SUPREME COURT OF CALIFORNIA
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Supreme Court of California
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S.Ct. Case No. S248492
2d Crim. No. B288828
S.Ct.No. NA039358
(Los Angeles County)
[CAPITAL CASE]

IN THE SUPREME COURT OF CALIFORNIA

WILLIAM TUPUA SATELE ,

Petitioner

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES,

Respondent;

PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

REPLY TO ANSWER TO PETITION FOR REVIEW

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

PENAL CODE § 1054.9 COMPELS THE RELEASE OF PHYSICAL EVIDENCE FOR EXAMINATION BY A DEFENSE EXPERT WHERE SUCH EXAMINATION IS REASONABLY NECESSARY TO ESTABLISH THAT THE PROSECUTION'S EXPERT'S OPINION OFFERED AT TRIAL HAS BEEN UNDERMINED BY LATER SCIENTIFIC RESEARCH OR TECHNOLOGICAL ADVANCES

Review should be granted so that this Court can clarify what is required for the good cause showing for access to physical evidence under Penal Code § 1054.9(c) in light of Penal Code § 1473. In the present case, the only way Petitioner can obtain an expert opinion that the ballistics testimony admitted against him at trial amounts to "false evidence" under Penal Code § 1473 is if he is granted access to the physical evidence under Penal Code § 1054.9 based on a showing that such examination is reasonably necessary to establish that the prosecution's expert's opinion offered at trial has been undermined by later scientific research or technological advances. We respectfully submit that Penal

Code § 1054.9(c) must allow the sort of access to physical evidence requested here when read in conjunction with Penal Code § 1473(e)(1).

Real Party asserts that Petitioner failed to provide good cause to believe that access to the physical evidence is reasonably necessary to the defendant's effort to obtain relief because he did not make a more detailed showing. (Answer, p. 21.) In particular, Real Party faults Petitioner for not including the reports of the prior ballistics experts in support of the motion. (Answer, p. 21.) This argument misstates the evidence available to Petitioner at the time the motion was made.

Petitioner did not have the underlying ballistics documents at the time the motion was made because Real Party had not yet provided it in discovery. After the Petition for Writ of Mandate was filed in the Court of Appeal, Real Party disclosed additional reports in discovery which had previously been concealed. Those reports were disclosed in time to file with the Amended Petition for Writ of Habeas Corpus filed on June 8, 2018[1], but not in time

[1] Petitioner hereby requests that, pursuant to Evidence Code § 452, this Court take judicial notice of the Amended Petition for Writ of Habeas Corpus and supporting exhibits filed in *In re William*

to be included in the motion at issue here.

Petitioner recognizes that it may not be technically appropriate to augment the factual showing in the Petition for Review with new factual matters. However, Real Party has taken a counter-factual position in suggesting that Petitioner could have attacked the ballistics findings in the motion in the trial court but failed to do so. The history of the case shows otherwise.

At the same time Petitioner was litigating the motion for access to the physical evidence, he was also litigating a motion for other discovery under Penal Code § 1054.9 which included the underlying ballistics reports. On August 16, 2017, counsel for Petitioner filed a notice of joinder to his co-defendant's discovery motion which requested an order that counsel for Petitioner be allowed to view any and all original evidence and an order for disclosure of the ballistics materials. (Exh. 40 to Amended Petition for Writ of Habeas Corpus, SATELE_HAB_000480-493.) On December 11, 2017, counsel for Petitioner appeared at a hearing on the discovery motion and again demanded discovery on ballistics including the "underlying documents for the

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Satele, Case No. S214846, on June 8, 2018.

ballistics." (Exh. 44 to Amended Petition for Writ of Habeas Corpus, SATELE_HAB_000571-597.)

On January 12, 2018, counsel for Petitioner appeared at a hearing on the discovery motion and again demanded discovery on ballistics. Counsel requested disclosure of ballistics documents including photographs and comparison slides, as well as the test-fired bullets and the actual bullets. (Exh. 33 to Amended Petition for Writ of Habeas Corpus, SATELE_HAB_000311-349.)

