

JAN 30 2017

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
CRIMINAL WRITS CENTER**

In re) Case No.: MA033712
RAYMOND LEE JENNINGS,) MEMORANDUM OF DECISION
Petitioner) (MOTION FOR FACTUAL INNOCENCE)

Motion for Factual Innocence (“Motion”) by Raymond Lee Jennings (“Petitioner”),
represented by Jeffrey I. Ehrlich, Esq. Respondent, the People of the State of California,
represented by Deputy District Attorneys Robert Grace and Kenneth Lynch. Granted.

STATEMENT OF FACTS¹

On February 22, 2000, 18-year old Michelle O’Keefe and her friend, Jennifer Peterson,
drove from Palmdale, California to Los Angeles, California to appear as extras in a music video
film shoot. O’Keefe left her blue Mustang parked under a light post at a Park-and-Ride
commuter parking lot in Palmdale and rode to Los Angeles in Peterson’s car. At approximately

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

8 Petitioner, a military veteran, was a security guard at the Park-and-Ride parking lot. At
9 9:32 p.m., Petitioner contacted his supervisor, Iris Malone, on a two-way radio to report hearing
10 gunshots. Malone arrived at the scene at 9:42 p.m. Petitioner directed Malone's attention to
11 O'Keefe's Mustang. The Mustang had rolled backwards and come to rest with its rear wheels in
12 a planter. Malone directed Petitioner to accompany her to the Mustang, but he refused. Malone
13 drove to the Mustang alone and noticed O'Keefe's leg and foot outside the open driver's side
14 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 Sheriff's Detectives Diane Harris and Richard Longshore arrived approximately three
21 hours after the shooting. The detectives found O'Keefe's wallet in the Mustang, which
22 contained credit cards and \$111 in cash. They also discovered two expended projectiles and
23 three shell casings on the ground between the parking spot where O'Keefe had moved the
24 Mustang and the car's resting place in the planter. A firearms expert later concluded the
25 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.
15 (Letter dated Oct. 2, 2015, attached to Motion as Exh. 2.) On March 2, 2016, Petitioner
16 supplemented the October letter by completing the CRU's "Conviction Review Request" form
17 and answering a list of 23 questions regarding Petitioner's case. To support his claims,
18 Petitioner also included new reports from four experts, including a criminal profiling expert, a
19 security expert, the director of a forensic laboratory, and a firearms and ballistics expert.
20 (Motion at p. 6; Exhs. 2, 8-12.)

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

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² The letter was unsealed by this Court on January 5, 2017.

1 (hereinafter, the “Joint Petition”), and pursuant to Penal Code³ section 1476, released Petitioner
2 from custody on his own recognizance pending the completion of the ongoing investigation.
3 (Minute Order dated Jun. 23, 2016, p. 2.) The District Attorney had no objection to Petitioner’s
4 release, and the California Department of Corrections and Rehabilitation lifted their hold on
5 Petitioner on June 23, 2016.

6 In an addendum to the Joint Petition dated December 20, 2016, the District Attorney’s
7 Office informed the Court that based on the new investigation, it has ruled out Petitioner as a
8 suspect in O’Keefe’s murder, and that, as a result, it “agrees that Raymond Jennings is entitled to
9 relief through habeas corpus based on newly discovered evidence pointing to his factual
10 innocence.” (Motion at p. 8.) The District Attorney’s Office also conceded that the newly
11 discovered evidence is sufficient to satisfy the burden of proof for a finding of factual innocence
12 under section 1485.5. (Motion at p. 8.) The addendum also states that the District Attorney’s
13 Office will not seek to retry Petitioner for O’Keefe’s murder.

14 On January 5, 2017, Petitioner filed the instant Motion, seeking a finding of factual
15 innocence. The Motion was held in abeyance pending service of it by the District Attorney upon
16 the Attorney General, as required by law. (§ 1485.5, subd. (b).) On January 23, 2017, this Court
17 granted the Joint Petition, finding that the new evidence casts “fundamental doubt on the
18 accuracy and reliability of the proceedings” and would tend to “undermine the entire prosecution
19 case and point unerringly to innocence or reduced culpability” so as to warrant habeas relief
20 under *In re Lawley* (2008) 42 Cal.4th 1231, 1239. The Court also found that the newly
21 discovered evidence would have more likely than not changed the outcome at trial, and therefore
22 also satisfies the section 1473 standard. (§ 1473, subd. (b)(3)(A).) The District Attorney has
23 now confirmed by email and a Proof of Service that the Attorney General has received notice of
24 this motion.

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³ All further statutory references are to the Penal Code unless otherwise specified.

