

FILED
Superior Court of California
County of Los Angeles

JAN 23 2017

SHERRIL CARTER, EXECUTIVE OFFICER/CLERK
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER**
11 **CRIMINAL WRITS CENTER**

12
13 In re) Case No.: MA033712
14 RAYMOND LEE JENNINGS,)
15 Petitioner,) MEMORANDUM OF DECISION
16 On Habeas Corpus) (PETITION FOR WRIT OF HABEAS
17) CORPUS)
18)

19 Petition for Writ of Habeas Corpus by Raymond Lee Jennings (“Petitioner”), represented
20 by Jeffrey I. Ehrlich, Esq. Respondent, the People of the State of California, represented by
21 Deputy District Attorneys Robert Grace and Kenneth Lynch. Granted.
22

23 **STATEMENT OF FACTS¹**

24 On February 22, 2000, 18-year old Michelle O’Keefe and her friend, Jennifer Peterson,
25 drove from Palmdale, California to Los Angeles, California to appear as extras in a music video
26 film shoot. O’Keefe left her blue Mustang parked under a light post at a Park-and-Ride
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28 ¹ The following facts and procedural history are adopted from the Court of Appeal opinion, *People v. Raymond Lee Jennings* (Dec. 19, 2011, B222959) [nonpub. opn.] (“*Jennings*”).

1 commuter parking lot in Palmdale and rode to Los Angeles in Peterson's car. At approximately
2 9:22 p.m., O'Keefe and Peterson returned to Palmdale. Peterson dropped O'Keefe off in the
3 Park-and-Ride lot at O'Keefe's Mustang. As O'Keefe got into her Mustang and started the
4 engine, Peterson drove away. O'Keefe had planned to attend her evening college class that night
5 and intended to change clothes, since her outfit for the music video shoot -- a tube top and knee-
6 length skirt -- would not have been appropriate for class. Perhaps in an effort to change clothes
7 in a less conspicuous spot, O'Keefe moved the Mustang from under the light post to a more
8 remote parking spot on the northern edge of the lot.

9 Petitioner, a military veteran, was a security guard at the Park-and-Ride parking lot. At
10 9:32 p.m., Petitioner contacted his supervisor, Iris Malone, on a two-way radio to report hearing
11 gunshots. Malone arrived at the scene at 9:42 p.m. Petitioner directed Malone's attention to
12 O'Keefe's Mustang. The Mustang had rolled backwards and come to rest with its rear wheels in
13 a planter. Malone directed Petitioner to accompany her to the Mustang, but he refused. Malone
14 drove to the Mustang alone and saw O'Keefe with her legs partially outside the open car door.

15 Malone radioed Petitioner and told him to call the police. At 9:49 p.m., Los Angeles
16 County Sheriff's Deputy Billy Cox arrived at the scene. Cox noticed the Mustang's engine was
17 running, in neutral, and that the emergency brake was disengaged. O'Keefe had suffered
18 multiple wounds, including blunt force trauma to her forehead and four gunshot wounds to her
19 face and chest.

20 Los Angeles County Sheriff's Detectives Diane Harris and Richard Longshore arrived
21 approximately three hours after the shooting. The detectives found O'Keefe's wallet in the
22 Mustang, which contained credit cards and \$111 in cash. They also discovered two expended
23 projectiles and three shell casings on the ground between the parking spot where O'Keefe had
24 moved the Mustang and the car's resting place in the planter. A firearms expert later concluded
25 the projectiles and shell casings all came from the same nine millimeter handgun.

26 At the time of the shooting, Victoria Richardson and three other people were sitting in a
27 parked car near the northwest corner of the parking lot. The group was smoking marijuana and
28 listening to music. Richardson stated that she heard a car alarm go off and then heard multiple

1 “tapping” noises. A few minutes later, Richardson saw a security car drive by. It was at this
2 time that Richardson and her companions decided to leave the parking lot. As they were driving
3 out of the lot, Richardson stopped the car and asked Petitioner what had happened. He
4 responded that he did not know, and Richardson and the others subsequently left the parking lot.

