SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

In the Matter of the Petition of KIMBERLY LOUISE LONG, For Writ of Habeas Corpus	CASE NO. RIF113354

REPORTER'S TRANSCRIPT OF RULING ON EVIDENTIARY

HEARING FOR WRIT OF HABEAS CORPUS

Before the Honorable Patrick F. Magers, Judge, Department 32

June 10, 2016

APPEARANCES:

For Petitioner/Defendant: CALIFORNIA INNOCENCE PROJECT
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Reported by:

TONI C. O'NEILL, CSR NO. 5482

RIVERSIDE, CALIFORNIA; JUNE 10, 2016

BEFORE THE HONORABLE PATRICK J. MAGERS

THE COURT: This is the matter of People versus Long. All parties are present.

I think it would probably be appropriate at this point in time for the record to make appearances.

MR. TATE: Good morning, your Honor. Deputy D.A. Alan Tate appearing on behalf of the People along with certified law clerk Allison Peacock.

MR. SIMPSON: Good morning, your Honor. Alex Simpson on behalf of Miss Long. She's present before the Court.

MS. COHEN: Good morning, your Honor. Raquel Cohen on behalf of Miss Long.

MS. BJERKHOEL: Good morning, your Honor. Alissa Bjerkhoel on behalf of Miss Long.

THE COURT: Thank you, counsel.

This matter was argued yesterday and submitted to the Court. I indicated I would be making a ruling this morning, which I will be.

At this point, I'll give counsel another opportunity to make any comments you feel are necessary.

Mr. Tate?

MR. TATE: No, your Honor.

MR. SIMPSON: Nothing further, your Honor.

THE COURT: In this particular case historically, on August 26, 2015, California Supreme Court issued an order to show cause in the matter of Kimberly Long and remanded the case to this Court for an evidentiary hearing of the habeas petition

to determine why counsel was not ineffective in his failure to:

Number one, consult a time-of-death expert;

Two, investigate DNA evidence at the crime scene;

Three, present evidence petitioner did not change her clothes; and

Number four, present evidence of victim's application for a restraining order.

As an additional ground for review, the Court was directed to determine why petitioner is not actually innocent of the crime for which she is now convicted of.

The standard for a claim of ineffective assistance of counsel is articulated in the United States Supreme Court case of *Strickland vs. Washington*, and as I go through my ruling, I'm going to delete any citations. Obviously, counsel is well aware of the citations. So your controlling case, obviously, is *Strickland vs. Washington*.

To establish ineffective assistance of counsel, defendant must establish that counsel's performance was deficient under an objective standard of reasonableness, and it's reasonable and probable that a more favorable result to the defendant would have occurred in the absence of counsel's failing. The petitioner's burden of proof with regard to ineffective assistance of counsel is a preponderance of the evidence.

In determining whether counsel's performance was constitutionally deficient, the Court looks at the reasonableness of counsel's conduct under prevailing professional standards. In order to perform effectively, counsel must make a rational

and informed decision on strategy and tactics founded on adequate investigation and preparation. To establish the petitioner has been prejudiced by counsel's deficient performance, the petitioner must show a reasonable probability that, but for counsel's errors that resulted, the decision would have been different. A reasonable probability is a probability sufficient to underline confidence in the outcome.

The first claim, failure to consult a time-of-death expert, and the preliminary question -- the evidence presented to the Court -- was whether or not defense counsel actually consulted a time-of-death expert.

In this particular case, defense counsel testified the only expert he consulted regarding time of death was an individual by the name of Daniel Vomhof, V-o-m-h-o-f. He holds a Ph.D. in biochemistry. He is not a forensic pathologist or medical examiner. He does not have a medical degree.

There is nothing in his curriculum vitae that would indicate that he is qualified to perform this assessment, and I have reviewed his curriculum vitae, Exhibit N in evidence, and in reviewing his resumé, the Court finds that he's not a qualified expert to render an opinion regarding time of death.

In this particular case, defense counsel indicated that he initially contacted this particular expert not on the time-of-death issue but to determine whether or not the subject of necessary force to cause the injuries to Mr. Conde could have been caused by his client, and I guess that's based upon the expert's background in biomechanics.

