Executive Department

State of California

EXECUTIVE ORDER B-61-18

Pending before me is an application for executive clemency submitted by Kevin Cooper, an inmate at San Quentin State Prison. In 1985, Mr. Cooper was convicted of murdering Douglas and Peggy Ryen, their 10-year-old daughter Jessica, and 11-year-old Christopher Hughes. 8-year-old Josh Ryen was severely injured during the attack, but survived. Mr. Cooper received a sentence of death from the Superior Court and all his appeals have been exhausted. Two prior unsuccessful clemency petitions were made to Governor Schwarzenegger. I have been asked in connection with this clemency application to order further forensic testing in order to evaluate Mr. Cooper's guilt or innocence.

WHEREAS the People, acting through the San Bernardino County District Attorney, contend that Mr. Cooper's claims of innocence were tested in the courts for decades, that previous DNA testing directly links Mr. Cooper to the crime, and that physical evidence clearly demonstrates Mr. Cooper's guilt, including via his blood found at the crime scenes, his blood on a tan t-shirt that also contained the genetic material of the victims, and his saliva found on prison-issued cigarette butts in the victims' car; and

WHEREAS the People also contend that Mr. Cooper is linked to the crime through circumstantial evidence such as footprints from prison-issued tennis shoes found at the crime scene, a blood-stained button found at the nearby home in which he was sleeping (the "hideout house"), a blood-stained rope found in the hideout house, a hatchet used in the murders that was missing from the hideout house, luminol testing in the sink and shower of the hideout house consistent with the presence of blood, and a sheath found in the hideout house matching one of the murder weapons; and

WHEREAS Mr. Cooper maintains that evidence against him was planted, tainted or destroyed by law enforcement, citing incidents in which inculpatory evidence allegedly appeared only after successive police searches, DNA tests revealed genetic material of unknown origin on key pieces of evidence, and a test of Mr. Cooper's blood sample containing both Mr. Cooper's blood along with blood of unknown origin; and

WHEREAS Mr. Cooper contends that clothes linked to the actual killer or killers in this case were destroyed by law enforcement officials; and

WHEREAS Mr. Cooper maintains that he has recently obtained witness declarations that purport to provide additional information implicating other individuals of this crime; and

WHEREAS Mr. Cooper asserts that advanced, scientifically reliable DNA testing is now available that may provide forensic evidence of his innocence, or at least corroborate the involvement of the person or persons who allegedly committed the crime; and

WHEREAS my Office requested additional information from both Mr. Cooper's defense team and the People earlier this year, and has thoroughly reviewed the record in this matter to better understand the state of the evidence and the additional forensic tests that have been requested; and



WHEREAS I take no position as to Mr. Cooper's guilt or innocence at this time, but colorable factual questions have been raised about whether advances in DNA technology warrant limited retesting of certain physical evidence in the case.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1. The following four items of evidence, ranked in order of priority by Mr. Cooper's defense team, shall be retested using the latest, most scientifically reliable collection and analysis methodologies:
 - a. The tan t-shirt;
 - b. The orange towel;
 - c. The hatchet handle; and
 - d. The hatchet sheath

The purpose of this new testing is to determine whether another suspected person's DNA, or the DNA of any other identifiable suspect based on a match in the FBI's Combined DNA Index System (CODIS) database, is present on the items tested.

Given the nature of the testing requested, and the fact that the murders in this case occurred before the advent of DNA technology and related evidence handling protocols, both parties acknowledge the distinct possibility that further testing may yield multiple DNA contributors of unknown origin. As such, if the only result of further testing is to yield either no additional DNA matches, or only DNA from unknown contributors, this matter should be closed

- 2. Judge Daniel Pratt (ret.) shall be appointed as a special master to:
 - Take all steps necessary to secure the evidentiary items listed above and deliver them securely for DNA testing to a laboratory of his choosing that is properly certified and able to upload and search against the CODIS database;
 - b. Oversee the testing;
 - c. Conclusively settle all disputes between the People and Mr. Cooper's defense team related to testing scope and protocols;
 - d. Make all final decisions on testing scope and protocols; and

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e. In carrying out his duties, Judge Pratt shall work under the general direction of the Legal Affairs Secretary and shall have at his disposal the resources of the Board of Parole Hearings, including any necessary investigative, law enforcement, and subpoena authority. The Executive Officer of the Board of Parole Hearings shall facilitate the provision of these resources and assist as necessary.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 24th day of December 2018.

EDMUND G. BROWN JR. Governor of California

ATTEST:

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ALEX PADILLA Secretary of State