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

Return to Petition for Writ of Mandate

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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 good cause and reasonable necessity entitling them to the order sought. Petitioner's showing presented in his motion filed in the trial court simply stated that

"habeas counsel is not able to obtain the physical evidence from trial counsel since it was never in trial counsel's possession." Petition for Writ of Mandate (B288828), Exhibit B, p. 4. The People's Opposition noted that no supporting documents or exhibits were submitted in support of the Motion, beyond a conclusory declaration from Counsel. (Petition for Writ of Mandate, B288828, Exhibit C: Opposition.) Counsel's declaration merely concluded that in to order examine whether there was error in the People's Expert's conclusion at trial, "it is necessary to have a defense expert examine the evidence." Counsel's declaration failed to point out that Petitioner's own defense expert had examined the evidence at the time of the trial and *agreed* with the prosecution's expert's conclusion that the ballistics were a match. (Reporter's Transcript (RT), Petitioner's Lodged Document in B288828, at pp. 6-7.)

The Los Angeles Superior Court conducted a hearing on the motion for discovery on February 1, 2018. (RT; Petitioner's Lodged Document, B288828.) On that same date, as a part of their discovery response, the People turned over in-excess-of a thousand pages of material, comprised of the Los Angeles Police Department (LAPD) Murder Book, to Counsel. (*Id.* at pp. 2-5.) When Counsel stated that he was unfamiliar with the contents of the evidence turned over by the People in the LAPD Murder Book, the People suggested that Counsel review the material prior to litigating his discovery request to retest the ballistics evidence, and suggested that the trial court continue the hearing to enable Counsel to do so. Counsel declined to do so and simply went forward with the discovery hearing with an admittedly less-than-complete understanding of what he possessed. (See *id.* at p. 5:22-28.) Counsel conceded during that hearing that Petitioner's previously retained ballistics expert, Mr. Butler, agreed with both prosecution experts that the ballistics were a match. (*Id.* at pp. 6-7, 11.) Petitioner made no further *supported* showing as to why further testing was necessary or why he might expect a different result from the answer provided by his previous expert. The court held that Petitioner failed to make a showing of good cause to retest the evidence, and denied the motion. (*Id.* at p. 40.)

Petitioner filed a Petition for Writ of Mandate in the Court of Appeal, Second Appellate District, on March 19, 2018. (B288828, Docket, http://appellatecases.courtinfo.ca.gov.) On March 21, 2018, he supplemented his petition with the Reporter's Transcript from the hearing. (*Ibid.*) The petition was summarily denied on April 19, 2018. (*Ibid.*) The Petition for Review was filed on April 27, 2018. On May 29, 2018, this Court requested an Answer from Real Party in Interest (the People). (S248492, Order.) The People filed an Answer on June 5, 2018. Petitioner filed a Reply on June 15, 2018. This Court issued an Order to Show Cause on July 11, 2018.

A sentenced capital defendant is entitled to post-conviction discovery, including "access to physical evidence," pursuant to Penal Code[1] section 1054.9, subdivision (c), upon a showing of good cause and reasonable necessity, after other pre-requisite requirements are met. (§ 1054.9, subd. (c).) 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, subdivision (c). 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 - and the People suggested that Counsel take additional time to review the discovery in order to make his showing - Petitioner failed to present supporting documentation supporting a finding of good cause at the hearing on the Motion.

Neither error by the trial court nor the Court of Appeal is supported by the record from the trial court. Petitioner failed to present the trial court with any 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 writ of mandate should be denied.

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

The People further note that both the Petition for Review and Petitioner's Reply contain lengthy arguments and references to documents that were *never presented* to the trial court, a point that Petitioner concedes. (See Reply, p. 5.) Why Petitioner chose to seek a Petitioner for Review here instead of simply seeking a re-hearing in the trial court is unknown. This Petition for Review - alleging error by the trial court - is properly limited to the record *actually presented* in the trial court. Supplying this Court with *additional documentation* that was never presented to the trial court is improper unless Petitioner is bringing his discovery motion before this Court in the first instance. Petitioner's briefs do not support the latter of these two constructs, and this Court has clearly stated its preference that post-conviction discovery issues be litigated in the trial courts and not presented to this Court in the first instance. (*In re Steele* (2004) 32 Cal.4th 682. 691 ("We believe that when ... no execution is imminent, the discovery motion should first be filed in the trial court that rendered the underlying judgment.").) If Petitioner wishes to supplement his showing in support of his sought discovery, he should do so in the Los Angeles Superior Court, and not here for the first time. This Court's role at this juncture, is to simply examine the trial court's ruling for error, not to litigate the discovery motion based upon a new showing in the first instance.

