthest edge of the window glass itself that abuts the windshield pillar.

This opening, referred to as the door jamb, is one of the most used areas when officers are utilizing cover and concealment behind the open door of a vehicle.

This area cannot be excluded and is the more likely area in which gunshots were fired that struck the victim.

The elements of time and motion (shooting dynamics) in a shooting incident must be carefully evaluated to ensure that all possibilities are presented; it appears that the prosecution focused only on the window opening and the defense counsel failed to challenge that theory by presenting the potential that gunshots could have passed between the open door and windshield.

The exterior and interior A Pillar of the windshield and the A-Pillar or window area closest to the hinges should have been examined for gunshot residue (GSR). The failure to take samples from this area is a forensic failure in the investigation and a knowledgeable, competent, and trained investigator would have known, or should have known, that this was an important area that could reveal important evidence.

16. Wound Paths in a Victim.

Wound paths through the victim are dependent on the orientation of the body to the muzzle for each gunshot. The fact that gunshot wounds might be left to right, or front to back does not mean that the shooter was in some specific location. This is an extremely critical element that is often overlooked by uninformed investigators.

The fact that a person may have received a wound which is inconsistent with the location of a shooter must be analyzed to determine whether the variable of the victim's movement or body orientation has created a false assumption that the shooter could not have been where it is believed he was.

In order to accomplish this it would be important to review other information and data from the crime scene such as the location of discharged cartridge cases and the direction in which the victim's vehicle was moving as well as distances and measurements.

There is insufficient data available at this time for me to analyze this.

17. Discharged Cartridge Cases.

There apparently were numerous discharged cartridge cases located in the parking lot and with gunshots being rapidly fired there is little ability for a shooter to move more than a few feet in any direction during such a rapid series of gunshots.

The projectiles and discharged cartridge cases could have been examined to determine a suspected make and model of firearm, but even without this information the information that a van blocked the view of Mr. Jennings being able to see the shooter, it should have been scientifically possible to conclude the general location of the shooter to within a few feet.

Once that location is determined, the trajectory can be extrapolated from that data in conjunction with the location and movement of the victim's vehicle.

A reasonable, competent, and knowledgeable person familiar with shooting reconstruction methodology should have been able to reach conclusions on the location of the shooter and present their opinions to the jury using the scientific method of forensic investigation.

At this point it is unexplainable why the application of generally accepted methodology was not employed by police investigators or why defense counsel did not retain such an expert on behalf of the defendant.

18. <u>Sound of Engine Running.</u>

I feel compelled to address what apparently was an issue that involved the sound of the vehicle that Mr. Jennings stated he heard. Mr. Ehrlich's letter provides some background on this in explaining that the issue was not that he heard the vehicle idling, but that he heard the engine when it was first started, with the possibility that the engine accelerated due to depression of the accelerator pistol during the shooting incident.

This is an area which I have been involved in with many shooting incidents and I have been personally involved in the acoustic reconstruction of sounds heard by ear witnesses.

One of the reasons that police officers are prohibited by their department Policy and Procedure from shooting at a motor vehicle is for the very reason that the operator can become disabled and cause the vehicle to continue on, in many instances accelerating, as they react to a wound and depress the accelerator.

A recent case of such an occurrence was in the City of Dothan, Alabama where a police officer shot the operator numerous times who was stopped. The vehicle then accelerated through a parking lot, over a curbing, crossed a busy roadway nearly missing vehicles and went through the brick wall of a business injuring a person inside.

It would not be unusual for this to have occurred.

Secondly, the fact that a police officer could not hear the vehicle idling and was allowed to testify to that is absurd. Hearing is subjective and speculative.

The generally accepted methodology for conducting an acoustic reconstruction is with the type of equipment used for noise recording such as where there is a citizen group complaining of some condition The testing is conducted by an acoustics engineer with very high end equipment and the test must replicate the exact conditions present at the time of the incident.

The testimony of a police officer giving an expert scientific opinion without any scientific parameters being documented should have been challenged in a Daubert Motion. The defense counsel should have employed an acoustic engineer to document and record scientific acoustic data using generally accepted methodology.

19. <u>Right to Amend.</u>

I reserve the right to amend or add to this report if additional evidence or medical data is received.

Respectfully submitted,

Ronald R. Scott

Ronald R. Scott, M.A., M.S.

