

ORIGINAL FILED

MAR 29 2012
LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re:

Frank O'Connell
Petitioner,
On Habeas Corpus

Case No.: A565559

Order Re:
PETITION FOR
WRIT OF HABEAS CORPUS

The Court has read and considered Petitioner Frank O'Connell's Petition for Writ of Habeas Corpus ("Petition") and Supplemental Petition for Writ of Habeas Corpus ("Supplemental Petition"), the People's Informal Response and Return to the Petition, Petitioner's Notice of New Authority, the People's Response and Petitioner's Reply, and the Memoranda of Points and Authorities and Exhibits thereto, in addition to the reporter's transcript of the proceedings conducted on July 13, 14 and 15, 2011 (Volume 1) and November 15 and 16, 2011 (Volume 2) (referred to collectively hereinafter as ("the habeas hearing")). Additionally, the Court takes judicial notice of its own file, including, but not limited to, all minute orders, motions, appeal, transcripts, and related decisional law pertaining to this case, pursuant to Evidence Code section 452.

1 This case concerns the murder of Jay French on January 5, 1984. Petitioner
2 was convicted of that murder in the first degree on January 14, 1985, and is currently
3 serving a sentence of 25 years to life. The People's case was based in large part on
4 eyewitness testimony, including the dying declaration of the victim partially identifying
5 his killer. Just prior to the hearing to be conducted by this court, counsel for Petitioner
6 discovered the homicide detectives' notes ("the notes") which were unknown to both the
7 prosecutor and defense counsel. These previously undisclosed notes and the evidence
8 presented at the hearing revealed the following: Suggestive identification procedures
9 used by the detectives may have influenced the identifications of Petitioner by
10 eyewitnesses Daniel Drucker, Arturo Villareal, and Maurice Soucy, and Mr. French's
11 dying declaration may not have referenced Petitioner at all; the notes revealed that in
12 1980, Mr. French was the victim of an attempt on his life by his ex-wife Jeanne Lyon
13 and her boyfriend Randy Smith.
14

15 As Mr. French returned home on January 5, 1984, he was murdered in the
16 driveway of his apartment complex by a tall slender blonde man. The shooter ran up to
17 Mr. French, shot him twice, and ran back to a yellow Pinto station wagon driven by a
18 blonde woman. The Pinto then left the scene. No physical evidence was recovered.
19 Petitioner had been romantically involved with Ms. Lyon in the months prior to the
20 shooting. He was implicated in the crime by the eyewitness testimony of Daniel
21 Drucker, who identified him from a photo lineup and then in court as the shooter, Arturo
22 Villareal, who also identified him as the shooter, and Maurice Soucy, who linked him to
23 a photograph of a "look alike" Pinto station wagon.
24

25 Shortly after the murder was committed, Mr. Drucker was shown a six-pack
26 photo lineup. After looking at the photographs for several minutes and asking questions
27 of the detectives, he purportedly identified Petitioner's photograph. He later reaffirmed
28 his original identification at the preliminary hearing and at trial. However, he recanted at

1 the habeas hearing, explaining he felt pressured by detectives to identify Petitioner and
2 was too intimidated by the court process to express his uncertainty. He was concerned
3 because the photo lineup was comprised only of frontal photographs when he had seen
4 only the profile of the shooter, and he was not wearing his glasses at the time of the
5 shooting.

6 In uncontested testimony at the habeas hearing, both the detective and Mr.
7 Drucker agreed Mr. Drucker's identification of Petitioner's photograph was not
8 immediate. It took time for him to look over the photo six-pack. Mr. Drucker testified that
9 once he had made a tentative identification of Petitioner's photograph, he felt pressure
10 to make a positive identification. He testified he believed the detectives wanted him to
11 choose a photograph, and he was trying to help them apprehend the killer. Once he had
12 chosen Petitioner's photograph, there is no dispute that someone from law enforcement
13 made a telephone call in his presence indicating he had identified the person
14 responsible for the murder. Once Mr. Drucker believed he had chosen the killer, he
15 thought the detectives had done their job and "found the right guy."