On February 1, 2018, the Honorable Laura Laesecke issued the order denying the motion for access to the physical evidence. (Exh. 50 to Amended Petition for Writ of Habeas Corpus, SATELE_HAB_000649.) At the same February 1st hearing, counsel for Petitioner appeared at a hearing on the discovery motion and again demanded discovery on ballistics. Counsel requested the underlying ballistics materials, including photographs and notes, for prosecution firearms examiners Starr Sachs and Patrick Ball. (Exh. 50 to Amended Petition for Writ of Habeas Corpus, SATELE_HAB_000614-615.)

On February 14, 2018, counsel for Petitioner appeared at a

hearing on the discovery motion and again demanded discovery on ballistics. One of the detectives on the case was present and the District Attorney asserted that he had made copies of everything they had already for disclosure to defense counsel. (Exh. 19 to Amended Petition for Writ of Habeas Corpus, SATELE_HAB_0000146.) The court ordered disclosure of the ballistics document. (Exh. 19 to Amended Petition for Writ of Habeas Corpus, SATELE_HAB_000173.) The judge directed the detective to contact the laboratory where the ballistics examination was conducted to request the bench notes. (Exh. 19 to Amended Petition for Writ of Habeas Corpus, SATELE_HAB_000172-173.)

On March 19, 2018, Petitioner then filed the Petition for Writ of Mandate in the Court of Appeal. On April 19, 2018, the Court of Appeal summarily denied the petition. On April 27, 2018, Petitioner filed a Petition for Review in this Court.

On April 27, 2018, after more than a year of post-conviction demands and litigation to obtain ballistics and firearms discovery, and after Petitioner filed his Petition for Writ of Mandate, the current prosecutor turned over discovery, which

purportedly came directly from the crime lab. This "new" discovery was not included in the prosecutor's discovery to trial counsel or to post-conviction counsel. Thus, it could not have been included in Petitioner's Motion for Motion for an Order Requiring Production of Physical Evidence for Testing by a Confidential Defense Expert (Penal Code § 1054.9(c)) or with the Petition for Writ of Mandate.

The new discovery turned over on April 27, 2018 contained some of the underlying ballistics documents including: "Property Reports, Drugfire Notifications, Intercomparison Reports, Firearm Worksheets, Firearms Analyzed Evidence Reports by Sachs and Ball on the Satele, Cervin and Martinez cases, Firearms Analysis Unit Requests, Second Examiner Notes, Cartridge Case Worksheets, Arrest Report, Evidence Inventory Reports and Preliminary Investigation Reports." (Exh. 68 to Amended Petition for Writ of Habeas Corpus, ¶ 4(k), SATELE_HAB_001015.)

While the Motion for an Order Requiring Production of Physical Evidence for Testing by a Confidential Defense Expert (Penal Code § 1054.9(c)) provided good cause to grant access to

the physical evidence even without this new information, the newly disclosed discovery provides further reasons to question the ballistics testimony presented at trial based on contradictory opinions and underlying documents provided in the most recent discovery provided on April 27, 2018. (Exh. 25 to Amended Petition for Writ of Habeas Corpus,¶ 7, SATELE_HAB_000214.) The materials that have now been provided in discovery show that the two LAPD criminalists, Ball and Sachs, had reached contrary and inconsistent conclusions regarding the test fired rounds, the weapons and the subject bullets and cartridges. (Exh. 25 to Amended Petition for Writ of Habeas Corpus, ¶ 14, SATELE_HAB_000215.)