EXHIBIT 10

Robert A. Gardner, CPP

Independent Security & Crime Prevention Advisor

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March 13, 2016

Jeffrey I. Ehrlich
The Ehrlich Law Firm
16130 Ventura Boulevard, Suite 610
Encino, CA 91436

Dear Mr. Ehrlich:

Per your request, I have reviewed the actions of Raymond Jennings on the evening of February 22, 2000 while he worked at a Park–and–Ride commuter parking lot in Palmdale, CA. Specifically, I was asked to offer opinions on the security standards of conduct related to Mr. Jennings' decision to not approach the victim's vehicle prior to the arrival of police. Based on my knowledge, training, and experience, in conjunction with my review of the available evidence, I am qualified to provide expert opinions about Mr. Jennings' actions.

My qualifications to render opinions in this matter include more than forty (40) years of combined security management and law enforcement experience. I am a Board Certified Security Manager with designation as a Certified Protection Professional (CPP) by ASIS International and as a Certified Security Professional (CSP) by the California Association of Licensed Investigators.

I am a Security Consultant and licensed Private Patrol Operator in the State of California. I am certified as both an Advanced and Supervisory Peace Officer. I am certified by the State of California to provide training to Security Guards and Proprietary Security Officers. I have attended numerous classes, seminars, and other formal and informal training; and have experience with regard to: Security Policies and Procedures, Security Officer Selection and Training, Security Officer Deployment and Management, and Private Patrol Best Practices. I have been retained by the State of California Bureau of Security and Investigative Services to serve as a Private Patrol subject matter expert to assist in the development of Private Patrol Licensee testing materials. I am Certified as a Firearm Training Instructor by the California Bureau of Security and Investigative Service and as a Firearm Safety Training Instructor by the California Department of Justice. During my law enforcement career I was a Police Firearm Instructor/Rangemaster and have extensive firearms training as a United States Army Officer.

Opinions and observations contained in this Declaration are based on the facts cited in the Second District Appellate Court review of Mr. Jennings' conviction and in a letter to the Los Angeles District Attorney's Conviction Review Unit prepared by the Ehrlich Law Firm dated October 2, 2015.

According the Prosecution theory, Mr. Jennings' refusal to approach the victim's vehicle upon the arrival of his supervisor (Malone) indicated that he was guilty of the homicide. In reality, Mr. Jennings' actions where consistent with sound officer safety practices and training mandated by the California Department of Consumer Affairs Bureau of Security and Investigative Services (BSIS). The actions of Malone were contrary to security industry best practices and reckless.

Mr. Jennings had been trained in firearms use and safety by the National Guard. As such, he was aware that it would be unsafe to approach a location where gunfire had just occurred. The safest course of action would be to wait for armed police officers to arrive and ensure that the area was secure. Even an armed police officer arriving to a shooting scene will normally wait for back up officers to arrive and only then proceed with extreme caution to investigate the situation.

Mr. Jennings was also a trained security guard. As part of his training he was required to pass a written test mandated by BSIS. The test is based on the BSIS Power to Arrest Training Manual (POA) and requires a 100% passing score. The following statements are quoted from the POA Manual on which Mr. Jennings' training was based:[1]

- *It is important to remember:*

  As a security guard, you are NOT a peace officer!!!

- *How are security guards DIFFERENT from peace officers?*

  Security guards do not have:

  - *The same job duties as peace officers;*
  - *the same training; or*
  - *the same powers as peace officers, according to the law.*

- *What should a security guard do if an incident/offense does occur?*

  If an offense occurs, a guard does not charge in. Instead, the security guard should:

  - *stay calm*
  - *observe and remember events*
  - *report to the police/or the security guard's supervisor (fellow employer policy).*

Based on the information available to me, it is my professional opinion that when Mr. Jennings refused to accompany his supervisor, Ms. Malone, to the crime scene before the police arrived, he was acting reasonably under the circumstances from an officer-safety standpoint, and in a manner that was consistent with the training provided to him by the State of California.

