

FILED
SAN MATEO COUNTY

OCT 07 2024

Clerk of the Superior Court
By [Signature]
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

PEOPLE OF THE STATE OF CALIFORNIA,	)	Case No. SCO55500A
	)	
Plaintiff,	)	
	)	ORDER ON DEFENDANT'S POST-
vs.	)	CONVICTION DISCOVERY MOTION
	)	
SCOTT LEE PETERSON,	)	PURSUANT TO PENAL CODE §
	)	
Defendant	)	1054.9

On January 17, 2024, Defendant filed a motion for post-conviction discovery pursuant to Penal Code § 1054.9 and supporting documents. The People filed their opposition on May 20, 2024, and Defendant replied on June 14, 2024. On July 15 and 16, 2024, the Court held a hearing on the motion. Defendant attended via Zoom. Paula Mitchell and Hilary Morman of the Los Angeles Innocence Project appeared on his behalf. The People appeared by Ahnna Reicks, Victoria Vasquez, David Harris, and Birgit Fladager. The Court took the matter under submission at the conclusion of the hearing. The Court has considered the filed pleadings submitted by all parties and the oral arguments of counsel, and now orders post-conviction discovery pursuant to Penal Code 1054.9 as follows.

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I. APPLICABLE LAW

California Penal Code § 1054.9 provides for post-conviction discovery "upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion." The statute provides that where a defendant makes a showing of unsuccessful good faith efforts to obtain discovery materials from trial counsel, the court "shall" order that the defendant be provided with reasonable access to materials "in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at the time of trial." Penal Code § 1054.9(a), (c). Penal Code § 1054.9 applies only to serious or violent felonies where the defendant was sentenced to 15 years or more. Penal Code § 1054.9(b) provides that if a defendant successfully obtains court-ordered post-conviction discovery once, any subsequent request for post-conviction discovery is within the discretion of the court. Defendants who are or have ever been sentenced to death or life in prison without the possibility of parole are not subject to the single mandatory grant of relief limitation of Penal Code 1054.9(b).

Defendant has a filed petition for writ of habeas corpus pending in the First District Court of Appeal. Defendant is presently serving a life sentence without possibility of parole after having a former capital sentence reversed on appeal. His case falls outside Penal Code 1054.9(b)'s limitation on the number

1 of post-conviction discovery motions he may bring. He is therefore
2 eligible to bring this motion and entitled to statutory discovery
3 upon a showing of good faith but unsuccessful efforts to obtain the
4 requested material from trial counsel.

5 In his notice of motion, Defendant specifically articulated
6 that he is seeking "an order directing the People to provide the
7 requested post-conviction discovery he is entitled to under Penal
8 Code section 1054.9," and that "This motion is made pursuant to
9 Penal Code section 1054.9..." Notice of Motion, at p. 1, L. 27-28
10 and p. 2, L. 10-11 filed 1/17/2024. In reply and at oral argument,
11 Defendant's counsel appeared to broaden the basis upon which relief
12 is requested. Defense cited In re Jenkins (2023) 14 Cal.5th 493
13 for the proposition that the materials they seek, even if outside
14 the scope of discovery described in Penal Code § 1054.9, are
15 exculpatory and that the prosecution therefore has both a Brady¹
16 duty and an ethical duty of disclosure that continues post-
17 conviction. Although Jenkins is instructive of the prosecution's
18 postjudgment Brady duty and ethical duty pursuant to California
19 Rule of Professional Conduct 3.8(d), the California Supreme Court
20 noted that in deciding Jenkins, it "express[ed] no opinion
21 regarding the Attorney General's postconviction statutory discovery
22 duties under section 1054.9 or court-ordered discovery following an
23 order to show cause." In re Jenkins, *supra*, footnote 10. The
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28 ¹ Brady v. Maryland (1963) 373 U.S. 83

1 Jenkins case is therefore of limited utility to this Court in
2 determining which materials sought by the defense are within the
3 ambit of Penal Code § 1054.9 and whether the defense has made the
4 required showing to justify ordering disclosure. Further, the
5 Jenkins court expressly limited the scope of the prosecution's
6 described post-conviction duties to evidence available to the
7 prosecution and not disclosed at the time of trial. Jenkins,
8 *supra*, at 509-511, 518, footnote 21. It declined to extend any
9 post-conviction duty to potentially exculpatory material obtained
10 by the prosecution after trial.

12 As a general rule, there is no statutory authority for a trial
13 court to entertain a post-judgment motion that is unrelated to any
14 proceeding then pending before the court. People v Picklesimer
15 (2010) 48 Cal.4th 330. "Consistent with this general rule, our
16 Supreme Court has held that a trial court does not have authority
17 'to order free-floating post-judgment discovery' which is unrelated
18 to any proceeding pending before the court." People v. Gonzalez
19 (1990) 51 Cal.3d 1179, 1256, 1261; In re Steele (2004) 32 Cal.4th
20 682, 691. Section 1054.9 modifies this rule, but limits the scope
21 of discovery to materials "to which the same defendant would have
22 been entitled to at the time of trial." People v. Davis (2014) 226
23 Cal.App.4th 1353. "A convicted defendant does not have a right to
24 a post-judgment discovery order based on Brady alone, independent
25 of section 1054.9." People v. Davis (2014), *supra*, at 1366;
26 quoting Kennedy v. Superior Court (2006) 145 Cal.App.4th, 359, 369.

1 To the extent that Mr. Peterson seeks discovery orders based on the
2 prosecution's post-conviction Brady and ethical duties untethered
3 to Penal Code 1054.9's limitations on the scope of post-judgment
4 discovery, the Court denies that request on the basis of People v.
5 Davis, *supra*, at 1366.

6 In re Steele (2004) 32 Cal.4th 682 described the showing that
7 a defendant seeking Section 1054.9 discovery must make. The
8 materials sought must be currently in the possession of the
9 prosecution and law enforcement authorities. Further, the specific
10 materials sought must fall into one of the following four
11 categories: 1) the prosecution provided them at the time of trial
12 but they have since become lost to the defendant; 2) the
13 prosecution should have provided at time of trial because they came
14 within the scope of a discovery order the trial court actually
15 issued, a statutory duty to provide discovery, or the
16 constitutional duty to disclose exculpatory evidence; 3) the
17 prosecution should have provided at the time of trial because the
18 defense specifically requested them and was entitled to receive
19 them; or 4) the prosecution had no obligation to provide at time of
20 trial absent a specific defense request, but to which the defendant
21 would have been entitled at the time of trial had the defendant
22 specifically requested them. Steele, *supra*, at 697. In the
23 following discovery orders, where the Court finds that the defense
24 has shown that the materials sought fall into one or more of the
25 foregoing categories, the Court will refer back to the "Steele
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categories" numbered 1-4 above to identify the basis upon which the Court finds disclosure is required.

II. CATEGORIES OF DISCOVERY SOUGHT IN INITIAL MOTION

A. MEDINA BURGLARY

1. Audio and video recordings and any transcripts of the interviews MPD conducted with Steven Todd and Donald Glenn Pearce at the Modesto Police Department on January 2, 2003 concerning involvement in the Medina burglary

The defense motion cites Bates material including Officer Hicks' police report and a property record documenting that videotaped recordings were made of the referenced interviews. The prosecution concedes that the trial court allowed evidence of Todd's and Glenn's statements to be introduced at trial as evidence of the quality of the investigation by Modesto Police Department. The defense has established a reasonable basis for believing this material exists. A reasonable basis for believing that the prosecution possessed the materials in the past also provides a reasonable basis to infer that the prosecution still possesses the materials. No additional showing on that point is necessary.

Barnett v. Superior Court (2010) 50 Cal.4th 890, 901. These items are discoverable under Penal Code

1 § 1054.9 under either Steele category 1 or 4, and
2 this request is granted.

3 **2. All MPD investigation and other police reports**
4 **regarding the steps MPD took to verify alibis of**
5 **Steven Todd and Donald Glenn Pearce, including all**
6 **interviews with witnesses, audio or video**
7 **recordings, or transcripts thereof**

8 Under Penal Code § 1054.9, it is not sufficient for
9 a defendant to simply offer a plausible
10 justification for disclosure of information he has
11 described with some specificity. Section 1054.9's
12 discovery is limited to specific materials that the
13 defendant can show fall into any of the categories
14 of material to which the defendant would have been
15 entitled at the time of trial. When a defendant
16 seeks discovery under section 1054.9, he must
17 identify those materials with sufficient specificity
18 to show that he *would*, in fact, have been entitled
19 to *those* materials at the time of trial. Kennedy v.
20 Superior Court (2006) 145 Cal.App.4th 359, at 371.
21 This request does not describe the materials sought
22 with sufficient specificity under Kennedy. It is
23 denied.
24 25 26

27 **3. All police reports, audio and video recordings, and**
28 **other relevant materials indicating that MPD**

1 verified the truthfulness of statements of Steven
2 Todd and Donald Glenn Pearce clearing them of
3 involvement in the disappearance of Laci Peterson
4 Under Penal Code § 1054.9, it is not sufficient for
5 a defendant to simply offer a plausible
6 justification for disclosure of information he has
7 described with some specificity. Section 1054.9's
8 discovery is limited to specific materials that the
9 defendant can show fall into any of the categories
10 of material to which the defendant would have been
11 entitled at the time of trial. When a defendant
12 seeks discovery under section 1054.9, he must
13 identify those materials with sufficient specificity
14 to show that he would, in fact, have been entitled
15 to those materials at the time of trial. Kennedy v.
16 Superior Court (2006) 145 Cal.App.4th 359, at 371.
17 This request does not describe the materials sought
18 with sufficient specificity under Kennedy. It is
19 denied.
20
21

22 **4. All reports, notes, computer generated data and**
23 **results, informed consent forms and/or polygraph**
24 **examination waiver forms, polygraph examination**
25 **statement of consent forms, Miranda waiver forms,**
26 **and/or signed confessions by Todd and Pearce related**
27 **to the investigation by MPD and/or California DOJ**
28

**Polygraph Examiner Jeannie Overall's polygraph
examinations of Steven Todd and Donald Glenn Pearce
conducted on January 3, 2003**

Prior counsel for Mr. Peterson sought the notes, charts, videos and reports regarding the polygraph examinations given to Steven Todd and Glenn Pearce in a prior Penal Code 1054.9 motion filed on October 14, 2011. (Motion Exhibit 3, p. 140). The Honorable Scott Steffen heard the motion on November 18, 2011. The minute order for the hearing in Motion Exhibit 3 at p. 182-183 demonstrates that Judge Steffen denied the prior request for these materials. He found that there was no basis pursuant to Penal Code 1054.9 to grant discovery because the materials were neither admissible nor likely to lead to admissible evidence based on Evidence Code § 351.1's prohibition of the use of polygraph results. Defense did not seek review of Judge Steffen's ruling, which is long final at this point.

