SUPREME COURT OF CALIFORNIA
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

WILLIAM TUPUA SATELE, Petitioner, v. **SUPERIOR COURT OF LOS ANGELES COUNTY**, Respondent, **THE PEOPLE OF THE STATE OF CALIFORNIA**, Real Party in Interest.	**Case No. S248492** 2d Dist. No. B288828 LASC No. NA039358 [CAPITAL CASE]

Original Proceedings
From the Los Angeles County Superior Court
The Honorable Laura Laesecke, Judge Presiding

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Defendant/Petitioner William Satele (Petitioner) and his co-defendant Daniel Nunez were convicted in the Los Angeles Superior Court, after a trial by jury, of two counts of capital murder, stemming from a drive-by shooting that occurred on October 29, 1998. (Los Angeles Superior Court case NA039358.) The jury returned guilty verdicts, and found special circumstances to be true, on July 6, 2000. Both defendants were sentenced to death, following a sentencing hearing on September 14, 2000. On July 1, 2013, this Court struck one special circumstance, but otherwise affirmed both convictions, in the case of *People v. Nunez and Satele* (2013) 57 Cal.4th 1 (*Satele*).

On October 23, 2017, Petitioner filed a motion to have the murder weapon and bullet fragments tested by a "confidential defense expert" pursuant to Penal Code section 1054.9. (Motion; Petition for Writ of Mandate (B288828), Exhibit B.) The People filed an Opposition to the motion in the Superior Court on or about December 5, 2017, and argued that the defense failed to make the requisite showings of either good cause or reasonable necessity entitling them to the order sought, and further noted that no supporting documents or exhibits were submitted in

support of the Motion, beyond a conclusory declaration from counsel. (Opposition; Petition for Writ of Mandate (B288828), Exhibit C.) The Los Angeles Superior Court conducted a hearing on the motion on February 1, 2018. (Reporter's Transcript (RT); Petitioner's Lodged Document, B288828.) The court held that Petitioner failed to make a showing of good cause, and denied the motion. (*Ibid*.) Petitioner filed a Petition for Writ of Mandate in the Court of Appeal, Second Appellate District, on March 19, 2018, and that petition was summarily denied on April 19, 2018. (B288828.) The instant Petition for Review was filed on or about April 27, 2018. On May 29, 2018, this Court requested an Answer from the People, as Real Party in Interest. (S248492.)

A sentenced capital defendant is entitled to post-conviction discovery, including "access to physical evidence," pursuant to Penal Code[1] section 1054.9, upon a showing of good cause and reasonable necessity, after other pre-requisite requirements are met. (§ 1054.9.) Petitioner's written motion and his oral argument presented during the hearing failed to demonstrate good cause for testing the firearm and bullet fragments, as required under the statutory requirements of section 1054.9. Petitioner so-much-as conceded this during oral argument, admitting that he needed to "come up with something." Petitioner failed to support his Motion with supporting documentation setting forth good cause, and even after the People's Opposition raised that issue, Petitioner failed to present supporting documentation supporting a finding of good cause at the hearing on the Motion.

Neither error by the trial court or the Court of Appeal is supported by the record presented. Petitioner failed to present the trial court with evidence in support of his claim that good cause existed for his request, and the trial court properly denied the motion on that basis. The Court of Appeal properly denied the Petition for Writ of Mandate. The Petition for Review should be denied.

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[1] All further statutory references are to the California Penal Code unless otherwise indicated.

STATEMENT OF FACTS

The Underlying Conviction - Guilt Phase Evidence

The following factual summary is adapted directly from this Court's Opinion in *Satele*, *supra*, 57 Cal.4th at pp. 5-20.

On October 29, 1998, about 11:00 p.m., a Black couple, Edward Robinson and his girlfriend Renesha Ann Fuller, were shot and killed outside Robinson's town house at 254th Street and Frampton Avenue in Harbor City, in the County of Los Angeles. Robinson's sister heard the shots, looked out her second-story window, and saw a big, older model car with horizontal taillights driving away. Four shell casings were found at the scene. An autopsy revealed that Robinson was shot three or four times. Fuller was shot twice, but one of the bullets may have first traveled through Robinson.