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2 **APPLICABLE LAW**

3 i. Factual Innocence

4 Section 1485.5, subdivision (a) states the following: “If the district attorney or Attorney
5 General stipulates to or does not contest the factual allegations underlying one or more of the
6 grounds for granting a writ of habeas corpus or a motion to vacate a judgment, the facts
7 underlying the basis for the court’s ruling or order shall be binding on the Attorney General, the
8 factfinder, and the California Victim Compensation Board.” (§ 1485.5, subd. (a).) Section
9 1485.5, subdivision (c) states that the express factual findings made by the court in considering a
10 petition for habeas corpus or an application for a certificate of factual innocence “shall be
11 binding on the Attorney General, the factfinder, and the California Victim Compensation
12 Board.” (§ 1485.5, subd. (c).)

13 In conjunction with section 1485.5, section 1485.55, subdivision (b) authorizes a
14 petitioner to “move for a finding of factual innocence by a preponderance of the evidence that
15 the crime with which he or she was charged was either not committed at all or, if committed, was
16 not committed by him or her.” (§1485.55, subd. (b).)

17 A petitioner, therefore, is entitled to a finding of factual innocence under section 1485.55,
18 subdivision (b) “only if he or she can demonstrate by a preponderance of the evidence that he or
19 she was ‘innocent’ in the sense that he or she did not perform the acts ‘that characterize the
20 crime’ or are elements of the crime, and was therefore ‘wrongfully convicted and unlawfully
21 imprisoned.’” (*People v. Etheridge* (2015) 241 Cal.App.4th 800, 810.)

22 In conjunction with the January 23, 2017 Order granting the Joint Petition, the Court also
23 finds that Petitioner has met his burden for a finding of factual innocence pursuant to sections
24 1485.5 and 1485.55.

25 **DISCUSSION**

26 i. New Evidence Implicating Other Suspects

27 The Joint Petition states that “[n]ewly discovered evidence has been revealed that
28 suggests a person or persons *other* than Mr. Jennings may have murdered Ms. O’Keefe.” (Joint

1 Petition at p. 1, emphasis added.) Specifically, the “newly discovered evidence supports the
2 inference that Ms. O’Keefe may have been killed by gang members during a robbery.” (Joint
3 Petition at p. 18.) The Joint Petition discusses new information regarding two individuals, other
4 than Petitioner, who were at the crime scene at the time of the murder: Jane Doe and John Doe.⁴

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

13 Jane Doe was with John Doe in the parking lot at the time of the murder. John Doe is
14 also a documented gang member with an extensive criminal record. Four months after
15 O’Keefe’s murder, John Doe was involved in a carjacking, an attempted carjacking, and a
16 robbery in which he stole the victim’s Mustang. John used a nine millimeter handgun in the
17 commission of these crimes. When John was arrested in June of 2000, he was wearing an
18 earring that matched the description of earrings that O’Keefe was wearing at the time of her
19 death. John Doe was never interviewed about the O’Keefe murder.⁵ (Joint Petition at pp. 14-
20 17.)

21 ii. New Expert Testimony Regarding Motive

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24 ⁴ Due to the ongoing nature of the investigation, these two individuals were so described anonymously in
25 the Joint Petition and will remain anonymous at the joint request of the District Attorney and the Sheriff’s
investigators.

26 ⁵ One month after O’Keefe’s murder, a newspaper reporter informed the Sheriff’s Department that the
27 newspaper had received an anonymous tip regarding the murder. The caller stated that on the night of the murder,
28 two gang members were in the Park-and-Ride parking lot stealing rims and hub caps. The gang members allegedly
attempted to carjack 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.)

1 In light of the new evidence regarding the other people present at the time of the murder,
2 Petitioner retained criminal profiling expert Peter Klismet to review the case. Specifically,
3 Klismet was retained to analyze the testimony of the prosecution's expert witness, former FBI
4 Special Agent Mark Safarik. (Report by Peter M. Klismet of Criminal Profiling Associates,
5 LLC, p. 1, attached to Motion as Exh. 1 ("Klismet Report").) At trial, Safarik concluded that
6 O'Keefe was murdered as the result of an attempted sexual assault, which then escalated into a
7 homicide. (*Jennings*, at p. *10.) This conclusion was an essential part of the prosecution's
8 case.⁶ In fact, the Court of Appeal noted that "Safarik was the only witness who testified that the
9 killer's apparent motive was to commit a sexual assault that was poorly planned and quickly
10 escalated to a homicide. This testimony may have been crucial to the prosecution's case
11 because, without it, there was no evidence from which the jury might infer the motive or the
12 perpetrator's intent in killing O'Keefe." (*Jennings*, at p. *11.)

