

## **Bizarre Twists and Turns in Coin Shop Killings Case Lead Judge to Set Aside 2 Life Sentences and Grant Ex-Marine A Second Chance at Innocence**

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### **Document Text**

For three years, former Marine Lance Cpl. Thomas R. Merrill has insisted from behind bars that he is innocent of a double murder and robbery at a coin shop in Newport Beach in 1989.

Today, the store's owner, who was shot four times at close range, believes Merrill is innocent and was "railroaded" into prison. A team of high-powered lawyers is fighting for his freedom. And the judge who handed him two life sentences at least agrees that Merrill was not given a fair shake by Orange County's criminal justice system.

In a rare move, the judge has thrown out Merrill's convictions, setting the stage for a retrial whose outcome is anything but certain.

According to Merrill's new lawyers, the prosecutor in his 1991 trial withheld evidence that could have led to Merrill's acquittal.

Moreover, they argue, defense attorney Gary M. Pohlson-appointed by the court to represent Merrill and paid \$75,000 by taxpayers-performed so poorly that Merrill was denied his constitutional right to adequate legal representation.

Pohlson, who becomes president-elect of the Orange County Bar Assn. next year, rejects the idea that he failed Merrill. He believes his client is innocent and did not get a fair trial, but he blames the prosecutor and the co-defendant's lawyer.

The prosecutor, Jeffrey L. Robinson-who has been scolded by appellate justices for overzealous conduct in another murder trial-denies any wrongdoing.

After five days of hearings, Superior Court Commissioner Richard M. Aronson ruled in June that the arguments presented by Merrill's new lawyers had merit. He has ordered a new trial-a trial that defense attorneys are confident will set Merrill free and that prosecutors vow to win again.

The renewed case provides a rare glimpse of how a man who may be innocent was sentenced to two life terms without the possibility of parole on evidence that was totally circumstantial, beginning with guilt by association.

From more than a thousand pages of court records emerges the story of a case rife with contradictions, finger-pointing, shifting testimony and developments that are not fully explained; a case in which the spotlight of blame moved from the first suspect, Marine Lance Cpl. Eric Jon Wick, to Merrill, his bunkmate at Tustin Marine Corps Air Station.

Wick was convicted and sentenced to a life term, with the possibility of parole in about 35 years. In that same trial, Merrill-who was portrayed by prosecutors as the mastermind and triggerman-was convicted and sentenced to life in prison without parole.

Wick, then 20, was accused of killing two people and critically wounding a third in the March 14, 1989, robbery of the now-defunct Newport Coin Exchange. It was not until 20 months later-after Wick had been ordered to face capital murder charges-that Merrill, then 26, was arrested.

At that point, everything changed. Wick had been accused of being the lone killer. But in their joint trial, the focus shifted to Merrill, who was then accused of holding the 9-millimeter Sig Sauer automatic pistol that maimed shop owner William D. King and killed his wife, Renee, as well as Clyde Oatts, a friend of the Kings.

Merrill was cast as the brains behind the crime, and Wick the unwitting, uninformed accomplice who grabbed the store owner's shotgun and pointed it at his fellow Marine in an effort to stop the shooting.

Looking back, some people find that shift hard to explain. After all, Wick had confessed to police that he performed the crimes alone and told a friend that he would "fry" because "I was there. I did it." There was strong physical evidence linking him to the case, and only circumstantial evidence against Merrill.

"I kept thinking there must be something more and there wasn't," said Virginia Kirkmeyer, a former Huntington Beach police officer-turned-private investigator who worked for Merrill's lawyer on the case. "They took little things and made them into evidence."

The gun used in the killings and coins from the shop were found in Wick's car. His fingerprints were on the display case in the business. A coin shop receipt bore his alias and the phone number of his Marine barracks and another slip of paper had his father's name and address. The week before the crime, Wick had come into the coin shop and placed an order for \$45,000 in exotic coins to be picked up on the day the robbery occurred.

After the crime, Wick repainted his bronze 1977 Chevrolet Nova white, acted nervous when authorities questioned him, and fled the Tustin Marine base the day after being interviewed by police and military investigators.

Two witnesses said they saw a man resembling Wick in the store. Shop owner King, who survived several gunshot wounds, including two in the head, identified Wick as the gunman and said consistently after his recovery that there was only one assailant that evening.

To implicate Merrill, the prosecutor discredited King's story about one assailant, arguing that King had suffered brain damage. Instead, Robinson built his case upon things King said when he was in shock, minutes after the shooting: That there were two assailants in the shop, and that "Tom shot me."

Also used to incriminate Merrill was a second confession by Wick. He told fellow Marine John Brady that he had committed the crimes with a slightly older friend from Reno who was proficient at martial arts. Merrill is four years older than Wick and has studied judo and aikido. He also had in his car the same type of 9-millimeter ammunition used in the killings.

Merrill, too, had rented a storage locker off the Marine base three weeks before the shootings and admitted moving Wick's guns into it when Wick seemed to become nervous about the police investigation. In addition, Brady testified that he talked with Merrill and Wick about robbing jewelry stores and killing drug dealers in a crack house assault-talks Brady said he did not take seriously.

Then there was the testimony of Merrill, who could never account for his whereabouts on the day of the crime.

