

JOHN H. YABLONSKY #2309342444
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SUPREME COURT CALIFORNIA
SAN BERNARDINO COUNTY

JOHN HENRY YABLONSKY,
PETITIONER,

CASE: FVI900518 (1172.6)
NOTICE OF MOTION TO DISMISS
SPECIAL CIRCUMSTANCE UNDER
P.C. §190.2 PURSUANT TO §1385.1
IN THE INTEREST OF JUSTICE
POINTS AND AUTHORITIES

PEOPLE OF CALIFORNIA
RESPONDENT,

DATE:
TIME:
DEPT.:
THE HONORABLE JUDGE M. MORTON

IF IT PLEASURES THE COURT, JOHN HENRY YABLONSKY (PETITIONER)
MOVES THE COURT ON A MOTION TO DISMISS SPECIAL CIRCUMSTANCE
ALLEGATION, BASED ON STATUTORY DEADLINES, MITIGATING FACTS,
DISTRICT ATTORNEY FAILURE TO NOTIFY, CONSTITUTIONAL SAFEGUARDS,
IN THE INTEREST OF JUSTICE. THIS MOTION IS ENRICHED WITH FACTS
THAT CAUSED TECHNICAL ERRORS INDICATING THIS COURT [MUST]
STRIKE THE SPECIAL CIRCUMSTANCES ON THE ILLEGALITY, AND
CONSTITUTIONALITY OF THE CLAIMS OUTLINED HEREIN.

DISMISS 1385.1 - 1

BACKGROUND

ON SEPTEMBER 20, 1985 RITA MABEL COBB WAS MURDERED
1 IN HER HOME BY AN "UNKNOWN" ASSAILANT (RT 1-35) TWENTY
2 FIVE YEARS LATER S.B.S.D. ROBERT ALEXANDER FILED AN
3 AFFIDAVIT, DECLARING JOHN HENRY YABLONSKY (PETITIONER) WAS THE
4 SOLE SUSPECT, TO RECEIVE AN ARREST WARRANT. THE
5 WARRANT WAS ISSUED ON MARCH 4, 2009. AS A RESULT OF THE
6 WARRANT S.B.S.D. COORDINATED A MULTI-DEPARTMENT TASK FORCE TO
7 ARREST PETITIONER AT HIS HOME IN LONG BEACH CA. ON MARCH 8,
8 2009 ABOUT 0900HRS, LONG BEACH POLICE, SIGNAL HILL POLICE AND
9 SAN BERNARDINO SHERIFF PLACED PETITIONER INTO CUSTODIAL
10 CUSTODY. S.B.S.D. ALEXANDER INTERROGATED PETITIONER, OUTSIDE
11 MIRANDA (DISCUSSED LATER) ~~WHILE~~ ^{WHILE} IN FRONT OF PETITIONER'S WIFE,
12 MOTHER IN LAW, AND TWO YOUNG DAUGHTERS. ON MARCH 8, 2009
13 THE S.B.D.A. FILED AN INFORMATION ALLEGING PETITIONER KILLED
14 RITA MABEL COBB ON 9-20-85 PURSUANT TO P.C. § 187. ON MARCH 10,
15 2009 PETITIONER PLEADED NOT GUILTY. AS A DIRECT RESULT OF
16 DISTRICT ATTORNEY REQUESTS, PROLONGING, CONTINUING PRELIMINARY
17 HEARING DATES, OVER 120 DAYS, SEVENTY FIVE DAY BEYOND STAT-
18 UTORY DEADLINES (P.C. 1382) TO AMEND THE INFORMATION, THE PRE-
19 LIMINARY HEARING OCCURED ON JULY 28, 2009. THERE WAS NO
20 EVIDENCE PRESENTED DURING PRELIMINARY HEARING SUPPORTING
21 THE MURDER ALLEGATION, OR WHICH WOULD SUPPORT ANY
22 SPECIFIC CIRCUMSTANCES FOR THIS CASE.