Issue preclusion, formerly known as collateral estoppel, "precludes re-litigation of issues argued and decided in prior proceedings" where the following threshold requirements are met: 1) the issue is identical to that decided in a former

1 proceeding, 2) the issue was actually litigated, 3)
2 the issue was necessarily decided in the former
3 proceeding, and 4) the prior decision is final on
4 the merits and 5) the party against whom preclusion
5 is sought is the same party or in privity with the
6 party to the former proceeding. People v. Strong
7 (2022) 13 Cal.5th 698, 701. Here, Mr. Peterson
8 previously sought a determination in this action
9 that he was entitled to the same material related to
10 the polygraph that he seeks now. He filed a noticed
11 motion, which was adjudicated by Judge Steffen on
12 the merits and decided adversely to him. All of the
13 elements of issue preclusion are met. The Court
14 denies this request based on the preclusive effect
15 of Judge Steffen's final 2011 ruling in the prior
16 Penal Code § 1054.9 motion.
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19 **5. A complete copy of the handwritten notes and all**
20 **materials generated by or located within the files**
21 **of CA DOJ Polygraph Examiner Jeannie Overall related**
22 **to the polygraph examinations of Todd and Pearce on**
23 **January 3, 2003, including notes or reports**
24 **explaining the basis for the examiner's decision not**
25 **to ask either Todd or Pearce whether they had any**
26 **information about other individuals involved in the**
27 **Medina burglary, or whether any of their associates**
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1 participated with them in the Medina burglary, or
2 whether they had any knowledge of anyone else who
3 was or may have been involved in the abduction of
4 Laci Peterson

5 Prior counsel for Mr. Peterson sought the notes,
6 charts, videos and reports regarding the polygraph
7 examinations given to Steven Todd and Glenn Pearce
8 in a prior Penal Code 1054.9 motion filed on October
9 14, 2011. (Motion Exhibit 3, p. 140). The
10 Honorable Scott Steffen heard the motion on November
11 18, 2011. The minute order for the hearing in
12 Motion Exhibit 3 at p. 182-183 demonstrates that
13 Judge Steffen denied the prior request for these
14 materials. He found that there was no basis
15 pursuant to Penal Code 1054.9 to grant discovery
16 because the materials were neither admissible nor
17 likely to lead to admissible evidence based on
18 Evidence Code § 351.1's prohibition of the use of
19 polygraph results. Defense did not seek review of
20 Judge Steffen's ruling, which is long final at this
21 point.

22 Issue preclusion, formerly known as collateral
23 estoppel, "precludes re-litigation of issues argued
24 and decided in prior proceedings" where the
25 following threshold requirements are met: 1) the
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1 issue is identical to that decided in a former
2 proceeding, 2) the issue was actually litigated, 3)
3 the issue was necessarily decided in the former
4 proceeding, and 4) the prior decision is final on
5 the merits and 5) the party against whom preclusion
6 is sought is the same party or in privity with the
7 party to the former proceeding. People v. Strong
8 (2022) 13 Cal.5th 698, 701. Here, Mr. Peterson
9 previously sought a determination in this action
10 that he was entitled to the same material related to
11 the polygraph that he seeks now. He filed a noticed
12 motion, which was adjudicated by Judge Steffen on
13 the merits and decided adversely to him. All of the
14 elements of issue preclusion are met. The court
15 denies this request based on the preclusive effect
16 of Judge Steffen's final 2011 ruling in the prior
17 Penal Code § 1054.9 motion.
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20 **6. Identification of the MPD vehicles in which Todd and**
21 **Pearce were interviewed on January 2, 2003 prior to**
22 **being transported to MPD, and whether those vehicles**
23 **were equipped with audio and/or video recording**
24 **capability on that date. If the vehicle was**
25 **equipped with recording devices, audio/video**
26 **recordings of those interviews.**
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1 Under Penal Code § 1054.9, it is not sufficient for
2 a defendant to simply offer a plausible
3 justification for disclosure of information he has
4 described with some specificity. Section 1054.9's
5 discovery is limited to specific materials that the
6 defendant can show fall into any of the categories
7 of material to which the defendant would have been
8 entitled at the time of trial. When a defendant
9 seeks discovery under section 1054.9, he must
10 identify those materials with sufficient specificity
11 to show that he *would*, in fact, have been entitled
12 to *those* materials at the time of trial. Kennedy v.
13 Superior Court (2006) 145 Cal.App.4th 359, at 371.
14 Defense asserts the following basis for concluding
15 these materials exist: "The lengthy, detailed
16 written reports memorializing the above-described
17 interviews with Todd and Pearce appear to be taken
18 from an audio or video recording or transcript
19 rather than from contemporaneous handwritten notes
20 taken by the officer on the scene. See Bates 4110-
21 4120, 20396-20397." Defense Motion Exhibit A, p.
22 72, item F. Defense did not attach Bates 4110-4120
23 or 20396-20397 to their motion. The People's lodged
24 responsive exhibits contain Bates 20396-20397
25 (Opposition to PC 1054.9 motion, p. 1005 of Disk 4
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1 of lodged exhibits), which is a written report by a
2 parole agent discussing statements made by Steven
3 Todd to Officer Hicks during transport to Modesto PD
4 from his arrest location at Tenaya Drive. The agent
5 who wrote the report indicated that he was driving
6 at the time of the statement by Todd. It makes no
7 reference to the type of vehicle used for transport,
8 or whether it belonged to the Modesto Police
9 Department or the Department of Corrections (the
10 employing agency for the parole agent who was
11 driving). The defense has failed to demonstrate a
12 reasonable basis for believing that Todd was
13 transported in a Modesto police vehicle or that any
14 such vehicle was actually equipped with a recording
15 device. This request is denied.
16

17 **7. Handwritten notes taken by MPD officers who**
18 **interviewed Steven Todd and Donald Glenn Pearce on**
19 **January 2, 2003 while Todd and Pearce were seated in**
20 **the back of a police patrol vehicle giving explicit**
21 **details concerning their involvement in the Medina**
22 **burglary the evening of January 2, 2003.**
23

24 Defense asserts the following basis for concluding
25 these materials exist: "See Bates 4110-4120, 20396-
26 20397. The lengthy reports memorializing those
27 interviews include very specific information that
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1 appears to have been transposed either from an audio
2 recording or transcript, or from contemporaneous
3 notes taken by an officer or officers on the scene."
4 Defense Motion Exhibit A, p. 72, item F. Defense
5 did not attach Bates 4110-4120 or 20396-20397 to the
6 motion. Bates 20396-20397 makes no reference to any
7 contact with Donald Glenn Pearce. In relevant part,
8 it describes a parole agent driving Officer Hicks
9 and Steven Todd from Tenaya Drive to the Modesto
10 Police Department, and statements made by Todd
11 during that trip. Officer Hicks testified as a
12 witness at trial. Any contemporaneous notes he made
13 would have been a statement of a witness
14 discoverable under Penal Code § 1054.1, which Steele
15 category 2 makes discoverable under Penal Code §
16 1054.9. Defense has demonstrated that Mr. Peterson
17 would have been entitled to this material at the
18 time of trial. The request for any still-existing
19 contemporaneous notes of Officer Hicks regarding his
20 interview of Steven Todd on January 2, 2003 is
21 granted.
22

23
24 **8. All other interviews, recordings, and contacts made**
25 **by MPD and/or other law enforcement with Todd and**
26 **Pearce during the 18 hours they were in custody,**
27 **between the commencement of the raid at the 1406-**
28

1 1407 Tenaya Drive properties commencing around 5:30
2 PM on January 2, 2003, and the recorded polygraph
3 examinations that started at 11:30 AM on January 3,
4 2003, apart from the discovery already requested
5 above.
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7 Under Penal Code § 1054.9, it is not sufficient for
8 a defendant to simply offer a plausible
9 justification for disclosure of information he has
10 described with some specificity. Section 1054.9's
11 discovery is limited to specific materials that the
12 defendant can show fall into any of the categories
13 of material to which the defendant would have been
14 entitled at the time of trial. When a defendant
15 seeks discovery under section 1054.9, he must
16 identify those materials with sufficient specificity
17 to show that he *would*, in fact, have been entitled
18 to *those* materials at the time of trial. Kennedy v.
19 Superior Court (2006) 145 Cal.App.4th 359, at 371.
20 This request does not describe the materials sought
21 with sufficient specificity under Kennedy. It is
22 denied.
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25 9. All MPD and other law enforcement agency reports,
26 notes, statements, and/or other documents related to
27 Steven Todd's release from custody and re-arrest on
28 January 6, 2003, including but not limited to:

1 a. All reports and documents related to Steven
2 Todd's apparent posting of bail for release after
3 his arraignment on January 6, 2003

4 The defense asserts the following basis for
5 believing this material exists: "See Bates
6 20406." The defense did not attach Bates 20406
7 to their pleadings. The Court was unable to
8 locate it in the voluminous materials lodged with
9 the prosecution's response. Defense has failed
10 to demonstrate a reasonable basis for believing
11 this material exists or that it falls into any
12 Steele category requiring disclosure. This
13 request, and sub-requests b-e in this category of
14 materials are all denied.
15

16 b. The report from the arresting officer

17 See item a, above.
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19 c. All reports and information regarding the basis
20 for Todd's re-arrest

21 See item a, above.
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23 d. All notes, reports, and/or audio and video
24 recordings of statements made by Todd at the time
25 of his rearrest, or while otherwise in MPD and/or
26 Stanislaus County Sheriff's Department custody

27 See item a, above.
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1 e. All investigative efforts into whether Todd
2 utilized cash stolen from the Medina property to
3 post his bail bond on January 6, 2003

4 See item a, above.

5
6 10. Booking photos for Steven Todd and Donald Glenn
7 Pearce taken upon their arrest on January 2, 2003.
8 Photos documenting any physical injuries on the
9 persons of Todd and Pearce at arrest on January 2,
10 2003. Fingerprint cards and palm prints for Todd
11 and Pearce collected by MPD on January 2, 2003. All
12 recordings of phone calls made by Steven Todd and
13 Donald Glenn Pearce while they were in custody from
14 the time of their arrests on January 2, 2003, until
15 the time they were transferred to state prison
16
17 At oral argument on the motion, defense withdrew the
18 requests for booking photographs, fingerprint cards,
19 and palm print cards. The Court finds that the
20 defense has failed to demonstrate either a
21 reasonable basis for concluding that "recordings of
22 all telephone calls made by Steven Todd and Donald
23 Glenn Pearce from January 2, 2003 until their
24 transfer to state prison" still exist in the
25 possession of law enforcement, or that all such
26 calls fall within any of the Steele categories of
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1 discovery to which Mr. Peterson would have been
2 entitled at the time of trial. The Court first notes
3 that Mr. Peterson's initial informal discovery
4 demand to the prosecution did not contain a demand
5 for all recorded calls made by Steven Todd and
6 Donald Glenn Pearce prior to their transfer to state
7 prison. (Motion Exhibit A, p. 74, item J - request
8 for fingerprints, palm prints, and booking photos
9 but not jail calls). The initial demand makes no
10 reference to any reason for believing these
11 materials exist. Motion Exhibit 5, Carl Jensen's
12 declaration regarding his conversation with Steven
13 Todd, makes no mention of Todd ever discussing the
14 content of any jail call he made. Defense did not
15 include any material in their demand letter, motion,
16 or accompanying exhibits documenting any attempt to
17 inquire about the Stanislaus County Sheriff's
18 Department's inmate telephone service provider or
19 the retention period for jail calls made in 2003.
20 The motion does not indicate that the prosecution
21 ever provided jail calls from Todd and Pearce to the
22 defense, either voluntarily or in response to a
23 defense discovery request or court order. The
24 defense makes no argument demonstrating a reasonable
25 basis for concluding that a discovery request for
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1 those materials would have been granted by the court
2 at the time of trial - particularly one so broad as
3 to require production of every call either of them
4 made to any person.

