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8 DOUGLAS R. STANKEWITZ

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

10 CENTRAL DIVISION

11 DOUGLAS R. STANKEWITZ,

12 Petitioner,

13 On Habeas Corpus.

Case No. 21CRWR685993

NOTICE OF MOTION AND MOTION  
TO ACCESS COURT EXHIBITS FOR  
EXAMINATION AND TESTING;  
PROPOSED ORDER

Date: To be determined  
Time: 9 am  
Dept: 62

(Related Case: Fresno Superior Court  
Case No. CF78227015)

14 TO THE SUPERIOR COURT FOR THE COUNTY OF FRESNO AND TO THE DISTRICT  
15 ATTORNEY FOR THE COUNTY OF FRESNO:

16 YOU WILL PLEASE TAKE NOTICE that Defendant DOUGLAS R. STANKEWITZ,  
17 through counsel, hereby files through counsel his Motion to Access Court Exhibits for  
18 Examination and Testing, to be heard on date to be determined.

19 Such motion is predicated on the Points and Authorities and Declaration of Counsel  
20 herewith provided.

21 Oral argument for this motion is requested.

22 Dated: September 16, 2022

Respectfully Submitted,

23 J. TONY SERRA  
24 CURTIS L. BRIGGS

25 Attorneys for Petitioner  
26 DOUGLAS RAY STANKEWITZ

27   
28 By Curtis L. Briggs

FILED

SEP 19 2022

FRESNO COUNTY SUPERIOR COURT  
BY \_\_\_\_\_ DEPUTY

## REQUESTED COURT EXHIBITS

The court has the following firearm court exhibits in its possession:

Exhibit #5-A Titan .25 cal firearm & Holster

Exhibit #5-B Orange box (and all contents)

Exhibit #5-C Fired cartridge casing

Exhibit #5-d Ammunition magazine containing 2 unfired cartridges

Exhibit #5-e Magazine with 2 unfired cartridges

loose unfired cartridge, does not have a court labeled exhibit number, herein designated as Exhibit 5x

For reference, a photo of each Exhibit is attached. The defense needs its expert to examine and test the firearm evidence. Further, the defense needs to rebut the inspection report filed by the Fresno District Attorney, attached to its Informal Response to the Amended Emergency Petition. The inspection report, which excluding exculpatory information, was filed on September 1, 2021.

The inspection and testing will be performed by Chris Coleman, Forensic Analytical Crime Lab (FACL), Hayward, CA. The qualifications of FACL for forensic firearm analysis are found at their website: <https://www.facrimelab.com/general-criminalistics/>. There is also a copy of the relevant web page attached hereto (Exhibit 5aa). The qualifications of Chris Coleman are attached hereto (Exhibit 5bb). To ensure the integrity of the exhibits, the defense requests that a District Attorney Investigator transport the exhibits to the FACL, using chain of custody procedures. FACL will observe its Evidence Handling (Exhibit 5cc hereto) and Evidence Submission procedures (Exhibit 5dd), attached hereto.

The examination and testing will be nondestructive:

1. Examination and testing of the holster, including determination of all internal contact patterns and whether all parts of each internal contact pattern were applied using the same firearm; and examination and evaluation of all handwritten and/or stamped identification markings.

- 1 2. Examination and testing of the holster using porous paper and fingerprint powder to  
2 determine whether Court Exhibit #5-A fits the holster and could have been responsible  
3 for internal contact patterns present.
- 4 3. Examination and testing of the Court Exhibits #5A, 5-B, 5-C, 5-d, 5-e and 5x loose  
5 unfired cartridge. The examiner will fire the gun, using his own ammunition, namely  
6 Winchester .25 auto rounds. Because the Court Exhibits have been stored at the Fresno  
7 County Superior Court, the firearm should be in stable condition, such that it can be  
8 successfully test-fired.
- 9 4. Comparison of #5-C, the fired cartridge casing allegedly found at the crime scene, with  
10 #5-A, Titan .25 cal., to determine whether it was fired in #5-A.
- 11 5. Examination and testing of Court Exhibit #5-e, ammunition magazine and cartridges to  
12 determine how many cartridges #5-A would hold.
- 13 6. Examination of #5-A, #5-B, #5-C, #5d, #5e and 5x to determine whether any of the  
14 items contain Criminalist Boudreau's identification marks or any other law  
15 enforcement identification marks.
- 16 7. Examination and testing of Court Exhibit #5-A for blood and tissue.
- 17 8. Comparison testing of the test fires in evidence at FCSD to Court Exhibit #5-A. (The  
18 testing of the test fires is covered in a separate Motion to Compel Discovery, Including  
19 Evidence Examination and Testing, described as Envelope labeled as "3 Test Fired  
20 Cases from Titan 25 Auto #146425", described in a report dated 7-20-2017 by DA  
21 Investigator Mike Garcia, Item #26, at Bates page 4265, paragraph 5, Habeas Exhibit  
22 7h.

