NEWS RELEASE

GREGORY D. TOTTEN
District Attorney

For Immediate Release

Approved By: GDT

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Tuesday, November 18, 2014

Release No. 14-063

VENTURA, California –District Attorney Gregory D. Totten announced today that following review by the conviction integrity unit his office has agreed that Michael Ray Hanline be released from prison.

On November 10, 1978, J. T. McGarry, aka Mike Mathers, disappeared from his home in Ventura. Two days later, his body was found off Highway 33. Hanline was convicted by a jury of first degree murder with the special circumstance that the crime was committed in the course of a burglary. He was sentenced to life imprisonment without the possibility of parole.

Investigations conducted by the District Attorney's Conviction Integrity Unit and Bureau of Investigation, and by the California Innocence Project, have found new evidence that casts doubt upon the correctness of the jury's verdict. At the initiative of the District Attorney's Office, DNA analysis was conducted on evidence collected at the crime scene. In addition, the District Attorney's Office concluded that certain reports would have been helpful to the defense and should have been disclosed to defense counsel at the time of trial.

On November 13, 2014, the District Attorney filed the attached response to a petition for writ of habeas corpus. In response, the Superior Court, County of Ventura, issued a writ of habeas corpus setting aside the conviction and sentence. The matter is now scheduled November 24, 2014, at 8:30 a.m. in courtroom 13, to set the case for retrial and establish bail.

As the United States Supreme Court recognized in *Berger v. United States*, the twofold aim of the prosecutor "is that guilt shall not escape nor innocence suffer." To that end, the District Attorney established a conviction integrity process in 2012 to review claims of factual innocence. At the present time, the conviction integrity process has not concluded that Hanline is factually innocent. But flaws in the trial and the totality of the evidence cast sufficient doubt upon the conviction to warrant vacating the jury's guilty verdict. The District Attorney will continue to evaluate the evidence to determine how to proceed.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

In the Matter of the Application of MICHAEL RAY HANLINE, for Writ of Habeas Corpus.	COURT NO. CR14566 RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS; POINTS AND AUTHORITIES Date: November 13, 2014 Time: 4:00 p.m. Courtroom 13

TO THE HONORABLE DONALD COLEMAN, JUDGE OF THE SUPERIOR COURT; DEFENDANT/PETITIONER, MICHAEL RAY HANLINE; AND HIS ATTORNEYS, CALIFORNIA INNOCENCE PROJECT AND ALEXANDER SIMPSON:

Pursuant to the court's orders of January 31, 2014, and May 27, 2014, the People respectfully submit this informal response to the petition for writ of habeas corpus. (Cal. Rules of Court, rule 4.551(b).)

The People concede that habeas corpus relief should be granted and that the conviction be set aside. This concession is based upon the following reasons:

1. At the initiative of the prosecution, DNA testing of evidence from the crime secne was recently conducted. DNA of the victim, and DNA of another male individual, were identified. Testing has determined that the DNA of the other male individual is not that of petitioner or his purported accomplice, Dennis "Bo" Messer. While this evidence does not

conclusively prove petitioner's innocence, it contradicts the prosecution's theory at trial that petitioner and Messer committed the murder.

2. The information contained in several police reports reviewed during in camera hearings was potentially helpful to the defense but was not disclosed to the defense. Although the Court of Appeal determined that these reports were not material under *Brady v. Maryland* (1963) 373 U.S. 83, subsequent information, including information obtained at an evidentiary hearing in federal court, and information obtained after the federal challenge was concluded, establishes additional materiality of the undisclosed information.

3. Additional evidence obtained after trial is contrary to the prosecution's theory upon which the guilty verdict was based.

4. Taken together, the information now known about the case undermines confidence in the conviction.

We are continuing to review the evidence in this matter. We respectfully request that the case be reset for trial several months out so that we may complete this evaluation. In light of the new information obtained, we are agreeable to petitioner being released from custody at this time on an amount of bail he is able to post.

Respectfully submitted,

GREGORY D. TOTTEN, District Attorney
County of Ventura, State of California

DATED: November 13, 2014 By _____
MICHAEL D. SCHWARTZ
Special Assistant District Attorney

DATED: November 13, 2013 By _____
MICHAEL S. LIEF
Senior Deputy District Attorney

POINTS AND AUTHORITIES

I.

LEGAL STANDARD

The twofold aim of the prosecutor "is that guilt shall not escape nor innocence suffer." (*Berger v. United States* (1935) 295 U.S. 78, 88.) Even "after a conviction the prosecutor . . . is bound by the ethics of his office to inform the appropriate authority of . . . information that casts doubt upon the correctness of the conviction." (*Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25; *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.)

