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Scott Peterson's Murder Conviction Sufficient To Bar Entitlement To Life Insurance Proceeds Despite Pending Appeal

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Almost everyone is familiar with the murder trial of Scott Peterson. In 2004, after a highly publicized criminal trial in California, Scott was convicted of the first-degree murder of his wife, Laci. In 2005, Scott was sentenced to death. He filed an appeal, which is currently pending before the California Supreme Court. In the meantime, Scott resides in San Quentin State Prison on California's death row.

Fewer people may be aware of the battle that has raged during the past several years—largely unnoticed by the media—over Laci Peterson's life insurance proceeds. In 2001, Principal Life Insurance Company issued a \$250,000 variable life insurance policy to Laci, with Scott as the primary beneficiary. Laci was reported missing on Christmas Eve, 2002. Almost four months later, on April 14, 2003, Laci's body washed ashore at the San Francisco Bay. A few days after that, Scott was arrested and charged with Laci's murder.

Principal admitted that Laci's life insurance proceeds were due and payable, but it could not determine who should receive them. Scott was the named beneficiary under the policy. But California Probate Code Section 252—known as the "slayer statute"—provides that a beneficiary is disqualified from receiving insurance proceeds if the beneficiary murders the insured. Because Scott had been charged with Laci's murder, there was the possibility that he could be disqualified from receiving the insurance proceeds if ultimately convicted. Laci's policy provided that if Scott was ineligible to receive the

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proceeds, they would be paid to Laci's estate.

As a result, Principal filed an interpleader action in California state court. As part of the interpleader action, Principal deposited the insurance proceeds with the court and asked the court to determine to whom they should be paid. After Principal filed the interpleader action, Laci's mother, Sharon Rocha, opened Laci's estate and was appointed as Administrator. Principal was dismissed from the interpleader action, leaving Scott and the Administrator to litigate their claims to the insurance proceeds. (Full disclosure: Manatt represented Principal in the interpleader action.)

After Scott was convicted of Laci's murder, the Administrator filed a motion for summary judgment in the interpleader action. The motion asked the court to take judicial notice of the criminal court documents evidencing Scott's conviction. Scott opposed the motion by submitting evidence that his conviction was on appeal. The court took judicial notice of the criminal verdict and granted summary judgment in the Administrator's favor, finding that Scott was disqualified from receiving the proceeds and awarding them to Laci's estate. Scott appealed.

On October 31, 2007, the California Court of Appeal issued the next (and likely the final) chapter in the saga, affirming the lower court's decision disqualifying Scott from receiving the insurance proceeds. The result is not remarkable. What is surprising, however, is the amount of work it took the Court of Appeal to achieve that result.

California's "slayer statute" and the two ways to disqualify a beneficiary

California's "slayer statute," codified at Probate Code Section 252, states in full:

A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

The "slayer statute" is grounded in the uncontroversial public policy that a murderer should not profit from his or her crime. Comparable "slayer statutes" are found in many states and in

the Uniform Probate Code.

Under California's Probate Code Section 254, the "slayer statute" may be invoked in two possible ways:

(a) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this part. [Or,]

(b) In the absence of a final judgment of conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this part. The burden of proof is on the party seeking to establish that the killing was felonious and intentional for the purposes of this part.

In other words, if there has been a "final judgment of conviction" of first-degree murder against the beneficiary, that alone is sufficient to prove that the beneficiary feloniously and intentionally murdered the insured, thus barring the beneficiary from receiving the victim's insurance proceeds. But if there is no "final judgment of conviction," a competing claimant can still invoke the "slayer statute" by proving by a preponderance of the evidence, either on summary judgment or at trial, that the beneficiary feloniously and intentionally murdered the insured. So the absence of a "final judgment of conviction" against a murderer-beneficiary does not necessarily mean that he or she will be eligible to receive the victim's insurance proceeds. It just means that a competing claimant (usually the contingent beneficiary) will need to work harder to disqualify the murderer-beneficiary.