Apparently at some point during his discussion with

this expert, the time of death was discussed, and again the Court finds that defense counsel has failed to consult a qualified time-of-death expert. No attempt was made to contact any forensic pathologist or medical examiner or any pathologist, for that matter, or any other qualified expert to render an opinion on time of death in this case.

In this hearing, Dr. Bonnell, B-o-n-n-e-l-l, and Dr. Hua, H-u-a, have testified before this Court, and they concluded to a reasonable degree of medical certainty that the postmortem changes observed in the victim's body could not have occurred in less than one hour. Neither forensic pathologist could give an exact timing of the victim's death. However, both forensic pathologists testified in this court that the victim's death occurred significantly earlier than 1:20 a.m., the earliest time the prosecution could place the petitioner at the scene. Their observations were based upon postmortem changes by the first responders as well as the deputy coroner's report -- and that would be Mr. Gomes, G-o-m-e-s.

Hearing their testimony, this Court finds both opinions to be credible, convincing, and compelling. Their testimony indicates such qualified medical opinions were available at the time of trial and defense counsel failed to seek out medical experts to address the issue. The Court finds that defense counsel's performance fell below an objective standard of reasonableness when he failed to consult and present the testimony of a qualified time-of-death expert.

In making this ruling, I'm not saying that he should have contacted these two particular experts, but it's apparent

to the Court that these qualified opinions did exist in the medical field, and there was no effort to contact or secure the testimony of such experts.

If such expert would have testified, it would have put the victim's time of death at a time when petitioner could not have committed the crime, if believed by the jury. Obviously, it's always a question of fact for the jury to either accept or reject the testimony of any witness that testifies, including an expert.

Failure to obtain DNA testing from the crime scene, category number two:

Pursuant to a stipulation that's been filed with the court in this hearing, the Court finds that there was an unknown male DNA on a cigarette butt in the ashtray on the living room coffee table near the victim's body. According to testimony from petitioner, Miss Long, the cigarette butt was not present before the murder. The Court finds her testimony to be credible.

The Court also finds that there was a mixture of at least two unknown individuals on the speaker wire which was formerly attached to a missing center stereo console at the crime scene. The Court further finds that there was an absence of petitioner's DNA on the speaker wires.

The Court finds that the DNA evidence is significant in this case regarding the cigarette butt. The DNA on the cigarette butt placed a potential unknown third party possible perpetrator at the crime scene whose whereabouts could not be accounted for.

The DNA evidence on the speaker wires was, in the

Court's opinion, of minimal evidentiary value due partially to the chain of evidence or lack of chain of evidence or possession.

Defense counsel testified that he did not obtain DNA testing on the cigarette butt. Counsel also testified that he did not have a tactical reason for not doing so. Defense counsel admitted he should have obtained DNA testing on the cigarette butt. Accordingly, this Court finds that the defendant's performance fell below an objective standard of reasonableness when he failed to obtain DNA testing on the cigarette butt.

Category three, failure to impeach Lovejoy with family law documents:

Petitioner presented evidence in this hearing that a request for a restraining order in Riverside Superior Court was filed by the victim, Mr. Conde, against his ex-girlfriend, Miss Lovejoy. Miss Lovejoy was a possible suspect in the victim's murder, and, again, the defense at the petitioner's second trial was that Lovejoy committed the murder, not her. That was the evidence presented by defense counsel during the second trial.

The request for a restraining order was signed on September the 24th, 2003, and filed by Mr. Conde on September 26th, 2003, in Riverside Superior Court, a week and a half before his murder.

In his request for a restraining order, he accused Lovejoy of various harassing and vandalism acts. Mr. Conde reported that "Lovejoy called and said that my girlfriend is going to get it and for me to watch my back, and she is not

going to let me see my son." Mr. Conde also reported Lovejoy "hates my girlfriend, and she is going to ruin our lives."

In the request for a restraining order, the victim, Mr. Conde, also requested orders regarding custody and visitation of his child.

In reviewing the application for a temporary restraining order, the Court does note that a temporary restraining order was actually denied by the court. However, pursuant to the Family Law Code, these matters must be set for an evidentiary hearing notwithstanding the fact that the TRO, temporary restraining order, which would have been valid up to the evidentiary hearing, was denied. So this matter was actually set for an evidentiary hearing an October 20th, 2003, wherein Mr. Conde could present evidence to the court on that date in his request for a permanent restraining order against Miss Lovejoy, and, of course, she would have the opportunity to be present and present evidence on her own behalf.