A basis for habeas corpus relief is "newly discovered and credible evidence which undermines the entire case of the prosecution." (*In re Hall* (1981) 30 Cal.3d 408, 417.) "[A] habeas corpus petitioner must first present newly discovered evidence that raises doubt about his guilt; once this is done, he may introduce 'any evidence not presented to the trial court and which is not merely cumulative in relation to evidence which *was* presented at trial' (*ibid.*) insofar as it assists in establishing his innocence." (*Id.* at p. 420.)

To warrant habeas corpus relief, the new evidence must "point unerringly to innocence." (*Id.* at p. 423.) However, the defense does not have "the virtually impossible burden of proving there is no conceivable basis on which the prosecution might have succeeded." In *Hall*, the Attorney General asserted that even if another individual "pulled the trigger, petitioner may have been otherwise involved in the crime." In concluding that habeas corpus relief was warranted, the court stated, "But the prosecution proceeded solely on the theory that petitioner was the gunman, not that he was one of the bystanders and not that he may have aided or abetted others in committing the crime. . . [The evidence obtained] subsequent to trial completely destroys *this* case against petitioner. No more need be shown to warrant relief." (*Ibid.*, emphasis by court.)

The present case is similar. The prosecution's theory at trial was that petitioner and "Bo" Messer kidnapped the victim, took him to another location, and murdered him. The absence of petitioner or Messer's DNA, and the presence of DNA of another, unknown male

individual, is contrary to this theory. While it remains possible that petitioner had some role in the murder, the new evidence is contrary to the prosecution's theory at trial.

The failure to provide material exculpatory evidence under *Brady v. Maryland, supra*, will also form the basis for habeas corpus relief. (*In re Brown* (1998) 17 Cal.4th 873; *In re Pratt* (1999) 69 Cal.App.4th 1294.) As discussed below, evidence discussed during in camera hearings was not disclosed to the defense. In light of additional evidence now known, we concede that failure to disclose it violated *Brady v. Maryland.*

II.

SUMMARY OF FACTS

On federal habeas corpus, the magistrate judge – who ultimately determined that there had been serious discovery-related Constitutional violations – noted, "The case against petitioner was far from overwhelming. It was entirely circumstantial." (Report and Recommendation of Magistrate Judge, p. 47.[1]) Very briefly, the key evidence of petitioner's guilt was as follows:

The victim, J.T. McGarry, also known as Michael Mathers, was last heard from alive the evening of November 10, 1978. Attorney Bruce Robertson testified that he spoke on the telephone with the victim at approximately 9:00 p.m. Robertson testified that when he called back at 11:00 p.m., the victim's line was busy, and at around midnight, the operator informed him the phone was off the hook. At around 12:30 a.m. on November 11, two associates of the victim came to the victim's residence, but there was no answer at the door.

The victim's body was found off Highway 33 on November 12. The cause of death was

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[1] The Report and Recommendation recommended granting the habeas petition and granting petitioner a new trial. The district court judge declined to adopt the Report and Recommendation. Instead, the district court judge found that the evidence "would not be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found Petitioner guilty of McGarry's murder." (Order Declining to Adopt Report and Recommendation and Denying Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254, pp. 24-25.) Accordingly, the petition did not meet the requirements for second or successive habeas petitions under the Antiterrorism and Effective Death Penalty Act (AEDPA). (28 U.S.C. § 2244(b)(2)(B)(ii).) It should be noted that the DNA testing discussed herein had not yet been conducted and was not known to the federal court.

two .38 caliber gunshot wounds, one to his neck, and one to his chest.

The victim and petitioner had been involved in a "love triangle" with Mary Bischoff.[2] She had lived on and off with both the victim and petitioner, most recently with petitioner. She testified that she had complained to petitioner that the victim still had her property at the victim's residence. This property included her share of the stolen cash that she and the victim had skimmed off the proceeds of motorcycle swap meets that they had run for Lou Kimzey, editor and publisher of *Easyriders* and other motorcycle magazines. Petitioner reported that Bischoff had told him that the victim had kept $30,000 or $35,000 of the skimmed money, and that half of this belonged to her.

Bischoff testified that in October 1978, after complaining about getting her property back, petitioner said there was a "contract" out on the victim, and that petitioner would "blow his brains out." Bischoff admitted at trial that she had told petitioner's counsel that petitioner had not made this threat. There was no other witness to this alleged threat. Petitioner testified at trial that he made no such threat and denied any mention of a contract on the victim.