5 Later that night, Petitioner told investigators that he had been patrolling the parking lot on
6 foot when he heard a car alarm and a single gunshot. He stated that he ducked behind his car for
7 cover, but looked up and saw O’Keefe’s Mustang rolling into the planter. Petitioner recalled that
8 he heard five more shots but never saw the shooter. Petitioner stated he did not see anyone leave
9 the area by foot or by car. Petitioner explained that he radioed his supervisor for help, but
10 remained by his car because he did not know whether the shooter was still in the parking lot.
11 Three days after the shooting, Petitioner resigned from his security guard job.

12 Five years later, Petitioner was arrested and charged with O’Keefe’s murder. The
13 People’s case against Petitioner was purely circumstantial. There were no eyewitnesses
14 identifying Petitioner as the shooter, and investigators never found the murder weapon.
15 Investigators also tested Petitioner’s security guard uniform, but did not find any gunshot
16 residue, blood, or fibers from O’Keefe’s clothing. Additionally, DNA of an unidentified male
17 was found under O’Keefe’s fingernails, but it did not match Petitioner.

18 **PROCEDURAL HISTORY**

19 Petitioner pleaded not guilty, and the case went to trial three times. The first two trials
20 took place for “administrative reasons” in downtown Los Angeles after Petitioner unsuccessfully
21 moved for a change of venue due to the publicity garnered by the case in the Antelope Valley,
22 which includes Palmdale. The first trial took place in the spring of 2008 and ended in a mistrial.
23 The jury hung 9-to-3 in favor of guilt. The second trial, in February 2009, also ended in a
24 mistrial, with the jury hanging 11-to-1 in favor of guilt. The third trial was held in the Antelope
25 Valley, where the crime occurred and the case had been widely publicized. On December 18,
26 2010, the third jury convicted Petitioner of second-degree murder. On February 18, 2010,
27 Petitioner was sentenced to state prison for 40 years to life.
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1 On December 19, 2011, the California Court of Appeal, Second District, affirmed
2 Petitioner's conviction in an unpublished decision, finding there was sufficient evidence to
3 support the jury's conclusion. (*People v. Raymond Lee Jennings* (Dec. 19, 2011, B222959)
4 [nonpub. opn.] ("*Jennings*").)

5 Conviction Review Unit Investigation

6 On June 29, 2015, Los Angeles County District Attorney Jackie Lacey announced the
7 creation of the District Attorney's Office's new Conviction Review Unit ("CRU"), which was
8 established to "address credible claims of innocence made by people currently incarcerated for
9 serious and violent felonies." (Los Angeles District Attorney's Office News Release, "D.A.
10 Jackie Lacey Announces Creation of Conviction Review Unit" (Jun. 29, 2015)
11 <[http://da.lacounty.gov/sites/default/files/press/062915_DA_Jackie_Lacey_Announces_Creation
12 _of_Conviction_Review_Unit.pdf](http://da.lacounty.gov/sites/default/files/press/062915_DA_Jackie_Lacey_Announces_Creation_of_Conviction_Review_Unit.pdf)> [as of Jan. 20, 2017].)

13 On October 2, 2015, Petitioner's counsel, Jeffrey I. Ehrlich, wrote a letter to Assistant
14 Head Deputy District Attorney Kenneth Lynch urging the CRU to review Petitioner's case. On
15 March 2, 2016, Petitioner supplemented the October letter by completing the CRU's "Conviction
16 Review Request" form and answering a list of 23 questions regarding Petitioner's case. To
17 support his claims, Petitioner also included new reports from four experts, including a criminal
18 profiling expert, a security expert, the director of a forensic laboratory, and a firearms and
19 ballistics expert.

