

NATHAN MEDINA
CTF North A Lassen B244
P.O. Box 705
Soledad, California 93960

**IN AND FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

THE PEOPLE OF THE STATE OF CALIFORNIA,)	CASE NO. 5-080656-2
Plaintiff,)	
v.)	NOTICE OF MOTION AND
)	MOTION FOR DISCOVERY
)	IN ANTICIPATION OF
)	FILING HABEAS CORPUS
)	PURSUANT TO PENAL
)	CODE 1054.9; POINTS AND
)	AUTHORITIES;
)	DECLARATION
NATHAN MEDINA,)	
Defendant.)	

TIME: 09:00 A.M.
DATE: October 28, 2024

NOTICE IS HEREBY GIVEN that on October 28, 2024, at 09:00 A.M. or as soon thereafter as the matter may be heard in the above-entitled Court, located at 1020 Ward St., Contra Costa, the Defendant will move the Court for an order compelling the People to disclose to Defendant in anticipation of the filing of a petition for a writ of habeas corpus.

This Motion is authorized by Penal Code section 1054.9.

This motion is based upon the attached memorandum of points and authorities, the declaration of Nathan Medina, and on such oral and documentary evidence as may be presented to the Court at the hearing on the motion

Executed this _____ Signature_____

Nathan Medina

MEMORANDUM OF POINT AND ATUHORITIES

Penal Code § 1054.9 grants persons convicted of a crime and sentenced to death, to life without possibility of parole, or to prison for 15 or more years for violent or serious felony, the right to obtain discovery from the People to help those persons file a “postconviction writ of habeas corpus or motion to vacate a judgment”. Pen. Code § 1054.9; see *also* In re Steel, 32 Cal.4th 682, 691 (2004). (authorizing filing of a motion under section 1054.9 by person “preparing to file” such a writ or motion). Section 1054.9 authorizes three categories of discovery. Defendant seeks the following categories:

(1) *All material in defense counsel's trial file.*

Under Section 1054.9, a criminal defendant is entitled to a copy of the “materials that the defense once possessed but has since lost.” In re Steel, 32 Cal.4th at 693. To obtain a reconstructed copy of defense counsel’s file, the moving party only has to show that (1) trial counsel’s files are incomplete; (2) he or she made “good faith efforts” to obtain the missing materials from trial counsel; and (3) he or she did not succeed in these efforts. Id. at 693-94; Hurd v. Super. Ct., 144 Cal.App.4th 1100, 1107 (2006); Barnett v. Super. Ct., 50 Cal.4th 890, 898 (2010); Kennedy v. Super. Ct., 145 Cal.App.4th 359, 366 (2006). (burden rests with defendant).

Defendant has made this showing. (see Exhibit A, Affidavit of Nathan Medina)

Because Defendant has made this showing, he is entitled to have the People produce everything that was in the defense's discovery file at the time of trial Catlin v. Super. Ct., 51 Cal.4th 300, 305 (2011). ("The language could not be plainer: If that showing is made, the defendant is entitled to discovery.") Defendant is not required to identify the documents sought or demonstrate that the prosecution still possesses them. Barnet, 50 Cal.4th at 898.

(2) All materials to which Defendant would have been entitled

Penal Code § 1054.9 also grants a criminal defendant the right to have the People produce all materials "to which the defendant was actually entitled at the time of trial, but did not receive." In re Steel, 32 Cal.4th at 695; Pen. Code § 1054.9(b). To obtain such materials – which go beyond "file reconstruction" – the defendant must show:

1. That he attempted to obtain the materials from trial counsel and has failed.

Pen. Code § 1054.9(a); In re Steel, 32 Cal.4th at 697;

Procedurally, the defense must show that it informally requested the sought after evidence from the prosecution and wait-15 days for the Prosecution to comply. Hall v. Superior Court, 133 Cal.App.4th 908, 918 (2005).

