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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]**

**MOTION TO PRESERVE EVIDENCE OF  
PETITIONER'S INNOCENCE POSSESSED  
BY DAVID R. MUGRIDGE, ATTORNEY**

***Death Penalty Case***

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

COMES PETITIONER through counsel who move for an order to preserve the evidence of his innocence possessed by David R. Mugridge, attorney. The exonerating evidence was discovered by Mr. Mugridge during his representation of Josefina Sonia Saldana (now deceased) in another murder case. (*People v. Saldana*, Fresno Super. Ct. No. 0632815-7.) The sought order needs to be in effect until Mr. Mugridge is judicially authorized to turn over to Petitioner's attorneys the Saldana exculpatory material in order "*to ensure that an innocent man is not wrongfully executed.*" (Ex. 162, Decl. of David Raymond Mugridge, at ¶ 7, Feb. 4, 2016, italics added, filed in support of pending Pet. for Writ of Habeas Corpus.)

The exculpatory evidence in issue is decisive as to whether Petitioner lives or is executed. Thus his counsel must ensure that such material is protected.


Counsel for Petitioner previously filed a motion for the production of the exculpatory material. (Motion for Order Permitting Former Counsel for Josefina Saldana, Deceased, To Grant Petitioner's Attorneys Access To the Files and Other Information In His Possession Bearing On Their Client's Innocence, June 29, 2016.) It was denied. (Order, Sept. 21, 2016.) Now his attorneys must take steps to preserve the evidence since there has not been a ruling on the pending habeas corpus petition.

Accordingly, this Court is moved to grant the relief sought herein, and for such other relief that may be appropriate.

Dated: June 26, 2018

Respectfully submitted

ROBERT R. BRYAN  
PAMALA SAYASANE

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

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **Introduction**

Petitioner seeks to ensure that material relevant to establishing his innocence is preserved. Habeas counsel have a duty to preserve the documents and records addressed in the motion, thus the requested order is appropriate and necessary.

#### **1. Background**

A jury convicted Petitioner in 1996 of first degree murder for the deaths of Peggy Tucker and Inez Espinoza, and also of four counts of attempted murder with the use of a firearm. The special-circumstance allegation of multiple-murder was found true resulting in a death judgment. (*People v. Doolin* (2009) 45 Cal.4th 390, 399-400.)

New evidence reflects that Petitioner is innocent of the Tucker murder. Establishment of that judicially would eliminate the multiple murder special circumstance, render invalid the death judgment, and necessitate a new trial. The entire trial process was contaminated by, among other things, false evidence and testimony. Consequently, a new guilt-phase trial should be mandated because the jury heard evidence that was untrue and prejudicial.

It is contended in the pending habeas corpus petition that an evidentiary hearing

is necessitated because of the newly-discovered evidence of innocence. “The substantial risk of putting an innocent man to death clearly provides an adequate justification for holding an evidentiary hearing.” (*In re Davis* (2009) 557 U.S. 952, 953; see also Pen. Code, § 1473 [a writ of habeas corpus can be sought due to material false evidence having been introduced against a petitioner at trial]; Pen. Code, § 1485.5 -1485.55.) The new evidence of innocence, when viewed in combination with the constitutional errors and other evidence of innocence previously presented and pending herein, mandates reversal of Petitioner’s convictions and death judgments. (*In re Doolin*, Case No. S197391.)

## **2. Newly-Discovered Evidence**

Newly-discovered evidence establishes that Petitioner is innocent of murdering Peggy Tucker, whose body was found outside the home of Josefina Sonya Hernandez (aka Josefina Saldana), a woman who was subsequently convicted of a double-homicide. (Pet. for Writ of Habeas Corpus, May 4, 2016, Claim 1 at pp. 3-13.) Information newly learned on postconviction suggests that Ms. Saldana, not Petitioner, was responsible for Ms. Tucker’s death. (RT 1671-1673, 1711.) The exculpatory evidence is possessed by Ms. Saldana’s former attorney, David R. Mugridge, who represented her in a case involving the murder of a pregnant woman and her unborn baby. Although Ms. Saldana is now deceased, because of the attorney-client privilege, Mr. Mugridge cannot divulge the information without judicial authorization. (Pet. for Writ of Habeas Corpus, Ex. 162, *supra*, at ¶ 7; see also Motion for Order Permitting Former Counsel for Josefina Saldana, Deceased, To Grant Petitioner’s Attorneys Access To the Files and Other Information In His Possession Bearing On Their Client’s Innocence, *supra*.)

Ms. Saldana had appeared (under the name Josefina Sonya Hernandez) as a prosecution witness at Petitioner’s trial for the Tucker killing. (CT 656-662, 671, 769-771; RT 1662-1670.) She said that on the night of the shooting she heard dogs barking outside her house, a gunshot, and “a loud voice, oh, my God, oh, my God.” (RT 1665.) She “did not call the police.” (RT 1666.) The next morning she noticed “a lot of police out in our alley” behind her house. (RT 1667.) The body of Ms. Tucker was there. (RT 1643, 1667, 1671, 1699.)