Miss Long in this particular trial testified that she called Miss Lovejoy after Mr. Conde filed his restraining order and told her that she and the victim were going to take Lovejoy's children away from her.

Petitioner in this hearing has introduced family law court documents filed in Orange County -- which is, actually, a paternity suit. This was signed by Miss Lovejoy on September the 26th, 2003, the same date the victim requested his restraining order, and filed by Miss Lovejoy on October 2nd, 2003, a few days before the victim's murder. In those Orange County documents, Miss Lovejoy requested both legal and physical

custody of her child.

This Court finds that the statements and evidence of the restraining order would have been admissible as impeachment evidence at petitioner's trial as well as the Orange County documents filed by Miss Lovejoy in the paternity suit requesting custody of their children. This obviously could provide a motive to Miss Lovejoy to have committed the crime in this case.

Defense counsel testified that although he had the request for the restraining order in his file, he did not utilize the documents to impeach Miss Lovejoy when she testified in the second trial. He did not seek to have it admitted. Defense counsel also testified that he did not have a tactical reason for not doing so. Defense counsel admitted that he should have done so.

Accordingly, this Court finds that defense counsel's failure fell below an objective standard of reasonableness when he failed to utilize the Riverside Family Law court documents he had in his possession or to secure the Orange County documents. It's unclear, based upon the evidence, whether he was in possession of the paternity suit or not, but he was aware of it because there is evidence that his investigator requested those documents from the Orange County Superior Court, but again it's unclear whether he ultimately received those documents.

The last category regarding ineffective assistance of counsel is his failure to prove petitioner did not change her clothes -- pivotal issue in the case.

The evidence presented to the jury in the second trial as well as the first trial:

The evidence presented to the jury demonstrated it was an extremely bloody crime scene. There is no question the perpetrator would have the victim's blood on her person. Although the People have now argued in this hearing that it is possible for a perpetrator to not have blood on her clothes, this Court finds this theory unlikely and not consistent with the crime scene as described by Daniel Verdugo in his trial testimony.

I think it's worth noting at this point what his particular description was. I have it up here.

Mr. Verdugo testified that he was a 20-year veteran of the Corona Police Department. He was a crime scene technician, and he had worked many, many, many different homicide scenes -- I forget the exact number, but I think maybe it was about 400 -- anyway, a well-experienced individual. And Mr. Verdugo responded to the crime scene and indicated in part of his testimony -- I'm just going to read part of it to give the flavor of what he observed.

"In this particular case, I was able to find blood 360 degrees from where the victim was. This blood was on every wall in the living room. There was also some blood that I noticed on the carpet and some items on the floor, but oddly enough there was no blood on the ceiling." And he concluded from that there were horizontal strikes to the victim and not vertical strikes, which would have resulted in blood spatter on the ceiling.

"Question: Am I understanding you correctly, from the position in which you observed Mr. Conde, you found blood evidence 360 degrees around his body; correct?"

And this was basically his testimony -- the first trial as well, but, anyway, this was a very bloody crime scene, and as I just indicated, the Court finds that the People's theory that she possibly did not have blood on her is not consistent with a crime scene as described by Mr. Verdugo.

In both trials, the People argued that the petitioner was a liar and gave three specific examples: Her clothing, her shoes, and her purse. People argued petitioner killed Mr. Conde and changed her clothes before the paramedics arrived, including the police.

Petitioner testified at trial, the first and second trial, that she didn't change her clothes, but defense counsel failed to present any corroboration of those self-serving statements regarding her clothes or her purse or her shoes. And this was true in the first trial as well, the first trial being, basically, the same theory in the second trial, that the defendant had an opportunity to change her clothes because the perpetrator of this homicide undoubtedly would have had blood on their person or on their clothes.

Mrs. Long testified that she didn't change her clothes, which gave the prosecution the opportunity in closing argument to argue that she's a liar, don't believe her, there's no corroboration of that. The only evidence that she didn't change her clothes is, obviously, her testimony, which you can't believe.