Ernie Vasquez, who was in the area that night, testified that even though few cars were on the road the night of October 29, 1998, on several occasions during a period of 15 to 20 minutes he saw an older Buick Regal or similar model sedan, burgundy or dull red in color, driving near the area of the murders. The car had horizontal taillights. Vasquez later identified Juan Carlos Caballero as the driver. (Caballero was murdered shortly after the murders in this case.) Persons resembling defendant Satele (also known as "Wilbone") and defendant Nunez (also known as "Speedy") were, respectively, in the front passenger seat and backseat of the vehicle. After about 11:00 p.m., while Vasquez was parked in a hotel driveway, he heard shots, ducked down, and then drove away. After driving for about a minute, he saw a body lying in the road, and stopped to assist the victim, later identified as Robinson.

Around midnight that same night, about an hour after Robinson and Fuller were murdered, Joshua Contreras met both defendants and Caballero at a neighborhood park. Both defendants and Contreras were members of the West Side Wilmas gang. Contreras heard defendant

Satele say, "We were out looking for niggers," and heard Satele or Nunez say, "I think we hit one of 'em."

The next evening, Contreras was at a friend's house with several people, including both defendants. Satele appeared nervous, and told Contreras that the murders of the "Black guy and Black girl" that he had shot were "in the news." Satele told Contreras "he was driving right there in Harbor City and he saw a Black guy or Black girl hugging or kissing or something and he just shot them."

Later that night around 3:40 a.m., Los Angeles Police Officers Adam Greenburg and Vinh Nguyen were in a marked police car when they saw a car, later identified as a four-door Chrysler, driving with its headlights off. The Chrysler pulled over to the curb. As the officers pulled in front of the Chrysler and activated their car's emergency lights, three occupants fled the Chrysler. Officer Greenburg identified defendant Nunez as the person who had been driving and defendant Satele as the person who had been seated in the front passenger seat. The police pursued Satele and arrested him. On the Chrysler's driver's seat was a white baseball cap with the word "West" on the front and the name "Speedy" on the back. Between the driver's and passenger's seats was a large semiautomatic Norinco Mak-90, an AK-47-type assault rifle. The rifle was identified as the murder weapon through ballistics testing. A magazine attached to the weapon contained 26 live rounds of jacketed hollow-point cartridges; the magazine was capable of carrying 30 rounds.

Joshua Contreras, who had joined the West Side Wilmas gang shortly before the two murders, told police that both defendants were "riders" - persons who "kill[ed] their enemies" - and that they had an AK-47 rifle they called "Monster." Contreras saw defendant Satele put the AK-47 into the "car that Speedy [(defendant Nunez)] had" shortly before defendant Satele was arrested. (At trial, Contreras denied or claimed not to remember his statements to police, and those statements were introduced as prior inconsistent statements.)

On December 3, 1998, several weeks after the two murders, Ernie Vasquez and defendant Satele were in a cell in a Los Angeles County jail.

When Satele heard that Vasquez was from Harbor City, he asked if Vasquez had heard about the killings there. When Vasquez said, "I think so, yes" or "something … to that nature," Satele said, "Well, we did that," or possibly "I did that," adding, "I AK'd them," or "We AK'd them." Vasquez mentioned these statements to police officers on January 6, 1999, after his fingerprint had been found on victim Fuller's car. At Vasquez's request, he was then transferred to the Lynwood jail, which was closer to his home.

On January 7, 1999, defendant Nunez, who was a trusty at Lynwood jail, approached Vasquez. Nunez asked if Vasquez was from Harbor City, and Vasquez said, "Yes." Nunez said he had killed "those niggers … in your neighborhood." Nunez mentioned that he had been driving down the street when one of the victims "looked at him wrong," so Nunez "turned back around and blasted" the victim.