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## MEMO OF POINTS AND AUTHORITIES

A California Supreme Court Case, *Satele v Superior Court*, (2019) 7 Cal. 5<sup>th</sup> 852, is on all fours and on point. The case held that in preparation for filing a habeas corpus petition, a defendant was entitled to access to ballistics evidence in court exhibits. The purpose of the production of the evidence was for testing by an expert.

Cal. Rules of Court, Rule 2.550(c) provides that trial exhibits are included in the definition 2.550(b)(1). *Satele, supra* at 861. Specifically, the California Rules of Court authorize the court to permit an exhibit's release for examination outside of a court facility. Cal. Rules of Court, Rule 2.400(c). The court retains inherent authority to consider such factors as the need for testing, the administrative burden attendant to testing, any conditions necessary to maintain the integrity of the exhibit and chain of custody, as well as other equitable factors. *Satele, supra*, sets out the requirements for the court in granting access to the court exhibits. The only responsibility of the court is to ensure the integrity of the exhibits. No good cause is required because the good cause requirement applies only to physical evidence in the possession of the prosecution and law enforcement authorities. *Satele, supra* at 855. [Emphasis added]

All of the requested exhibits are in the court's possession. The qualifications of the lab and the forensic firearm examiner mean that the integrity of the exhibits will be maintained. DA Investigator transporting of the exhibits insures chain of custody. Therefore, the court should grant this motion.

### DECLARATION OF COUNSEL

Counsel, predicated on his information and belief, avers the following:

1. Court Exhibits #5-A, 5-B, 5c, 5d, 5e and 5x (one unfired cartridge) are in the possession of the Fresno Superior Court. The Court Exhibits have been stored at the Fresno County courthouse and kept clean and dry.

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2. The firearm evidence testing is necessary because the defense has never previously tested it.
3. As detailed in Exhibit 5bb hereto, firearms expert Chris Coleman has the requisite qualifications to test the firearms evidence.
4. The FACL cost for the examination and testing is \$3900.00.
5. Petitioner is indigent and therefore asks the court to order the County to bear the costs. If needed, defense counsel will pay for the reasonable administrative cost of packaging and transportation of the exhibits to the testing lab, as well as the cost of testing and examination.

I declare under penalty of perjury that the above is true and correct based on my information and belief. Executed on September 16, 2022, at San Francisco, California.

  
CURTIS L. BRIGGS

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am a citizen of the United States. My business address is P. O Box 7225, Cotati, CA  
4 94931. I am over the age of eighteen years and not a party to the within action.

5 On the date set forth below, I caused a true copy of the within  
6 NOTICE OF MOTION AND MOTION TO ACCESS COURT FOR EXAMINATION AND  
7 TESTING; ORDER PERMITTING ACCESS TO COURT EXHIBITS

8 to be served on the following parties in the following manner:

9 Mail  X  Overnight mail   Personal service   Fax

10 Office of District Attorney  
11 2220 Tulare Street, Suite 1000  
12 Fresno, CA 93721

13 I declare under penalty of perjury that the foregoing is true and correct, and that this  
14 declaration is executed on September  16 , 2022, at Cotati, California.

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16 ALEXANDRA COCK

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
CENTRAL DIVISION

DOUGLAS R. STANKEWITZ,  
Petitioner,  
On Habeas Corpus.

Case No. 21CRWR685993  
ORDER PERMITTING ACCESS  
TO COURT EXHIBITS

Having considered the “Notice of Motion and Motion for Access to Court Exhibits”  
filed on September \_\_\_\_, 2022, the Court grants Petitioner’s motion.

Petitioner DOUGLAS R. STANKEWITZ, is hereby permitted to access the  
following evidence, pursuant to the subsequent procedures:

Court Exhibits:

- Exhibit #5-A Titan .25 cal firearm & Holster
- Exhibit #5-B Orange box (and all contents)
- Exhibit #5-C Fired cartridge casing
- Exhibit #5-d Ammunition magazine containing 2 unfired cartridges
- Exhibit #5-e Magazine with 2 unfired cartridges
- loose unfired cartridge, does not have a court labeled exhibit number, herein designated as Exhibit 5x

Procedures:

1. All examination and testing will be performed by Chris Coleman, FACL.

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2. The exhibits will be transported from the court to FACL by a Fresno DA Investigator.
3. The examination and testing will be performed as described in the Motion to Access Court Exhibits on pgs. 2 and 3.
4. Fresno County will bear the costs of packaging, transportation, examination and testing.

Dated this \_\_\_\_\_ of September, 2022

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Arlan J. Harrell  
Judge of the Superior Court