23 THE PEOPLES THEORY FELONY MURDER (RT:32:13-34:2)

24 "THAT BECAUSE PETITIONER LIED DURING INTERROGATION HE'S THE KILLER"

25
26 DISMISS 1385.1-2
27

1 "THE PEOPLES POSITION/ARGUMENT AS FAR AS THE
2 INTERVIEW GOES IS THAT HE KILLED THE VICTIM
3 WHILE HAVING SEX OR THAT THE SEX WAS THE
4 PURPOSE OF THE KILLING... BECAUSE HE WANTED
5 TO RAPE THE VICTIM IN SOME WAY. THEN THAT
6 WOULD BE THE REASON SOMEONE WOULD SAY NO,
7 'I DIDNT HAVE SEX WITH THE WOMAN'."
8 RT 32:13-34:21

9 IN THIS CASE, ALEXANDER TESTIFIED DURING PRELIMINARY
10 HEARING, DURING CROSS-EXAMINATION, TO THE FOLLOWING (RT 31:13-19):

11 COUNSEL Q- AND WHO WAS AT THE HOUSE DURING QUESTIONING?
12 ALEXANDER A - HIS WIFE MELODY WAS THERE (THEN HER MOTHER,
13 THERE MIGHT HAVE BEEN SOME KIDS... I DONT
14 BELIEVE WE MET THEM.

15 THE STATES EXPERTS WERE CLEAR ON TWO SPECIFIC
16 TOPICS OF PRIMARY INTEREST AT THIS TIME:

17 (RT 317 CRIMINALIST DONALD JONES)

18 "THE DNA MATCHING YABLONSKY WAS THE RESULT OF SEX
19 THAT OCCURED SEVERAL DAYS BEFORE THE MURDER OF
20 RITA COBB..." "IM CERTAIN OF THIS"

21 (RT 490 PATHOLOGIST DR. SAUKEL)

22 "THE DNA MATCHING YABLONSKY WAS THE RESULT OF SEX
23 THAT OCCURED UP TO ONE AND A HALF DAYS BEFORE
24 THE MURDER OF RITA COBB" "THERE IS NO PHYSICAL
25 OR SCIENTIFIC EVIDENCE YABLONSKY RAPED RITA COBB"

26 THE STATES ENTIRE CASE RESTED ON COMMENTS MADE
27 DURING AN ILLEGAL INTERROGATION (OUTSIDE MIRANDA), WHICH WAS
28 CONTRADICTED BY THE STATES OWN EXPERTS. "THAT YABLONSKY LIED
29 BECAUSE HE WAS INTERROGATED ABOUT AN EXTRAMARITAL AFFAIR IN
30 FRONT OF HIS WHOLE FAMILY, THEN HE [MUST] BE THE KILLER"

DISMISS (385,1-3)