At this hearing, the petitioner has presented evidence that her clothes she wore the night of the murder matched the clothes collected by the police after the murder. Specifically,

witness Jeffrey Dills had provided a description of petitioner's clothes to the police. The parties admitted the police interview of Mr. Dills as evidence in this case. Dills' description of the clothes matched the exact description of the clothes taken from the petitioner after the murder.

Dills was never questioned by defense counsel at the preliminary hearing about what clothes petitioner was wearing while he was with her the night of the murder.

Further, after Mr. Dills' untimely death, defense counsel did not seek to introduce Dills' description of the clothes at petitioner's trial, and as far as Mr. Dills' description of what Miss Long was wearing while she was in his company that evening, it was not a generic description of clothing that we often hear -- for example, light-colored shirt or bright-colored pants. This was a very specific description of very unique and distinctive clothing, and of course this was in his interview with police, which was tape-recorded and video-recorded. And at the preliminary hearing, Mr. Dills basically testified concerning what time he dropped off Miss Long the night of the murder, was not questioned at all about the clothing description, and because Mr. Dills was killed in a traffic accident prior to trial, the preliminary hearing transcript only was admitted. So the testimony of Mr. Dills that the jury heard basically dealt with Miss Long, what they did that evening, and dropping her off at her home between 1:20 and 1:30 without ever any mention of what clothing she was wearing.

Defense counsel admitted that he failed to ask Dills

about petitioner's clothes at the preliminary hearing and failed to ask of this Court during the first trial and second trial to admit Dills' statements to the police regarding what clothing petitioner was wearing prior to the murder. Defense counsel admitted that he had no tactical reason for not doing so.

The Court finds the issue of whether petitioner changed her clothes is a significant issue in this case. If petitioner did not change her clothes, there's a reasonable inference from the evidence that she is not the killer. Hence, it was pivotal that defense counsel establish that Miss Long did not change her clothes. Accordingly, this Court finds defense counsel's performance fell below an objective standard of reasonableness when he failed to prove petitioner did not change her clothes.

Now, a side note, which is not necessary for my ruling today, but at some point an issue may come up of whether or not Mr. Dills' tape-recorded or video-recorded statement would be admissible in a subsequent trial, and I think we all acknowledge that there's no specific exception in the California Evidence Code which would allow the tape-recorded statement to come in as a hearsay exception under the California Evidence Code.

However, in giving this case much thought, it occurs to the Court that there were two possible grounds for admissibility. Again, this is not necessary for my ruling today, but I think the record should be clear as far as my thoughts and what I would have done during the second trial if the defense attorney would have requested me to entertain admitting the tape-recorded, slash, video recording of Mr. Dills -- in particular, the description of Miss Long's closing.

The Court could easily conclude that the clothing description of Mr. Dills given in the recorded statement is not hearsay. The analysis would be as follows:

It would be introduced as circumstantial evidence of his knowledge regarding a very specific, distinctive, and unique clothing and purse worn by the petitioner.

His actual testimony read to the jury: She obviously was with him that evening prior to the murder and was dropped off at her home. When contacted by the police -- and this is actual evidence. When contacted by the police, she was wearing the identical clothing described by Mr. Dills. This leads to the only reasonable inference circumstantially that she didn't change clothes after the murder as argued by the prosecution.

So I think clearly this could be introduced to show Mr. Dills' specific knowledge of clothing through a hearsay introduction, which would lead to a circumstantial inference of the fact that she was wearing the same clothing when contacted by the police. The inference would be she didn't change her clothes. Nonhearsay.

On another note, if we're talking about a possible hearsay exception, possibly for the entire record or video recording, we can look to the Supreme Court -- United States Supreme Court starting off with *Chambers vs. Mississippi* where the court found that reliable hearsay statements made under certain circumstances can be admitted, despite state law, as a matter of due process. And that was one of the things I always -- many years ago at the sentencing on due process violation in this case -- I should say I made that statement

during DNA request for testing when the Court was made aware of the actual clothing description.