5 At oral argument, the asserted basis for demanding
6 all recordings of jail calls was to determine if
7 Todd or Pearce ever discussed having been told by
8 police who interviewed them that the police knew
9 they were not involved in the murder of Laci
10 Peterson because they had already concluded that
11 Scott Peterson was the culprit. The defense
12 evidentiary support for that argument was limited to
13 the multiple hearsay declaration of witness "D.M.",
14 whose identity the defense has declined to reveal.
15 The declaration was filed for the first time in the
16 defense reply brief. The prosecution objects to the
17 Court's consideration of that declaration for any
18 purpose based both on the timing of the filing and
19 on their inability to investigate the veracity of
20 the hearsay declarant or offer impeachment. The
21 Court overrules the evidentiary objection to this
22 and all other defense offers of proof on the basis
23 that the motion procedure described in Penal Code
24 1054.9 does not appear to require a formal
25 evidentiary hearing for resolution.
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1 However, the Court attaches no evidentiary weight to
2 the content of the offer of proof from D.M., and
3 does not find that it provides a reasonable basis
4 for believing that either Steven Todd or Donald
5 Glenn Pearce ever spoke to anyone on a recorded jail
6 call about what police allegedly said to either of
7 them about the Peterson investigation. First,
8 D.M.'s declaration makes no reference to ever having
9 met or spoken to Donald Glenn Pearce. Second, in
10 D.M.'s multiple hearsay statement about having
11 spoken to Steven Todd, D.M. only states that the
12 alleged conversation happened "after Steven Todd was
13 arrested", not that the conversation occurred while
14 Steven Todd was in custody. D.M. did not state that
15 the conversation happened over the telephone.
16 Third, in Motion Exhibit 8, defense witness George
17 Gudgell described interviewing D.M. in 2015. D.M.
18 apparently did not tell Gudgell that he ever spoke
19 to Steven Todd after Todd's arrest. Even without
20 knowing D.M.'s identity and any potential
21 impeachment material that the prosecution might have
22 been able to proffer had that identity been
23 revealed, the court finds that D.M.'s 21 years-
24 belatedly revealed, vague, and apparently evolving
25 recollection does not provide a reasonable basis for
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1 concluding that every phone call that Steven Todd
2 made while in Stanislaus County custody in 2003 and
3 after is potentially exculpatory. This request does
4 not fall within any of the Steele disclosure
5 categories. The Court denies it.

6
7 11. All audio and/or video recordings and written
8 witness interview reports showing that MPD
9 interviewed Susan and Rudy Medina about what they
10 witnessed on the morning of December 24, 2002 prior
11 to leaving town, and whether they saw any suspicious
12 activity on their street, including whether either
13 was shown photographs of Steven Todd and/or Donald
14 Glenn Pearce in attempt to identify whether they had
15 seen either man on Covena Avenue that morning
16
17 Defense asserts in relevant part the following basis
18 for believing this material exists:

19 Asking the Medinas about whether they saw
20 any suspicious activity on their street
21 the morning of December 24... including
22 showing the Medinas photographs of the men
23 who confessed to burglarizing their home
24 to see if one or both could recognize them
25 as having been present on the street that
26 morning, would be a logical investigatory
27 step... Defense Motion Exhibit A, p. 74,
28 item K.

29 Defense attached as Motion Exhibit 4 the declaration
30 of Susan Medina dated July 29, 2023. In relevant
31 part, Ms. Medina states: "We were told that the

1 police arrested two individuals for burglary. The
2 police never showed either me or my husband any
3 pictures of the men that they had arrested to see if
4 we could identify them." Defense Motion Exhibit 4,
5 p. 192, P. 23, emphasis added by Court. In a motion
6 pursuant to Penal Code 1054.9, the defense is
7 obligated to demonstrate a reasonable basis for
8 believing that the requested material exists. The
9 relevant witness has averred under penalty of
10 perjury that the material sought in this request
11 never existed. The defense has failed in the
12 required showing and this request is denied.
13
14

15 12. All reports, interviews, audio and/or video
16 recordings following up on information provided by
17 Lilian V.'s report to MPD on January 1, 2003 of
18 having seen a man on a bicycle on Cavena on December
19 24, 2002 between 10:15 and 10:20 AM described as a
20 5'8" white male, weathered face, long blunt hair to
21 ears, turned his head away, bicycle loaded with
22 saddle bags, transient type person, relatively well
23 groomed, didn't respond to her saying 'hello',
24 including whether Lilian V. was shown photographs of
25 either Steven Todd or Donald Glenn Pearce to see
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1 whether she could identify either of them as the man
2 she reported seeing

3 Defense asserts the following reason for believing
4 this item exists:

5 See Bates 14861. Showing Ms. V photographs
6 of the men who confessed to committing the
7 Medina Burglary to see if she could
8 identify either as the man she saw riding
9 his bike down the street on Coven Avenue
10 on December 24 would be a logical
11 investigatory step to determine the
12 veracity of Steven Todd's statement to
13 police indicating that he was not present
14 on Coven Avenue on December 24, 2002.
15 Defense Motion Exhibit A, pp. 74-75, item
16 L.

17 The declaration of Paige McGrail filed as an exhibit
18 to the defense DNA motion pursuant to Penal Code
19 1405 includes a hearsay statement from Lilian V.
20 that no one from law enforcement ever contacted her
21 to follow up on information submitted to the tip
22 line in Bates 14861. (Exhibits in support of Motion
23 for DNA testing, p. 66.) Since the witness herself
24 has indicated that this material never existed, the
25 defense has failed to show a reasonable basis for
26 production under Penal Code 1054.9. This request is
27 denied.

28 13. All reports, notes, interviews, recordings,
 and/or any other documents related to the
 information provided to MPD by the teacher of Steven

1 Todd's son, including statements that the mother of
2 Steven Todd's child had a history of selling babies
3 in open adoptions, and indications from Steven
4 Todd's son about violent acts on a pregnant woman,
5 and any subsequent investigation based on the
6 information provided
7

8 Defense asserts the following basis for believing
9 this material exists:

10 See Bates 15010 and 15031. Interviewing
11 the teacher of Steven Todd's son about her
12 report that Todd's associate had a history
13 of selling babies in open adoptions
14 appears to be potentially highly material
15 information police would investigate as
16 part of an investigation into the
17 disappearance of pregnant Laci Peterson
18 and one that resulted in a capital murder
19 charge against Mr. Peterson.

20 In Bates 15010, the tipster indicated "One of her
21 student's dads was arrested for robbery." The tip
22 did not mention Steven Todd by name. In Bates
23 15031, the tipster identified herself as a teacher
24 of Steven Todd's child and further reported "The
25 mother of this child has been a surrogate mother and
26 sold babies twice before." Prosecution Opposition
27 to PC 1054.9, Exhibit Disk 4, pp. 593 and 614.
28 Neither tip made reference to any violent acts
against pregnant women by Steven Todd or the mother
of his child at any time. The defense motion

1 identified the source of the alleged "violent acts"
2 information as a forthcoming (but never actually
3 filed) sworn declaration documenting a "post-
4 conviction interview" in which the witness described
5 a "subsequent incident" with Steven Todd's child on
6 the playground. Defense Motion Exhibit A, p. 75,
7 footnote 4.

8 Since the "violent acts" statement occurred post-
9 trial, it is outside of the material discoverable
10 pursuant to Penal Code § 1054.9.

11 Steven Todd's child's teacher was never called as a
12 trial witness, so her statement was not discoverable
13 under Penal Code § 1054.1. The defense has not
14 alleged that any pre-trial discovery order was
15 sought or obtained requiring pre-trial production.
16 For the tips that do appear in the Bates logs, the
17 defense has produced no reasonable basis for
18 believing that the police ever further interviewed
19 the teacher, thereby failing to demonstrate a
20 reasonable basis for concluding that the requested
21 material ever existed. Steven Todd did not testify
22 at trial, but was a potential trial witness. The
23 prosecution concedes that various statements of
24 Todd's were admitted at trial for non-hearsay
25 purposes. His arrest for robbery would have been
26
27
28

1 relevant to impeachment of his credibility had he
2 testified, and the defense therefore would have been
3 entitled to that information at the time of trial
4 had they requested it. The prosecution's opposition
5 to PC 1054.9 motion Disk 4 demonstrates that the tip
6 sheet identifying the name and contact information
7 of the witness who discussed the arrest was turned
8 over to defense prior to the original trial. The
9 present defense motion does not allege that these
10 Bates pages are missing from the discovery, so they
11 do not fall into the file reconstruction category of
12 materials required to be produced under Steele. The
13 tip regarding the prior "selling of babies"
14 connected to Steven Todd's child's mother acting as
15 a surrogate is not potentially exculpatory in light
16 of the forensic evidence presented at trial that
17 Laci died while Conner was still *in utero*, and
18 Conner died as a result of Laci's murder. The
19 defense has failed to demonstrate that the requested
20 material ever existed, or meets any Steele category
21 requiring production pursuant to Penal Code §
22 1054.9. This request is denied.
23
24

25 **14. MPD's reports, notes, and other records**
26 **documenting the investigative steps taken to**
27 **determine the status of Steven Todd's**
28

1 methamphetamine use on December 24-26, 2002 which
2 would have compromised his ability to recall dates
3 and times of events that week

4 At oral argument, defense indicated that this
5 request was directed at materials generated by the
6 polygraph examination of Steven Todd. This request
7 is denied based on the preclusive effect of Judge
8 Steffen's ruling on a prior Penal Code 1054.9 motion
9 in this action as described above in items 4 and 5.
10 To the extent that the written motion seeks other
11 materials, under Penal Code § 1054.9, it is not
12 sufficient for a defendant to simply offer a
13 plausible justification for disclosure of
14 information he has described with some specificity.
15 Section 1054.9's discovery is limited to specific
16 materials that the defendant can show fall into any
17 of the categories of material to which the defendant
18 would have been entitled at the time of trial. When
19 a defendant seeks discovery under section 1054.9, he
20 must identify those materials with sufficient
21 specificity to show that he *would*, in fact, have
22 been entitled to *those* materials at the time of
23 trial. Kennedy v. Superior Court (2006) 145
24 Cal.App.4th 359, at 371. This request is denied.
25
26
27
28

1 15. Cell phone records obtained by law enforcement
2 for Donald Glenn Pearce, Steven Todd, and/or any
3 other suspect in the Medina burglary investigation
4 for the period December 24-26, 2002

5 Defense asserts the following basis for believing
6 this material exists:
7

8 MPD consistently and systematically
9 collected cell phone records of material
10 witnesses, including Susan Medina, Karen
11 Servas, and Scott Peterson as part of its
12 investigation into the disappearance of
 Laci Peterson, so there is reason to
 believe MPD would also have obtained those
 records for Todd and Pearce.

