

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
RYAN B. MCCARROLL
Deputy Attorney General
AMANDA D. CARY
Deputy Attorney General
State Bar No. 252215
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
Telephone: (559) 705-2305
Fax: (559) 445-5106
Email: Amanda.Cary@doj.ca.gov
Attorneys for Respondent

In the Supreme Court of the State of California

In re

KEITH ZON DOOLIN,

On Habeas Corpus.

Case No. S234285

Fresno County
Superior Court, Case
No. 554289-9

Death Penalty Case

**RESPONSE TO “MOTION TO PRESERVE
EVIDENCE OF PETITIONER’S INNOCENCE
POSSESSED BY DAVID R. MUGRIDGE,
ATTORNEY”**

Petitioner Doolin has filed a motion in this Court for an order requiring attorney David R. Mugridge to preserve any evidence in his possession bearing on Doolin’s alleged innocence. (*In re Doolin*, motion filed June 27, 2018, S234285.) Since Mugridge is a third party to the underlying proceedings, the State’s interest is limited. The State

nonetheless observes that Doolin has failed to identify any constitutional or statutory authority authorizing third-party preservation at the present time. So too has he failed to show that a preservation order is actually necessary in the present case. As a result, the State respectfully suggests that this Court deny his request without prejudice.

PROCEDURAL BACKGROUND

Doolin was tried, convicted, and sentenced to death in 1996 for murdering two prostitutes and attempting to murder four others. (*People v. Doolin* (2009) 45 Cal.4th 390, 399-400.) In 2009, this Court affirmed the judgment on direct appeal. (*Id.* at p. 401.) Later that same year, this Court denied Doolin's first petition for a writ of habeas corpus. (*In re Doolin*, order filed Oct. 11, 2005, S137884.)

In 2011, Doolin filed a second habeas petition. (*In re Doolin*, petn. filed Oct. 24, 2011, S197391.) The State filed an informal response in 2012. (*In re Doolin*, informal response filed June 11, 2012, S197391.) This Court has not yet ruled on the petition.

In 2016, Doolin filed a third habeas petition raising, inter alia, a claim of third-party culpability as to one of the two murders. (*In re Doolin*, petn. filed May 4, 2016, S234285.) He also asked this Court for access to confidential information in the possession of attorney Mugridge regarding the allegedly culpable third party, Josefina Saldana, whom Mugridge had represented prior to her suicide in 2001. (*In re Doolin*, motion filed June 29, 2016, S234285.) The State responded, inter alia, that the request was premature because this Court had not yet determined whether to issue an order to show cause as to the underlying claim. (See *In re Steele* (2004) 32 Cal.4th 682, 690; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1258.) The State also observed that Doolin had offered nothing to suggest that Mugridge was unable or unwilling to preserve the information in the interim. (*In re Doolin*, response filed Aug. 11, 2016, S234285.) This Court

ultimately denied the requested access without comment. (*In re Doolin*, order filed Sep. 21, 2016.) The State subsequently filed an informal response to the third habeas petition later that same year. (*In re Doolin*, informal response filed Oct. 28, 2016, S234285.) This Court has not yet ruled on the petition.

ARGUMENT

I. THIRD-PARTY PRESERVATION IS UNAUTHORIZED AND UNNECESSARY

Doolin now asks this Court to order Mugridge to preserve the information in his possession. But, as this Court has observed, “the federal Constitution does not confer a general right to criminal discovery [citation] and does not mandate the full panoply of pretrial rights in collateral efforts to overturn a final conviction [citation].” (*People v. Gonzalez, supra*, 51 Cal.3d at p. 1258.) Since there is no constitutional right to third-party post-conviction discovery, there is likewise no constitutional right to third-party preservation in speculative anticipation of post-conviction discovery. Nor is there such a right as a matter of statutory law in the present case. Neither attorney Mugridge nor his client Saldana were members of the prosecution team for purposes of post-conviction discovery under Penal Code section 1054.9. (See *People v. Superior Court (Morales)* (2017) 2 Cal.5th 523, 534; *Steele, supra*, 32 Cal.4th at pp. 696-697.) And this Court has pointedly explained that “[a]n order purporting to require the preservation of materials beyond the scope of Penal Code section 1054.9 would . . . exceed the trial court's jurisdiction on a motion to preserve evidence.” (*Morales, supra*, 2 Cal.5th at p. 535.) Thus, Doolin fails to identify any authority authorizing the third-party preservation that he currently seeks.

And, in any event, Doolin fails to show that third-party preservation is reasonably necessary in the present case. As with his earlier request for

access to the information in Mugridge's possession, Doolin offers nothing to suggest that Mugridge is unwilling to preserve the materials absent an order from this Court. Indeed, it appears that he has been preserving the materials without a court order ever since his client committed suicide in 2001. There is no reason to suspect that he has recently had a change of heart. As a result, the requested preservation order appears to be unnecessary.

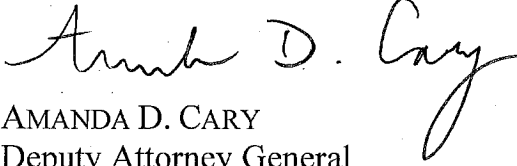
CONCLUSION

As a result, the State respectfully suggests that this Court deny Doolin's request without prejudice.

Dated: July 10, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
RYAN B. MCCARROLL
Deputy Attorney General


AMANDA D. CARY
Deputy Attorney General
Attorneys for Respondent
General Fund - Legal/Case Work

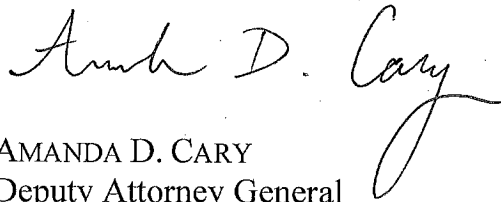
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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONSE TO “MOTION TO PRESERVE EVIDENCE OF PETITIONER’S INNOCENCE POSSESSED BY DAVID R. MUGRIDGE, ATTORNEY”** uses a 13 point Times New Roman font and contains 768 words.

Dated: July 10, 2018

XAVIER BECERRA
Attorney General of California

A handwritten signature in cursive script that reads "Amanda D. Cary". The signature is written in black ink and is positioned to the right of the typed name.

AMANDA D. CARY
Deputy Attorney General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re Doolin on Habeas Corpus**
No.: **S234285**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 10, 2018, I served the attached **RESPONSE TO "MOTION TO PRESERVE EVIDENCE OF PETITIONER'S INNOCENCE POSSESSED BY DAVID R. MUGRIDGE, ATTORNEY"** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 2550 Mariposa Mall, Room 5090, Fresno, CA 93721, addressed as follows:

Robert R. Bryan
Attorney at Law
1955 Broadway, Suite 605
San Francisco, CA 94109-2211
Attorney for Doolin

David R. Mugridge
Attorney at Law
1221 Van Ness Avenue, Suite 500
Fresno, CA 93721

Pamala Sayasane
Attorney at Law
660 Fourth Street, #341
San Francisco, CA 94107
Attorney for Doolin

The Honorable Lisa A. Smittcamp
District Attorney
Fresno County District Attorney's Office
2220 Tulare Street, Suite 1000
Fresno, CA 93721

California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105-3647

County of Fresno
Downtown Courthouse
Superior Court of California
1100 Van Ness Avenue
Fresno, CA 93724-0002

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 10, 2018, at Fresno, California.

Lynda Gonzales
Declarant


Signature