POINTS AND AUTHORITIES

P.B. § 190.4(a) THE DISTRICT ATTORNEY [MUST] PROVE EVERY ELEMENT TO SPECIAL CIRCUMSTANCES "BEYOND REASONABLE DOUBT". IF THE FINDING WAS BY JURY, IT SHOULD BE A JURY AS FACT FINDERS TO DETERMINE WHETHER THE THRESHOLD OF PROOF HAD BEEN BREACHED. EVIDENCE OF "UNCHARGED" SPECIAL CIRCUMSTANCES [MUST] BE PRESENTED DURING THE PRELIMINARY HEARING, AND ADEQUATE NOTICE MUST BE GIVEN TO COUNSEL. (MENDALLA 33 CSd 754 (1983); (DONNELL 65 CSd 227 (1976)) WHEN NO EVIDENCE WAS PRESENTED DURING PRELIMINARY HEARING, WHICH ONE COULD CONCLUDE A SPECIAL CIRCUMSTANCE CHARGE WOULD BE FILED, IT WOULD BE HIGHLY PRESUDICIAL TO RELY ON [UNCORROBORATED] THIRD PARTY HEARSAY, PREVENTING THE DEFENDANT FROM CROSS EXAMINATION. (MENDALLA) (SARCH 36 CSd 539 (1984)) (P.C. § 1585(a)(3) "45 DAY DEADLINE" TO AMEND. IN THIS INSTANT ALEXANDER TESTIFIED IN PRELIMINARY HEARING, THAT HE HELD AN [UNVERIFIED] INTERVIEW OVER THE PHONE, WITH SOMEONE ALLEGING TO BE IN ANOTHER COUNTRY AT THE TIME OF THE INTERVIEW, CLAIMING TO BE PETITIONERS EX-WIFE HOLLY BROWN. ALLEGEDLY [HOLLY] STATED THAT PETITIONER STATED WHILE MARRIED TO HOLLY, THAT HE'D BEEN ARRESTED FOR RAPE IN THE STATE OF TEXAS. (CA EV. § 1200) "THIRD PARTY UNRELIABLE STATEMENTS ARE INADMISSIBLE" (CA EV. § 917) "THERE IS A PRESUMPTION THAT CERTAIN COMMUNICATION ARE CONFIDENTIAL" (CA EV. § 980) "MARITAL COMMUNICATION ARE CONFIDENTIAL" (C.C.P. § 1881(1)) "NOR CAN EITHER . . . WITHOUT THE CONSENT OF THE OTHER . . ." (IN RE DE NEEF 42 CAL APP 2D 691 (1941)); (KELLER 165 CAL APP 2D 419 (1958) (DICTUM); (MIRANDA V. ARIZONA 384 US 436 (1966)); (TARABINO 53 CAL APP 157 (1921))

DISMISS 1385.1-4

1 (BLAY 340 US 332(1991) "MARTIAL COMMUNICATION PRESUMED
2 CONFIDENTIAL" EVEN AFTER MARRIAGE TERMINATED. (DORSEY
3 46 CA3d 706(1975): (DELPH 94 CA3d 411(1979) "CONFIDENCE
4 EVEN APPLIES TO DOMESTIC PARTNERS." (GARCIA 36 C3d
5 539(1984) "SPECIAL CIRCUMSTANCE ALLEGATION DESERVE SAME
6 PROTECTION AS ELEMENTS TO CRIMINAL CHARGES" (ENGBERT
7 31 C3d 797(1982) "STATUTE DEFINING CRIMINAL CHARGES
8 EQUALLY APPLY TO SPECIAL CIRCUMSTANCE CLAUSES"
9 (GHENT 90 CA3d 994(1979) "SPECIAL CIRCUMSTANCE SUBJECTS
10 TO DISMISSAL PURSUANT TO P.C. § 1385.1" (TAPIA 53 C3d
11 282) "DEFENDANTS MAY MOVE THE COURT TO STRIKE MURDER
12 SPECIAL CIRCUMSTANCE BASED ON CONSTITUTIONAL ERRORS"
13 (TRWEGUE 61 C4TH 227(2015): (CURL 51 C3d 1292(1990)
14 "DEFENDANT ENTITLED TO EVIDENTIARY HEARING ON PREPONDER-
15 ANCE OF EVIDENCE BEYOND REASONABLE DOUBT"

16 (JABLONSKI 37 C4TH 774(2006) "THE CORDUS DELICTI
17 RULE DOES NOT APPLY TO PROOF ON FELONY BASED SPECIAL
18 CIRCUMSTANCES THAT OCCURRED BEFORE JUNE 6, 1990"
19 THAT ELEMENTS OF PROOF REQUIRE SHOWING THAT THE
20 FELONY AND MURDER WERE SERIES OF ONE CONTINUAL
21 TRANSACTION. (HAYES 52 C3d 577): (WILLIAMS 49 C4TH 405
22 (2010) "ONE CONTINUAL ACT" (RAY 13 C4TH 313(1996) "FOR CRIMES
23 BEFORE JUNE 6, 1990 INDEPENDANT PROOF IS NECESSARY
24 (SANCHEZ 246 C4TH 167(2016): (ALVAREZ 27 C4TH 1161
25 (2002) "ADMISSIONS WITHOUT INDEPENDANT PROOF BEYOND REAS-
26 ONABLE DOUBT NOT PRESENTED AT PRELIMINARY HEARING"
27 (BRAFF 170 C4TH 345(2009) (SAME)

