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Judge Chipped Away at Lisker Evidence

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In his analysis of Bruce Lisker's 1985 murder conviction, U.S. Magistrate Judge Ralph Zarefsky this week debunked incriminating evidence against Lisker, assailed the government's case and showed a willingness to break new legal ground.

Zarefsky's findings dealt a severe blow to the state attorney general's defense of Lisker's conviction and added credence to Lisker's claim that he was wrongly convicted of the killing of his mother.

Still, Lisker faces a significant legal obstacle in that he needs to secure favorable rulings before the prison doors swing open.

In a telephone interview from Mule Creek State Prison in Ione, Calif., Lisker said he was "overjoyed" by the magistrate's findings. "I just want to go home," he said. "Day by day, I'm dying in here."

In a 57-page report released Thursday, Zarefsky recommended to U.S. District Court Judge Virginia A. Phillips that Lisker, 40, be allowed to proceed with his effort to overturn his conviction even though he missed a statutory deadline for filing a habeas corpus petition.

If Phillips adopts Zarefsky's recommendations, it will be the first time in federal court that an exception to a filing deadline is based on a showing of actual innocence, experts said. Attorneys said Phillips would probably make a decision within the next several months.

“A number of courts have acknowledged the idea that actual innocence would have to be an exception to an untimely petition,” said Eric M. Freedman, a professor at Hofstra University’s School of Law and an expert on habeas corpus law. “This, however, would be the first decision to apply that concept.”

If Lisker is granted an exception, he would then have to prove that his constitutional rights were somehow violated. It’s not enough for Lisker to show that the jury got the verdict wrong, attorneys said.

In his petition, Lisker alleges that his constitutional rights were violated because his defense attorney was incompetent. He alleges that his rights were further violated because a jailhouse informant was acting as a government agent when he claimed he’d heard Lisker confess.

Should Lisker’s habeas corpus petition be granted, one outcome is that he could be given a new trial. At that juncture, the district attorney would have to decide whether there is enough evidence to prove his guilt beyond a reasonable doubt.

In addition to arguing that Lisker’s petition was untimely, lawyers for the state attorney general’s office have claimed that there is still significant evidence of Lisker’s guilt, namely in the form of multiple confessions he’s made.

A spokesman for the state attorney general’s office said Friday that lawyers were reviewing Zarefsky’s report and considering their options. He declined to comment further. A spokeswoman for Dist. Atty. Steve Cooley declined to comment, saying the case was now in the hands of the attorney general.

Based on the evidence today, Zarefsky said in his report, “no reasonable juror” would reach a guilty verdict.

In his analysis of the case, Zarefsky concluded that no convincing evidence remains to sustain Lisker’s conviction. He also attacked the heart of the attorney general’s case: the confessions.

Zarefsky dismissed Lisker’s various confessions, suggesting they were attempts to minimize his time behind bars. He noted that his admissions were inconsistent and contained little or no details about the crime. Of the scant details that Lisker did

offer, he said, some were in conflict with the facts.

Confessions he's given to parole officials, Zarefsky noted, "were made with everything to gain and nothing to lose."

A jury hearing the case today "would know that there is essentially no evidence of [Lisker's] guilt," Zarefsky wrote.

Zarefsky also questioned the credibility of three LAPD officers, rejected the testimony of the jailhouse informant as unreliable and concluded that there was "a strong suggestion that someone else was responsible for the crime."

Lisker's 66-year-old mother, Dorka Lisker, was fatally beaten and stabbed inside the family's Sherman Oaks home on March 10, 1983. Lisker told police that he found his mother bloody and near death in the entry hall of the home. He said he saw her in that condition from two windows at the rear of the house. Because the front door was locked, he said, he had to break into the house through the kitchen window.

Andrew Monsue, the lead LAPD detective on the case, was immediately suspicious of Lisker's story. He knew that Lisker did not get along with his mother and had a history of drug abuse. Lisker was arrested the day his mother was killed. He has been behind bars ever since.

At the time, the prosecution's case hinged largely on four elements: Blood spatter on his clothes implicated him, he confessed to a jailhouse informant, bloody shoe prints placed only him at the scene and it was impossible for him to have seen his mother from the back of the house because furniture and an indoor brick planter would have blocked his view.

At an evidentiary hearing in December, each of those elements was seriously challenged. Testimony proved that blood spatter on Lisker was as consistent "with his innocence" as with his guilt, Zarefsky said. Experiments, first done by Times reporters as part of a sevenmonth investigation into the case, proved that Lisker could have seen his mother from the window, according to testimony by experts from both sides.

Testimony from an LAPD analyst and an FBI expert also undermined the prosecution's contention that only Lisker's shoe prints were found at the scene. A bloody print found in the bathroom of the Lisker house was proved not to have been made by Lisker's shoes, they said. Additionally, that print appeared to match an apparent shoe impression on the victim's head, according to the LAPD analyst.

During the evidentiary hearing, the attorney general put two LAPD officers on the witness stand who testified that they might have stepped in the blood when they responded to the crime scene. Zarefsky said their testimony was not credible. "The court... is troubled by the fact that the officers' reports and trial testimony were at odds with their testimony here," he wrote.

Zarefsky was also critical of Monsue. Specifically, he found that the detective inexplicably dismissed another "likely suspect" who lied about his whereabouts at the time of the murder, admitted being in a knife fight on the day of the crime and acknowledged going to the victim's house and talking to her the day before the slaying. That suspect, Michael Ryan, who had a long history of violence, later killed himself. Phone records from the Lisker home show that a call was made minutes before the murder -- the number matched that of Ryan's mother, except for the last digit and the area code, which wasn't dialed.

"The evidence here suggests no reason why Ryan should have been considered 'cleared,'" Zarefsky wrote.

William Genego, one of Lisker's attorneys, said he said he was extremely pleased with Zarefsky's findings, calling them "devastatingly powerful."

"We couldn't have asked for anything more," he said. "It's an amazing piece of work."

Laurie Levenson, a former federal prosecutor and now a professor at Loyola Law School, said she was impressed with how carefully Zarefsky documented his findings.

"It's a grand slam for Lisker," she said. "It's going to be hard for the attorney general to attack [Zarefsky's] work."

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