In 1998, two years after Petitioner had been sentenced to death, Ms. Saldana was charged with two counts of murder and kidnapping in another case. She had lured Margarita Flores, eight-months pregnant, from her Fresno home with the promise of free baby furniture and diapers. Saldana then murdered Ms. Flores and dismembered the body, pieces of which were scattered in Southern California and Tijuana, Mexico. (Pet.,

*supra*, Claim 1, § I, at pp. 8-10.) She kept the fetus.

Ms. Saldana was arrested after bringing to a Fresno hospital the dead fetus which she had cut out of Ms. Flores. Her accomplice, Serafin Rodarte, a farm worker, then hanged himself. In a suicide note he wrote "she made me do it." (*Id.*, Claim 1, § I (3), at p. 9.) In 2001, Ms. Saldana was convicted of murdering the mother and child. Shortly thereafter she hanged herself in the Fresno County Jail. Her attorney was Mr. Mugridge. (*People v. Saldana*, Fresno Super. Ct. No. 0632815-7; Ex. 162, *supra*, at ¶ 4.)

Mr. Mugridge has disclosed to current habeas counsel that he possesses exculpatory evidence, learned during his representation of *Saldana*, regarding Petitioner. He wants to make this available to Petitioner's counsel but cannot do so without judicial permission. As he explains:

1. I am an attorney in good standing and licensed to practice in the state of California. My law practice is in Fresno, California, where I have litigated numerous homicides including those involving the death penalty. I am a state bar certified criminal law specialist. Most of my time involves special circumstance cases which I have received by courts appointment. I have been a trial lawyer for approximately 30 years. . . .

2. During my years practicing law in Fresno County, I became familiar with Rudy Petilla, now deceased, who represented Keith Zon Doolin on capital murder charges in 1996. Rudy had a poor reputation in the Fresno legal community. . . .

3. Recently I was contacted by attorneys Pamala Sayasane and Robert R. Bryan, new state and federal habeas counsel for Mr. Doolin. They asked me about what I knew regarding Rudy and his representation of Mr. Doolin.

4. I related to them that *I have exonerating information regarding Mr. Doolin which came to my attention during my representation of Josefina Sonia Saldana, aka Josefina Sonya Hernandez*. I represented during her 2001 murder trial for killing Margarita Flores and her baby. Shortly after being convicted, Ms. Saldana committed suicide in the Fresno County Jail by hanging. . . .

5. *I explained to Ms. Sayasane and Mr. Bryan that I had potentially exonerating information regarding Mr. Doolin*. However, it was explained that I am bound by the attorney-client privilege from disclosing how I came upon this information or the nature of the evidence.

6. *I told the attorneys that I would gladly tell them what I know, and even provide them with access to the materials in my possession, if a court directed me to do so*.

7. I have struggled about what to do with this predicament. As an attorney who has practiced for many years, I strongly believe in the rule of law. However, I also believe in doing what is right, and that includes *doing whatever I can to ensure that an innocent man is not wrongfully*

*executed*. I agreed to provide Mr. Doolin's counsel with this declaration so that they could preserve their client's right . . .

(*Ibid*, italics added.)

It is believed that the information known to Mr. Mugridge and contained in his files would establish that his former client killed Peggy Tucker and that Petitioner is thus innocent. Evidence also suggests that Ms. Saldana similarly shot and killed another woman, Natalie Ann Carrasco. (Ex. 165, *Clues Sought in Killing of Tattooed Prostitute, Motive for Slaying Undetermined, Police Say*, Fresno Bee, June 26, 1993.) On June 23, 1993, the body of Ms. Carrasco was found in front of Saldana's house. (Ms. Tucker's body was found behind Saldana's home two years later.)

Information learned postconviction establishes that Ms. Saldana went to Ms. Carrasco's funeral and befriended her mother, Becky Carrasco. To deflect blame from herself, Saldana said that she saw Natalie being pushed out of a black car by a black man. The mother pursued an investigation, including discussions with the police, regarding her daughter's death. (Pet., *supra*, Claim 1, § K, at pp. 11-12.)

The Fresno Police Department had determined that a serial killer was murdering prostitutes, like Tucker and Carrasco. (Ex. 163, *Police Suspect Serial Killer*, Fresno Bee, Sept. 21, 1995; Ex. 164, *Three Violent Deaths—One Killer?*, Fresno Bee, Sept. 24, 1995.) Years later a detective revealed to Mrs. Carrasco that he believed Josefina Saldana killed her daughter. He asked the mother to try to persuade Ms. Saldana to confess to her daughter's murder. Before Mrs. Carrasco could speak with her, Saldana committed suicide. (Ex. 162, *supra*, at ¶ 4.)

Accordingly, there is convincing evidence that Petitioner is innocent of capital murder, and that a serial murderer, Josefina Saldana, was actually responsible for at least one of the crimes for which Petitioner was charged and convicted.