2. That he was entitled, "at time of trial," to materials he seeks in the motion. Pen.

Code § 1054.9(b). Such materials include: (a) materials “the prosecution did provide at time of trial but have since become lost to the defendant,” In re Steel, 32 Cal.4th at 697; (b) materials “the prosecution should have provided at the time of trial because” they came within (i) “the scope of a discovery order the trial court actually issued at that time,” l’d. at 697; “the prosecution had no obligation to provide at the time of trial absent specific defense request, but to which the defendant would have been entitled at time of trial had the defendant specifically requested them.” Id. at 697; (ii) “a statutory duty to provide discovery,” l’d. such as the Criminal Discovery Act; or (iii) the People’s “constitutional duty to disclose exculpatory evidence,” l’d. whether or not it is material, Barnett, 50 Cal.4th at 900-01; (c) materials “the prosecution should have provided at the time of trial because the defense specifically requested them at that time and was entitled to receive them,” In re Steele, 32 Cal. 4th at 697; and (d) materials “the prosecution had no obligation to provide at the time of trial absent specific defense request, but to which the defendant would have been entitled at time of trial had the defendant specifically requested them,” l’d. at 697. This includes materials that could have been requested in a so called Pitches motion for law enforcement records, if they are material to the habeas proceeding. Hurd v. Super. Ct., 144 Cal.App.4th at 1107-08, 1111 (2006);

(3) The materials requested exist;

(4) The prosecution and law enforcement authorities involved in the case currently posses those materials.

Because Pen. Code § 1054.9 provides only for specific discovery and not the proverbial fishing expedition for anything that might exist, defendant seeking discovery beyond recovering what the prosecution had provided to the defense before trial must show reasonable basis to believe that specific requested materials actually exist.

Defendant moves the court for an order to be provided specifically for the following discovery material:

1. Mendell 911 call (concealed no peoples exhibit #)
2. Rhoads 911 call (peoples exhibit #2)
3. Rhoads recorded interview (peoples exhibit #15)
4. Mendell recorded interview (peoples exhibit #16)
5. Longfellow recorded interview (no audio) (peoples exhibit #5)
6. Rhoads' phone records from 3-20-08 of phone number 911 call was made from
7. Mendell's phone records from 3-20-08 of phone number 911 call was made from
8. Gina Holland phone records from 3-20-08
9. All Police reports for Rhoads house on, and prior to 3-20-08
10. Confidentiality agreement between Trial Counsel and district attorney's office regarding 911 calls and witness interviews (If there is no agreement, the DA must state in writing that no such agreement exists to counter Counsel's claim that the DA made him sign a confidentiality agreement before they would turn the recordings over to him)
11. Copy of Motion to Quash and Traverse search and arrest warrant,
12. Copy of minute order and audio recording from Motion to Quash and Traverse hearing held in Richmond court, by Judge Laurel Brady.
13. E-mail correspondences between trial counsel, district attorney's office, Steven Moawad, Private Investigator – Mark Harrison, Walnut Creek Police department, any and all expert witnesses

14. the Affidavit in Support of Detention
15. the Affidavit in Support of Search Warrant and Arrest Warrant
16. the Affidavit in Support of Complaint
17. the Affidavit in Support of the Information
18. all digital photos
19. all CD's
20. all DVD's

Defendant has made the "good faith efforts" to obtain materials from counsel, and has failed. (See attached exhibits)

The "good faith efforts" identified above and attached satisfied the defendant's burden under Pen. Code § 1054.9. see also *In re Steel*, 32 Cal.4th at 693-694; Hurd v. Super. Ct., 144 Cal.App.4th 1100, 1107 (2006); Barnett v. Super Ct. 50 Cal.4th 890, 898 (2010); Kennedy v. Super. Ct. 145 Cal.App. 359, 366.

Defendant moves the court for an order of the Court, that defendant be provided the specific discovery requested.

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

Dated: _____.

By: _____
Nathan Medina

Enclosures: Informal Request

Affidavit of Nathan Medina
28 U.S.C. § 1746

Affidavit: "No more than that is necessary to make a *prima facie* case." United States v. Kis (7th Cir. 1981) 658 F. 2d 526, 536.

- I Nathan Medina, ("Affiant") hereby state the following:
- Affiant is over the age of 18 years old; and
 - Affiant is competent to state the facts herein; and
 - Affiant has firsthand knowledge of the facts set forth; and
 - If called to testify, affiant will do so to the veracity of this affidavit.
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- On September 4th, 2024, I mailed out through the prison legal mail an informal request for Discovery to: Counsel Dirk Manoukian and District Attorney Diana Becton, with a 15 day requirement for response.
 - On September 24th, 2024, I received through legal mail the District Attorneys response denying my request.
 - As of September 25th, I have not received a response from Counsel, Dirk Manukian.
 - Attached are Proof of Service sent with the Informal Requests.

I declare under penalty of perjury under the laws of the United States, that the forgoing is true and correct.

Executed _____

Signature: _____

Nathan Medina