

JOHN H. YABLONSKY #2309342444  
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R.C. CA. 91739  
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SUPERIOR 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 PLEASES THE COURT, JOHN HENRY YABLONSKY (PETITIONER)  
MOVES THE COURT ON A MOTION TO DISMISS SPECIAL CIRCUMSTANCE  
ALLEGATION, BASED ON STATUTORY DEADLINES, MITIGATING FACTS,  
DISTRICT AGENCY 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

1 ON SEPTEMBER 20, 1985 RITA MABEL COBB WAS MURDERED  
2 IN HER HOME BY AN "UNKNOWN" ASSAILANT (RT 1-35) TWENTY  
3 FIVE YEARS LATER S.B.S.D. ROBERT ALEXANDER FILED AN  
4 AFFIDAVIT, DECLARING JOHN HENRY YABLONSKY (PETITIONER) WAS THE  
5 SOLE SUSPECT, TO RECEIVE AN ARREST WARRANT. THE  
6 WARRANT WAS ISSUED ON MARCH 4, 2009. AS A RESULT OF THE  
7 WARRANT S.B.S.D. COORDINATED A MULTI-DEPARTMENT TASK FORCE TO  
8 ARREST PETITIONER AT HIS HOME IN LONG BEACH CA. ON MARCH 8,  
9 2009 ABOUT 0900HRS, LONG BEACH POLICE, SIGNAL HILL POLICE AND  
10 SAN BERNARDINO SHERIFF PLACED PETITIONER INTO CUSTODIAL  
11 CUSTODY. S.B.S.D. ALEXANDER INTERROGATED PETITIONER, OUTSIDE  
12 MIRANDA (DISCUSSED LATER) ~~WIFE~~ <sup>WHILE</sup> IN FRONT OF PETITIONER'S WIFE,  
13 MOTHER IN LAW, AND TWO YOUNG DAUGHTERS. ON MARCH 8, 2009  
14 THE S.B.D.A. FILED AN INFORMATION ALLEGING PETITIONER KILLED  
15 RITA MABEL COBB ON 9-20-85 PURSUANT TO P.C. § 187. ON MARCH 10,  
16 2009 PETITIONER PLEADED NOT GUILTY. AS A DIRECT RESULT OF  
17 DISTRICT ATTORNEY REQUESTS, PROLONGING, CONTINUING PRELIMINARY  
18 HEARING DATES, OVER 170 DAYS, SEVENTY FIVE DAY BEYOND STAT-  
19 UTORY DEADLINES (P.C. 1382) TO AMEND THE INFORMATION, THE PRE-  
20 LIMINARY HEARING OCCURED ON JULY 28, 2009. THERE WAS NO  
21 EVIDENCE PRESENTED DURING PRELIMINARY HEARING SUPPORTING  
22 THE MURDER ALLEGATION, OR WHICH WOULD SUPPORT ANY  
23 SPECIAL CIRCUMSTANCES FOR THIS CASE.

24 THE PEOPLE THEORY FELONY MURDER (RT:32:13-34.2)

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

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 CRIMINANIST 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 RAPEO 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. § 19.4(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 CS01754 (1983); (DONNELL 65 CAS0227 (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) (GARCH 36 CS01539 (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 (1991); (KELLER 165 CAL APP 2D 419 (1958) (DICTUM); (MIRANDA V. ARIZONA 384 US 436 (1966); (TARABINO 53 CAL APP 157 (1921))

