

1 J. TONY SERRA, SBN 32639
2 CURTIS L. BRIGGS, SBN 284190
3 3330 Geary Blvd, 3rd Floor East
4 San Francisco, CA 94118
5 Tel 415-986-5591
6 Fax 415-421-1331

FILED

SEP 19 2022

FRESNO COUNTY SUPERIOR COURT
BY _____ DEPUTY

Attorneys for Petitioner
DOUGLAS R. STANKEWITZ

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

DOUGLAS R. STANKEWITZ,

Petitioner,

On Habeas Corpus.

Case No. 21CRWR685993

NOTICE OF MOTION AND MOTION
TO COMPEL EVIDENCE
EXAMINATION AND TESTING,
PROPOSED ORDER

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

(Related Case: FCSC Case No. CF78227015)

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

YOU WILL PLEASE TAKE NOTICE that Defendant DOUGLAS R. STANKEWITZ,
through counsel, hereby files his Motion to Compel Evidence Examination and Testing, to be
heard on the date above-named.

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

Oral argument is requested for this motion.

Dated: September 16, 2022

Respectfully Submitted,

J. TONY SERRA
CURTIS L. BRIGGS
Attorneys for Petitioner
DOUGLAS RAY STANKEWITZ


By Curtis L. Briggs

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2 As previously expressed in defense pleadings, the Fresno District Attorney's (Fresno DA)
3 office has continued to refuse the defense requests to examine and test the holster and gun in
4 evidence. There are indications that the prosecution may already tested the gun, and the results are
5 helpful to the defense. It is known that the prosecution has done other investigation. For example,
6 according to an interview transcript filed with this court in the habeas proceeding, the prosecution
7 interviewed Det. Thomas Lean III, Ret., in 2019¹, and never informed the defense, nor provided
8 defense with a copy of the interview transcript or notes. This is clearly a violation of *Brady*² and
9 indicates prosecution obstruction of justice in this case.
10

11 The purpose of this Motion is to invite the Court to step in order the prosecution to provide
12 evidence that the defense is clearly entitled to. Per the citations below, defendant is entitled to and
13 should have been provided all exculpatory evidence.

14 As part of its Informal Response to the Amended Emergency Petition, the Fresno DA's
15 office conducted an inspection of the holster in the habeas proceeding. In violation of *Brady*, as
16 well as state POST standards³, it filed a report which excluded the exculpatory information found
17 on it: the date of 7-26-73 and a 3-digit number, likely an officer badge number.
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19 As the safekeeper of the evidence, the DA always has access to evidence. The defense is
20 supposed to have the same access to the evidence.

21 **REQUESTED ITEMS FOR EXAMINATION AND TESTING**

22 Envelope labeled as "3 Test Fired Cases from Titan 25 Auto #146425", described in a
23 report dated 7-20-2017 by DA Investigator Mike Garcia, Item #26, at Bates page 4265,
24 paragraph 5, Habeas Exhibit 7h. The envelope has a Property Card attached which lists
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27 ¹ See Habeas Exhibit 1e, Det. Lean interview with Investigator Jonah Lamb, dtd_3-27-2020, at 5 (first paragraph).

28 ² *Brady v. Maryland* (1963) 373 U.S. 83.

³ See Reply Exhibit 14c, Declaration of Roger Clark, dtd 10-8-2021 @ 12-13.

1 victim Jesus R. Meras, dated 2-13-78, attached to it. A photo of the evidence is attached to
2 confirm the item of evidence is being described. See Exhibit 5ee, hereto.

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

11 The examination and testing will be nondestructive:

12 Examination and comparison testing of the 3-test fire cartridges in evidence, listed above,
13 stored at the Fresno County Sheriff's Department (FCSD), to Court Exhibit #5-A (.25 cal Titan
14 auto) to determine whether they were fired in Court Exhibit #5-A.