13 Such records would have had to have been obtained by
14 search warrant or subpoena. Defense conceded at
15 oral argument that they have no basis for concluding
16 that a search warrant was ever obtained for the
17 requested records. Defense has not demonstrated any
18 reasonable basis for believing such records exist,
19 such as a property log entry, reference to the trial
20 record, or search warrant return. The bare
21 assertion that law enforcement obtained other cell
22 phone records from other witnesses does not
23 reasonably establish that they did so from every
24 witness. Defense has failed to establish a
25 reasonable basis for believing that this material
26
27
28

1 was ever obtained by law enforcement. This request
2 is denied.

3 **16. A copy of Donald Glenn Pearce's receipt for the**
4 **purchase of a Nokia phone on December 24, 2002, as**
5 **noted in the report of the January 2, 2003 search of**
6 **1406 and/or 1407 Tenaya Drive properties**

7
8 Defense asserts the following basis for believing
9 this material exists: "See Bates 4121." Defense
10 does not attach Bates 4121 to its motion or reply.
11 Defense makes no other argument for why a receipt
12 for the purchase of a cell phone by Donald Glenn
13 Pearce would fall into any of the Steele categories
14 of discovery. This request is denied.
15

16 **17. MPD police investigation reports, arrest**
17 **reports, notes, recordings, and/or other documents**
18 **detailing Officer Mike Hicks's prior contacts with**
19 **Donald Glenn Pearce and Steven Todd as indicated in**
20 **Detective Stough's and Detective Hicks's reports**

21 Defense motion asserts the following basis for
22 concluding this material exists: "See Bates 20362,
23 4115". Defense attaches neither Bates page to
24 either its motion or reply. Bates 20362 in the
25 prosecutions' lodged responsive Disk 4 to the
26 discovery motion identifies Officer Hicks as part of
27 the team that executed the searches at Tenaya Drive
28

1 related to the Medina burglary and indicates that he
2 interviewed both Todd and Pearce because he had
3 prior contacts with the and was "familiar" with
4 them. At oral argument, the prosecution agreed that
5 Officer Hicks testified at trial. The prosecution's
6 written response also notes that Todd's and Pearce's
7 statements were admitted for a non-hearsay purpose
8 at trial. Investigation reports, arrest reports,
9 notes, and recordings of Officer Hicks' prior
10 contacts with Todd and Pearce would have been both
11 statements of a trial witness under Penal Code
12 1054.1 (Steele category 2) and potential impeachment
13 material of hearsay declarants (Steele category 2).
14 The defense has demonstrated a reasonable basis for
15 concluding this material exists and that Mr.
16 Peterson was entitled to it at the time of trial.
17 The request is granted as to all investigation
18 reports, arrest reports, notes, or recordings
19 generated by Officer Hicks regarding any prior
20 contacts he had with Steven Todd or Donald Glenn
21 Pearce.
22
23

24 **18. All recordings, interview memoranda, audio and**
25 **video recordings, and transcripts thereof, and/or**
26 **other notes of communications between**
27 **representatives of the Stanislaus County District**
28

1 Attorney's Office, and other law enforcement, with
2 suspects Todd and Pearce, related to their role in
3 the Medina burglary, including but not limited to
4 plea negotiations, incentives offered, charges to be
5 brought in the criminal complaints, plea agreements
6 entered into, the factual basis for the pleas
7 entered into, abstracts of judgments, and custody
8 records for Steven Todd and Donald Glenn Pearce
9
10 Under Penal Code § 1054.9, it is not sufficient for
11 a defendant to simply offer a plausible
12 justification for disclosure of information he has
13 described with some specificity. Section 1054.9's
14 discovery is limited to specific materials that the
15 defendant can show fall into any of the categories
16 of material to which the defendant would have been
17 entitled at the time of trial. When a defendant
18 seeks discovery under section 1054.9, he must
19 identify those materials with sufficient specificity
20 to show that he would, in fact, have been entitled
21 to those materials at the time of trial. Kennedy v.
22 Superior Court (2006) 145 Cal.App.4th 359, at 371.
23
24 This request does not describe the materials sought
25 with sufficient specificity under Kennedy. It is
26 denied.
27
28

1 19. All reports, notes, interviews, audio/video
2 recordings and transcripts thereof, photographs,
3 and/or any other documents relating to the January
4 2, 2003 searches MPD conducted pursuant to warrants
5 issued in the Medina burglary investigation,
6 including but not limited to the addresses located
7 in the Airport District that MPD searched in
8 connection with the investigation into the Medina
9 burglary, as well as:
10

11 Under Penal Code § 1054.9, it is not sufficient for
12 a defendant to simply offer a plausible
13 justification for disclosure of information he has
14 described with some specificity. Section 1054.9's
15 discovery is limited to specific materials that the
16 defendant can show fall into any of the categories
17 of material to which the defendant would have been
18 entitled at the time of trial. When a defendant
19 seeks discovery under section 1054.9, he must
20 identify those materials with sufficient specificity
21 to show that he *would*, in fact, have been entitled
22 to *those* materials at the time of trial. Kennedy v.
23 Superior Court (2006) 145 Cal.App.4th 359, at 371.
24 This request does not describe the materials sought
25 with sufficient specificity under Kennedy. The
26 request for "any and all" materials is overbroad,
27
28

1 and is denied except as stated below on more
2 specifically identified materials.

3 **a. The warrants issued and returns filed on the**
4 **above-described properties, including**
5 **descriptions and photographs of all items of**
6 **evidence found including, but not limited to**
7 **stolen items recovered and identified as not**
8 **belonging to the Medinas**

9
10 Discovery available pursuant to Penal Code 1054.9
11 is restricted to materials currently in the
12 possession of either the prosecution or law
13 enforcement agencies which participated in the
14 investigation of the case. Once a search warrant
15 is executed, both the warrant and the
16 corresponding warrant return are filed with the
17 court and become a judicial record. Penal Code §
18 1534(a). Since Penal Code § 1054.9 discovery
19 does not extend to court records, the request for
20 the issued search warrants and returns is denied.
21 People v. Superior Court (Morales) (2017) 2
22 Cal.5th 523, 534-535; Shorts v. Superior Court
23 (2018) 24 Cal.App.5th 709, 729.

24
25 When a search warrant is executed, the law
26 requires the executing officers to both provide a
27 receipt for any seized property specifying in
28

1 detail the property taken, and maintain that
2 seized property in law enforcement custody until
3 the issuing court makes orders for its
4 disposition. Penal Code §§ 1535, 1536. The
5 defense motion and responsive prosecution
6 exhibits demonstrate that the Modesto Police
7 Department did conduct searches of Tenaya Drive
8 addresses and did seize various items of
9 property. Defense has demonstrated a reasonable
10 basis to believe that descriptions and/or
11 photographs of the seized items exist. The
12 seizure of stolen items of jewelry unrelated to
13 the Medina burglary is potentially exculpatory
14 because of the unaccounted jewelry in the
15 Peterson investigation, and therefore falls
16 within Steele categories 2 and 4. The Court
17 orders production pursuant to Penal Code § 1054.9
18 of any existing descriptions and photographs of
19 jewelry seized during the execution of search
20 warrants at the Tenaya Drive addresses on January
21 2, 2003.

22
23
24 **b. Property destruction or release forms for all**
25 **items collected, identified as the Medinas'**
26 **property, and turned over to their possession**
27
28

1 Property destruction orders are court records.
2 They are outside the scope of discovery
3 authorized by Penal Code § 1054.9, and the
4 request for any property destruction order is
5 therefore denied. Property release forms
6 generated by law enforcement showing the
7 disposition of items seized pursuant to a search
8 warrant are within the scope of discovery
9 authorized by Penal Code § 1054.9. However,
10 defense has not provided a reasonable basis for
11 believing that a property release form
12 documenting that property identified as belonging
13 to the Medinas and returned to them would fall
14 within any Steele category of discovery. It was
15 undisputed in this action that Donald Glenn
16 Pearce and Steven Todd burglarized the Medina
17 residence - the potential relevance of the
18 burglary is related to its timing and the
19 asserted possible participation of others. A
20 property receipt showing that stolen property in
21 the burglary was returned to its rightful owner
22 has no probative value in determining when the
23 item was stolen or who participated in its theft.
24 This request is denied.
25
26
27
28

1 c. Photographs of all locations searched and all
2 items recovered, including the Medinas' safe,
3 jewelry, tools, and money wrappers

4 The defense motion and responsive prosecution
5 exhibits demonstrate that the Modesto Police
6 Department did conduct searches of Tenaya Drive
7 addresses and did seize various items of
8 property. Defense has demonstrated a reasonable
9 basis to believe that photographs taken during
10 the search exist. Photographs of recovered
11 property that were identified as belonging to the
12 Medinas would not be potentially exculpatory for
13 the reasons identified in item b, above. The
14 recovery of jewelry unrelated to the Medina
15 burglary is potentially exculpatory because of
16 the unaccounted jewelry in the Peterson
17 investigation, and therefore falls within Steele
18 categories 2 and 4. The Court orders production
19 pursuant to Penal Code § 1054.9 of any existing
20 photographs of the locations searched where
21 jewelry not identified by the Medinas as their
22 property was seized during the execution of
23 search warrants at the Tenaya Drive addresses on
24 January 2, 2003.