Based on this discovery, it appears that Ball had some reason to re-compare bullets to the weapon associated with Petitioner in the middle of January 1999, but there does not seem to be a paper trial indicating the reason for that re-comparison. (Exh. 25 to Amended Petition for Writ of Habeas Corpus, ¶ 16, SATELE_HAB_000216.) Nevertheless, Ball says that the class characteristics between Petitioner's weapon and the other cartridges did not match, suggesting that there was a prior

comparison that "matched" them. Ball concluded in January 1999 that the bullets had different class characteristics meaning that they could not have been fired from the same weapon as the present case. Nevertheless, Ball did not believe it necessary to re-compare the evidence in this case. (Exh. 25 to Amended Petition for Writ of Habeas Corpus, ¶ 17, SATELE_HAB_000216.)

The conclusions of Ball suggest that there was a mix-up in the test fired ammunition, the subject bullets and cartridges or the weapons in the course of the comparisons. His conclusion, based on class characteristics rather than individual characteristics, suggests that whatever problem there was that led to a mis-comparison of the materials in the two cases was not based on subtle distinctions but on gross characteristics. If the weapon associated with Petitioner compared favorably to the evidence in another case and it turns out that the other case's class characteristics were inconsistent with that conclusion, then either the evidence was mixed up or the evidence against Petitioner did not compare favorably to the present case. (Exh. 25 to Amended Petition for Writ of Habeas Corpus, ¶ 21-22, SATELE_HAB_000217.)

This conflicting evidence does not end there. Sachs, another LAPD firearms examiner, conducted further comparisons after Ball's comparisons and conclusions. On April 27, 1999, Sachs found a match between the cartridges recovered in another case and the weapon associated with Petitioner. This is directly contrary to Ball's earlier conclusion and appears to be consistent with an earlier undocumented conclusion that Ball was reacting to in January 1999. However, there is no further analysis by anyone provided after the April 27, 1999, favorable comparison of the weapon associated with Petitioner and the suspect in the other case. (Exh. 25 to Amended Petition for Writ of Habeas Corpus, ¶ 25, SATELE_HAB_000218.)

Real Party's failure to disclose the underlying ballistics documents in post-conviction discovery prevented Petitioner from attaching those documents as exhibits to the motion and prevented Petitioner from obtaining a preliminary expert opinion regarding the validity of the expert opinion introduced at trial. When the documents were disclosed, after the filing of the Petition for Writ of Mandate, it was apparent that they contained exculpatory information which serves to undermine the expert

opinion given at trial. We respectfully submit that Petitioner provided good cause to believe that access to physical evidence is reasonably necessary to his effort to obtain relief at the time he filed his motion. The trial court's interpretation of Penal Code § 1054.9 to require a more detailed showing renders a defendant's post-conviction opportunity to seek relief pursuant to Penal Code § 1473(e)(1) to be illusory.

Review is necessary so that this Court can resolve the issue of whether Penal Code § 1054.9 compels the release of physical evidence for examination by a defense expert where such examination is reasonably necessary to establish that the prosecution's expert's opinion offered at trial has been undermined by later scientific research or technological advances.

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CONCLUSION

For the reasons stated above and the reasons stated in the Petition, Petitioner respectfully requests that review be granted.

DATED: June 15, 2018

Respectfully submitted,

SANGER SWYSEN & DUNKLE
Robert M. Sanger
Stephen K. Dunkle

By: /s/
Stephen K. Dunkle
Attorneys for Petitioner,
William Satele

CERTIFICATE OF WORD COUNT

California Rules of Court, Rule 14 (c)(1)

I have run the "word count" function in WordPerfect Office X6 and hereby certify that this brief contains 2,223 words, including footnotes.

Dated: June 15, 2018

/s/
Stephen K. Dunkle

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 125 E. De La Guerra Street, Suite 102, Santa Barbara, California, 93101.

On June 15, 2018 I served the foregoing document entitled: **REPLY TO ANSWER TO PETITION FOR REVIEW** on the interested parties in this action by depositing a true copy thereof as follows:

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Executed June 15, 2018 at Santa Barbara, California.

/s/
Stephen K. Dunkle

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Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S248492**
Lower Court Case Number: **B288828**

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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.

6/15/2018
Date

/s/Stephen Dunkle

Signature

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