The People respectfully submit that this Court should deny the petition for writ of mandate. Thereafter, if Petitioner wishes to make a more complete showing he should return to the trial court and do so, instead of supplementing his incomplete record here for the first time.

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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 half-page declaration from counsel, and Points and Authorities consisting of a page-and-a-half. (*Ibid.*) The Motion stated:

> 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 cited the applicable section under which he sought discovery, section 1054.9, and simply stated:

> In this case, [section 1054.9] subdivision (a) is satisfied because [Petitioner] is preparing a post-conviction 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 or exhibits were presented to the trial court. (B288828: Petition, Exhibits.)

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: "The Defense does not attempt to articulate - with supporting facts - how

[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.

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 required showings of good cause and reasonable necessity, which are statutorily required when seeking post-conviction access to physical evidence, pursuant to section 1054.9, subdivision (c). (Opposition p. 4.) 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 post-conviction 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 physical examination of evidence should be conducted "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, 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.) The People are further aware that this Court has specifically left open the question of whether a successive, supported

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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.

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. (RT: Petitioner's Lodged Document, B288828.) The court held that Petitioner failed to make a showing of good cause, and denied the motion. (*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 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 trial court in support of its Motion. However, the defense conceded during the hearing that all three of those experts, *including Petitioner's own expert*, agreed that the ballistics evidence recovered at the scene matched the firearm recovered from

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

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.) 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.) 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.) The court agreed and found that the defense argument amounted to: "Gee, Judge, there is no harm." (*Id.* at p. 30.) The defense argued, generically, that there had been advances in technology since the ballistics evidence was originally tested, but offered no evidence to support a conclusion that the test results here might be different as a result, and conceded, "Is that going to do it? I don't know." (*Id.* at p. 35.) Defense Counsel conceded that defense claims were required to be substantiated. (*Id.* at p. 36.) Counsel 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 trial 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 filed 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.) The Petition contains no enumerated allegations. On May 29, 2018, this Court requested an Answer to the Petition for Review. The People filed an Answer and this Court issued an Order to Show Cause. This Return is respectfully filed in response.

RETURN

Real Party in Interest, People of the State of California (the People), respond to Petitioner's enumerated allegations, and admit, deny, and/or allege as follows[6]:

I. The People admit that Petitioner was convicted of two counts of first degree murder with personal use and gang enhancements, and sentenced to death in the underlying case, NA039358, and that this Court affirmed his conviction and sentence in *Satele, supra*, 57 Cal.4th 1. The People further allege that the California Attorney General represents the People in the pending Petition for Writ of Habeas Corpus in case S214846.

II. The People admit that Petitioner sough post-conviction discovery, and allege that on February 1, 2018, the People turned over one thousand pages of discovery to Petitioner, comprised of the LAPD Murder Book, pursuant to his discovery request. (See: RT at pp. 2-4.)

III. The People admit that Peptomer's request for post-conviction discovery included the listed items pertaining to the ballistics evidence in the underlying case, as alleged.

IV. The People admit that the trial court denied Petitioner's Motion to test the ballistics, and allege that the court's stated basis for doing so was that Petitioner failed to meet his burden to demonstrate "good cause to believe that the

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6. Petitioner's filing in the Court of Appeal, B288828, was entitled "Petition for Writ of Mandate," and this portion of the Return is submitted in response to the allegations contained therein.

access to the physical evidence is reasonably necessary for the Defendant to get relief." (RT p. 40.) The People allege that the Reporter's Transcript from the hearing was filed with the Court of Appeal on March 21, 2018. (B288828, Lodged transcript.)

V. The People admit that Respondent is the Superior Court and that it had jurisdiction over the discovery hearing and order below. The People allege that they are the Real Party in Interest. The People further allege that the Attorney General represents the People in the pending state habeas petition in case S214846, and that petition is before this Court and not the trial court. The Los Angeles Superior Court was therefore not in possession of the Exhibits, filed with the pending habeas petition on June 8, 2018, at the time that the trial court ruled upon the Motion. The People allege that the Judge who heard the underlying trial was the Honorable Thompson Ong, and not Judge Laura Laesecke.

VI. The People admit that Petitioner may bring a writ following the denial of his motion for discovery by the trial court.

VII. The People deny that Judge Laesecke's ruling was contrary to law, an abuse of discretion, or made in excess of the court's jurisdiction. The People allege that Judge Laesecke both understood and followed the requirements of section 1054.9, subdivision (c), and that the trial court was required to grant Petitioner's motion, "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).) The People further allege that the trial court carefully and conscientiously