Bischoff testified that on November 10, 1978, she and petitioner were living at a friend's house in the San Fernando Valley. She testified that at 7:30 or 8:00 p.m., petitioner and his friend, "Bo" Messer, left the residence. She testified that petitioner was armed with a .38 caliber handgun in his belt when he left. She had earlier testified that she did *not* see petitioner leave carrying the gun.

Bischoff testified that petitioner and Messer returned around 11:00 p.m. or midnight. It had been raining, and petitioner was wet and dirty. She did not see the gun at that time. Petitioner shared some cocaine from a brown glass vial with Bischoff, stating that he had seen "Magic Michael" that evening, and that his "old lady" had given petitioner the cocaine. Bischoff testified that she recognized the taste of the cocaine as "mother of pearl" that the victim had shared with her previously, that it was different from the cocaine petitioner had

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[2] Petitioner denied that he was in love with Bischoff, testifying that it was not an exclusive relationship and he was not upset by this arrangement.

given her previously, and that the victim carried a similar brown glass vial whenever he had cocaine in his pocket.

Bischoff admitted that she had been smoking marijuana laced with angel dust (PCP) that night and had also used cocaine. She was also under the influence of drugs during the trial, and the judge had to adjourn the proceedings for that reason.

Petitioner testified at trial, denying that he committed the murder. He testified that he was working on motorcycles in the garage that evening, and left only briefly around 10:30 or 11:00 p.m. to get beer. He testified that he had received the cocaine from a woman named Carol in Orange County on Thursday night, the day before the murder. The prosecution located Carol Moseby, who testified that she knew petitioner and had seen him Thursday evening, but denied providing him with the cocaine.

In the early morning hours of Sunday, November 12, at approximately 1:00 or 1:30 a.m., petitioner, Messer, and Bischoff started driving to J.T.'s home in a stolen van they had been using. They arrived at 3:00 a.m. The victim was not home. As Bischoff packed up her belongings, Messer moved throughout the house, taking items such as the victim's briefcase and keys, and a pocket knife belonging to the victim's roommate, Sterling Holt. While they were there, Messer and Bischoff used some of the cocaine from the vial. Bischoff testified that she commented that this was J.T.'s coke, and that petitioner, who was present, said nothing.

Petitioner, Messer and Bischoff then continued on toward San Francisco, using the victim's credit card to pay for a hotel room. Petitioner signed as John McGarry. Bischoff said that since the victim still owed her money, they could use the card. She added that since it was really a company card, the victim would not have to pay.

Police searched the van on November 28, finding a loaded .38 caliber revolver that was not the murder weapon, a pink slip to Bischoff's motorcycle, seven one hundred dollar bills, and other property of the victim.

The prosecution presented evidence that it characterized as an attempt by petitioner to fabricate an alibi, playing a recording from the Santa Barbara County Jail of the defendant

meeting with two individuals. The prosecution argued they appeared to be trying to create an alibi for the night of the murder, as the defendant discussed being at a bar with some people celebrating his birthday, leaving it up to others to determine which bar.

A number of witnesses testified for petitioner that he had been home on the night of the murder, working on a motorcycle in the garage; the prosecution disputed the truthfulness of their testimony, arguing to the jury that they had lied to provide petitioner with an alibi.

III.

DNA TESTING

At the initiative of the District Attorney's Office, DNA analysis was conducted of evidence from the crime scene. Forensic DNA analysis had not been conducted earlier since this technology did not exist at the time of the trial.

DNA profiles for two male individuals were found. One profile matched the victim. Petitioner and Messer were both excluded as contributors for the other profile. That male individual has not yet been identified.

IV.

SEALED REPORTS

As described in more detail in the Report and Recommendation of Magistrate Judge, several in camera hearings were heard in the trial court regarding an "8 page report" and a "14 page report." (Each of these documents actually consisted of several shorter reports.) In the first hearing, both the prosecutor and the court recognized that the information could be used to impeach the credibility of Bischoff. But the prosecutor argued that turning over the reports could endanger a purported informant, then identified as "A." Judge Soares directed the prosecutor to "sanitize" the information by conducting a new interview of "A," and to turn that information over to the defense. That never occurred. Instead, in a later hearing, the trial judge, the Honorable Steven Stone, ordered the original reports sealed.