20 The CRU agreed to review the case, and on June 22, 2016, Chief Deputy District
21 Attorney John K. Spillane submitted a letter to this Court under seal.² The letter stated that the
22 CRU "undertook a complete and thorough review of the case which included a request that the
23 Los Angeles County Sheriff's Department (LASD) reopen the investigation into the murder,"
24 and stipulated that the letter would serve as Jennings's petition for writ of habeas corpus based
25 on newly discovered evidence. (Letter dated June 22, 2016 at pp. 1, 18.) On June 23, 2016, at
26 the request of the parties, the Court deemed the letter to be a joint habeas corpus petition
27 (hereinafter, the "Joint Petition"), and pursuant to Penal Code section 1476, released Petitioner
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² The letter was unsealed by this Court on January 5, 2017.

1 from custody on his own recognizance pending the completion of the ongoing investigation.
2 (Minute Order dated Jun. 23, 2016, p. 2.) The District Attorney had no objection to Petitioner's
3 release, and the California Department of Corrections and Rehabilitation lifted their hold on
4 Petitioner on June 23, 2016.

5 In an addendum to the Joint Petition dated December 20, 2016, the District Attorney's
6 Office informed the Court that based on the new investigation, it has ruled out Petitioner as a
7 suspect in O'Keefe's murder, and that, as a result, it "agrees that Raymond Jennings is entitled to
8 relief through habeas corpus based on newly discovered evidence pointing to his factual
9 innocence." The addendum also states that the District Attorney's Office will not seek to retry
10 Petitioner for O'Keefe's murder.³

11 On January 5, 2017, Petitioner also filed a Motion for Finding of Factual Innocence
12 ("Motion"). That same day, the Court held an *in camera* hearing with representatives from the
13 District Attorney's Office and the Los Angeles County Sheriff's Department to discuss the
14 current status of the investigation.⁴

15 As requested during a Marsy's Law presentation by the victim's parents, Michael and
16 Patricia O'Keefe, the Court has also reviewed the closing arguments of Deputy District Attorney
17 Michael Blake, and Petitioner's trial counsel, David Houchin, Esq., given during Petitioner's
18 third trial.⁵

23 ³ This case marks the first time that the Conviction Review Unit has recommended that a conviction be
24 vacated and the Petitioner exonerated. Due to the importance of this decision, the Court wished to outline its
reasoning in writing.

25 ⁴ The specifics of the hearing remain under seal so as to not compromise the ongoing investigation, but the
26 Court has been briefed on the developments made in the investigation since June 2016, and that information further
corroborates the newly discovered evidence that has been made available to the public.

27 ⁵ Mr. O'Keefe also requested that the Court speak to the prosecuting attorney, Mr. Blake. For ethical
28 reasons, the Court is prohibited from having ex parte communications with Mr. Blake. At the time of trial, Mr.
Blake was unaware of the information now relied upon by the CRU. Mr. Blake has since been informed of the new
information, but he has chosen not to address the Court.

1 **APPLICABLE LAW**

2 i. Newly Discovered Evidence

3 “Because a petition for a writ of habeas corpus seeks to collaterally attack a
4 presumptively final criminal judgment, the petitioner bears a heavy burden initially to plead
5 sufficient grounds for relief, and then later to prove them.” (*People v. Duvall* (1995) 9 Cal.4th
6 464, 474.) In habeas corpus collateral attacks, “all presumptions favor the truth, accuracy, and
7 fairness of the conviction and sentence; *defendant* thus must undertake the burden of overturning
8 them.” (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1260, italics in original.)

9 “Habeas corpus will lie to vindicate a claim that newly discovered evidence demonstrates
10 a prisoner is actually innocent.” (*In re Hardy* (2007) 41 Cal.4th 977, 1016.) “[A] criminal
11 judgment may be collaterally attacked on habeas corpus on the basis of newly discovered
12 evidence if such evidence casts fundamental doubt on the accuracy and reliability of the
13 proceedings.” (*In re Lawley* (2008) 42 Cal.4th 1231, 1239 (“*Lawley*”), internal citations and
14 quotation marks omitted.) “It is not sufficient that the evidence might have weakened the
15 prosecution case or presented a more difficult question for the judge or jury.” (*In re Clark*
16 (1993) 5 Cal.4th 750, 766 (“*Clark*”).) The evidence must “undermine the entire prosecution case
17 and point unerringly to innocence or reduced culpability.” (*Lawley, supra*, 42 Cal.4th at p. 1239,
18 citing *In re Hall* (1981) 30 Cal.3d 408, 417.) “[E]vidence which is uncertain, questionable or
19 directly in conflict with other testimony does not afford a ground for relief upon habeas corpus.”
20 (*In re Lindley* (1947) 29 Cal.3d 709, 722 (“*Lindley*”).) If “a reasonable jury could have rejected”
21 the evidence, the habeas petitioner has not satisfied his or her burden. (*Clark, supra*, 5 Cal.4th at
22 p. 798, fn. 33.)

