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Attorneys for Petitioner,
KEITH ZON DOOLIN

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

KEITH ZON DOOLIN

On Habeas Corpus.

**No. S234285
(Related Nos. S054489, S197391)**

**PETITIONER'S REPLY TO OPPOSITION
TO MOTION TO PRESERVE EVIDENCE
OF PETITIONER'S INNOCENCE**

Death Penalty Case

**TO: THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND
ASSOCIATE JUSTICES**

On June 27, 2018, Petitioner moved for an order to preserve the evidence of his innocence possessed by David R. Mugridge, attorney. The evidence was discovered by Mr. Mugridge during his representation of Josefina Sonia Saldana in an unrelated murder case. After conviction she committed suicide. (*People v. Saldana*, Fresno Super. Ct. No. 0632815-7.) Ms. Saldana had been a prosecution witness at Petitioner's earlier trial.

Respondent filed on July 11, 2018 an Opposition that asked the Court to deny Petitioner's request without prejudice. (Opp'n at p. 2.) According to Respondent: (1) "[s]ince Mugridge is a third party to the underlying proceedings, the State's interest is limited"; (2) Petitioner "has failed to identify any constitutional or statutory authority authorizing third-party preservation at the present time"; and, (3) Petitioner has "failed to show that a preservation order is actually necessary." (Opp'n at pp. 1-2.) Petitioner disagrees on both statutory and constitutional grounds.

The criminal justice system relies on the public being able to trust that the State will always seek truth and justice, especially where someone's life hangs in the balance. Thus where evidence exists that may exonerate a wrongfully-convicted person on death row, there should be no disagreement that such evidence should be preserved. Indeed, the California legislature recently affirmed this goal by amending Penal Code section 1473, making it easier for criminal defendants to overturn their convictions based upon, as here, new evidence of innocence. (§ 1473(b)(3)(A) [allowing for claims of innocence to be reviewed under the more favorable standard of preponderance of evidence].) Further, Petitioner is guaranteed not to be deprived of life, liberty or property without due process of law, and, is entitled to compulsory process for obtaining witnesses and evidence, and effective assistance of counsel, guaranteed by Amendments Five, Six and Fourteen of the Constitution of the United States. It is therefore incongruous that Respondent would be allowed to block the preservation of exculpatory evidence and risk its loss.


Respondent contends that a preservation order is not "necessary in the present case" because "it appears that [Mr. Mugridge] has been preserving the materials without a court order ever since his client committed suicide in 2001" and there "is no reason to suspect that he has recently had a change of heart." (Opp'n at pp. 3-4.) However, a private citizen's voluntary action does not have the same effect as a court order. And under the present posture of the case, there is no way to prevent the loss of the evidence through misadventure or the attorney becoming incapacitated.

Accordingly, to ensure that Petitioner's rights are protected, it is requested that this Court issue the sought record preservation order, and grant such other relief that may be appropriate.

Dated: July 16, 2018

Respectfully submitted

ROBERT R. BRYAN
PAMALA SAYASANE

By: 
ROBERT R. BRYAN
Lead Attorney for Petitioner,
Keith Zon Doolin

DECLARATION OF SERVICE BY MAIL

I, ROBERT R. BRYAN, declare that I am over 18 years of age, not a party to the within cause; my business address is 1955 Broadway, Suite 605, San Francisco, California 94109. Today I served a copy of the attached **Petitioner's Reply to Opposition to Motion to Preserve Evidence of Petitioner's Innocence** upon the following by mailing same in an envelope, postage prepaid, addressed as follows:

Amanda D. Cary, Esq.
Deputy Attorney General
2550 Mariposa Mall Room 5090
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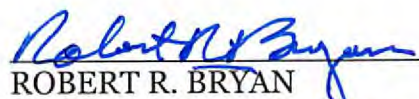
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Keith Zon Doolin (Petitioner)
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I declare under penalty of perjury that the foregoing is true and correct.
Executed on this the 16 of July 2018 at San Francisco, California.


ROBERT R. BRYAN
Lead Attorney for Petitioner,
Keith Zon Doolin