The sealed reports state that "A" contacted the police to report that Bischoff had telephoned him, and had provided him with information about the murder. During this

purported telephone call, she provided some details in conflict with her other statements and testimony. For example, she purportedly told "A" that two individuals had used a ruse to get the victim out of his house, that petitioner had returned home the night of the murder with blood on his shirt, and that there was blood on the steering wheel of the van. She testified at trial that his shirt had vomit, not blood, on it. Forensic testing found no blood in the van.

During the evidentiary hearing in federal court, Bischoff denied making the telephone call to "A." This evidence could be significant in two ways. Since the details were inconsistent with her trial testimony, it could be used to impeach her credibility. In the alternative, and more significantly, it could constitute evidence that "A" or other individuals had actually committed the murder and were attempting to "frame" petitioner.

V.

ADDITIONAL NEW INFORMATION

During the last several months, the District Attorney's Office has interviewed several individuals who were involved in the events surrounding the murder of the victim. These interviews suggest that persons other than petitioner also had motives and means to kill the victim. These interviews, together with evidence from the in camera hearings discussed above and the federal habeas evidentiary hearing, also suggest that witnesses were manipulated and threatened and discouraged from cooperating with the prosecution or with the Innocence Project. This evidence casts further doubt on petitioner's guilt.

VI.

RELEASE PENDING RETRIAL

Penal Code section 1485 provides regarding habeas corpus: "If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such Court or Judge must discharge such party from the custody or restraint under which he is held."

"As a general rule, when . . . the judgment of conviction is reversed on appeal or vacated in habeas corpus proceedings due to error in the trial, retrial is permitted." (*Sons v.*

Superior Court (2004) 125 Cal.App.4th 110, 118.)[3] When a writ of habeas corpus vacates a judgment, the parties are placed in the same position as if the first trial had never occurred. (*Ibid.*) In *Sons*, the court found that an order vacating the conviction based upon *Brady* violations did not bar retrial.

In the present case, the District Attorney's Office is continuing to evaluate whether there is sufficient evidence to convict petitioner on retrial, or, in the alternative, whether petitioner is factually innocent. But based upon the evidence already obtained, it is our position that justice would not be served by retaining petitioner in custody while further investigation is conducted.

In *In re Hall*, *supra*, 30 Cal.3d 408, a referee recommended that a writ of habeas corpus issue to vacate the defendant's conviction of first degree murder and life term. The court granted petitioner's application for release on his own recognizance pending final disposition of the petition for habeas corpus. (*Id.* at p. 416.) The Supreme Court ultimately granted habeas corpus relief, remanded to the superior court, and ordered that "own recognizance shall remain in effect unless the superior court determines that changed circumstances require a different disposition." (*Id.* at p. 435.)

The court may release on own recognizance any person charged with an offense other than a capital offense. (Penal Code, § 1270, subd. (a).) Defendants are entitled to release on bail, subject to several exclusions, among them "[c]apital crimes where the facts are evident or the presumption great." (Cal. Const., art. I, § 12(a).) "A defendant charged with an offense punishable by death cannot be admitted to bail, when the proof of his or her guilt is evident or the presumption thereof is great." (Pen. Code, § 1270.5.)

For the purpose of bail, any case which statutorily is punishable by death is a "capital crime" and "an offense punishable by death," even if the prosecution is not seeking death. (*In re Bright* (1993) 13 Cal.App.4th 1664, 1669.) In such cases, bail must be denied where the

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[3] "The primary exception to this general rule is that retrial is barred if the evidence admitted at trial was legally insufficient to support a conviction." (*Id.* at fn. 1.) In the present case, the Court of Appeal on direct appeal found the evidence sufficient to sustain the verdict.

facts are evident or the presumption of guilt is great. (*Ibid.*)

In *Maniscalco v. Superior Court* (1993) 19 Cal.App.4th 60, the court held that a special circumstance murder, even if the prosecution is not seeking the death penalty, constitutes a "capital offense" and therefore the defendant is not entitled to be released on bail. At a prior bail hearing in that case, the trial judge denied bail because "proof was evident and the presumption great." (*Id.* at p. 63, fn. 4.) The Supreme Court issued a brief order, stating, "The denial is without prejudice to a renewed application to the trial court for bail on grounds that, as a matter of law, the evidence presented to the grand jury would be insufficient to sustain a conviction on appeal . . . or to a renewed application on that ground if the evidence presented at any future preliminary hearing is insufficient under that test." (*Ibid.*)

The present case charges special circumstances and is thus a capital case for purposes or bail or own recognizance, even though the prosecution has not sought the death penalty. Thus, own recognizance release is not statutorily permitted. However, based upon all the information currently known, the court could reasonably conclude that proof of guilt is not evident and the presumption of guilt is not great. Accordingly, petitioner should be entitled to bail.