16 The defense at trial never had the opportunity to cross-examine and thereby
17 explore with Mr. Drucker the circumstances of his identification of Petitioner in the photo
18 lineup. There was no cross-examination as to the affirmation of his choice by law
19 enforcement. In fact, Mr. Drucker's testimony at the hearing was the first evidence of
20 that having occurred. Law enforcement's failure to reveal all the circumstances
21 surrounding the identification procedure prevented a full and fair opportunity for the
22 defense to cross-examine Mr. Drucker, the People's most important witness.

23 The trier of fact based its decision in this case in large part on the eyewitness
24 testimony identifying Petitioner. The suggestive identification procedure could have
25 caused the trier of fact to question the accuracy of Mr. Drucker's identification of
26 Petitioner. Issues were raised at the habeas hearing surrounding the identification that
27 could have created reasonable doubt in the mind of the trier of fact as to that
28 identification. These questions could have had an effect on the outcome of the trial had

1 all of the information revealed at the hearing been known to the trier of fact. It should be
2 noted, the trier of fact in this case was the court, not a jury.

3 Arturo Villareal, a delivery person, and another witness, Alec Sanchez, a flagman
4 in the area, both testified at trial that the shooter left the scene of the crime in a yellow
5 Pinto station wagon with faded wood sides ("the Pinto") driven by a woman with blonde
6 hair. The Pinto was never recovered. It appears from the record that the detectives'
7 efforts to locate the Pinto consisted of notifying the police in Azusa, where Ms. Lyons
8 lived, of "the want on the yellow Pinto station wagon" and investigators canvassing Ms.
9 Lyon's neighborhood. There is no indication they notified other police departments in
10 the area of Azusa or South Pasadena, where the shooting occurred. They do not
11 appear to have checked DMV records for vehicles matching the Pinto's description
12 registered to owners in the area, parking citations issued to such vehicles, or accidents
13 or insurance claims involving such vehicles.

14 Instead, the record reflects the detective took a photograph at night of a "look
15 alike" Pinto he found parked on a street somewhere in South El Monte; he did not
16 remember which street. The detective testified at trial the Pinto station wagon he
17 photographed probably had a license plate on it, but he did not know. Investigators
18 showed the photograph to Ms. Lyon's neighbors, several of whom recognized it as a car
19 that had been parked in the neighborhood. Mr. Soucy and another neighbor testified at
20 trial they had seen such a Pinto parked in front of Mr. Soucy's residence, across the
21 street from Ms. Lyon's, prior to the holidays in 1983. However, Mr. Soucy was the only
22 witness to link Petitioner to the Pinto identified as the get away car.

23 At trial, Mr. Soucy identified Petitioner in court and testified he had seen him
24 driving a Pinto like that depicted in the photograph on numerous occasions and had
25 spoken to him twice. The defense briefly cross-examined Mr. Soucy as to his
26 identification of Petitioner's photograph in the photo lineup without the knowledge that
27 contrary to the police report, Mr. Soucy had not immediately identified Petitioner's
28 photograph. In fact, the previously undisclosed notes of the detectives were critical to

1 the accuracy of his identification. The notes reveal Mr. Soucy did not positively identify
2 Petitioner's photograph and instead chose the same two photographs chosen by Mr.
3 Villareal.

4 Mr. Soucy's courtroom identification of Petitioner during the court trial could not
5 be challenged with information the defense did not have. Once again, the defense did
6 not have an opportunity to question the accuracy of Mr. Soucy's identification of
7 Petitioner with information disclosed in the newly discovered notes. Accordingly, there
8 was no evidence available at trial that Mr. Soucy, despite his testimony that he had
9 seen Petitioner with the Pinto many times and had spoken with him twice, was
10 equivocal in his identification when he viewed the photo lineup. Once again, the lack of
11 information concerning the circumstances surrounding the photographic identification
12 prevented any challenge to the accuracy of what the notes reveal was a questionable
13 eyewitness identification of Petitioner.

14 The notes as to Mr. Soucy's photographic identification of Petitioner also cast
15 doubt on the credibility of the detective's impeachment testimony of Mr. Villareal, who in
16 addition to identifying the Pinto, also witnessed the shooting along with Mr. Drucker.
17 Mr. Villareal testified at trial he identified two photographs in the photo lineup and told
18 the detective he "couldn't be positive." He testified he said Petitioner's photograph
19 "looked like the person who was there, but I'm not positive." The detective offered
20 impeachment testimony, maintaining that Mr. Villareal identified Petitioner's photograph
21 in the photo lineup as "the strongest contender, and I'm sure that's him." The newly
22 discovered information as to Mr. Soucy's identification of Petitioner strongly suggests
23 Mr. Villareal's testimony was truthful.