On February 9, 1999, Los Angeles Police Detective Robert Dinlocker showed both defendants a photograph of the four-door Chrysler in which they were seen on the night after the murders, and asked them if that car was used in the homicide. Two days later, defendants were falsely told they were going to be booked on murder charges; while being transported together to and from the courthouse their conversations were recorded. Defendant Satele said: "I not even really sweating it dog, because all that shit that they got, that shit's wrong.… But if them mother fuckers would have shown me the car that we fuckin' actually did that shit in, fuck, I'd be stressing like a mother fucker."

Ruby Feliciano testified that she owned the four-door Chrysler in which defendants were seen on the night after the murders. A week earlier, she had taken the car to defendant Nunez for repairs, and he had promised to return the car that evening. Nunez did not do so, and when she later told Nunez she was going to report her car as stolen, he threatened her life. After the car was impounded by police shortly after the two murders, Feliciano received a telephone call from Nunez's girlfriend; Nunez, who was in jail, was also on the line. During this

three-way conversation, Nunez asked Feliciano to change what she had told the detectives, and his girlfriend asked Feliciano to say that she had spoken to Nunez and his girlfriend at a certain time on the night police recovered the car, and that Nunez had been home at the time.

The prosecution presented evidence of defendant Nunez's animus against Blacks. Esther Collins, who is Black, testified that in September 1997, defendant Nunez, who was intoxicated, came up to her in her garage and, calling her a "nigger," asked for money or drugs. When Collins said she had none, Nunez again called her a "nigger" and spat on her. He then hit Collins in the mouth with a hard object, fracturing her jaw, and said, "Nigger, get up nigger." Collins's husband, who is also Black, came out to the garage with a "pop gun" in an effort to scare Nunez off. Nunez laughed at him, threw "the word 'nigger' around," and left. Collins, who was afraid of the West Side Wilmas gang (of which Nunez was a member), did not report the incident to the police that day because she did not want trouble.

At the time Collins testified against defendants, she was incarcerated. She testified that on one occasion when she and defendant Nunez were on the bus from jail to court, he said, "Are you testifying? Don't testify. Something like that." Nunez also asked, "Where is your son? Is he in custody?" Collins denied she was personally afraid to testify, but said she feared reprisal against her son, who was also in prison, because "[i]t's a black and racial thing in jail." Los Angeles District Attorney's Office Investigator John Neff testified he had spoken to Collins the week before her testimony. Collins told him she was afraid to testify because, while on the transportation bus, "one of the defendants had made a veiled threat by asking how her son was," and then saying, " 'You're not going to testify, are you?' "

The prosecution presented evidence that West Side Wilmas gang members other than defendants had committed assaultive crimes, and the prosecution introduced records of convictions for purposes of proving the gang allegation. Los Angeles Police Officer Julie Rodriguez testified as an expert on the West Side Wilmas gang. She said the gang's primary

activities are "anything that's going to benefit the gang," including murder. The area of the two murders was claimed by rival gangs. Murdering a Black couple with no gang ties would cause defendants to "move … up in the gang." In her view, if these defendants murdered Robinson and Fuller, they did so with the specific intent to promote, further or assist in the criminal activity of West Side Wilmas gang.

Los Angeles County Deputy Sheriff Scott Chapman, who was assigned to the gang unit at the Men's Central Jail, testified that while rival gang members in the street will attack each other, "[o]nce they come into county jail it becomes a race issue … [and] [t]hey bond together to protect themselves." Hispanic gangs sometimes include persons who, like defendant Satele, are of Samoan descent. Further, Los Angeles County Deputy Sheriff Larry Arias testified that on November 9, 1999, he was escorting a Black inmate named Keys in the Men's Central Jail. Keys, who was "waist chained" and could not raise his hands to his face, was punched in the face by defendant Satele and fell to the ground. Keys had not provoked the attack.

David Butler, a firearms examiner, retired Los Angeles police officer, and "distinguished member" of the Association of Firearm and Tool Mark Examiners, testified on behalf of the defense, and testified that the casings found at the murder scene bore marks consistent with having been fired from the gun found in the car in which Petitioner was riding the night after the two murders. The magazine attached to this gun held 30 rounds. The bullets contained steel penetrators, and were originally designed to penetrate light armor on military vehicles. In Butler's view, the shooter was fairly stationary when the shooting occurred.