23 In addition, Penal Code⁶ section 1473, a new version of which became effective on
24 January 1, 2017, was amended to allow a writ of habeas corpus to be prosecuted on the basis of
25 new evidence. Specifically, section 1473, subdivision (b)(3)(A) states that a writ of habeas
26 corpus may be prosecuted if “[n]ew evidence exists that is credible, material, presented without
27 substantial delay, and of such decisive force and value that it would have more likely than not

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⁶ All further statutory references are to the Penal Code unless otherwise specified.

1 changed the outcome at trial.” (§ 1473, subd. (b)(3)(A).) Section 1473 defines new evidence as
2 “evidence that has been discovered after trial, that could not have been discovered prior to trial
3 by the exercise of due diligence, and is admissible and not merely cumulative, corroborative,
4 collateral, or impeaching.” (§ 1473, subd. (b)(3)(B).)

5 As discussed *post*, the Court finds Petitioner has met his burden for habeas corpus relief
6 under both the *Lawley* standard and the more lenient section 1473 standard.

7 DISCUSSION

8 i. New Evidence Implicating Other Suspects

9 The Joint Petition states that “[n]ewly discovered evidence has been revealed that
10 suggests a person or persons *other* than Mr. Jennings may have murdered Ms. O’Keefe.” (Joint
11 Petition at p. 1, emphasis added.) Specifically, the “newly discovered evidence supports the
12 inference that Ms. O’Keefe may have been killed by gang members during a robbery.” (Joint
13 Petition at p. 18.) The Joint Petition discusses new information regarding two individuals, other
14 than Petitioner, who were at the crime scene at the time of the murder: Jane Doe and John Doe.⁷

15 According to the newly discovered evidence, Jane Doe is a documented gang member
16 and claims to associate only with other gang members. Jane Doe was arrested two weeks after
17 O’Keefe’s murder for assault with a deadly weapon. At that time, she claimed to have
18 information about O’Keefe’s murder. Jane told investigators that she saw a black Toyota Tercel
19 drive past her car at the time of the murder. She stated the car was driven by a white male
20 wearing a white shirt and sideways baseball hat. Since the time of O’Keefe’s murder, Jane has
21 been arrested numerous times for violent crimes, including attempted murder. (Joint Petition at
22 pp. 13-14.)

23 Jane Doe was with John Doe in the parking lot at the time of the murder. John Doe is
24 also a documented gang member with an extensive criminal record. Four months after
25 O’Keefe’s murder, John Doe was involved in a carjacking, an attempted carjacking, and a
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27 ⁷ Due to the ongoing nature of the investigation, these two individuals were so described anonymously in
28 the Joint Petition and will remain anonymous at the joint request of the District Attorney and the Sheriff’s
investigators.

1 robbery in which he stole the victim's Mustang. John used a nine millimeter handgun in the
2 commission of these crimes. When John was arrested in June of 2000, he was wearing an
3 earring that matched the description of earrings that O'Keefe was wearing at the time of her
4 death. John Doe was never interviewed about the O'Keefe murder.⁸ (Joint Petition at pp. 14-
5 17.)