24 The cornerstone of the People's case was the testimony of these eyewitnesses.
25 The People then bolstered their case with the powerful last dying words of the victim.
26 As he lay dying, Mr. French declared: "That fucker in the yellow Pinto shot me" and that
27 "he was going to die and it had to do with something with Jeannie [Lyon], it looked like
28 somebody she hangs around with or somebody she hung around with."

1 However, unbeknownst to the prosecutor or defense counsel, the victim may not
2 have identified Petitioner at all in his dying declaration. At trial, neither party knew of the
3 prior attempt on Mr. French's life by his ex-wife and another individual who closely
4 resembled Petitioner. That attempt became known to the parties only once the notes
5 were discovered during the habeas proceedings.

6 Jeannie Lyon and Mr. French had been engaged in a constant, long running
7 battle for custody of their young son Jay Jr. Ms. Lyon had gone to great lengths to
8 retain custody of the child. In 1979, after Mr. French was granted custody, she
9 absconded with the child. That effort ended when she was arrested in Oregon, and the
10 child was returned to Mr. French on Easter 1980. Then in May 1980, Randy Smith, a
11 tall man with sandy or blonde hair, was driving a green Capri registered to Ms. Lyon
12 who was the passenger. The two waited for Jay French to leave his employment and
13 as he passed by, they pulled behind the motorcycle he was riding and tried to run him
14 down. Mr. French reported this attempt on his life to the Pasadena police.

15 Not only was that same custody battle continuing at the time of the murder, but
16 there was a pending court hearing concerning the results of psychiatric examinations of
17 the child when Mr. French was killed. Ms. Lyon had a compelling desire for custody of
18 her child and an end to the long custody battle. Here once again, a tall, blonde man
19 was the perpetrator, this time succeeding in killing Mr. French with a gun, rather than a
20 car. Once again, a woman was aiding the effort, not as the passenger, but as the driver
21 of the get away car. In both instances, the car involved was never recovered.

22 The trier of fact concluded Mr. French's dying declaration pointed solely to
23 Petitioner as the former boyfriend of Mr. French's ex-wife. However, knowledge of the
24 prior attempt on his life gives Mr. French's dying declaration additional meaning and an
25 alternative interpretation which if known, may well have altered the outcome of this
26 case.

27 Rather than identifying Petitioner, Mr. French instead may have been identifying
28 someone else. Declarations were submitted with the Petition, including that of Ms.

1 Lyon's sister, an ex-husband, an ex-boyfriend, a former friend, and a former co-worker,
2 suggesting in the strongest terms this may be the case. While the declarations are
3 hearsay and cannot be considered for their truth, the fact all these unrelated individuals
4 have come forward with consistent reports of confessions by Ms. Lyon which exonerate
5 Petitioner underscores the importance of the newly discovered information. With this
6 information, the defense would have been able to interview and present witnesses
7 inculcating Ms. Lyon and exonerating Petitioner. This in turn would have permitted the
8 trier of fact to draw a different inference from the dying declaration.

9 Based on the testimony presented at the habeas hearing and the totality of the
10 record, this court finds as follows:

11 This is a case based solely on eyewitness testimony. No physical evidence or
12 other corroboration was presented. The new information presented at the habeas
13 hearing casts legitimate doubt on the accuracy of the eyewitness identifications of Mr.
14 Drucker, Mr. Villareal, Mr. Soucy, and Mr. French through his dying declaration. The
15 failure to disclose the prior attempt on the life of the victim casts doubt on the true
16 meaning of the dying declaration, a critical piece of the prosecution's case. The
17 defense could not investigate issues it did not know existed. Even the decision to waive
18 jury trial may have been different had the defense known of the exculpatory information
19 contained in the notes.

20 The failure to disclose the detectives' notes containing exculpatory information
21 constituted a Brady violation and deprived Petitioner of a fair trial. The evidence at
22 issue cast significant doubt on the accuracy of the in court witness identifications. The
23 discrepancy between the notes and the police reports is more than significant. The
24 failure to disclose the prior attempt to murder the victim, committed by the victim's ex-
25 wife and a man resembling Petitioner, provides new meaning to the dying declaration
26 and the inferences to be drawn from such persuasive evidence.