Evidence introduced during Penalty Phase included information that when defendant Satele was 16, he was arrested for carrying a gun, and he was placed in a military boot camp for about four months. Further, a psychiatrist who interviewed Satele, administered the Minnesota Multiphasic Personality Inventory test to defendant Satele, and the test results indicated that Satele was "highly pathological," might be psychotic, and exhibited a borderline personality disorder.

The Motion for Section 1054.9 Discovery

On October 23, 2017, Petitioner filed a motion to have the murder weapon and bullet fragments tested by a "confidential defense expert" pursuant to section 1054.9. (Motion; Petition for Writ of Mandate (B288828), Exhibit B.) The Motion was cursory, consisting of a one-page notice, a one-page declaration from counsel, and Points and Authorities consisting of less than two pages. (*Ibid*.) The Motion stated that:

> This motion is based on grounds that: (1) confidential examination and testing of such physical evidence is necessary to investigate, prepare and file a timely, exhaustive and complete petition for writ of habeas corpus; (2) defendant is entitled to the right to present evidence in one's own defense, pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 15, and 24.

(*Id*. at p. 2.)

Counsel's Declaration in support of the motion merely stated that:

> 2. I am informed and believe that a forensic examination of the ballistics evidence by a confidential defense expert is necessary to the preparation of a petition for writ of habeas corpus. The prosecution called a ballistics expert at trial to testify that the casings and bullets admitted as exhibits at trial were fired by the alleged murder weapon "to the exclusion of all others." In order to investigate the validity of that claim, it is necessary to have a defense expert examine the evidence.

(Declaration of Stephen K. Dunkle, Motion, p. 3.) Conspicuous in its absence was a declaration from a ballistics expert that either the original test results were flawed or that technological advances now exist that would disprove the original test results or impeach the People's and Defense's experts at trial (both of whom reached the same conclusion).

Petitioner's Points and Authorities, included in the Motion, cited the applicable section under which he sought discovery, section 1054.9, and simply stated that:

> In this case, [section 1054.9] subdivision (a) is satisfied because [Petitioner] is preparing a postconviction writ of habeas corpus in a case in which a sentence of death has been imposed and habeas counsel is not able to obtain the physical evidence from trial counsel since it was never in trial counsel's possession.

(Motion, p. 4.) No further showing was presented regarding good cause or the necessity of the evidence. No additional supporting documents, exhibits, or references to the trial court record were included or supplied to either the trial court or the Court of Appeal.

The People's Opposition

The People filed an Opposition to the Motion on or about December 5, 2017. (Opposition; Petition for Writ of Mandate (B288828), Exhibit C.) In their Opposition, the People cited section 1054.9, subdivision (c), and argued that the defense failed to make the requisite showings of both good cause and reasonable necessity entitling them to the order sought, and further noted that no supporting documents or exhibits were submitted in support of the Motion, beyond the conclusory declaration from counsel. (*Id*. at p. 4.) The People's position was that "The Defense has not sufficiently established good cause that access to the physical evidence is reasonably necessary and therefore, the Defense's request should be denied."[2] Further, the People argued that:

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[2] It is noteworthy that between the dates of approximately December 5, 2017, when the People's Opposition was filed, and February 1, 2018, when the hearing on the motion was held, the Defense did not file a Reply to the People's Opposition, nor did they submit any additional exhibits or documentary evidence in support of their Motion.

"The Defense does not attempt to articulate - with supporting facts - how there is any good cause, nor why the requested examination is material to their habeas petition." (*Id*. at p. 5.)