6 ii. New Expert Testimony Regarding Motive

7 In light of the new evidence regarding the other people present at the time of the murder,
8 Petitioner retained criminal profiling expert Peter Klismet to review the case. Specifically,
9 Klismet was retained to analyze the testimony of the prosecution's expert witness, former FBI
10 Special Agent Mark Safarik. (Report by Peter M. Klismet of Criminal Profiling Associates,
11 LLC, p. 1, attached to Motion as Exh. 1 ("Klismet Report").) At trial, Safarik concluded that
12 O'Keefe was murdered as the result of an attempted sexual assault, which then escalated into a
13 homicide. (*Jennings*, at p.*10.) This conclusion was an essential part of the prosecution's case.⁹
14 In fact, the Court of Appeal noted that "Safarik was the only witness who testified that the
15 killer's apparent motive was to commit a sexual assault that was poorly planned and quickly
16 escalated to a homicide. This testimony may have been crucial to the prosecution's case
17 because, without it, there was no evidence from which the jury might infer the motive or the
18 perpetrator's intent in killing O'Keefe." (*Jennings*, at p.*11.)

19 Upon being informed of the new evidence relating to Jane Doe and John Doe, Safarik
20 withdrew his previous opinion and filed a declaration in support of Petitioner's habeas petition.
21 (Declaration of Mark E. Safarik, dated Aug. 24, 2016, attached to Motion as Exh. 12 ("Safarik
22 Declaration").) Safarik explained that his original conclusion was based on an assumption that

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24 ⁸ One month after O'Keefe's murder, a newspaper reporter informed the Sheriff's Department that the
25 newspaper had received an anonymous tip regarding the murder. The caller stated that two gang members were in
26 the Park-and-Ride parking lot stealing rims and hub caps. The gang members allegedly attempted to carjack
27 O'Keefe's Mustang, but something went wrong and she was shot. Investigators attempted to validate this tip, but
ultimately concluded "some of the assertions made by the anonymous caller appeared to be far-fetched or
improbable, based upon the evidence at the scene and the totality of the investigation conducted to date." (Joint
Petition at p. 10.)

28 ⁹ During closing arguments in Petitioner's third trial, Deputy District Attorney Michael Blake stated,
"There is a sexual component to this crime. That is the motive, and that's how it began." (Transcript of
Proceedings in *People v. Jennings*, dated Nov. 23, 2009-Nov. 25, 2009, at p. 7256.)

1 the information available to him at the time was the result of a “comprehensive, thorough, and
2 well-planned investigation.” (Safarik Declaration at p. 2.) Safarik stated that at the time he
3 prepared the original report for this case, and at the time he testified at trial as a witness for the
4 prosecution, he “assumed and believed that the investigators had interviewed all witnesses who
5 were present at the scene when the murder occurred, and had evaluated the information they
6 provided in light of all the facts, including their respective criminal backgrounds (or lack
7 thereof).” (Safarik Declaration at p. 5.) Upon learning that investigators had neglected to
8 interview all witnesses present at the crime scene, Safarik indicated the following: “Had I been
9 aware in July 2007 that this portion of the investigation had not been conducted, I would not
10 have been able to formulate a reliable opinion about the case or to have written a report about the
11 O’Keefe murder, because I would not have had sufficient information to do so.” (Safarik
12 Declaration at p. 6.) Based on the information that has now come to light as a result of the
13 CRU’s review of this case, Safarik states he is not confident he would still reach all of the same
14 conclusions or opinions expressed in his original report and trial testimony. (Safarik Declaration
15 at p. 6.)

16 Petitioner’s expert provided an alternate theory based on the new information implicating
17 other possible suspects. Klismet concluded that the evidence strongly suggested the murder was
18 the result of a botched robbery, in part because O’Keefe’s cell phone was stolen and the glove
19 compartment was ransacked. (Klismet Report at p. 9.). O’Keefe’s wallet was wedged between
20 the seat and the center console and hidden from view, which could explain why it was not taken.
21 (Klismet Report at p. 9.) Klismet cited the Crime Classification Manual in concluding the
22 murder fit the characteristics of “situational felony murder.” (Klismet Report at pp. 4-5.) In a
23 situational felony murder scenario, the offender often kills the victim in a panic and flees the
24 scene. (Klismet Report at p. 4.) Indications of a situational felony murder scenario include blunt
25 force trauma, close-contact gunshot wounds, and some sort of alarm or trigger that prompts a
26 panicked killing. The offender is often young, inexperienced, and possibly under the influence
27 of drugs or alcohol. (Klismet Report at pp. 4-5.) After comparing these factors to the facts
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1 present in this case, Klismet concluded that O’Keefe’s murder was likely the result of a gang-
2 related robbery attempt, with all the hallmarks of a situational felony murder scenario.