"Final judgment of conviction," Take 1

In the trial court and on appeal, the Administrator contended that Scott's conviction was a "final judgment of conviction" for the purposes of Probate Code Section 254(a). If the trial court had accepted this argument, Scott would have been disqualified from receiving the proceeds as a matter of law. But since Scott's conviction was pending appeal, the trial court concluded that it did not qualify as a "final judgment."

The Court of Appeal agreed. Noting that the phrase "final judgment" was ambiguous, the court turned to the rules of statutory interpretation, which require it to "ascertain the intent of the legislature so as to effectuate the purpose of the law." The court looked to the official comments by the

California Law Revision Commission, whose sweeping proposed changes to California's Probate Code were ultimately adopted in 1990. In the comments to Section 254(b), the Commission wrote: "Section 254 was amended . . . to add the words 'a final judgment of' in subdivision (b). This made clear that the civil court may determine the issue by the civil standard of proof during the pendency of an appeal from a criminal conviction of felonious and intentional killing." The court concluded that these comments "leave no doubt that the phrase 'a final judgment of conviction' was intended to exclude a criminal conviction that is on appeal." For good measure, the court noted that Section 254(a) is based on a nearly identical provision of the Uniform Probate Code, and that other states interpreting that provision have agreed that "a judgment becomes final when the appellate process is terminated or the time for appeal has expired."

Thus, the Court of Appeal agreed with the trial court that Scott's conviction, while pending appeal, was not a "final judgment of conviction" and did not automatically disqualify him from receiving Laci's insurance proceeds.

"Final judgment of conviction," Take 2

Next the Court of Appeal turned to Section 254(b), which permits a party to invoke the "slayer statute" by proving by a preponderance of the evidence that the beneficiary feloniously and intentionally murdered the insured. In the Administrator's motion for summary judgment, she submitted Scott's murder conviction as evidence that he feloniously and intentionally killed Laci. Scott did not submit any contrary evidence, other than to demonstrate that his conviction was pending appeal. In light of the record, the Court of Appeal framed the issue as such: "whether the nonfinal judgment of first degree murder, not rebutted by any evidence that appellant did not feloniously and intentionally murder his wife, constitutes sufficient evidence to warrant the granting of the Administrator's summary judgment motion under subdivision (b) of Probate Code section 254."

The court first examined California Evidence Code Section 1300. That rule provides that "[e]vidence of a final judgment adjudging a person guilty of a crime punishable as a felony is not made inadmissible by the hearsay rule when offered in a civil action to prove any fact essential to the judgment" A conviction of first-degree murder requires a finding by the trier of fact that the murder occurred intentionally. So under Section 1300, a "final judgment" of conviction of first-degree murder would be admissible to demonstrate that the convict had committed murder, and had done so intentionally.

But what is a “final judgment” under Section 1300? Once again, the court noted that the term was ambiguous. And once again, the court dug for clues to the Legislature’s intent. In this case, however, the court concluded that the term “final judgment” as used in Section 1300 includes a conviction that is final in the trial court *even if the conviction has been appealed*.

In reaching its conclusion, the court noted that Section 1300 had been enacted in 1965 based on Rule 63(20) of the Uniform Rules of Evidence. Several aspects of Rule 63(20) were revised when creating Section 1300, yet the phrase “final judgment” was not changed. So the court concluded that the drafters of Section 1300 must have intended the phrase “final judgment” to mean the same thing it meant in Rule 63(20). The court researched the history of Rule 63(20) and identified four separate factors to support its conclusion that the term “final judgment” as it is used in Rule 63(20)—and therefore as it is used in Section 1300—includes a conviction that has been appealed.

First, the court noted generally that the drafters’ comment to Rule 63(20) “contains no hint that a judgment on appeal would not qualify for admission.”

Second, Rule 63(20) was updated in 1974 to expressly provide that “[t]he pendency of an appeal may be shown but does not affect admissibility.” The phrase “final judgment” was not amended. Thus, the court reasoned that the 1974 amendment would have been meaningless if the term “final judgment” was not intended to include convictions that had been appealed.