The People did not argue below - nor do they argue here - that Petitioner did not meet the initial foundational requirements set forth in section 1054.9, subdivisions (a) or (b); rather the People argued only that the defense failed to meet the additional showings of good cause and reasonable necessity, which are statutorily required when seeking the testing of physical evidence, pursuant to section 1054.9, subdivision (c). (Opposition p. 4.) Further, the People further pointed out that the original prosecutor was not available to litigate the post-conviction discovery claims[3] and the original trial court Judge, the Honorable Tomson Ong, had been removed from the case by the defense via an affidavit filed pursuant to Code of Civil Procedure section 170.6. (*Id*. at p. 5.) These developments - which are not unusual in postconviction capital case litigation - underscore the importance of the defense establishing its required showing under section 1054.9, subdivision (c).

Further, after pointing out the perceived deficiencies in Petitioner's initial motion, the People went on to address how the defense physical examination of evidence should be ordered "assuming arguendo that the Defense can meets its burden of sufficiently demonstrating facts and exhibits that sufficiently establish good cause and materiality that necessitate access to the requested physical evidence…." (Opposition, p. 6.) While the People's Opposition stopped short of conceding that a successive discovery motion can be brought under section 1054.9, that is certainly an open question, albeit a premature one here, since the instant procedural posture does not yet present that scenario. The trial court - in fact - indicated that it was denying the defense discovery motion "without prejudice." (RT p. 4:4-7.) The People are further aware that this Court

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[3] The trial was originally conducted by then-Deputy District Attorney Scott Millington. Mr. Millington is currently a sitting judge on the Los Angeles Superior Court, having been appointed to the bench by the Governor on February 16, 2005.

has specifically left open the question of whether a successive, supported discovery motion can be brought pursuant to section 1054.9. (*Catlin v. Superior Court* (2011) 51 Cal.4th 300, 308 (*Catlin*) ("The question whether a court may deny multiple discovery motions as successive is not before us, and we therefore do not address it.") While that question will no-doubt be resolved by this Court in the future, this case does not yet present facts which allow the fair determination of that important question, and today is therefore not the day to resolve that issue.

The Los Angeles Superior Court's Ruling on the Motion

The Los Angeles Superior Court conducted a hearing on the Motion on February 1, 2018. (Reporter's Transcript (RT); Petitioner's Lodged Document, B288828.) The court held that Petitioner failed to make a showing of good cause, and denied the motion on that basis. (*Id*. at p. 40.)

At the outset of the hearing, the court noted that, regarding a different portion of the discovery request, the People had provided defense counsel with 1,001 pages of discovery, including some material that had been reviewed by the court in camera. (RT pp. 2-4.) The court also noted that it had previously held a telephonic hearing with counsel regarding the defense request to retest the ballistics evidence. (*Id*. at p. 4.)[4] During that prior telephonic hearing, the court denied the defense request to retest the ballistics evidence "without prejudice." (*Ibid*.)

The defense next indicated that it had received reports from ballistics experts Starr Sechs, Patrick Ball, and defense ballistics expert Mr. Butler, who was previously retained by Petitioner at trial. (RT pp. 5-7.) There is no indication in the record or exhibits before this Court that the defense provided those reports to the court in support of its Motion. However, the defense conceded during the hearing that all of the above-named experts agreed that the ballistics evidence recovered at the scene

[4] If that conference was reported, a transcript has not been provided to this Court by Petitioner.

matched the firearm recovered from Petitioner, and defense counsel further admitted that defense expert Butler's testimony "corroborate[d]" the testimony from the People's expert, Patrick Ball, that the ballistics evidence "is a match." (*Id*. at p. 7.) In response to the defense request, the court inquired, "What is this accomplishing? … Why are we creating a third (sic)[5] report?" (*Id*. at p. 9:12, 9:23.) The defense postulated that they might, in theory, find an expert who disagreed that the ballistics matched, but described this only as a 'possibility,' and offered nothing concrete to support the conclusion that such would *actually* be the result in *this* case. (*Id*. at p. 11; see also *id*. at p. 33:2-4.) A defense investigator viewed the evidence with counsel in the Superior Court Evidence Room, and took photographs. (*Id*. at p. 27.)