27 Evidence impeaching an eyewitness is material. There is a reasonable
28 probability that had the notes of the detectives been disclosed, the result of the court

1 This case concerns the murder of Jay French on January 5, 1984. Petitioner
2 was convicted of that murder in the first degree on January 14, 1985, and is currently
3 serving a sentence of 25 years to life. The People's case was based in large part on
4 eyewitness testimony, including the dying declaration of the victim partially identifying
5 his killer. Just prior to the hearing to be conducted by this court, counsel for Petitioner
6 discovered the homicide detectives' notes ("the notes") which were unknown to both the
7 prosecutor and defense counsel. These previously undisclosed notes and the evidence
8 presented at the hearing revealed the following: Suggestive identification procedures
9 used by the detectives may have influenced the identifications of Petitioner by
10 eyewitnesses Daniel Drucker, Arturo Villareal, and Maurice Soucy, and Mr. French's
11 dying declaration may not have referenced Petitioner at all; the notes revealed that in
12 1980, Mr. French was the victim of an attempt on his life by his ex-wife Jeanne Lyon
13 and her boyfriend Randy Smith.
14

15 As Mr. French returned home on January 5, 1984, he was murdered in the
16 driveway of his apartment complex by a tall slender blonde man. The shooter ran up to
17 Mr. French, shot him twice, and ran back to a yellow Pinto station wagon driven by a
18 blonde woman. The Pinto then left the scene. No physical evidence was recovered.
19 Petitioner had been romantically involved with Ms. Lyon in the months prior to the
20 shooting. He was implicated in the crime by the eyewitness testimony of Daniel
21 Drucker, who identified him from a photo lineup and then in court as the shooter, Arturo
22 Villareal, who also identified him as the shooter, and Maurice Soucy, who linked him to
23 a photograph of a "look alike" Pinto station wagon.
24

25 Shortly after the murder was committed, Mr. Drucker was shown a six-pack
26 photo lineup. After looking at the photographs for several minutes and asking questions
27 of the detectives, he purportedly identified Petitioner's photograph. He later reaffirmed
28 his original identification at the preliminary hearing and at trial. However, he recanted at

1 trial would have been different. Moreover, the decision to waive jury trial was based on
2 the information known to Petitioner and his counsel. A knowing and intelligent waiver of
3 a trial by jury cannot exist and cannot result in a fair trial unless all the evidence is
4 known to the parties.

5 The Petition is granted.

6 Dated this 29th day of March, 2012.

7 *Suzette Clover*
8 SUZETTE CLOVER
9 Judge of the Superior Court



MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 03/29/12

CASE NO. A565559

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: FRANK THOMAS OCONNELL

COUNT 01: 187 PC FEL

ON 03/29/12 AT 830 AM IN NORTHEAST DISTRICT DEPT NEF
CASE CALLED FOR JUDICIAL ACTION

PARTIES: SUZETTE CLOVER (JUDGE) DAVID DIAZ (CLERK)
NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

THE PETITION IS GRANTED AS SET FORTH IN THE ACCOMPANYING ORDER.
THE ORDER IS STAYED UNTIL APRIL 17, 2012. FURTHER PROCEEDINGS
TO DETERMINE THE STATUS OF THE CASE ARE SET FOR APRIL 17, 2012,
AT 8:30 A.M. IN DEPARTMENT F. PETITIONER FRANK O'CONNELL WILL
BE ORDERED OUT, AND ALL PARTIES ARE TO APPEAR AT THAT TIME.

A COPY OF THIS MINUTE ORDER AND ORDER RE: PETITION FOR WRIT OF
HABEAS CORPUS IS MAILED VIA U.S. MAIL AS FOLLOWS:

JUAN MEJIA D.D.A.
HABEAS CORPUS LITIGATION TEAM
320 TEMPLE ST. SUITE 540
LOS ANGELES, CA 90012

VERNA WEFALD, ESQ.
69 N. RAYMOND AVE #320
PASADENA, CA 91103

PETER A. CAMIEL, ESQ.
MAIR & CAMIEL, P.S.
710 CHERRY STREET
SEATTLE, WA 98104

NEXT SCHEDULED EVENT:
04/17/12 830 AM FURTHER PROCEEDINGS DIST NORTHEAST DISTRICT DEPT NEF