Anyway, there is case law which the trial court could rely upon in this particular case for its decision -- unusual case -- and the issue of clothing being highly relevant to a crucial issue. And under the circumstances, Mr. Dills gave a statement with substantial reasons to assume its reliability because the prosecution's entire case was based upon the statement of Mr. Dills saying that he had dropped her off between 1:20 and 1:30. But for that evidence introduced by the People, relied upon by the People -- but for that evidence, the Court would have dismissed this case under 1118.1. So obviously the People's cornerstone to their prosecution was the reliability of Mr. Dills.

Then, of course, we have Federal Rule 807, which is an exception to the hearsay rule, which is kind of an outgrowth from *Chambers vs. Mississippi*. But at any rate, there is grounds for a hearsay exception to apply outside the California Evidence Code, and that would apply probably to most of the recorded statement. So with that said, the Court had found defense counsel's performance deficient on an objective standard of reasonableness.

The question now becomes whether petitioner has actually been prejudiced by the defense counsel's failure, whether it's reasonably probable that a more favorable result would have occurred in the absence of counsel's error. And, of course, obviously this is the second prong of the analysis with regard to all four categories.

The testimony of the time-of-death expert estimating time of death prior to petitioner arriving home could be fatal to the People's case. Dr. Cohen testified in this case that he disagreed with the expert testimony of Dr. Bonnell and Dr. Hua and opined the time of death was just as likely before 1:30 -- strike that -- before 1:20 a.m. as after.

Notwithstanding Dr. Cohen's testimony -- and Dr. Cohen is a highly qualified medical examiner and not to take anything away from his testimony -- but notwithstanding Dr. Cohen's testimony, a jury hearing the testimony of the two highly qualified experts that I heard in this particular case, a jury -- this could reasonably raise a reasonable doubt in the minds of the jurors. Therefore, there is a reasonable probability that a result more favorable to the petitioner would have occurred, and, therefore, defense counsel's deficient performance resulted in prejudice to petitioner on this ground.

Category two, the DNA evidence:

The cigarette butt DNA evidence would have been relevant and admissible at trial, but in evaluating the evidence in the case, the Court is unable to find that its introduction would have resulted in a result more favorable to the petitioner. That's what this -- regarding the cigarette butt. And, again, obviously relevant and admissible, but I just can't reach that preponderance of the evidence that a more favorable result would have occurred if the DNA evidence was available for the jury to consider, and I just can't make that finding.

Three, change of clothes evidence:

In the portion of Dills' interview describing exactly

what petitioner was wearing before the murder, the unique and unusual clothes, it would have independently corroborated petitioner's testimony. The only reasonable inference a juror could draw would be that she didn't change clothes, which would be in complete contradiction to the People's theory of the murder. Therefore, there is a reasonable probability that a result more favorable to the petitioner would have occurred and, therefore, defense counsel's deficient performance resulted in prejudice to the petitioner.

Lastly, category four, victim's application for restraining order:

This evidence would have been relevant and admissible at trial, but the Court is unable to find a reasonable probability that a more favorable outcome would have resulted.

Again, admissible, but I just can't make that finding of a reasonable probability that a different result would have occurred.

Turning to a separate claim, actual innocence claim -- and, obviously, counsel knows there's a completely different burden of proof. It involves -- an actual innocence claim is a very unique situation. We don't see this very often.

For petitioner to prevail on this claim, the evidence must be of such character as will completely undermine the entire structure of the case upon which the prosecution was based and point unerringly to innocence. The Court is basing this standard of proof based upon *in re Lindley* and *in re Lawley*, and we already discussed those cases in depth during these proceedings but, nonetheless, a very high burden.

In determining actual innocence, the Court has considered the testimony of the forensic pathologists, all of them, the evidence of third party culpability, the DNA present at the crime scene, and the fact that petitioner did not change her clothes. Further, this Court has considered several pieces of evidence that were introduced at this hearing in which they cast doubt on the People's case.

At petitioner's trial -- second trial and probably the first trial as well -- the People relied on a photograph of petitioner's -- actually, this actually bears upon both trials.

At petitioner's both trials, the People relied on a photograph of petitioner's shoes to repeatedly argue to the jury that petitioner was a liar and committed a credible error in staging the crime scene because she testified when she came in through the door, she kicked off her shoes as she walked into the house, when in actuality the shoes in the pictures presented to the jury appeared to be neatly placed right next to each other.