The People responded that the defense failed to make a showing of good cause, based upon what they had presented to the court thus far, and that their currently-unsupported request was based upon a showing that amounted to "pure speculation." (RT p. 26:15.) The court agreed and found that the defense argument amounted to: "Gee, Judge, there is no harm." (*Id*. at p. 30:18-19.) The defense argued, generically, that there had been advances in technology since the ballistics evidence was originally tested, but conceded, "Is that going to do it? I don't know." (*Id*. at p. 35:9-10.) Defense Counsel conceded that defense claims were required to be substantiated. (*Id*. at p. 36.) Defense then stated:

> We have to come up with something, if there is anything to come up with. If there isn't, that's fine. We'll move on. We'll do something else. That obviously happens a lot, where we go and we look at part of the case and we say, "Okay. We thought there was something there, and there wasn't."

(*Ibid*.)

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[5] Given that defense counsel conceded that he already had reports from three prior experts (*id*. at pp. 5-7), his request to have the evidence examined by a fourth expert would presumably result in a fourth report.

The People responded that the defense bears the burden to demonstrate good cause and reasonable necessity, and that they had failed to establish either. (RT p. 37.) The defense offered no proof that the opinions of either the prosecution or defense experts were deficient, and therefore they failed to demonstrate good cause as required by statute. (*Ibid*.) The court found that the defense failed to make an actual, supported showing of "good cause" as required by the statute. (*Id*. at p. 40.) Accordingly, the court denied the motion on that basis. (*Ibid*.)

The Court of Appeal's Ruling on the Writ

Petitioner filed a Petition for Writ of Mandate in the Court of Appeal, Second Appellate District, Division 3, on March 19, 2018. (Writ, B288828.) Attached to the writ were three exhibits: A) A two-page letter seeking discovery; B) A five-page motion seeking discovery (Motion) and a proposed order; and C) The People's Opposition to the Motion, consisting of nine pages (Opposition). On March 21, 2018, Petitioner also filed with the Court of Appeal a copy of the Reporter's Transcript from the February 1, 2018, hearing on the Motion. (RT.) On April 19, 2018, the Court of Appeal denied the Petition for Writ of Mandate. (Petition for Review, S248492, Exhibit A.)

Petition for Review

On April 27, 2018, Petitioner filed the instant Petition for Review. (Petition for Review, S248492.) On May 29, 2018, at 4:06 p.m., this Court requested an Answer to the Petition for Review, due on June 5, 2018. This Answer is respectfully filed pursuant to the Court's request.

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POINTS AND AUTHORITIES

I

SECTION 1054.9, SUBD. (C), PROVIDES FOR EXAMINATION AND TESTING OF EVIDENCE, IN A POST-CONVICTION CAPITAL CASE, UPON A SHOWING OF GOOD CAUSE AND REASONABLE NECESSITY

Section 1054.9 provides for post-conviction discovery in a case where the death penalty or a life-sentence has been imposed. The instant capital murder case is a qualifying case under section 1054.9. Section 1054.9, subdivisions (a) and (b), set forth the prerequisites for *general* discovery under the section, and provide:

> **(a)** Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materials described in subdivision (b).
>
> **(b)** For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

(§ 1054.9, subd. (a), (b).) The People did not oppose Petitioner's request regarding the ballistics evidence under subdivisions (a) or (b); rather, the People's Opposition was based only on the lack of showing of good cause and reasonable necessity, as required under section 1054.9, subdivision (c), discussed immediately below.

Section 1054.9, subdivision (c), controls a petitioner's post-conviction *examination of evidence*, and is the subdivision at issue in the matter before this Court. The section provides, in relevant part[6]:

> (c) In response to a writ or motion satisfying the conditions in subdivision (a), court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant **only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief**.

(§ 1054.9, subd. (c), emphasis added.)