13 Upon being informed of the new evidence relating to Jane Doe and John Doe, Safarik
14 withdrew his previous opinion and filed a declaration in support of Petitioner's habeas petition.
15 (Declaration of Mark E. Safarik, dated Aug. 24, 2016, attached to Motion as Exh. 12 ("Safarik
16 Declaration").) Safarik explained that his original conclusion was based on an assumption that
17 the information available to him at the time was the result of a "comprehensive, thorough, and
18 well-planned investigation." (Safarik Declaration at p. 2.) Safarik stated that at the time he
19 prepared the original report for this case, and at the time he testified at trial as a witness for the
20 prosecution, he "assumed and believed that the investigators had interviewed all witnesses who
21 were present at the scene when the murder occurred, and had evaluated the information they
22 provided in light of all the facts, including their respective criminal backgrounds (or lack
23 thereof)." (Safarik Declaration at p. 5.) Upon learning that investigators had neglected to
24 interview all witnesses present at the crime scene, Safarik indicated the following: "Had I been
25 aware in July 2007 that this portion of the investigation had not been conducted, I would not
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28 ⁶ 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 have been able to formulate a reliable opinion about the case or to have written a report about the
2 O'Keefe murder, because I would not have had sufficient information to do so." (Safarik
3 Declaration at p. 6.) Based on the information that has now come to light as a result of the
4 CRU's review of this case, Safarik is not confident he would still reach all of the same
5 conclusions or opinions expressed in his original report and trial testimony. (Safarik Declaration
6 at p. 6.)

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

21 iii. New Expert Testimony Regarding Ballistics

22 At trial, the prosecution's firearms experts testified that the ammunition used in this
23 crime was a combination of different types of ammunition made by different manufacturers.
24 This evidence was presented to support the notion that Petitioner's military training provided
25 him with the skill and knowledge to combine different types of ammunition in order to achieve a
26 greater degree of damage. (Forensic Firearms and Ballistics Report by Ronald R. Scott, p. 4,
27 attached to Motion as Exh. 9 ("Scott Report").) However, Petitioner's ballistics expert, Robert
28 Scott, now contends that, to the contrary, this evidence is indicative of inexperience because

1 “[a]n experienced shooter would never mix ammunition from manufacturers. When shooting
2 crimes are committed and evidence is recovered which shows that different makes and types of
3 ammunition came from a single firearm, it is a clear and convincing sign that the person simply
4 loaded whatever they could get their hands on. Persons who cannot legally purchase
5 ammunition and use the same brand and design with the same consistent velocity and energy will
6 acquire whatever they can from other sources.” (Scott Report at p. 5.) Scott stated this is a
7 common occurrence with street gangs because firearms and ammunition are often shared among
8 members. (Scott Report at p. 5.) This new report suggesting a connection between the ballistics
9 evidence and gang activity, which has only become plausible since the discovery of the new
10 suspects and their gang connections, further supports the theory that the murder may have been
11 gang-related.

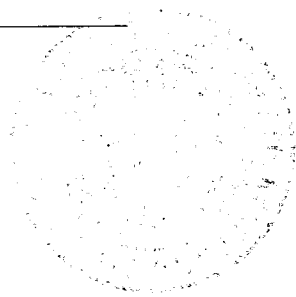
12 As the Court of Appeal acknowledged, Safarik’s expert testimony regarding a sexual
13 motive was the cornerstone of a case based purely on circumstantial evidence. The newly
14 discovered evidence tends to negate that motive by providing an alternate explanation that takes
15 into account the similarities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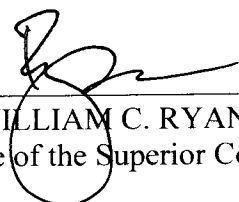
DISPOSITION

For all the foregoing reasons, the Motion for Factual Innocence is GRANTED. The Court finds Petitioner Raymond Lee Jennings to be factually innocent of the murder of Michelle O'Keefe.

The Clerk is ordered to serve a copy of this order upon Jeffrey I. Ehrlich, Esq., as counsel for Petitioner, and upon Deputy District Attorney Robert Grace and Assistant Head Deputy District Attorney Kenneth Lynch, as co-counsel for Respondent. A courtesy copy is also to be served on Deputy Attorney General Julie Malone, as counsel for the Secretary of the Department of Corrections and Rehabilitation.

Dated: 1-30-17




WILLIAM C. RYAN
Judge of the Superior Court

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1 **Send a copy of this order to:**

2 *Counsel for Petitioner*

3 Jeffrey I. Ehrlich
4 The Ehrlich Law Firm
5 16130 Ventura Blvd., Suite 610
6 Encino, CA 91436

7 *Counsel for Respondent*

8 Office of the District Attorney
9 Conviction Review Unit
10 Attn: Robert Grace and Kenneth Lynch
11 320 W. Temple St., Suite 540
12 Los Angeles, CA 90012

13 *Counsel for the Secretary of the Department of Corrections and Rehabilitation*

14 Department of Justice – State of California
15 Office of the Attorney General
16 300 South Spring Street, Suite 1702
17 Los Angeles, CA 90013
18 Attn: Julie Malone, Supervising Deputy Attorney General
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