DISMISS 1385.1-5

ANALYSIS

IN THIS HISTORICAL "WHO COMMITTED MURDER" CASE, STATE PARTIES KNEW PETITIONER RENTED A COTTAGE FROM RITA SOME TIME IN 1985 (RT 106) THAT PETITIONER WAS SEXUALLY INVOLVED WITH RITA ON OR ABOUT SEPTEMBER 17, 1985 (RT 317) BUT NO LATER THAN SEPTEMBER 18, 1985 (RT 490). RITA WAS SEEN ALIVE, UNHARMED ON SEPTEMBER 20, 1985 BY JOSEPH SAUNDERS (CT 78) ALSO SEEN UNHARMED AND "UNVIOLATED" AT 1930XRS ON SEPTEMBER 20, 1985 BY BRUCE NASH (CT 117, 270-272) (RT 415-417), JOHN SULLIVAN (CT 65) (RT 394-422) WHILE FRANCESCA DRAKE, RITA'S FRIEND STATED RITA LEFT THE DRINKING PARTY ALONE, ABOUT 2345 HOURS THAT FRIDAY NIGHT, LONEY AS SHE ALWAYS WAS. (EMPHASIS) RITA MADE NO MENTION TO ANY OF HER CLOSE FRIENDS SHE'D BEEN Raped, VIOLATED, BECAUSE HER SEX WITH PETITIONER WAS CONSENSUAL. THERE IS NO EVIDENCE SAYING OTHERWISE.

ACCORDING TO STATE, RITA LEFT THAT PARTY HEADING HOME, AND NO PLACE ELSE. ONLY ACCORDING TO NASH, AT 2100 HOURS THAT NIGHT, RITA STATED "SHE WASN'T GOING HOME AFTER THE PARTY, AND WAS GOING TO THE ZODIAC COUNCE INSTEAD" (CT 270-272) (CA EV. § 1250) IT IS RELEVANT THAT RITA HAD A "JEKYLE AND HYDE" PERSONALITY WHEN SHE DRANK (RT 140, 146, 280) "NOBODY ARGUES OTHERWISE". TO THE STATES OWN EVIDENCE "NOBODY" ACTUALLY WITNESSED RITA COBB DRIVE HOME THAT NIGHT AFTER SHE LEFT THE DRINKING PARTY OTHER THAN GREGORY RANDOLPH - A S.B.S.D. COUNTY CORONER AT THAT TIME, (DISCUSSED ELSEWHERE) DIANNE FLAMB TESTIFIED SHE SEEN A SILVER PINTO PARKED AT RITA'S HOUSE ABOUT THE TIME OF THE MURDER. (RT 200-204)

"PETITIONER OWNED A DARK BLUE PINTO AT THE TIME"

DISMISS 1985, 1-6

1 EVEN THOUGH STATE PROSECUTOR KNEW THE DNA
2 FOUND INSIDE RITA, MATCHING PETITIONER, WAS THE RESULT
3 OF SEXUAL ENCOUNTER WHICH OCCURED "DAYS" BEFORE THE
4 MURDER, THEY RELIED ON AN ILLEGAL INTERROGATION, HELD
5 OUTSIDE MIRANDA, ILLEGALLY ANTI-CATED, TO CREATE A
6 NEXUS FROM THE SEX TO A MURDER SEVERAL DAYS
7 LATER.