3 iii. New Expert Testimony Regarding Ballistics

4 At trial, the prosecution’s firearms experts testified that the ammunition used in this
5 crime was a combination of different types of ammunition made by different manufacturers.
6 This evidence was presented to support the notion that Petitioner’s military training provided
7 him with the skill and knowledge to combine different types of ammunition in order to achieve a
8 greater degree of damage. (Forensic Firearms and Ballistics Report by Ronald R. Scott, p. 4,
9 attached to Motion as Exh. 9 (“Scott Report”).) However, Petitioner’s ballistics expert, Robert
10 Scott, now contends that, to the contrary, this evidence is indicative of inexperience because
11 “[a]n experienced shooter would never mix ammunition from manufacturers. When shooting
12 crimes are committed and evidence is recovered which shows that different makes and types of
13 ammunition came from a single firearm, it is a clear and convincing sign that the person simply
14 loaded whatever they could get their hands on. Persons who cannot legally purchase
15 ammunition and use the same brand and design with the same consistent velocity and energy will
16 acquire whatever they can from other sources.” (Scott Report at p. 5.) Scott stated this is a
17 common occurrence with street gangs because firearms and ammunition are often shared among
18 members. (Scott Report at p. 5.) This new report suggesting a connection between the ballistics
19 evidence and gang activity, which has only become plausible since the discovery of the new
20 suspects and their gang connections, further supports the theory that the murder may have been
21 gang-related.

22 While the investigation into the tragic murder of Michelle O’Keefe is still ongoing, the
23 newly discovered evidence disclosed thus far has directed the People’s focus away from
24 Petitioner and on to other possible suspects. In June 2016, the District Attorney’s Office
25 acknowledged that the “evidence that other people present at the scene committed crimes with
26 handguns close in time and similar in nature to the instant matter and left the scene before law
27 enforcement could arrive raises questions about the validity of Mr. Jennings’s conviction.”
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1 (Joint Petition at p. 18.) The information gathered in recent months has only bolstered this
2 conclusion.

3 As the Court of Appeal acknowledged, Safarik's expert testimony regarding a sexual
4 motive was the cornerstone of a case based purely on circumstantial evidence. The newly
5 discovered evidence tends to negate that motive by providing an alternate explanation that takes
6 into account the similarities between this crime and other crimes committed around the same
7 time by documented gang members who were parked a short distance away from O'Keefe's
8 Mustang on the night of the murder. There is no doubt that the prosecution's case would have
9 been decidedly different without Safarik's testimony regarding a possible sexual motive, or if the
10 alternative theory of a gang-related robbery attempt had been presented to the jury. The People
11 agree that "Jane's and John's age, gang involvement, criminal histories, and presence at the
12 crime scene lend credence to the opinions of the retired FBI profiler and ballistics expert [that]
13 the crime was a robbery committed by gang members, rather than a sexual assault which
14 escalated into a murder." (Joint Petition at p. 18.) If additional information regarding the
15 presence of the gang members at the scene had been presented at trial, along with the lack of
16 physical evidence implicating Petitioner, the Court concludes, as the District Attorney's CRU
17 has, that no reasonable jury would have been able to determine beyond a reasonable doubt that
18 Petitioner was guilty of killing O'Keefe.