The language of the statute is clear and unambiguous. "If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls." (*Catlin*, *supra*, 51 Cal.4th at p. 304.) The statute simply requires that a defendant seeking to test physical evidence, such as firearms and ballistics evidence, show good cause for the request, and demonstrate that it is reasonably necessary to support a postconviction claim for relief brought by way of a writ of habeas corpus or motion to vacate judgment. (§ 1054.9, subd. (c).) This Court has held that discovery may be sought in preparation of such claims. (*In re Steele* (2004) 32 Cal.4th 682, 691.) However, this Court has also held that the statute limits post-conviction discovery and does not provide for "free-floating" discovery. (*Id*. at p. 695; see also *Barnett v. Superior Court* (2010) 50 Cal.4th 890, 899.) With this in mind, the People respectfully submit that the "good cause" and "reasonable necessity" requirements, set forth in section 1054.9, subdivision (c), plainly require that those two basic showings be made by a moving petitioner before examination of evidence may be ordered.

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[6] One additional sentence, at the end of subdivision (c), addresses the testing of DNA evidence, and is not relevant to the instant matter.

II

A DISCOVERY ORDER IS REVIEWED FOR ABUSE OF DISCRETION

Generally, discovery orders are reviewed for abuse of discretion.

> An appellate court "generally review[s] a trial court's ruling on matters regarding discovery under an abuse of discretion standard." (*People v. Ayala* (2000) 23 Cal.4th 225, 299.) Furthermore, " 'The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.' " (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 566 (*Denham*).)

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 366.)

Similarly, a trial court's ruling regarding a showing of "good cause" is generally reviewed for abuse of discretion. (See e.g. *People v. Laursen* (1972) 8 Cal.3d 192, 204 (the finding regarding good cause for a motion to continue made pursuant to section 1050, is reviewed for abuse of discretion); accord *People v. Serrata* (1976) 62 Cal.App.3d 9, 16.) The People accordingly submit that the trial court's finding regarding the lack of showing of good cause should be reviewed for abuse of discretion.

"[D]iscretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered. [Citations.]" *(People v. Giminez* (1975) 14 Cal.3d 68, 72.) The trial court's ruling is presumed to be correct and Appellant has the burden of overcoming that presumption. (*Denham*, *supra*, 2 Cal.3d at p. 564.) Further, "It is a basic presumption indulged in by reviewing courts that the trial court is presumed to have known and applied the correct statutory and case law in the exercise of its official duties." (*People v. Mack* (1986) 178 Cal.App.3d 1026, 1032; Evid. Code, § 664 [Official duty is presumed to be regularly performed.].)

III

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT PETITIONER FAILED TO DEMONSTRATE GOOD CAUSE IN SUPPORT OF HIS MOTION

The trial court found that Petitioner failed to demonstrate good cause in support of his request to test the ballistics evidence. (RT p. 40.) The record that has been supplied to this Court clearly supports the trial court's conclusion. Pursuant to the statute, Petitioner was required to demonstrate to the trial court "a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief." (§ 1054.9, subdivision (c).) Petitioner clearly failed to do so, even after being placed on notice two months prior to the hearing that the People intended to object to his request only on that basis. (Opposition, p. 4.)

Petitioner's Motion was completely devoid of exhibits establishing good cause. The Motion merely noted that testing was "necessary" to the preparation of a writ of habeas corpus, with no further showing. (Motion, at p. 2.) Petitioner's Motion was accompanied by a Declaration from counsel Stephen K. Dunkle (at Motion, p. 3), but that declaration merely stated that testing was "necessary" without any further proof or showing of good cause. Petitioner admitted at the hearing that he possessed reports from three separate ballistics experts, including a ballistics expert retained by Petitioner (RT pp. 5-7), yet he did not attach those reports as exhibits to his motion, or submit them with a Reply. No documentary evidence or exhibits beyond the conclusory declaration of counsel are before this Court. Certainly, a completely conclusory declaration is insufficient as a matter of law to establish good cause. To hold that a single, unsupported, conclusory sentence establishes "good cause" for testing, would simply render the statutory requirement meaningless.