Many of those involved in the case agree that Merrill was his own worst enemy on the witness stand. In two days of testimony, he was hesitant, slow to answer and was caught in numerous contradictions about his involvement with Wick.

"This was a circumstantial evidence case," said prosecutor Robinson. "There was no smoking gun. But if you add up all the pieces, the aggregate of the evidence points to Tom Merrill. In fact, the strongest piece of evidence in the case is Mr. Merrill. He was dishonest throughout his testimony."

Robinson and Wick's lawyer, Deputy Public Defender Tim B. Severin, built the circumstantial evidence case to reach a common goal: To point the finger at Merrill as the one who did the shooting.

Wick's defense hinged on Severin's argument that Wick tried to stop the killing, that he grabbed King's shotgun and held it on Merrill to make him stop shooting.

Severin told the jury that Wick, who never testified, was so frightened of Merrill that he never implicated him in his confessions. The evidence introduced to support the portrayal of a dominating Merrill-the prep school-educated stepson of an Episcopal priest-was that he was older than Wick, more schooled and that he knew martial arts.

But there was no tangible evidence, such as fingerprints, linking Merrill to the crime, and eyewitness accounts and identifications were rife with contradictions, even the prosecutor admitted.

Many of these concerns are spelled out in a habeas corpus petition, which William J. Genego, a former USC law professor who is Merrill's new lawyer, filed in February to get Merrill's convictions invalidated. The document attacks the underpinnings of the prosecution's case, contending that the circumstantial evidence was weak and eyewitness testimony placing Merrill at the scene was unreliable.

But the heart of Genego's argument was that the prosecution improperly withheld evidence and that Pohlson, Merrill's defense attorney, was not properly prepared for trial and allowed dubious testimony against his client to go unchallenged.

Witness Gregory Zumbrunn first swore that he saw only one man in the coin shop: a man resembling Wick who held a short rifle or gun. Zumbrunn later testified that he saw a second man resembling Merrill coming out of the store, although he was unable to pick Merrill out of a lineup.

And Genego, armed with the declarations of medical specialists, argued that King's remarks moments after the shooting-that there were two assailants, one white and one black, and that "Tom shot me"-were unreliable because his

wounds might have made him delusional.

Genego suggested that perhaps King was describing the two victims, a black man and a white woman, and not the suspects. Both Merrill and Wick are white, although Merrill, who is half Pakistani, is olive-skinned and has close-cropped black hair.

King told The Times that prosecutors treated him "like a blithering idiot" and dismissed his contention that Wick was the only shooter.

"I had told them as far as I was concerned, there was only one guy there," King said. "I told them: 'You guys are crazy. Wick was in my store setting the whole thing up the previous week.' When everything started to shift to Merrill, that's when I started to feel uncomfortable."

King said he believes Merrill is innocent and that he was "railroaded."

Another key witness was Finn Olsen, a baker who saw two people in the parking lot behind the Newport Coin Exchange. Though Olsen picked Merrill's picture out of a photo lineup, saying he resembled one of the men he had seen, he did not pick Merrill out of a physical lineup, and later insisted—as he does today—that Merrill was not one of the two men.

But because Olsen was never asked to tell the jury that, Merrill's defense went without a key piece of evidence pointing to his innocence.

In a sworn court declaration, Olsen says Merrill was not one of the men he saw, and that he repeatedly told that to prosecutor Robinson and his investigator, Gerald C. Teplansky. Teplansky essentially confirmed Olsen's contention during court hearings in June, establishing that this information was withheld from Merrill's original attorney.

Robinson, who has since left the district attorney's office to go into private practice, denies any impropriety, saying Olsen only told him that he could not identify anyone in the parking lot. Teplansky declined to comment for this story.

Genego's criticism is not just aimed at the prosecution. He accuses defense attorney Pohlson of 17 incidents of incompetence, saying that among other things, he failed to discover evidence that would help his client.

To buttress his argument, Genego hired two prominent criminal defense lawyers, Gerald Chaleff of Santa Monica and Jack M. Earley of Irvine, who submitted lengthy declarations agreeing that Pohlson did not put on an adequate defense.

"The combined effect of the attorney's errors was devastating to Merrill's case," Chaleff wrote.

A key error made by Pohlson, Genego said in court papers—and Chaleff and Earley agreed—was his failure to ask that Merrill be tried separately from Wick, especially after Severin made it clear in his opening statement that he intended to portray Merrill as the mastermind and gunman.

"I was surprised that Pohlson never asked for a severance," Severin said. "It was an absolute benefit to have Merrill tried along with my client. Tactically, I could try to paint the second person as the triggerman."

Pohlson told The Times that he made a careful, sound decision not to have his client tried separately. He said he believed that Wick's confession would have greater "impact" on a jury if both men were present in the courtroom during a joint trial. He disagreed with all of Genego's characterizations of his performance.

In the end, Merrill's behavior at the trial dictated his fate. Aronson gave Wick a lighter sentence than Merrill, saying he was convinced that Merrill had pulled the trigger in "some sort of Marine macho fantasy."

Still, some involved in the case are nagged by unanswered questions. To this day, Wick has never disclosed—at least to anyone willing to say—what went on in the coin shop.

"We still don't know how many people were in there," said Newport Beach Police Sgt. John Desmond, who was one of the investigators on the case. "No one ever told us. I'd love to have Wick call and tell me what happened, just to finally hear it."

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