1 d. Interviews or reports documenting whether the
2 Medinas were shown any jewelry collected during
3 the above-referenced searches that did not belong
4 to them

5 Defense exhibit 4, the declaration of Susan
6 Medina, includes a statement from Ms. Medina that
7 prior to trial in this matter she was shown
8 jewelry recovered by the police that did not
9 belong to her. The recovery of jewelry unrelated
10 to the Medina burglary during the search on
11 January 2, 2003 is potentially exculpatory given
12 the unaccounted-for jewelry in the Peterson
13 investigation described in the defense pleadings,
14 and would have been discoverable at trial under
15 Steele category 2. Ms. Medina's declaration
16 provides a reasonable basis for concluding that
17 such interviews occurred and that reports of
18 those interviews exist. The Court grants this
19 request.
20
21

22 e. Interviews or reports documenting whether Scott
23 Peterson was shown any jewelry collected during
24 the above-referenced searches to see whether he
25 could identify it as having belonged to Laci
26 Defense's supporting motion exhibits include a
27 declaration from Mr. Peterson asserting his basis
28

1 for filing the motion. Mr. Peterson would have
2 personal knowledge regarding whether the police
3 ever showed him any items of recovered jewelry to
4 determine whether it belonged to Laci. His
5 declaration is silent on that matter. The
6 defense asserts that the material exists based on
7 their expectation that "a thorough search and
8 documentation of the items seized, particularly
9 jewelry, would be expected...". The primary thrust
10 of the defense argument - at the original trial,
11 in the subsequent appeal and habeas proceedings,
12 and at oral argument on this motion - is that the
13 Modesto Police Department did not thoroughly
14 investigate this case. This request appears to
15 the Court to be consistent with defense's oral
16 argument that they seek to require the
17 prosecution to admit or deny the existence of
18 various investigatory materials, rather than to
19 seek actual production of materials that did or
20 do exist. That is not a proper purpose for a
21 Penal Code § 1054.9 motion. Given the failure to
22 plead a specific basis for believing this
23 material exists that is well within Mr.
24 Peterson's personal knowledge, the Court finds
25 that the defense has failed to demonstrate a
26
27
28

1 reasonable basis for concluding this material
2 exists. This request is denied.

3 **f. Audio/video recordings and transcripts thereof,**
4 **notes, reports, or any other documents relating**
5 **to all interviews conducted, or statements**
6 **obtained during the above-referenced searches**
7
8 Under Penal Code § 1054.9, it is not sufficient
9 for a defendant to simply offer a plausible
10 justification for disclosure of information he
11 has described with some specificity. Section
12 1054.9's discovery is limited to specific
13 materials that the defendant can show fall into
14 any of the categories of material to which the
15 defendant would have been entitled at the time of
16 trial. When a defendant seeks discovery under
17 section 1054.9, he must identify those materials
18 with sufficient specificity to show that he
19 *would*, in fact, have been entitled to *those*
20 materials at the time of trial. Kennedy v.
21 Superior Court (2006) 145 Cal.App.4th 359, at 371.
22 This request does not describe the materials
23 sought with sufficient specificity under Kennedy.
24 The request is denied.

25
26 **g. Notes, reports, correspondence, or other**
27 **documents authored by all officers present for**
28

1 and involved in the above referenced searches,
2 including but not limited to MPD Sgt. Cloward,
3 Officer Kelley, Officer Gonzales, Officer Intorf,
4 Office Pimentel, Det. Grogan, Officer Meyer, Agt.
5 Brodie, Sgt. Helton, Det. Hicks, Officer Locke,
6 Officer Fainter, Officer Ramirez, Lt. Watts, Agt.
7 Suazo, Officer Sanchez, and Officer Garcia

8
9 Under Penal Code § 1054.9, it is not sufficient
10 for a defendant to simply offer a plausible
11 justification for disclosure of information he
12 has described with some specificity. Section
13 1054.9's discovery is limited to specific
14 materials that the defendant can show fall into
15 any of the categories of material to which the
16 defendant would have been entitled at the time of
17 trial. When a defendant seeks discovery under
18 section 1054.9, he must identify those materials
19 with sufficient specificity to show that he
20 would, in fact, have been entitled to those
21 materials at the time of trial. Kennedy v.
22 Superior Court (2006) 145 Cal.App.4th 359, at 371.
23 This request does not describe the materials
24 sought with sufficient specificity under Kennedy.
25 This request is denied.
26
27
28

1 20. Reports, notes, photographs, audio/video
2 recordings and transcripts thereof, results of
3 forensic testing, and/or other documents related to
4 the gun and jewelry anonymously dropped off at the
5 Modesto Police Department on January 2, 2003,
6 including but not limited to:

7
8 a. Digital copy of videotaped surveillance from the
9 Modesto Police Department lobby taken at
10 approximately 1:10 AM on January 3, 2003,
11 depicting a white male adult, late 20s-30s, 5'8"
12 tall, approximately 150 lbs., carrying a blue
13 plastic shopping bag and telling the officer in
14 the callbox he wanted to turn in some stolen
15 property, which was later determined to be
16 jewelry and a gun from the Medina burglary

17 At oral argument, the prosecution acknowledged
18 that this item had been originally provided to
19 the defense, but objected to re-production
20 because the defense failed to demonstrate that it
21 "currently" exists in law enforcement possession.
22 The prior production puts this material squarely
23 into Steele category 1, file reconstruction. A
24 reasonable basis for believing that the
25 prosecution possessed the materials in the past
26
27
28

1 also provides a reasonable basis to infer that
2 the prosecution still possesses the materials.
3 No additional showing on that point is necessary.
4 Barnett v. Superior Court (2010) 50 Cal.4th 890,
5 901. The Court grants this request.

6 **b. All notes, reports, photographs, audio, and video**
7 **recordings and transcripts thereof, and other**
8 **documents regarding any investigation into the**
9 **identity of the person or persons who anonymously**
10 **dropped off items stolen in the Medina burglary**
11 **to the MPD station**

12 The defense withdrew this request at oral
13 argument.

14 **c. Officer Serratos' report documenting the recovery**
15 **of the gun inside the shopping bags delivered to**
16 **the MPD referenced above**

17 The defense withdrew this request at oral
18 argument.

19 **d. Photographs of the recovered property taken by**
20 **CSO Hodson**

21 At oral argument, the prosecution acknowledged
22 that this item had been originally provided to
23 the defense, but objected to re-production
24 because the defense failed to demonstrate that it
25 "currently" exists in law enforcement possession.
26
27
28

1 The prior production puts this material squarely
2 into Steele category 1, file reconstruction. A
3 reasonable basis for believing that the
4 prosecution possessed the materials in the past
5 also provides a reasonable basis to infer that
6 the prosecution still possesses the materials.
7 No additional showing on that point is necessary.
8 Barnett v. Superior Court (2010) 50 Cal.4th 890,
9 901. The Court grants this request.
10

- 11 21. Police reports and/or notes documenting
12 investigative steps taken in the investigation of
13 the Medina burglary concerning eyewitnesses who
14 reported to MPD that they saw a van and three men
15 located on the street outside the Medinas' home on
16 December 24, 2002 including but not limited to:
17
18 a. Reports, interviews, audio and video recording
19 and transcripts thereof (excluding hypnosis video
20 already provided), written statements, or other
21 documents related to the eyewitness account
22 provided by Diane Jackson indicating that she saw
23 three suspicious men with a van outside the
24 Medina home or in the La Loma neighborhood on
25 December 24, 2002 including but not limited to:
26
27
28

1 1. Any attempted identification by Ms. Jackson of
2 the men she reported seeing, and/or whether she
3 saw Steven Todd, Donald Glenn Pearce, and/or
4 any other suspects potentially involved in the
5 Medina burglary;
6

7 Diane Jackson authored a declaration that was
8 attached as an exhibit to the defense motion
9 for DNA, but not attached to the Penal Code §
10 1054.9 motion. In that declaration, Ms.
11 Jackson states that she was never asked to
12 attempt to identify the men arrested for the
13 Medina burglary or any other suspects to the
14 Medina burglary. (Defense Exhibits to the DNA
15 motions, p. 534). Defense has failed to
16 demonstrate a reasonable basis to conclude the
17 requested material ever existed. This request
18 is denied.
19

20 2. Any attempted identification of the van Ms.

21 Jackson saw parked on Cavena Avenue on December
22 24, 2002, other than the Martinez van, which
23 she stated was not the van she saw
24

25 Diane Jackson authored a declaration that was
26 attached as an exhibit to the defense motion
27 for DNA, but not attached to the Penal Code §
28 1054.9 motion. In that declaration, Ms.

1 Jackson states that she was never asked to
2 attempt to any van other than the Martinez van.
3 (Exhibits to the DNA motions, p. 534). Defense
4 has failed to demonstrate a reasonable basis to
5 conclude the requested material ever existed.
6 This request is denied.
7

8 **3. Internal memoranda and/or correspondence**

9 **regarding the MPD's decision to hypnotize Diane**
10 **Jackson;**

11 This material is not a statement of Ms.
12 Jackson. The defense motion pleadings
13 articulate no reasonable basis for believing
14 that any internal memoranda or correspondence
15 regarding MPD's decision to hypnotize Diane
16 Jackson exists, nor does the pleading
17 articulate any basis for believing that such
18 internal memoranda or correspondence would fall
19 within any of the Steele categories. This
20 request is denied.
21

22 **4. Reports regarding contacts with Ms. Jackson**

23 **indicating MPD's decision to hypnotize her on**
24 **January 17, 2003 was a planned hypnosis**
25 **interview and not a "cognitive" interview that**
26 **inadvertently resulted in hypnosis by an**
27 **interviewer, who was not qualified to conduct**
28

1 hypnosis, as MPD later claimed in response to a
2 Trombetta motion on July 8, 2003

3 Defense motion asserts that this material
4 exists based on "Bates 26023, 36747" without
5 further citation to any exhibit filed with this
6 motion or the DNA motion. The Court has
7 searched the exhibits filed with this motion,
8 the prosecution's responsive lodged exhibits,
9 the DNA motion, and has searched the defense-
10 provided USB drive containing the court
11 reporter's transcripts of the judicially
12 noticed trial proceedings (in excess of 20,000
13 pages), and has been unable to locate the
14 transcript of the Trombetta hearing referenced
15 in this request or the identity of the "MPD"
16 personnel who allegedly claimed that a
17 "cognitive" interview was planned with Ms.
18 Jackson. Based on the insufficiency of the
19 defense pleading, the Court has been unable to
20 locate any reasonable basis in the record for
21 concluding that this material exists. This
22 request is denied.