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16 **MEMO OF POINTS AND AUTHORITIES**

17 In addition to addressing access to court exhibits, *Satele v. Superior Court* (2019) 7 Cal.5th
18 852, 857, deals directly with postconviction discovery under Penal Code Section 1054.9. In its
19 discussion of 1054.9, it states “‘the statute partially abrogated the general rule that a person
20 seeking habeas corpus relief from a judgment of death is not entitled to postconviction discovery
21 until a court issues an order to show cause’. (People v. Superior Court (Morales) (2017) 2 Cal.5th
22 523, 528; [Emphasis Added][Other citations omitted] see generally People v. Gonzalez (1990) 51
23 Cal.3d 1179, 1255-1261. [Other citations omitted]” The *Satele* court goes on to say “It authorizes
24 discovery of materials, including physical evidence, to facilitate the prosecution of a habeas
25 corpus petition or motion to vacate the judgment”. (Morales, at p. 528.)[Emphasis added] After
26 both the trial court and the Second District Court of Appeal, Div. Three both denied Satele’s
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1 request for evidence for expert testing, the *Satele* court issued a writ of mandate directing the trial
2 court to vacate its order and conduct further proceedings. *Satele*, supra, at 855. In a footnote, the
3 court explains that 1054.9 was amended to apply to cases in cases involving a serious felony or a
4 violent felony resulting in a sentence of 15 years or more. *Satele*, supra, at 857, fn 2. Thus,
5 because Mr. Stankewitz’s case involves a violent felony resulting in a sentence in excess of 15
6 years, his case is covered under the statute.
7

8 The *Satele* case makes it clear that under PC 1054.9, a petitioner who meets the felony
9 criteria of 1054.9(a), is entitled to discovery prior to a court issuing an order to show cause in a
10 habeas proceeding. *Id* at 857. [Emphasis added] It vests jurisdiction in the trial court to grant
11 discovery and order the preservation of evidence within the statute’s scope. *Satele*, at 857, citing
12 *Morales*, at 531, 533.
13

14 Upon a showing of good faith but unsuccessful efforts to obtain discovery materials from
15 trial counsel, the court shall order that the defendant “be provided reasonable access to any of the
16 materials described in subdivision (c).” In essence, “[i]f that showing is made, the defendant is
17 entitled to discovery.” *Satele*, supra, at 858, citing *Caitlin v. Superior Court* (2011) 51 Cal. 4th 300,
18 305. In this case, habeas counsel has made an informal request of the Fresno District Attorney’s
19 (Fresno DA) office for the evidence. Said request has been unsuccessful because the Fresno DA
20 has not provided the evidence. See Declaration of Curtis L. Briggs, infra. *Satele*, citing *Caitlin*,
21 supra, defines “discovery materials” as “materials in the possession of the prosecution and law
22 enforcement authorities to which the defendant would have been entitled at the time of trial.”
23 (Section 1054.9, subd.(c))”. Further, that the discovery contemplated under section 1054.9(a)
24 applies only to those materials “currently in the possession of the prosecution or law enforcement
25 authorities involved in the prosecution of the case.” *Satele*, supra, at 858, citing *Morales*, supra, at
26 534 and *In re Steele* (2004) 32 Cal.4th 682,697.
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1 In another ballistics testing and examination case, the court held that both the defense and
2 the prosecution are entitled to test and inspect physical evidence. Further, that the defense is
3 entitled to test and examine the evidence independent of the observation of the district attorney.
4 *Walters v. Superior Court*, (2000 CA4, Div. 3) 80 Cal.App 4th 1074, 1078, citing *Prince v.*
5 *Superior Court* (1992)8 Cal.App. 4th 1176, 1179.

7 Clearly, because he was charged with first degree murder with a firearm, Mr. Stankewitz
8 would have been entitled to test and examine the test shell cartridges at the time of his trials.
9 Counsel made a good faith effort to obtain the evidence from the prosecution. Petitioner has
10 shown good cause for the examination and testing. Therefore, this court should order the
11 prosecution to grant access to the shell cartridge casings evidence held in the FCSD, to be
12 examined and tested by FACL.