8 THAT FAKE AND ILLEGAL EVIDENCE . . . WAS ALTERED SO
9 MANY TIMES IN THIS "SHELL GAME" OF WHICH TRANSCRIPT TO
10 USE, THE VERSION USED IN THIS CASE WAS SHOWN TO JURISTS
11 WITH ANSWERS BY PETITIONER THAT WERE NOT IN ORIGINAL
12 REAL TIME RECORDINGS. (EMPHASIS) (RT 403 DOA THOMAS)

13 "I HAVE TO TAKE IT HOME TO ENSURE EVERYTHING THAT
14 NEEDS TO BE TAKEN OUT IS REMOVED, AND TO ENSURE EVERY-
15 THING SOUNDS GOOD . . . I CAN'T LEAVE THAT UP TO
16 SOMEBODY ELSE" (EMPHASIS) (EMPHASIS)

17 (RT 34:12-14)

18 "FROM THE LIES THE JURY COULD INFER THE SEX,
19 YASIONSKY AND WITH THE VICTIM WAS NOT CONSENTUAL" . . .

20 (CA EVS 1402) THE RULES OF EVIDENCE ARE CLEAR, THAT ONE
21 [MUST] EXPLAIN THE REDACTIONS, BUT MAY [NOT] CHANGE THE
22 MEANING. IN THIS CASE PETITIONER INVOKED MIRANDA TWICE
23 WHICH WERE REMOVED. (RT 403) PETITIONER'S ANSWERS WHETHER
24 HE HAD A KEY TO RITA'S HOUSE WAS CHANGED FROM SAYING
25 "HE DIDN'T" TO SAYING "HE DID" (RT 403) THAT NEXUS FROM SEX
26 ON WEDNESDAY-THURSDAY, "DAYS" BEFORE THE MURDER OCCURED
27 (RT 317:490) CANNOT BE ATTACHED AS SPECIAL CIRCUMSTANCE

DISMISS 1385.1-7

1 FOR THE ABOVE STATED REASONS, EVEN STATES OWN
2 EXPERTS CLEARLY ADMITTED THERE SIMPLY NO EMPIRICAL
3 EVIDENCE, EITHER PHYSICALLY OR SCIENTIFICALLY, WHICH
4 INDICATES PETITIONER RANED RITA, OR, COMMITTED THE
5 MURDER, OTHER THAN THE DISTRICT ATTORNEY'S SPECULAT-
6 ION WHICH IS TIED TO, HANDCUFFED TO EVIDENCE HE
7 HIMSELF MANUFACTURED, (CHANGING THE MEANING (CAEV. 1400-1421)
8 (VERIFACTATES EXHIBITS 49+49A)

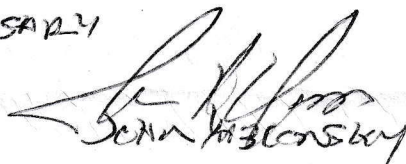
9 CONCLUSION

10 OUR STATE SUPREME COURT FOUND UNDER
11 MORRIS "THAT INFERENCEAL EVIDENCE IS [ONLY]
12 SUFFICIENT IF IT IS [SUBSTANTIAL] AND OF
13 [SOLID] [CREDIBLE] VALUE" (EMPHASIS)

14 PRAYER

- 15 1) HOLD AN EVIDENTIARY HEARING ON OUTLINED ISSUES
16 2) STAKE/DISMISS SPECIAL CIRCUMSTANCES IN INTEREST OF JUSTICE
17 3) ANY OTHER RELIEF NECESSARY

18 OCTOBER 17, 2023

19 
JOHN HENRY YABLONSKY

20 VERIFICATION

21 I JOHN HENRY YABLONSKY AN ADULT OLED ME
22 OF ONSERT DECLARE UNDER PENALTY OF PERJURY
23 THE ABOVE STATED FACTS ARE TRUE ACCORDING
24 TO BELIEF AND KNOWLEDGE

25 OCTOBER 17, 2023

26 
JOHN HENRY YABLONSKY

27 DISMISS 185, 1-8