### **3. Habeas Counsel Have A Duty To Preserve Evidence That Is Relevant To Habeas Corpus Claims**

"Habeas corpus counsel in a capital case shall have a duty to investigate factual and legal grounds for the filing of a petition for a writ of habeas corpus." (Supreme Court Policies Regarding Cases Arising from Judgments of Death 3.1.1-1; see *In re Clark* (1993) 5 Cal.4th 750, 799, 811.) Consequently it is necessary that all potentially relevant material be preserved.

The need to preserve evidence is implicit in Penal Code section 1054.9. Enacted in 2002, this provision grants all capital inmates the right to discovery. (*In re Steele*

(2004) 32 Cal.4th 682, 691.) Death-sentenced prisoners like Petitioner have a right to post-judgment discovery “as an aid in preparing the [habeas corpus] petition.” (*Id.* at p. 691; see §1054.9, subd. (a) [providing discovery “[u]pon the prosecution of a post-conviction writ of habeas corpus. . . .”].) Here the discovery rights under section 1054.9 will be rendered meaningless unless the exculpatory material possessed by Mr. Mugridge is preserved so that counsel can review it once judicial authorization is eventually granted.

Petitioner seeks relief in the two pending habeas corpus petitions. Logically the passage of time creates a risk that evidence and other material related to innocence might be lost or inadvertently destroyed. Existing statutory provisions prohibiting the destruction of material do not necessarily safeguard what is held by Mr. Mugridge in this unique situation.

#### **4. Constitutional Grounds for the Requested Order**

Finally, the exculpatory evidence addressed in this motion must be preserved to ensure that Petitioner's “federal due process right to meaningful appellate review” is not violated by the lack of a complete capital record. (See *People v. Frye* (1998) 18 Cal.4th 894, 941; see also *Hart v. Eyman* (9th Cir. 1972) 458 F.2d 334, 337-340.) Petitioner's state and federal constitutional rights to effective assistance of counsel, and a meaningful and reliable post-conviction challenge of his capital convictions, will be violated if he is unable to establish innocence through being unable to use evidence that presently is in existence. (U.S. Const., Amend. Five, Six, Eight and Fourteen; Cal. Const., art. I, § 15; *Dobbs v. Zant* (1993) 506 U.S. 357, 358 [noting constitutional importance of reviewing capital sentences on a complete record], citing *Gardner v. Florida* (1977) 430 U.S. 349, 361, and *Gregg v. Georgia* (1976) 428 U.S. 153, 167, 178.) Accordingly, this Court should order the requested preservation of the material possessed by Mr. Mugridge.

#### **CONCLUSION**

For the foregoing reasons, this Court should grant Petitioner's motion to preserve the evidence bearing on his innocence.

Dated: June 26, 2018

Respectfully submitted

ROBERT R. BRYAN  
PAMALA SAYASANE

By:

  
ROBERT R. BRYAN

Lead Attorney for Petitioner,  
Keith Zon Doolin

## DECLARATION OF COUNSEL

I, Robert R. Bryan, declare:

1. I am lead counsel for the Petitioner in this matter. (Order, July 22, 2015.) Co-counsel is Pamala Sayasane.

2. Evidence establishing our client's innocence was uncovered by David R. Mugridge through his representation of Josefina Sonia Saldana (now deceased) in another murder case. (*People v. Saldana*, Fresno Super. Ct. No. 0632815-7.) Years later Ms. Sayasane and I learned of its existence during the course of our investigation in the present case.

3. Mr. Mugridge would like to provide the newly discovered Saldana evidence to us, but he cannot do so without judicial authorization. He wants "*to ensure that an innocent man is not wrongfully executed.*" (Ex. 162, Decl. of David Raymond Mugridge, at ¶ 7, Feb. 4, 2016, italics added, filed in support of pending Pet. for Writ of Habeas Corpus.)


4. Ms. Sayasane and I previously filed a motion for the exculpatory material. (Motion for Order Permitting Former Counsel for Josefina Saldana, Deceased, To Grant Petitioner's Attorneys Access To the Files and Other Information In His Possession Bearing On Their Client's Innocence, June 29, 2016.) It was denied. (Order, Sept. 21, 2016.)

5. The exculpatory evidence in issue is decisive as to whether Petitioner lives or is executed. Thus we must ensure that it is protected.

6. Now his attorneys must take steps to preserve the evidence since there has not been a ruling on the pending habeas corpus petition.

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

Executed on this the 26th day of June 2018, in San Francisco, California.

  
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 **Motion To Preserve Evidence Of Petitioner's Innocence Possessed By David R. Mugridge, Attorney**, upon the following by mailing same in an envelope, postage prepaid, addressed as follows:

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Keith Zon Doolin (Petitioner)  
No. 13400, 4-EY-25  
San Quentin State Prison  
San Quentin, California 94974

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

Executed on this the 26th day of June 2018 at San Francisco, California.

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