Conspicuous in its absence was a declaration from a ballistics expert that either the original test results were flawed or that technological advances now exist that would disprove the original test results or impeach the People's and Defense's experts at trial. This is particularly important since, at trial - as Petitioner conceded at the hearing - both the People's ballistic expert *and Petitioner's own retained ballistics expert* agreed that the ballistics evidence matched the assault rifle recovered from the car that Petitioner was arrested in. (RT p. 7.) Petitioner admitted that his own expert "corroborated" the testimony of the People's expert at trial. (*Ibid*.) Petitioner having conceded that his own expert corroborated the findings of the People's expert at trial, the trail court fairly inquired of Petitioner, "What is this accomplishing? … Why are we creating a third report?" (*Id*. at p. 9:12, 9:23.) Petitioner's lack of a concrete, supported showing created proper grounds for the denial of his motion. As noted by the trial court, the argument that, "there is no harm" in the testing, does not create a showing of good cause as required by the statute. (*Id*. at pp. 30, 40.)

Petitioner was statutorily required to establish "good cause" and "reasonable necessity" for his request to test the physical ballistics evidence introduced at trial. (§ 1054.9, subdivision (c).) Given the complete lack of showing of good cause, the trial court did not abuse its discretion in denying Petitioner's Motion on that ground. (RT p. 40.) The Court of Appeal therefore properly denied the Petition for Writ of Mandate. This Court should similarly deny the Petition for Review.

That is not to say that the requisite showing is either impossible to attain or is barred from being subsequently presented in the trial court. As noted above, this Court has specifically left open the question as to whether a successive motion for discovery can be brought under section 1054.9. (*Catlin*, *supra*, 51 Cal.4th at p. 308.) Given that unresolved question, the People's Opposition addressed the procedural aspects of conducting such testing, "assuming arguendo that the Defense can meet its burden …." (Opposition p. 6.) However, testing is properly denied where Petitioner fails to make the proper showing, as required by law.

CONCLUSION

Petitioner fails to raise an issue that warrants this Court's review. The only question presented here is whether the trial court abused its discretion in finding that Petitioner failed to establish good cause, as required by the applicable statute. Petitioner fails to carry his burden to establish that the trial court abused its discretion in denying his Motion to test the ballistics evidence because he failed to make the basic, statutorily required, prerequisite showing of good cause and reasonable necessity in the trial court. The trial court properly denied his Motion on that basis. The Court of Appeal properly summarily denied the writ below because Petitioner failed to demonstrate that good cause supported his Motion, as required by law.

The Petition for Review should be denied.

Respectfully submitted,

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By

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the enclosed Answer to Petition for Review is produced using 13-point Roman type, and contains approximately 5,885 words, including footnotes, and excluding tables, caption, and signature block, which is less than the 8,400 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: This 5th day of June, 2018

Los Angeles County
District Attorney's Office
Appellate Division

_____

Scott D. Collins
Deputy District Attorney
Attorney for Respondent
Real Party in Interest

DECLARATION OF SERVICE BY MAIL

William Satele v. Superior Court of Los Angeles County

Case No. S248492; B288828; LASC NA039358

The undersigned declares under the penalty of perjury that the following is true and correct:

I am over eighteen years of age, not a party to the within cause, and employed in the Office of the District Attorney of Los Angeles County with offices at 320 West Temple Street, Suite 540, Los Angeles, California 90012. On the date of execution hereof I served the attached document entitled **ANSWER TO PETITION FOR REVIEW** by depositing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States mail in the County and City of Los Angeles, California, addressed as follows:

Hon. Lee Edmon, Presiding Justice
California Court of Appeal
Second Appellate District - Division 3
300 South Spring Street – 2nd Floor
Los Angeles, CA 90013

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Executed on June 5, 2018, at Los Angeles, California.

_____

Esmeralda Ek

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 6/5/2018 by Francisco Coello, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **SATELE v. S.C. (PEOPLE)**
Case Number: **S248492**
Lower Court Case Number: **B288828**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **SCollins@da.lacounty.gov**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/5/2018
Date

/s/Scott Collins

Signature

Collins, Scott (143426)

Last Name, First Name (PNum)

Los Angeles County District Attorney

Law Firm