Best regards,

Robert A. Gardner

Robert A. Gardner, CPP

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[1] Bureau of Security and Investigative Services Power to Arrest Training Manual, Revised: December 1991

EXHIBIT 11

TECHNICAL ASSOCIATES INCORPORATED

4125 Market Street, Suite 3 • Ventura, CA 93003 • 805.677.2155 • fax 805.676.1638

A Confidential-Privileged Communication

Summary Report of Case Review
TAI Case #4801
Appellate Court Case #B222959
Jennings v. Miller Habeas Matter

15 March 2016

Background:

This case involves the murder of Jennifer O'Keefe. Raymond Lee Jennings has been convicted of this crime. On the night of 22 February 2000, Jennifer O'Keefe was found with multiple gunshot wounds sitting in the front seat of her Ford Mustang in a "Park-n-Ride" parking lot in Lancaster, CA. Mr. Jennings was working on that evening as the security guard on-duty for the "Park-n-Ride" parking lot. Technical Associates, Inc. (TAI) was asked to review discovery materials produced during the investigation and trial of this matter, and to form an opinion on the validity of evidence presented and statements made by various prosecution experts.

Materials Received and Reviewed:

The following documents were received from Attorney Jeff Erhlich:

- The Court of Appeal's opinion in *People v. Jennings*, No. B222959.
- Laboratory notes and datasheets of the Los Angeles County Sheriff's Department Scientific Services Bureau concerning the visual and microscopic examination and testing of Mr. Jennings' clothes for gunshot soot and/or stippling, blood spatter, DNA, and other trace evidence.
- Trial testimony of Christina Gonzales, the Senior Criminalist assigned to the biology section of the Los Angeles County Sheriff's Department Crime Lab.

- Trial testimony of Mark Safarik, a criminal profiler who testified on behalf of the prosecution.
- Opening and closing statements of the prosecutor during the trial.
- Crime-scene photographs showing Michelle O'Keefe's body in her car after the shooting.

Comments:

A. The absence of gunshot residue on Mr. Jennings' uniform jacket was exculpatory

1. During the trial, Ms. Gonzales testified on behalf of the prosecution that she had examined the uniform jacket that Mr. Jennings was wearing on the night of the shooting, and that all of her tests for blood spatter were negative. She also testified that the jacket had been collected from Mr. Jennings six days after the shooting, and that two GSR stubs were collected, one from each of the jacket sleeves, though she made no mention of whether or not those GSR stubs were ever tested using the Particle Analysis Method (Scanning Electron Microscopy/Energy Dispersive Spectroscopy (SEM/EDS) analysis). She did state that no evidence of gunshot residue was observed using low power light microscopy.
2. Ms. Gonzales also testified that gunshot residue can be removed from clothing by rubbing the clothing or washing it. She further testified that, "after a certain amount of time, you just can't -- can't detect the G.S.R. (gunshot residue) if it was deposited." But she further elaborated that lightly brushing might be sufficient to remove gunshot residue that had been deposited on someone's hands. She added that brushing could "possibly" remove it from clothing, but that because of the weave of the material in the jacket that Jennings was wearing on the night of the shooting, the residue was more likely to adhere to the jacket than to his hands.
3. In closing argument, the prosecutor told the jury that, because Mr. Jennings had been in possession of the uniform jacket for six days before it was collected, "that destroys any value any evidence of this forensic evidence could have ever had. Okay? Big surprise, there is not a lot there. He had it for six days." (20 RT 7290.) He later added that, "the type of evidence that we were searching for is the type of evidence that could be easily destroyed or rendered undetectable or even brushed or washed away. You are talking about blood evidence. You are talking about hair, fiber. You are talking about gunshot residue. There is no surprise that there is none of this stuff in this case that points anywhere on either side." (7 RT 7290, 7291.)

4. Part of the area of my expertise deals with the analysis of items of clothing for gunshot residue. I have personally performed laboratory testing and analysis for gunshot residue on clothing. I was involved in the initial research that resulted in the development of the Particle Analysis method for GSR detection. In the initial research that I performed and subsequent research performed, it has been shown that GSR can be collected from many surfaces, including clothing, and can be detected years after its initial deposition.
5. Based on my training and experience, and the information that I have reviewed in this case, I have formulated the following opinions concerning the absence of gunshot residue on the uniform jacket and its relevance to the case.
    a. I agree with Ms. Gonzales' testimony that the fabric nature of the uniform jacket that Mr. Jennings was wearing on the night of the shooting would have made it likely that gunshot residue would have adhered to it if Mr. Jennings had fired a gun while wearing the jacket.
    b. I strongly disagree with the prosecutor's statements to the jury that the fact that the uniform jacket had been in Mr. Jennings's possession for six days before it was collected for testing "destroys any value" of gunshot residue testing, Specifically that the absence of gunshot residue sheds any light on Mr. Jennings' guilt.
    c. The Sheriff's Department Scientific Services Bureau notes concerning the uniform jacket specifically state that when it was examined, it was "worn and dirty." Likewise, the uniform pants collected from Mr. Jennings were also described by the criminalist who examined them as "worn and dirty." (*Id.*). There is no evidence that the Mr. Jennings washed his uniform jacket or pants, after the night of the incident and prior to the sheriff's personnel taking possession of them.
    d. In light of the Sheriff's Department's notation of the condition of the uniform jacket and pants as "worn and dirty," I would expect that, if Mr. Jennings had fired a gun while wearing the jacket on the night of the shooting, particularly if he had fired a gun multiple times as the assailant did in this case, that GSR would have been deposited on the jacket, and likely would have been detectable six days later if the jacket was not washed in the interim. Accordingly, the absence GSR on the jacket is evidence that Mr. Jennings did not fire a gun on the night of the shooting, while wearing the jacket.