Third, the court noted that the drafters of Section 1300, like the drafters of Rule 63(20), did not provide any hint that a “final judgment” did not include a conviction on appeal. In fact, the drafters of Section 1300 commented that a conviction should be considered “particularly reliable” evidence because “[t]he seriousness of the charge assures that the facts will be thoroughly litigated, and the fact that the judgment must be based upon a determination that there was no reasonable doubt concerning the defendant’s guilt assures that the question of guilt will be thoroughly considered.” The court observed that a determination of guilt “is made in the trial court by the trier of fact An appellate court makes no such determination.” This suggests that the drafters of Section 1300 were paying evidentiary deference to the trial court or the jury’s determination of guilt, regardless of whether that determination was later appealed.

Fourth, the court noted that since the enactment of Section 1300 in 1965, there had been no developments in the law providing any contrary interpretation. In fact, the case law interpreting Rule 803(22) of the Federal Rules of Evidence, which is comparable to Section 1300 and also uses the term “final judgment,” interprets that language to include a conviction that has been appealed.

Awkwardly, the court admitted to locating one exception: its own. In *In re L.S.*, 189 Cal. App. 3d 407 (1987), the California Court of Appeal had reviewed a child dependency action requiring it to evaluate the evidentiary significance of a father’s felony conviction for child molestation. The *In re L.S.* Court had held that “[a] judgment on appeal is not final. (Citations omitted.) Thus, the father’s convictions on appeal would not be competent to prove the father was a child molester under . . . Evidence Code section 1300.” In a surprising mea culpa, the court in the Peterson case wrote: “[u]pon closer examination of the issue . . . we now conclude that our resolution of the issue in *In re L.S.* . . . was ill advised, and we disapprove it.”

Based on its analysis of Section 1300, the court held that Scott’s first-degree murder conviction was prima facie evidence that he had feloniously and intentionally murdered Laci.

With that, the court evaluated the significance of the evidence in the context of the Administrator’s summary judgment motion. Having held that the Administrator’s motion was akin to a plaintiff moving for summary judgment in a standard civil case, the court held that the evidence of Scott’s conviction shifted the burden of proof to Scott. But Scott did not submit any contrary evidence and therefore failed to create a triable issue of fact:

The Administrator’s evidence was sufficient, and was unrebutted. Any evidence that appellant did not feloniously and intentionally kill his wife would have created a triable issue of fact. Appellant presented no such evidence, and the superior court properly granted the Administrator’s motion.

The Court of Appeal affirmed the trial court’s award of summary judgment in favor of the Administrator, thus disqualifying Scott from receiving the insurance proceeds.

The Court of Appeal’s October 31, 2007 ruling inspired a flurry

of press in the following days. Generally the commentators were neither surprised by nor critical of the court's ruling. Indeed, the court achieved a well-reasoned solution to a difficult practical problem. If the court had ruled the other way and concluded that a conviction on appeal is not evidence of a felonious and intentional killing, it would be far more difficult to disqualify beneficiaries convicted of the insured's murder from receiving insurance proceeds so long as the beneficiaries kept their appeals alive. As a result, those proceeds would sit on deposit with the court for years, and probably even decades, until the beneficiaries' appeals were exhausted. But by clarifying that a felony conviction is prima facie evidence of the commission of a felony, even if it is on appeal, the court handed claimants a powerful evidentiary tool to use on summary judgment or at the trial of an interpleader action.

Yet one should be careful not to overstate the scope of the court's ruling. A felony conviction on appeal may be prima facie evidence of the commission of a felony, but it is not conclusive. In Scott's case, he did not prevail on summary judgment because he did not submit *any* evidence to create a triable issue of fact. As the court noted: "[a]ny evidence that appellant did not feloniously and intentionally kill his wife would have created a triable issue of fact."

Scott could have submitted a declaration stating under penalty of perjury that he did not kill Laci, or that he did not do so intentionally. Or he could have submitted some—any—of the evidence introduced in his defense at his criminal trial. Presumably there are reasons why he did not do so. And, presumably, those reasons will remain known only to Scott and his counsel.

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