23
24
25 **b. All reports, interviews, audio and video**
26 **recordings and transcripts thereof, statements,**
27 **or other documents related to the information**
28

1 provided by Linda Chilles, wife of former MPD
2 Detective Nick Chilles who worked with Det.
3 Brochhini, indicating that around 9:30 AM on
4 December 24, 2002 she saw 3 men described as a
5 WMA, 30s-40s, 5'11", shoulder length dark brown
6 greasy hair, mustache, dark quilt type jacket.
7 S2 was a WMA 30-40 balding, medium build, flannel
8 shirt. S3 she did not see well, and a van parked
9 outside the Medina residence, and that the men
10 acted suspicious, including but not limited to:
11
12 At oral argument on the motion, defense counsel
13 articulated that the defense did not believe that
14 law enforcement actually interviewed any of the
15 witnesses described below in sections
16 (b), (c), (d), and (e) of this request and their
17 associated sub-parts. The declaration of Paige
18 McGrail establishes that Linda Chilles told her
19 in a post-conviction interview that she was never
20 interviewed by MPD about the information that she
21 provided. Defense Motion, p. 301. On that
22 basis, the motion for the items described in (b),
23 (c), (d), and (e) and all related sub-parts is
24 denied for failure to plead a reasonable basis
25 for believing that these materials ever existed.
26
27
28

1 1. All efforts MPD made to see if Ms. Chilles
2 could identify the men she reported seeing
3 and/or whether she saw Steven Todd, Donald
4 Glenn Pearce, and/or any other suspects
5 potentially involved in the Medina burglary;
6 See item b above.
7

8 2. All efforts MPD made to see if Ms. Chilles
9 could identify the van she saw parked on Coven
10 Avenue in front of the Medinas' home the
11 morning of December 24, 2002
12 See item b above.
13

14 3. All reports, notes or other documentation
15 regarding Linda Chilles' contact with Det. Doug
16 Ridenour on December 31, 2002, at which time
17 she made a second attempt to report the
18 suspicious activity she saw
19 See item b above.
20

21 c. All reports, interviews, audio and video
22 recordings and written transcripts thereof,
23 statements, or other documents related to the tip
24 provided by Niniv T. indicating that he saw three
25 Hispanic males 20s-30s standing outside near an
26 older 1975-1980 van, white, full-sized, no
27 windows, possibly a Chevy van parked on the east
28

1 side of Coven Avenue in the afternoon on
2 December 24, 2002, including but not limited to:

3 See item b above.

4 1. All efforts MPD made to see if this witness
5 could identify the men he reported seeing,
6 and/or whether he saw Steven Todd, Donald Glenn
7 Pearce, and/or any other suspect involved in
8 the Medina burglary on Coven Avenue the
9 morning of December 24, 2002

10 See item b above.

11 2. All efforts MPD made to see if this witness
12 could identify the van he saw parked on Coven
13 Avenue in front of the Medinas' home on
14 December 24, 2002, which he described in very
15 specific detail

16 See item b above.

17 d. All reports, interviews, recordings, statements,
18 or other documents related to the eyewitness
19 account provided by Sean M., indicating that
20 around 3:30 PM on December 24, 2002 he saw three
21 men wearing stocking caps and sunglasses driving
22 an older 70s van that drove past his home in the
23 La Loma neighborhood multiple times, and he saw
24 the men looking into windows of homes like they
25
26
27
28

1 were looking for homes to burglarize, including
2 but not limited to any attempted identifications
3 of the van he observed

4 See item b above.

5 e. All reports, interviews, audio and video
6 recordings and transcripts thereof, statements,
7 or other documents related to the eyewitness
8 account provided by Kim V., who told police on
9 January 1, 2003 that she saw an older "two-toned
10 beige van" associated with three Hispanic men,
11 who frequently sold what appeared to her to be
12 stolen goods from their van at the corner of
13 Yosemite Blvd and Santa Fe Avenue roughly two
14 miles from the Petersons' home. This witness
15 further reported that she had been the victim of
16 a burglary on December 21, 2002 and that she
17 suspected the van she described seeing might have
18 been involved, and that after the disappearance
19 of Laci Peterson, the van she had seen at the
20 corner stopped showing up soon thereafter.

21 See item b above. The declaration of Paige
22 McGrail submitted as an exhibit to the defense
23 DNA motion pursuant to Penal Code § 1405 contains
24 a hearsay statement from Kim V. indicating that
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1 law enforcement never interviewed her about the
2 information provided to the tip line. (Exhibits
3 to DNA motion, p. 63.)

4 22. Reports, notes, audio and video recordings and
5 transcripts thereof, photographs, chain of custody
6 logs, and/or other documents relating to the
7 processing of the Medina residence crime scene,
8 collection of forensic evidence therefrom, and any
9 subsequent examination of that evidence, including
10 but not limited to:

11 a. The chain of custody and present status of the
12 gloves the Medinas pointed out to Evidence ID
13 Technician Doug Lovell and described as having
14 been handled by the person or persons responsible
15 for burglarizing their home;

16 This request was withdrawn by the defense at oral
17 argument.

18 b. The chain of custody and present status of any
19 swabs collected from the gloves described above

20 This request was withdrawn by the defense at oral
21 argument.

22 c. Destruction orders for the above-described items
23 in the event that those items have been destroyed

1 This request was withdrawn by the defense at oral
2 argument.

3 **d. Photographs of the Medina residence and of any**
4 **evidence collected therefrom**

5 Defense asserts that Bates 20385 demonstrates
6 that Evidence ID technician Doug Lovell took
7 photographs of the interior of the Medina
8 residence during the burglary investigation. The
9 prosecution provided Bates 20385, which describes
10 Evidence ID technician Lovell's processing of
11 various items for fingerprint impressions. The
12 report does not say that he took photographs.
13 The court also reviewed the various declarations
14 of Susan Medina, police reports documenting
15 statements of Susan Medina, and defense
16 investigator Gary Ermoian's reports of statements
17 of Susan Medina. Contrary to defense counsel's
18 assertion at oral argument, none of those
19 statements of Ms. Medina provided in the defense
20 DNA motion or the defense motion pursuant to
21 Penal Code § 1054.9 include a statement by Ms.
22 Medina stating that police took photographs of
23 the interior of her home during the burglary
24 investigation. The defense has not adequately
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1 pled a reasonable basis for concluding these
2 items exist. The request is denied.

3 **e. Fingerprint examination reports by Evidence ID**
4 **Technicians Doug Lovell and Joy Smith and/or any**
5 **other DNA, biological, or forensic evidence**
6 **collected from the Medina residence and/or their**
7 **recovered property**

8 Bates 20385 does provide a reasonable basis to
9 conclude that fingerprint impressions were
10 collected from the Medina residence during the
11 burglary investigation. The presence of
12 unidentified impressions not belonging to Steven
13 Todd or Donald Glenn Pearce is potentially
14 exculpatory material in that it might suggest
15 additional participants in the burglary
16 consistent with defense's theory of third-party
17 culpability. (Steele category 2) The Court
18 grants the request for production of the
19 fingerprint examination reports by Lovell and
20 Smith and reports of any fingerprint impression
21 comparisons conducted on materials collected from
22 the Medina residence. Neither Bates 20385 nor any
23 other material submitted by defense provides a
24 reasonable basis for concluding that any non-
25 fingerprint forensic testing was attempted or
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1 performed. Any request broader than the
2 materials ordered above is denied.

3 **f. Hairs, fibers, and/or other trace evidence,**
4 **collected from the Medina home**

5 This request was withdrawn by the defense at oral
6 argument.

7 **g. Laboratory request forms or other correspondence**
8 **requesting any forensic testing on any evidence**
9 **collected in relation to the Medina burglary**

10 For the reasons articulated in item e above, the
11 Court orders disclosure of any laboratory request
12 forms or correspondence related to fingerprint
13 impression evidence collected from the Medina
14 residence and denies the balance of request for
15 failure to demonstrate a reasonable basis that
16 materials other than fingerprint collection and
17 comparison exist.

18 **h. Lab reports and other reports, notes, and/or any**
19 **documents associated with forensic testing**
20 **conducted on any evidence collected in relation**
21 **to the Medina burglary**

22 Neither Bates 20385 nor any other material
23 submitted by defense provides a reasonable basis
24 for concluding that any non-fingerprint forensic
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1 testing was attempted or performed. This request
2 is denied.

3 **i. Destruction orders for all evidence collected in**
4 **relation to the investigation of the Medina**
5 **burglary**

6 As noted above, destruction orders are court
7 records. Court records are outside the scope of
8 permissible discovery pursuant to Penal Code §
9 1054.9. The defense provided no further basis
10 for concluding that any other destruction orders
11 exist, and on that basis the Court denies the
12 balance of this request.
13

14 **23. All reports, notes, interviews, audio and video**
15 **recordings and transcripts thereof, and/or other**
16 **documents containing information regarding the**
17 **identity of all confidential informants utilized by**
18 **law enforcement in the investigation of the Medina**
19 **burglary, who may have information regarding**
20 **additional individuals associated with the Medina**
21 **burglary, including but not limited to:**
22

23 At oral argument, defense counsel indicated that the
24 defense is not seeking revelation of the identity of
25 any of the informants listed, but is seeking any
26 recorded statements. Counsel further indicated that
27 if any of the identified informants were transported
28

1 in police vehicles, the defense was seeking audio
2 recordings from the patrol cars. In this regard,
3 defense has provided no reasonable basis for
4 believing that any patrol cars used to transport the
5 identified informants were equipped with recording
6 devices. The Court denies that request.

7
8 **a. Informant referenced in Officer Helton's report**
9 **at Bates 2391**

10 Bates 2391 was not attached to the defense
11 motion. The prosecution's discovery motion
12 opposition included a copy on Disk 4, page 144.
13 Sergeant Helton's report indicated that Detective
14 Stough talked to a confidential informant who was
15 later driven by two officers and identified
16 Tenaya Drive as the location where Steven Todd
17 and Donald Glenn Pearce resided. Based on the
18 Court's review of the other Bates material
19 referenced below, the informant appears to be the
20 same informant referenced in Detective Stough's
21 report (item c below) as "X", whom Sergeant
22 Cloward "sent two officers" to pick up (item e
23 below). Sergeant Helton's report does not
24 indicate that he ever had direct contact with
25 "X." See below at c for the ruling on "X".
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1 **b. Informant referenced in Officer Helton's report**
2 **at Bates 2392**

3 The defense did not attach a copy of Bates 2392
4 to its motion. The copy lodged with the
5 prosecution's opposition to the discovery motion
6 at page 145 of Disk 4 indicates that Sergeant
7 Helton spoke directly to a confidential informant
8 who said he knew an Indian male named "Sanjeet"
9 who committed burglaries all the time and might
10 have access to a white van. The report did not
11 indicate that this informant conveyed any
12 information to Sergeant Helton suggesting that he
13 knew that "Sanjeet" or his van were ever in the
14 vicinity of the Peterson or Medina homes. The
15 defense has articulated no reasonable basis to
16 believe that this confidential informant provided
17 any other information, and the information
18 provided did not identify Sanjeet or his van as
19 having been involved in the Medina burglary.
20 There is no indication in the report that this
21 informant's statement pertained to Mr. Peterson
22 in any way. When pleading a request under Penal
23 Code 1054.9, the defense must, at a minimum,
24 explain how the requested material is potentially
25 exculpatory. Kennedy v. Superior Court (2006)
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1 145 Cal.App.4th 359 They have not done so. This
2 request is denied.