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PRAYER

1. That this Court order that the Fresno County District Attorney make the test shell cartridges available for testing by FACL.
2. That this Court order that Fresno County will bear the cost of packaging, transportation, examination and testing of the firearm evidence; or order that the Petitioner will bear the cost of examination and testing.
3. A proposed Order is attached.

DECLARATION OF COUNSEL

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

- 11 1. On August 14, 2022, I sent Deputy District Attorney Amythest Freeman, an email
12 requesting discovery material, specifically the shell casings stored in FCSD
13 Evidence, be made available for inspection and testing. To date, I have not received
14 a response. A copy of the email is attached as Exhibit 5ff.
- 15 2. DA Investigator Mike Garcia's 7-20-2017 report (Bates 4264-
16 4266), Habeas Exhibit 7h, attached hereto, documents that the .25 cal shell casings
17 were tampered with. The defense needs to test the cartridge casings, along with the
18 Court Exhibit firearm evidence. Given Garcia's description that this evidence has
19 been tampered with, Investigator Garcia's report establishes good cause for
20 inspection and examination.
- 21 3. Defense has filed a separate Motion for Access to Court Exhibits for Examination
22 and Testing concurrently with this motion.
- 23 4. As detailed in Exhibit 5bb hereto, firearms expert Chris Coleman has the requisite
24 qualifications to test the firearms evidence.
- 25 5. The .25 auto shell casings have never been previously tested by the defense. The
26 testing is necessary, material, and potentially exculpatory or exonerating for
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defendant. Further, under CA Penal Code Section 1054.9, testing and examination of this physical evidence is reasonably necessary to the defendant's efforts to obtain relief.

- 6. The testing of the .25 auto cartridge casings will be nondestructive.
- 7. For Defendant's resentencing currently pending before this court, per the 5th District Opinion, the defendant is entitled to present mitigation regarding the gun enhancement. Therefore, good cause exists for testing of the firearm evidence to use as mitigation of the gun enhancement.
- 8. Based on the declaration of FCSD Criminalist Allen J. Boudreau, Ret., the defense has questions regarding the validity of the testing of the firearm and shell casings⁴. These questions establish good cause for the evidence testing.
- 9. 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

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⁴ See Habeas Exhibit 2g, Declaration of Allen J. Boudreau, dtd 3/14/2020, at 2 and 4.

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, MOTION TO COMPEL EVIDENCE EXAMINATION AND
7 TESTING, PROPOSED ORDER

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 COMPELLING
EVIDENCE EXAMINATION
AND TESTING

Having considered the “Notice of Motion and Motion to Compel Evidence Examination and Testing” filed on September ____, 2022, the Court grants Petitioner’s motion.

Petitioner DOUGLAS R. STANKEWITZ, is hereby permitted to examine and test the following evidence, located in the Fresno County Sheriff’s Department, pursuant to the subsequent procedures:

Envelope labeled as “3 Test Fired Cases from Titan 25 Auto #146425”, described in a report dated 7-20-2017 by DA Investigator Mike Garcia, Item #26, at Bates page 4265, paragraph 5, Habeas Exhibit 7h. The envelope has a Property Card attached which lists victim Jesus R. Meras, dated 2-13-78, attached to it. A photo of the evidence is attached to confirm the item of evidence described.

1 Procedures:

- 2 1. All examination and testing will be performed by Chris Coleman, FACL.
- 3
- 4 2. The evidence will be transported from the court to FACL by a Fresno DA
- 5 Investigator.
- 6 3. The examination and testing will be performed as described in the Motion to
- 7 Compel Evidence Examination and Testing, on pgs. 2 and 3.
- 8 4. Fresno County will bear the costs of packaging, transportation, examination
- 9 and testing.

10 Dated this _____ of September, 2022

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14 Arlan J. Harrell

15 Judge of the Superior Court

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