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CONCLUSION

The People waive the issuance of an order to show cause (Cal. Rules of Court, rule 4.551 (c)) and agree that the court may issue a writ of habeas corpus vacating the conviction and sentence in the underlying criminal case. We request that the court set the matter for retrial so that we may continue to evaluate the matter. Counsel for petitioner has communicated to us that they are willing to continue the trial for several months on the condition that petitioner be released from custody during that period. We join in that request.

Respectfully submitted,

GREGORY D. TOTTEN, District Attorney
County of Ventura, State of California

DATED: November 13, 2014 By _____
MICHAEL D. SCHWARTZ
Special Assistant District Attorney

DATED: November 13, 2014 By _____
MICHAEL S. LIEF
Senior Deputy District Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of eighteen (18) and not a party to this action; my business address is 800 S. Victoria Avenue, Ventura, California 93009.

On November 13, 2014, I served the following document(s) described as:

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS; POINTS AND AUTHORITIES

[x] (BY MAIL) by placing a true copy thereof enclosed in a sealed envelope addressed as follows, and causing such envelope with postage thereon fully prepaid to be placed in the United States Mail at Ventura, California:

Alexander Simpson
Associate Director
California Innocence Project
225 Cedar St.
San Diego, CA 92101

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

CYNTHIA KLANTE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF VENTURA

MICHAEL RAY HANLINE,
Petitioner,

vs.

GARY SWARTHOUT,
Respondent, Warden of
California State Prison, Solano

Superior Court Case No. CR 14566

ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS

UPON REVIEW OF THE PETITION FOR WRIT OF HABEAS CORPUS, THE INFORMAL RESPONSE FILED BY THE VENTURA DISTRICT ATTORNEY, AND THE COURT FILES IN THE ABOVE-CAPTIONED MATTER, THE COURT FINDS:

On September 24, 1980, a jury convicted petitioner of first degree murder in *People of the State of California v. Michael Ray Hanline* (Ventura County Superior Court No. CR14566). The jury found true a special circumstance of murder during the course of a burglary. (*People of the State of California v. Michael Ray Hanline* (Ventura County Superior Court No. CR14566).)

On October 31, 1980, the court sentenced Michael Hanline to a term of life in prison without the possibility of parole. (*People of the State of California v. Michael Ray Hanline* (Ventura County Superior Court No. CR14566).)

Petitioner appealed, and in an unpublished opinion dated January 20, 1983, the Court of Appeal, Second Appellate District affirmed the judgment in all respects. (Case No. 39194.) The California Supreme Court denied the petition for review on April 13, 1983.[1]

[1]The case number for the Petition for Review is unknown at this time.

Petitioner filed the instant Petition for Writ of Habeas Corpus on January 24, 2014. In the Petition, Petitioner claimed violations of his rights to Due Process under the Fifth and Fourteenth Amendments (U.S. Const., 5th and 14th Amends.) and *Brady v. Maryland* (1963) 373 U.S. 83; and that he received ineffective assistance of counsel from his trial attorney in violation of his rights under the Sixth Amendment (U.S. Const., Amend. 6), the California Constitution (Cal. Const., Art. I, § 15), and *Strickland v. Washington* (1984) 466 U.S. 668.

On November 13, 2014, Real Party in Interest, The People of the State of California, filed an Informal Response to the Petition. The People concede that based on the *Brady* allegations put forth in the Petition, as well as new DNA evidence not previously performed but now known to the parties, mean that Petitioner's conviction should be reversed, and a new jury trial should be granted.

Based on the above, the Petition for Writ of Habeas Corpus is **GRANTED**.

The judgment of conviction for murder and true findings of special circumstances are hereby vacated, and the matter is remanded to the trial court for the People to proceed with the case as they deem appropriate in light of this decision.

The Court shall set future dates for the possible retrial on the afore-mentioned convictions in CR14566. The Court shall order Petitioner to be produced for retrial and for a bail hearing in a separate order.

It is further ordered a copy of this order shall be served on (1) Petitioner, (2) Petitioner's counsel, Alexander Simpson at the California Innocence Project, (3) Ventura County Deputy District Attorney Michael Lief, (4) California State Prison, Solano, Attn: Gary Swarthout, Warden, and (6) the Los Angeles Office of the Attorney General.

IT IS SO ORDERED.

DATED: 11/13/14

DONALD D. COLEMAN
JUDGE OF THE SUPERIOR COURT