3 **c. Informant referenced in Det. Stough's report at**
4 **Bates 20361 and 20365**

5 The Court has combined two defense requests under
6 this heading because they relate to different
7 pages of the same report authored by Det. Stough.
8 Det. Stough is referenced as the person who spoke
9 to the confidential informant referenced below in
10 item e related to Det. Cloward's report at Bates
11 20393. Det. Cloward's report indicated that he
12 "sent" two officers to pick up the informant, who
13 then spoke to Det. Stough. Det. Cloward's report
14 further stated that the Modesto Police Department
15 used the informant's information to create teams
16 to search the Tenaya Drive locations where Pearce
17 and Todd were arrested and various items of
18 property stolen in the Medina burglary were
19 found. Det. Stough's report contains the
20 statement of X, who he identifies as a convicted
21 felon who received a \$1,000 reward for the
22 information provided. Det. Stough gave a
23 detailed account of X's statement, which
24 inculpated "Steve," (identified by X in a photo
25 lineup as Steven Todd) in "a burglary that
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1 occurred near the missing girl's house". The
2 informant told Det. Stough that he had heard
3 Steve describing committing the burglary,
4 including stealing a safe, guns, and jewelry.
5 Steve said he had used a dolly to remove the
6 safe. Steve showed X some of the jewelry he had
7 taken. X described the Tenaya residences and
8 their occupants, including "Glen", his children,
9 and the women who lived there. On the same day
10 he spoke to X, Det. Stough and other MPD and
11 parole personnel searched Tenaya Drive and
12 arrested Steven Todd and Donald Pearce. Det.
13 Stough's report at Bates 20365 states that he met
14 with Parole Agents Brodie and Suazo, who provided
15 him with the Tec 9 that the informant referenced
16 in "d" below had recovered for them. Det.
17 Stough's report does not specify whether the "X"
18 he spoke to was the same "X" that Agent Brodie's
19 report discussed. The information provided by
20 "X" to Detective Stough is not exculpatory. "X"
21 did not hear Steven Todd identify any other
22 participants in the burglary. He did not identify
23 any statement by Todd describing the timing of
24 the burglary. Todd's involvement in the burglary
25 was undisputed, and "X's" information inculcating
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1 Todd sheds no light on the issues defense has
2 raised as potentially exculpatory. Defense has
3 made no showing of a reasonable basis that any
4 material beyond the reports already provided
5 exist. The Court denies this request.

6 **d. Informant referenced in Agent Brodie's report at**
7 **Bates 20397**

8 Agent Brodie's report describes the statement
9 taken from confidential informant "X" in Bates
10 20397 as identified in the defense pleading. The
11 Bates page makes no reference to any further
12 statement, recording, or other material sought by
13 the defense. "X" assisted detectives in
14 recovering a Tec 9 firearm stolen in the Medina
15 burglary. The defense withdrew its request for
16 X's identity, and the Court finds insufficient
17 reasonable basis to conclude that any material
18 beyond that in Bates 20397 other than the
19 informant's identity exists. The Court denies
20 this request.

21 **e. Informant referenced in Det. Cloward's report at**
22 **Bates 20393**

23 Request denied. See item c above.

24 **24. Reports, notes, audio and video recordings and**
25 **transcripts thereof, and/or other documents produced**
26
27
28

1 by MPD Off. Shawn Kelley and/or Off. John Sanchez
2 related to the drive taken with the confidential
3 informant, in which the CI identified residences
4 1406 and 1407 Tenaya Avenue and Steven Todd and
5 Donald Glenn Pearce as being involved in the Medina
6 burglary
7

8 Request denied. See items 23(a), (c), and (e)
9 above.

10 25. All reports, notes, audio and video recordings
11 and transcripts thereof, and/or other documents
12 related to the anonymous person who provided Oscar
13 Souza and Mike Brodie with the Tech 9 and 30-round
14 magazine which had been stolen during the Medina
15 burglary, including but not limited to information
16 identifying the anonymous person
17

18 The defense withdrew this request at oral argument.
19

20 26. MPD reports and other information confirming
21 that Ralph G. is the MPD confidential informant who
22 notified the police on January 2, 2003 that Steven
23 Todd, Donald Glenn Pearce, and possibly one
24 additional suspect named "Mark" were responsible for
25 the Medina burglary, including but not limited to:
26 a. Ralph G.'s status as an MPD informant
27
28

1 The defense withdrew this request at oral
2 argument.

3 **b. Information related to whether Ralph G. received**
4 **a reward for the information he provided to MPD**
5 **regarding suspects in the Medina burglary**

6 The defense identifies Bates 2392, discussed
7 above at item 23(b), as the basis for believing
8 this material exists. Other than the discussion
9 of "Sanjeet" and his white van, Bates 2392
10 describes Detective Stough's comments at a law
11 enforcement briefing apparently conveying the
12 information he learned from "X" described in item
13 23(c) above. While Bates 2392 describes Det.
14 Stough stating at the briefing that a "Mark, who
15 was recently raided in the park, was possibly
16 involved," Det. Stough's report of his
17 conversation with X does not indicate that he
18 received any information about a "Mark" from "X".
19 For the same reasons identified above in item
20 23(c), the Court denies this request and sub-
21 requests c and d related to Ralph G.

22 **c. Ralph G.'s criminal history**

23 Request denied. See item (b) above.

24 **d. Ralph G.'s arrest report as of January 3, 2002**
25 **and related booking photos, custodial statements**

1 Ralph G. made to MPD, and audio and video
2 recordings and transcripts thereof, concerning
3 Ralph G.'s knowledge of the individuals involved
4 in the Medina burglary and/or Laci Peterson's
5 disappearance
6

7 Request denied. See item (b) above.

8 e. Ralph G.'s charging documents related to his
9 arrest on January 3, 2003, for the receipt of
10 stolen property, plea negotiations with MPD and
11 the Stanislaus County D.A.'s office, the factual
12 basis for the plea Ralph G. entered, and abstract
13 of judgment related to his guilty plea
14

15 Discovery available pursuant to Penal Code 1054.9
16 is restricted to materials currently in the
17 possession of either the prosecution or law
18 enforcement agencies which participated in the
19 investigation of the case. Charging documents,
20 factual basis statements for pleas, and abstracts
21 of judgment are judicial records. Penal Code §
22 1534(a). Since Penal Code § 1054.9 discovery
23 does not extend to court records, the request for
24 those items is denied. People v. Superior Court
25 (Morales) (2017) 2 Cal.5th 523, 534-535; Shorts v.
26 Superior Court (2018) 24 Cal.App.5th 709, 729.
27
28

1 Ralph G. was not a witness at trial. Therefore,
2 any plea negotiations with the Stanislaus County
3 District Attorney's Office did not result in a
4 grant of immunity or other discoverable event in
5 the Peterson case. Defense has failed to
6 demonstrate how any plea negotiations in Ralph
7 G.'s criminal case are discoverable in any Steele
8 category.
9

10 27. MPD reports, notes, audio and video recordings
11 and transcripts thereof, and/or other documents
12 related to the information Det. Stough received
13 about the possible involvement of a "Mark" and other
14 suspects, as indicated in Sgt. Helton's reports,
15 including but not limited to:
16

17 Defense withdrew this request at oral argument.

18 a. Reports or other documentation relating to all
19 MPD officers' prior contact with or knowledge of
20 Mark T., which led them to suspect the tip that a
21 "Mark" was involved in the burglary was referring
22 to Mark T.
23

24 Defense withdrew this request at oral argument.

25 b. Reports, notes, photographs, recordings, search
26 warrant(s), if any, and other documents relating
27 to the referenced "raid" of Mark T., including
28

1 any search warrant obtained and executed, and the
2 return associated therewith

3 Defense withdrew this request at oral argument.

4 c. Reports, notes, and/or other documents regarding
5 the individual listed as "first name Gregg"
6 interviewed by Agent Brodie, including his full
7 name and identifying information

8 Defense withdrew this request at oral argument.

9 d. Reports, notes, interviews, recordings, and/or
10 other documents related to suspect "Vironi"

11 Defense withdrew this request at oral argument.

12 e. Stanislaus County jail roster showing where Jason
13 N. was in custody from October 30, 2002 to
14 January 3, 2003

15 Defense withdrew this request at oral argument.

16 28. A complete copy of the MPD and Stanislaus
17 County District Attorney's case files related to the
18 December 24, 2002 burglary of the Medina home at 516
19 Covena Avenue (MPD case #02-142951) including all
20 audio and videotaped recordings and transcripts of
21 those recordings, reports, notes, interviews,
22 evidence logs, correspondence, and/or other
23 investigatory documents not yet requested above and
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1 not yet provided to Mr. Peterson, including but not
2 limited to:

3 Defense withdrew this request and all subparts
4 identified in the motion at oral argument.

5 **B. LT. XAVIER APONTE REPORTS**

6
7 A complete copy of the MPD investigation into the
8 exculpatory information CDCR Lt. Xavier Aponte provided
9 to MPD regarding Laci Peterson witnessing Steven Todd
10 committing the Medina burglary on December 24, 2002 (MPD
11 Case No. 02-143025)