DISMISS 1885.1-4

1 (BLAY 340 US 332(1995)) "MARITAL COMMUNICATION PRESUMED  
2 CONFIDENTIAL" EVEN AFTER MARRIAGE TERMINATED. (DORSEY  
3 46 CASD 706(1975): (DELPH 94 CASD 411(1979)) "CONFIDENCE  
4 EVEN APPLIES TO DOMESTIC PARTNERS." (GARCIA 36 CASD  
5 539(1984)) "SPECIAL CIRCUMSTANCE ALLEGATION DESERVE SAME  
6 PROTECTION AS ELEMENTS TO CRIMINAL CHARGES" (CENSERT  
7 31 CASD 797(1982)) "STATUTE DEFINING CRIMINAL CHARGES  
8 EQUALLY APPLY TO SPECIAL CIRCUMSTANCE CLAUSES"  
9 (GHENT 90 CASD 994(1979)) "SPECIAL CIRCUMSTANCE SUBJECTS  
10 TO DISMISSAL PURSUANT TO P.C. § 1385.1" (TAPIA 53 CASD  
11 282) "DEFENDANTS MAY MOVE THE COURT TO STRIKE MURDER  
12 SPECIAL CIRCUMSTANCE BASED ON CONSTITUTIONAL ERRORS"  
13 (TRUJILLO 61 C4TH 227(2015)): (CURIEL 51 CASD 1292(1990))  
14 "DEFENDANT ENTITLED TO EVIDENTIARY HEARING ON PREPONDER-  
15 ANCE OF EVIDENCE BEYOND REASONABLE DOUBT"  
16 (JABLONSKI 37 C4TH 774(2006)) "THE CORPUS 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 CASD 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 (BRACE 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 1930 XRS 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, LONELY 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 COUNLEE 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 CORENER AT THAT TIME, (DISCUSSED ELSEWHERE) DIANNE FLUGG 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 1385, 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 ANTECIPATED, TO CREATE A  
6 NEXUS FROM THE SEX TO A MURDER SEVERAL DAYS  
7 LATER.

8 THAT FARE 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)

(RT 34:12-14)

17 "FROM THE LIES THE JURY COULD INFER THE SEX,  
18 YANSONSAY AND WITH THE VICTIM WAS NOT CONSENSUAL". . .

19 (CA EVS 1402) THE RULES OF EVIDENCE ARE CLEAR, THAT ONE  
20 [MUST] EXPLAIN THE REDACTIONS, BUT MAY [NOT] CHANGE THE  
21 MEANING. IN THIS CASE PETITIONER INVOKED MIRANDA TWICE  
22 WHICH WERE REMOVED. (RT 403) PETITIONER'S ANSWERS WHETHER  
23 HE HAD A KEY TO RITA'S HOUSE WAS CHANGED FROM SAYING  
24 "HE DIDN'T" TO SAYING "HE DID" (RT 403) THAT NEXUS FROM SEX  
25 ON WEDNESDAY-THURSDAY, "DAYS" BEFORE THE MURDER OCCURED  
26 (RT 317:490) CANNOT BE ATTACHED AS SPECIAL CIRCUMSTANCE  
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DISMISS 1385.1-7

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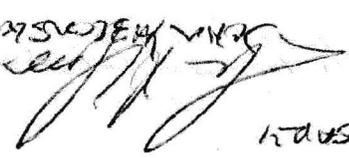
FOR THE ABOVE STATED REASONS, EVEN STATES CAN  
EXPERTS (EVENLY ADMITTED THERE SIMPLY AND EMPHATIC  
EVIDENCE, EITHER PHYSICALLY OR SCIENTIFICALLY, WHICH  
INDICATES PATTERNED BARRED RITH, OR, COMMITTED THE  
MURDER, OTHER THAN THE DISTRICT ATTORNEY'S SPECULAT-  
ION WHICH IS TIED TO, HANDCUFFED TO EVIDENCE HE  
HIMSELF MANUFACTURED) (THINKING THE MEANING (CASH 1400-742)  
(LEGAL CITIES EXHIBITS 494-119A)

CONCLUSION

COURT STATE SUPREME COURT FOUND UNDER  
MEANS "THAT MATERIAL EVIDENCE IS [ONLY]  
SUFFICIENT IF IT IS [SUBSTANTIAL] AND OF  
[SOLID] [CREDIBLE] VALUE [EMPHASIS]"

Prayer

- 1) HAD THE EVIDENTIALLY HEAVY ON OUTSTANDING ISSUES
- 2) STATE/DISMISSES SPECIAL CIRCUMSTANCES IN INTEREST OF JUSTICE
- 3) ANY OTHER BELIEF NECESSARY

OCTOBER 17, 2023  
  
JOHN HENRY KYSLENSKY

VERIFICATION

I JOHN HENRY KYSLENSKY AM ADVERSARIAL AND  
OF SOUND MIND AND UNDER NO INFLUENCE OF ANY  
SUBSTANCE, DRUGS, OR ALCOHOL, AND I AM  
NOT BEING COERCED, INTIMIDATED, OR  
INFLUENCED IN ANY MANNER TO SIGN THIS  
STATEMENT.

OCTOBER 17, 2023  
JOHN HENRY KYSLENSKY

DISMISS 185,1-8