This Court in this hearing has viewed three photographs of the crime scene depicting the positioning of the shoes. In all three photographs, the shoes are in different positions. Obviously, the shoes had been moved during the criminal investigation where the police officers had already secured the crime scene.

In addition, the People argued at trial that she lied when she said she had not brought her purse inside the house. However, a crime scene photograph depicts petitioner's purse underneath one of the Lowenbrau party beer hats. The purse's

corner strap can be seen coming out from underneath the hat. The purse matches the description given by Miss Long and by Mr. Dills in his videotaped statement.

When questioned by the People at trial about why her purse was not in the crime scene, the People showed petitioner numerous photographs of the crime scene but did not show her People's Exhibit 42, which depicted her purse underneath the hat. And during her trial while Miss Long was testifying, she was unable to identify her purse in any of the photographs shown to her by the prosecutor.

The prosecutor then, in closing argument, argued to the jury that petitioner was a liar because her purse was not present in the house. And in this hearing, evidence was introduced to clearly demonstrate that her purse was in the house underneath the Lowenbrau hat. This picture was available to Mr. Keen as well, and nothing was done at trial to rehabilitate the client and argue that the purse was actually present because here's the photograph.

This Court has considered the unlikelihood of petitioner being able and capable of cleaning the crime scene, cleaning herself, and leaving the crime scene, riding away to somewhere to dispose of the murder weapon, which was never found, and returning within a small window of opportunity while being highly intoxicated.

The burden petitioner has in this case is an extraordinarily high burden. If the medical testimony regarding the time of death in this case was uncontroverted, the standard would be clearly satisfied, and in this particular case, we

obviously have a conflict in the medical testimony between Dr. Cohen, Dr. Bonnell, and Dr. Hua. But for that conflict, if it was uncontroverted, then, as stated, the burden would clearly have been satisfied.

The Court cannot ignore or disregard the testimony of Dr. Cohen, a highly qualified and experienced medical examiner. A jury hearing this case could accept his testimony and disregard petitioner's experts, whoever those qualified experts will be.

Considering all the evidence, the Court finds it highly unlikely that the petitioner committed the crime, but evaluating and weighing all of the evidence in this case, the Court finds that the high standard of proof to satisfy an actual innocence claim has not been met.

The Court having found ineffective assistance of counsel on two substantial grounds -- failure to consult and call a qualified expert on the time-of-death issue and, further, produce evidence regarding petitioner's clothing -- the judgment of conviction is vacated, and a new trial will be ordered.

Would you like to set a date today?

MR. SIMPSON: Thank you, your Honor. I would like to set a date today. I would not expect --

(Discussion between the defendant and her counsel was held off the record.)

THE COURT: You're getting a new trial, Miss Long.

THE DEFENDANT: Okay. Okay.

THE COURT: Mr. Simpson?

MR. SIMPSON: If I may, your Honor, I'll just grab my

calendar. I don't know what the 60th day would be from here.

My understanding, your Honor, is traditionally that we have 60 days from the date of the judgment vacated -- the conviction -- for a retrial.

MR. TATE: Your Honor, if it's the intent of the petitioner in this case not to waive any time, I'd ask for a date in advance of the 60th day.

THE COURT: Mr. Simpson?

MR. SIMPSON: We can do -- it's up to you.

MR. TATE: Of course, the 60th day can be extended based on good cause, but I would suggest a date 30 days out, approximately.

MR. SIMPSON: That's fine, your Honor.

THE COURT: The record will reflect no time waiver?

MR. SIMPSON: No time waiver, your Honor.

THE COURT: We will set this for status 30 days from today's date.

MR. SIMPSON: Let's say the week of July 13th?

MR. TATE: No objection, your Honor.

THE COURT: July 13th for status and, again, no time waived?

MR. SIMPSON: No time waived, your Honor.

We do have a question as to the status of Miss Long's custody, and it would be our request that based on the rulings that you've made that she be released on her own recognizance.

THE COURT: Mr. Tate?

MR. TATE: Well, yes, your Honor. I would probably ask the Court to review our opposition to her bail motion from last

October that we filed. As the Court, I believe, is aware, when she was originally released on bail pending appeal, when it was time to turn herself in, she was missing for approximately ten days even though her own father was in court and admitted she was aware of it.

