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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 No. The conviction was affirmed on appeal, in an unpublished opinion in case no.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