B. The evidence does not show that Ms. O'Keefe's tube top had been pulled down in the assault

1. During his testimony, the prosecution's "profiler", Mr. Safarik, testified about his opinion of the crime-scene evidence in the case, which he stated indicated that there was, what he called, a "sexual component" of the assault and murder of

Ms. O'Keefe, because her tube top had been pulled down and her breasts were partially exposed. (17 RT 6407-6408.) Mr. Safarik also testified that the autopsy found no signs of any sexual assault on Ms. O'Keefe, and that her clothing other than her tube top and bra were undisturbed. (*Id.*) He later testified that there was minimal physical contact between Ms. O'Keefe and her attacker, with just the attacker pulling down her tube top. (*Id.* at 6432.)

2. Part of the services that TAI offers is crime-scene examination and reconstruction, in a variety of different crimes, and specifically in crimes involving sexual assault.

3. Based on my training and experience, and the information that I have reviewed in this case, I have formulated the following opinions concerning the prosecution's theory that Ms. O'Keefe's attacker had pulled down her tube top during the crime.

    a. Based on my examination of the crime-scene photos, I do not think that there is evidence that the attacker (or anyone else) pulled down Ms. O'Keefe's tube top. Tube tops by their nature can be moved out of their normal wearing position through normal activities. It is common to see women wearing tube tops needing to adjust them by pulling them back up. Ms. O'Keefe had allegedly entered her vehicle and shortly thereafter was attacked. There is no basis for the supposition that someone pulled down her top. The actions of getting into the vehicle and being attacked could result in the dislocation of the tube top without a "sexual component."

    b. The close up photo of Ms. O'Keefe's body after the shooting shows that her breasts were not exposed, and the top portion of the material of her tube top showed no indication of having been pulled down. Based on the comparison to other sexual-assault crime-scenes and crime-scene photos that I have examined in my professional capacity, there is no evidence that her top had been pulled down. Rather, it appears that the entire top may have simply shifted slightly downward as a result of the movement of her body before, during, and after the attack.

    c. If her top had been pulled down by an assailant who had touched or fondled her breasts, I would have expected to see evidence of a DNA transfer by the assailant. Yet there was no evidence of such transfer on Ms. O'Keefe's body.

If you have any questions regarding this matter, please contact me at the telephone number listed above.

Sincerely,

Marc Scott Taylor
President/Lab Director

Reviewed by:

Casey M. Milne
Forensic Scientist

EXHIBIT 12

DOCUMENT FILED UNDER SEAL

The People of the State of California v. Raymond Jennings
Case No.: MA 033712

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 237 West Fourth Street, Second Floor, Claremont, California 91711.

On **January 4, 2017,** I served the foregoing documents described as **NOTICE OF MOTION AND MOTION BY RAYMOND JENNINGS FOR FINDING OF FACTUAL INNOCENCE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JEFFREY I. EHRLICH; EXHIBITS** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

[] BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

[] BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

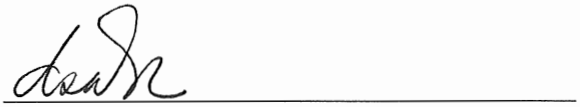
[] BY E-MAIL SERVICE Pursuant to agreement of the parties, I caused such document to be e-mailed as indicated on the attached service list.

[XX] BY PERSONAL DELIVERY I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

[XX] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **January 4, 2017,** at Claremont, California.



Isabel Cisneros-Drake, Paralegal

The People of the State of California v. Raymond Jennings
Case No.: MA 033712

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