19 CONCLUSION

20 The Court finds that the new evidence casts "fundamental doubt on the accuracy and
21 reliability of the proceedings" and would tend to "undermine the entire prosecution case and
22 point unerringly to innocence or reduced culpability" so as to warrant habeas relief. (*Lawley*,
23 *supra*, 42 Cal.4th at p. 1239.) The Court also finds that the newly discovered evidence would
24 have more likely than not changed the outcome at trial, and therefore also satisfies the new
25 section 1473 standard. (§ 1473, subd. (b)(3)(A).)

26 Lastly, the Court does not come to this decision lightly, and is not unmindful of the
27 feelings of Michelle O'Keefe's family and friends. This case marks the first time that the
28 District Attorney's Conviction Review Unit has recommended that a conviction be vacated and

1 the defendant be found factually innocent.¹⁰ The Court acknowledges the impact its decision will
2 undoubtedly have on the family and friends of Michelle O’Keefe, and the dismay or worse they
3 must now feel that a closed matter has been reopened and overturned. Michelle’s mother,
4 Patricia O’Keefe, pointed out when she addressed the court at the hearing that 32 jurors, one trial
5 judge and three Justices of the Court of Appeal felt there was sufficient evidence to convict
6 Petitioner. Undoubtedly, the O’Keefe’s feel a grave injustice has now been perpetrated.

7 But justice is not measured by the number of people who support the conviction.
8 Jennings spent eleven years of his life in prison based on a conviction in which the prosecuting
9 authorities themselves have declared publically that they now have no confidence. That
10 conclusion was based on evidence developed by further investigation by the Sheriff and which
11 was never presented to the prosecutor or to any of the juries that considered the charges against
12 Jennings. Indeed, that investigation now expressly *excludes* Jennings as being the perpetrator.
13 While to the O’Keefe’s and others it may feel it is unjust to now grant Jennings relief, it is even
14 more unjust to keep a man in prison who has been excluded by the lawful authorities as the
15 perpetrator after an investigation, and further, as to whom those authorities now acknowledge to
16 not merely be not guilty of the crime, but factually innocent of it. As to those who may say that
17 now no conviction is ever truly final as long as convictions can be “reviewed,” an ancient maxim
18 of common law jurisprudence comes to mind: “*Fiat justitia, ruat caelum,*” which translates as
19 “Let justice be done, though the heavens may fall.”¹¹

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¹⁰ The Court has held the Motion for a Finding of Factual Innocence in abeyance pending service of it by the District Attorney upon the Attorney General, as required by law. Penal Code § 1485.5(b).

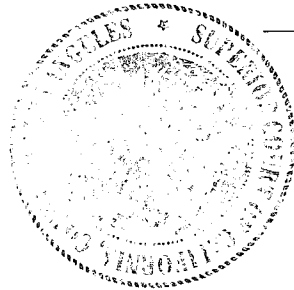
¹¹ Attributed to Lord Mansfield, sitting as Lord Chief Justice of England and Wales, in *Somerset v Stewart* (1772) 98 ER 499, 20 Howell’s State Trials 1, at 79, commonly known as *Somerset’s Case*. English common law, not repugnant to the United States and California constitutions, is the rule of decision in all California courts. Civil Code § 22.2.


1 **DISPOSITION**

2 For all the foregoing reasons, the Joint Petition for Writ of Habeas Corpus is GRANTED.
3 Petitioner's sentence of 40 years to life is recalled, the conviction is vacated and set aside, and
4 the charges against Raymond Lee Jennings are dismissed.

5 The Clerk is ordered to serve a copy of this order upon Jeffrey I. Ehrlich, Esq., as counsel
6 for Petitioner, and upon Deputy District Attorneys Robert Grace and Assistant Head Deputy
7 District Attorney Kenneth Lynch, as counsel for Co-Petitioner the People of the State of
8 California. A courtesy copy is to be served on Supervising Deputy Attorney General Julie
9 Malone, as counsel for Petitioner's nominal custodian, the Secretary of the Department of
10 Corrections and Rehabilitation.

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13 Dated: January 23, 2017



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15 WILLIAM C. RYAN
16 Judge of the Superior Court
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Send a copy of this order to:

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