

Los Angeles Times

U.S. Judge Grants Hearing in Murder

By SCOTT GLOVER AND MATT LAIT

July 13, 2005 | 12 AM

TIMES STAFF WRITERS

A United States magistrate judge has found that a San Fernando Valley man serving a life sentence for murdering his mother 22 years ago has made a persuasive “preliminary” case that “he is innocent of the crime for which he has been convicted.”

As a result, U.S. Magistrate Judge Ralph Zarefsky ordered an evidentiary hearing for October to consider Bruce Lisker’s claim of innocence, a development that legal experts called rare.

Zarefsky’s decision follows a Los Angeles Times article in May that described new and overlooked evidence in the case uncovered by a Los Angeles Police Department investigator, a technician in the LAPD crime lab and Times reporters .

This evidence, including a bloody footprint pointing to another suspect, prompted the prosecutor in Lisker’s case, now retired, to say in an interview that he has “reasonable doubt” about Lisker’s guilt.

At least seven jurors who voted to convict Lisker at his Van Nuys trial in 1985 said they would have acquitted him had they known about the new crime scene evidence and information that was never presented about the second suspect.

Legal experts say the vast majority of post-conviction appeals are dismissed without the participants ever seeing the inside of a courtroom.

In this case, “clearly, they have the judge’s attention,” said Laurie Levenson, a professor at Loyola Law School in Los Angeles and a former federal prosecutor. “The judge has a concern about whether an innocent man is sitting in prison for a murder

he didn't commit."

Lisker, 40, was convicted of fatally beating and stabbing his mother, Dorka, in the family's Sherman Oaks home March 10, 1983. A teenager at the time, he was arrested that day and has been behind bars ever since.

Lisker told police he found his mother stabbed, beaten and near death. He called paramedics, who rushed her to the hospital, where she died later that day.

At the evidentiary hearing, Lisker's lawyers will be allowed to introduce evidence and call witnesses in an effort to persuade Zarefsky that their client is innocent.

They must establish his innocence in order for Zarefsky to consider waiving a deadline Lisker missed for filing constitutional claims in federal court.

If the judge grants an exception and waives the deadline, Lisker will then have to prove that his constitutional rights were violated during his prosecution in order for the federal courts to order a retrial.

Granting Lisker's appeal and ordering a new trial rest on his constitutional claims, not on whether the evidence in federal court establishes his innocence.

Zarefsky will make a recommendation to a federal judge, who will decide whether Lisker's appeal should be granted.

Lisker's lawyers intend to argue that their client's constitutional right to effective counsel was violated because his trial lawyer performed poorly.

The attorneys also plan to argue that a jailhouse informant who testified against Lisker was effectively working on behalf of the prosecution when he said Lisker had confessed to him in jail.

The California attorney general's office, which is defending Lisker's conviction, declined to comment.

The attorney general's office has argued that even if the judge believes Lisker is innocent, Lisker is not entitled to an exception to the filing deadline, which he missed by seven years.

Law professor Levenson said that because of procedural hurdles Lisker faces in federal court, his lawyers might want to approach Los Angeles County Dist. Atty. Steve Cooley.

If Cooley could be convinced that Lisker was wrongfully convicted, he could file a writ in state court that would virtually guarantee a new trial.

“The ironic thing is that people look to the courts to remedy injustice, but it may actually be the prosecutor, at least in these circumstances, who has more power to remedy the problem,” Levenson said. “They have to go to the person who has the power -- and that’s what Cooley has.”

Cooley declined to comment.

Lisker’s attorneys said they hoped prosecutors would conclude on their own that Lisker -- at the very least -- deserved a new trial and that an evidentiary hearing in federal court was unnecessary.

“I hope they have the good sense and judgment not to make us go through the time and expense of putting on the evidence that they know exists,” said William Genego, one of Lisker’s lawyers. “They have to know the verdict is not reliable. Bruce did not get a fair trial.”

An evidentiary hearing could involve allegations of police incompetence and misconduct during the original murder investigation and a subsequent review of the case by the LAPD’s Internal Affairs Division in 2003, Genego said.

In the Internal Affairs probe, a sergeant said he was ordered to shut down his inquiry shortly after uncovering evidence undermining Lisker’s conviction.

The Times, in its seven-month investigation of the case, called into question much of the evidence used to prosecute Lisker.

That included a bloody footprint found in a bathroom in the Lisker home.

At trial, prosecutors said the footprint was Lisker’s. But recent testing by an LAPD analyst determined that it did not match Lisker’s shoes.

The analyst also examined, at The Times' request, an autopsy photo that showed a shoe impression on the victim's head. The analyst determined that the impression was not made by Lisker's shoes either, but was "similar in size and dimension" to the footprint in the bathroom.

At trial there was no discussion of the impression.

Lisker has twice confessed to the killing over the years -- once in an unsuccessful effort to get a more lenient sentence and later when he became eligible for parole .

He now says the confessions were desperate attempts to minimize his time behind bars for a crime he did not commit.

He has maintained his innocence for more than a decade.

He has also filed three previous appeals, each of which was quickly denied.

But none of those included the newly discovered bloody footprint evidence.

Loyola's Levenson cautioned that the judge's decision to hold a hearing was by no means a guarantee that Lisker, currently presumed guilty, would get a new trial or be released.

"It's a first step," she said. "But I think his chances just went up dramatically. Somebody is going to hear him out. This gives him his shot."

Scott Glover

Scott Glover is a former investigative reporter for the Los Angeles Times.