Penal Code section 1319 specifically applies to requests for release on a suspect's own recognizance, and it specifically prohibits own recognizance release under circumstances where that person has failed to appear previously on a violent crime.

Otherwise, with respect to bail, I think the scheduled amount of bail for a crime that potentially results in a life prison sentence is a million dollars.

THE COURT: Mr. Simpson?

MR. SIMPSON: Your Honor, I think we'd be comfortable with Miss Long's release if she be placed on electronic monitoring. I think that's a reasonable -- a reasonable middle ground. But it is our position, as stated in our motion for bail and habeas determination, that she meets all the requirements for release on her own recognizance.

THE COURT: Anything further, Mr. Tate?

MR. TATE: Well, just to remind the Court that Penal Code section 1319 is directly on point. So she doesn't qualify.

THE COURT: I understand.

MR. TATE: Thank you.

THE COURT: In this particular case, I did previously set bail, I believe, after -- after the first trial. I believe I reduced bail, and she was out on bail during her second trial.

She was out on bail pending appeal because -- she had significant legal issues, as the trial court, that I recognized, and in my 30 years as a trial judge, I've never granted bail on appeal in a felony matter, especially a murder case. But this case presented such unique circumstances to the Court that I felt compelled to set bail.

I did not feel -- and I believe I articulated that on the record. I did not believe that Miss Long posed a danger to the community or to society. If I had any doubt that she did, bail would not have been set.

At this point in time I'm going to set bail. Bail will be set in the amount of $50,000.

I am going to order as a condition of bail that she not consume any alcohol. She is not to associate with anybody on probation or parole, and those are the limitations on her bail.

MR. TATE: Your Honor, during the last bail release, there was also a limitation on her from leaving the county. I think her phone records at the time indicated she was in San Diego County. Would you include that as an additional condition?

THE COURT: I think that's probably a reasonable request, do not leave Riverside County, but I do note that where she was at -- it was the Cleveland National Forest. I believe that's where she was, and that borders Riverside County.

Anyway, I think that's a reasonable request. Do not leave Riverside County.

MR. SIMPSON: Thank you, your Honor.

MR. TATE: Would the Court entertain a request to stay

any of its orders today for ten days for further review from a higher court?

THE COURT: I would, Mr. Tate, if I thought that there was a question about my ruling. Obviously, the district court of appeals -- the Supreme Court in its discretion can do anything they want with my ruling, but I really feel that my ruling is substantially based on an objective evaluation of the evidence in this case. I think it's a proper ruling.

This has been a long road for everybody involved in this case, especially Miss Long, and at this point in time I will not be staying my order.

MR. SIMPSON: I'm sorry, your Honor, one final thing. I apologize.

I just looked at my calendar, and I realized I misread it. Could we actually do July 8 instead of July 13th?

MR. TATE: No objection, your Honor.

THE COURT: July 8th.

MR. TATE: And the department that the case will be in at that point?

THE COURT: This would be called, I believe, in Department 41.

MR. SIMPSON: Department 41?

THE CLERK: It will be set in 41V and then assigned at that time.

MR. SIMPSON: Thank you, your Honor.

THE COURT: All right, counsel.

Unsolicited comments. I thought that your presentation of the evidence in this case was thorough, your arguments were

persuasive, both sides, and it was well presented.

Good luck to both sides.

MR. TATE: Thank you, your Honor.

MR. SIMPSON: Thank you, your Honor.

THE DEFENDANT: Thank you, your Honor.

(Proceedings adjourned.)

REPORTER'S CERTIFICATE

PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. RIF113354
	)	
KIMBERLY LOUISE LONG,	)	
	)	
Defendant.	)	
	)	

I, TONI CAREL O'NEILL, Certified Shorthand Reporter, No. 5482, do hereby certify:

That on June 10, 2016, in the County of Riverside, State of California, I took in stenotype a true and correct report of the proceedings had in the above-entitled case, pages 1 through 24, and that the foregoing is a true and accurate transcription of my stenotype notes, taken as aforesaid, and is a partial transcript of the hearing thereof.

DATED: Riverside, California, June 30, 2016

TONI CAREL O'NEILL, CSR NO. 5482