12 Defense submitted a declaration of Lt. Aponte, dated
13 March 3, 2005, in the exhibits to the DNA motion. DNA
14 motion exhibits, p. 565-567. In the declaration, Lt.
15 Aponte states that he listened to a recording of a
16 telephone call that a dorm officer brought to his
17 attention between inmate Shawn Tenbrink and his
18 brother Adam Tenbrink. Lt. Aponte states that when he
19 listened to the recording, he heard Adam tell Shawn
20 that Adam was told by someone that Lt. Aponte assumed
21 was Steven Todd that Laci Peterson saw Todd committing
22 a burglary. Lt. Aponte stated that based on the
23 conversation, it did not sound to him as though Adam
24 Tenbrink was present at the burglary, but was relating
25 something that someone else had told him. Lt.
26 Aponte's declaration states that he made a recording
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1 of the call and notified the MPD tip line. He did not
2 receive a call back, so he called again a few days
3 later. Both parties indicate that the second tip
4 provided by Lt. Aponte was provided to defense as
5 Bates 15311. The prosecutions's lodged exhibit Disk D
6 contains a discovery receipt at p. 790 showing that
7 defense investigator William Pavelic signed for that
8 discovery on May 14, 2003. Lt. Aponte's declaration
9 goes on to state that after his second call to the tip
10 line, he received a call from an unnamed MPD detective
11 asking him to arrange a telephonic interview with
12 Shawn Tenbrink. Lt. Aponte did so. His declaration
13 does not indicate that he recorded that interview.
14 Lt. Aponte listened to the interview. Lt. Aponte
15 described Shawn Tenbrink as "not very cooperative"
16 with the detective and indicated that Shawn Tenbrink
17 denied knowing anything about Laci Peterson's
18 disappearance to the MPD detective. Lt. Aponte does
19 not recall if he mailed a copy of the audiotape that
20 he made of the conversation between Adam and Shawn
21 Tenbrink to MPD, or if he was asked to do so. Lt.
22 Aponte declared that he is not aware of any MPD
23 officer visiting the prison facility in person to
24 interview Shawn Tenbrink. He declared that "the
25 telephonic interview with Shawn is the only interview
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1 that took place to my knowledge." (Defense DNA motion
2 exhibits, p. 566). Lt. Aponte further describes that
3 in 2003, the administration building at the prison
4 facility housing Shawn Tenbrink was condemned and all
5 offices were moved. Lt. Aponte searched for the
6 audiotape that he made of the recorded call between
7 Adam and Shawn Tenbrink and was unable to locate it.
8 Lt. Aponte declared that the telephone service
9 provider at the prison facility changed, and the
10 original recording of the call no longer exists. He
11 searched for a log to try to locate the name of the
12 interviewing MPD detective and was unable to find it.
13 Lt. Aponte verified to Detective Grogan that he was
14 the source of the tip identified on Bates 15311.
15 The defense exhibits to the DNA motion also contained
16 a report by defense investigator Carl Jensen
17 documenting a December 1, 2004 unrecorded interview he
18 conducted with Lt. Aponte at 9:40 AM. (DNA motion
19 exhibits, p. 796-798) While the interview was not
20 recorded, Lt. Aponte apparently had an opportunity to
21 review Investigator Jensen's written report of it,
22 because the report submitted bears Lt. Aponte's
23 initials dated December 1, 2004 at 1720 hrs (5:20 PM).
24 In that interview, Lt. Aponte conveyed that the prison
25 utilized a system called IMARS to monitor and record
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1 calls inmates placed to outside parties. Because of
2 storage and budget constraints, tapes generated by
3 IMARS were generally recycled between 30 and 60 days
4 after the call was made. Over time, the storage and
5 recording capabilities and budget improved. As of
6 January 2003, Lt. Aponte described a transition to a
7 new system that allowed calls to be retrieved for a
8 period of time exceeding one year from a company "back
9 East". In Lt. Aponte's statement to Jensen, Aponte
10 repeated that he had called the tip line twice and not
11 received a call back after his first call. He stated
12 that he did not believe he actually listened to the
13 recording of the call between Adam and Shawn Tenbrink
14 until after speaking to a detective from MPD after the
15 second call to the tip line. "To the best of his
16 recollection", Lt. Aponte told Jensen that in the
17 recorded call Adam Tenbrink told Shawn Tenbrink that
18 Laci Peterson was missing, that she had "happened to
19 walk up" while Steve Todd was doing the burglary and
20 "Todd made some type of verbal threat to Laci."
21
22 Lt. Aponte could not remember the name of the MPD
23 detective he spoke to, but said "Grogan" sounded
24 familiar when given a list of names of MPD detectives.
25 The call he listened to lasted 3 to 4 minutes. Lt.
26 Aponte told Jensen that the MPD detective came to the
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1 prison facility to interview Shawn within a couple of
2 weeks of Lt. Aponte's call, but he did not recall the
3 date. Lt. Aponte said Shawn looked "scared" at the
4 interview but Lt. Aponte didn't know why. Lt. Aponte
5 said that Shawn denied knowing Steve Todd or talking
6 to Adam. The detective asked Lt. Aponte to monitor
7 Shawn Tenbrink more closely, and Lt. Aponte said that
8 Shawn Tenbrink's mail and phone calls were monitored
9 more closely. Lt. Aponte was 99% sure he made a
10 separate cassette recording of the call between Adam
11 and Shawn Tenbrink. He did not recall if the
12 detective took the tape with him or received it at a
13 later date. He told Jensen that the office move made
14 it generally difficult to locate things, and stated
15 that he lost his spiral notebook where he would've
16 noted the call with the detective during the office
17 move. He did not specifically discuss his efforts to
18 locate the tape of the recorded call between Shawn and
19 Adam Tenbrink with Jensen. Lt. Aponte told Jensen
20 that after returning to his housing unit from the
21 interview with MPD, Shawn Tenbrink immediately called
22 his home to try to speak to Adam. Adam was not home,
23 so Shawn spoke to their mother. Lt. Aponte recalled
24 that Shawn Tenbrink told his mother to tell Adam that
25 the police had interviewed him and for Adam to "keep
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1 his mouth shut because he doesn't know who he's
2 dealing with." Lt. Aponte got the impression that
3 Shawn and Adam were not friends with Todd, and that
4 Shawn Tenbrink had little to no respect for his mother
5 based on the telephone call. In February 2009, in
6 connection with Mr. Peterson's first habeas corpus
7 petition, Shawn Tenbrink provided a handwritten
8 declaration stating that he had a telephone call with
9 his brother Adam in January 2003 while Shawn was
10 incarcerated on a parole violation. Shawn stated that
11 Adam told him he knew who robbed the house across the
12 street from the Peterson's residence. Shawn said that
13 Adam said that "someone" had told Adam that Laci had
14 seen Todd rob the house. Shawn said he did not
15 remember if Adam told Shawn that Todd robbed the house
16 with anyone else. (Defense DNA motion exhibits, p.
17 805)

- 18
19
20 **1. All audio recordings and transcripts of all calls Lt.**
21 **Aponte made to MPD, or any other law enforcement**
22 **agency involved in the search for Laci Peterson,**
23 **including but not limited to the two calls Lt. Aponte**
24 **described making in January-February 2003**

25 Neither of Lt. Aponte's statements indicate that the
26 tip line that Lt. Aponte called was recorded. The
27 prosecution's exhibits show that Bates 15311 was
28

1 provided to Mr. Peterson's trial team, and Lt. Aponte
2 confirms that it contains the content of the tip.
3 Defense has not provided a reasonable basis for
4 believing that any audio recordings of Lt. Aponte's
5 calls to MPD exist. The Court denies this request.

6 **a. All MPD and other law enforcement agency reports,**
7 **handwritten and typed notes, call logs, audio and/or**
8 **video recordings, voicemail recordings,**
9 **investigative materials, and/or any other documents**
10 **regarding the calls Lt. Aponte made to MPD,**
11 **including but not limited to the two calls Lt.**
12 **Aponte described making in January-February 2003**

13 The Court finds that the defense has not provided a
14 reasonable basis to believe that any of the above-
15 described material exists beyond the Bates page
16 already provided.

17 **b. All telephone calls recorded between inmate Shawn**
18 **Tenbrink while he was in custody in 2003 and his**
19 **brother Adam and/or anyone in the Tenbrink family,**
20 **including but not limited to the call Lt. Aponte**
21 **described in his report to MPD**

22 Both Lt. Aponte's declaration and his statement to
23 Carl Jensen indicate in different ways that he made
24 a recording, but has not since been able to locate
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1 it or describe what happened to it. His statement
2 to Carl Jensen indicates that the prison's telephone
3 recording system in place in January 2003 could
4 retain calls for one year or more. His 2005
5 declaration stated that he attempted to retrieve the
6 recording of the call from the prison recording
7 system and it no longer exists. Neither the
8 interview with Jensen nor the 2005 declaration
9 contain any reason to believe that either the
10 specific call Lt. Aponte copied or any other calls
11 from Shawn Tenbrink's 2003 incarceration existed
12 after 2005 when Lt. Aponte searched. The defense
13 has failed to establish a reasonable belief that
14 this material exists. The request is denied.
15

16 **c. All investigative actions MPD took in response to**
17 **receiving the information Lt. Aponte reported in his**
18 **two calls to MPD, and any reports and/or documents**
19 **related thereto, including but not limited to:**
20

21 **1. The identity of the "unnamed" MPD detective who**
22 **interviewed Shawn Tenbrink in late January or**
23 **early February 2003 about Laci Peterson having**
24 **seen Steven Todd while the Medina burglary was in**
25 **progress and who thereafter directed Lt. Aponte**
26 **to monitor Mr. Tenbrink's telephone calls**
27
28

1 The prosecution argues that Detective Grogan
2 conducted a post-trial investigation attempting
3 to identify any MPD detective who interviewed
4 Shawn Tenbrink, was unsuccessful in that effort,
5 and generated a written report communicating that
6 information to the defense. The defense
7 maintained at oral argument that they do not
8 believe that Detective Grogan's post-trial
9 investigation was accurate or thorough, and the
10 defense is seeking a court order that the
11 prosecution try again using a custodian of
12 records. Lt. Aponte's two statements both
13 indicate that when speaking to the MPD detective,
14 Shawn Tenbrink denied any knowledge of Laci
15 Peterson's disappearance, Steven Todd's
16 statements, or even speaking to his brother Adam.
17 Shawn Tenbrink's 2009 declaration establishes
18 that 1) the information Adam gave him about Laci
19 seeing Todd "rob" the house was multiple hearsay
20 and 2) he doesn't remember Adam mentioning if
21 Todd told him about other participants to the
22 burglary. Even if the MPD detective who
23 conducted the interview could be identified, the
24 defense has provided no basis to believe that
25 Shawn Tenbrink's statement to that detective was
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1 exculpatory. Both Lt. Aponte's statements
2 regarding the call between Shawn Tenbrink and
3 Adam Tenbrink and Shawn Tenbrink's 2009
4 declaration clearly show that neither Tenbrink
5 had any personal knowledge of the events
6 described to Adam by someone who might (or might
7 not) have been Steven Todd. To the extent that
8 Adam Tenbrink may have spoken directly to Steven
9 Todd, Adam is the relevant potentially
10 exculpatory witness. Nothing in Lt. Aponte's
11 statements indicates that any MPD police officer
12 ever interviewed Adam Tenbrink about the content
13 of his call with his brother. Because the
14 defense has failed to demonstrate that this
15 material falls into any of the Steele categories,
16 this request is denied.

17
18 2. Phone records, reports, notes, audio recordings,
19 e-mail, and other written communications, and any
20 other record documenting every contact ever made
21 between Lt. Aponte and Det. Grogan and/or any
22 other MPD detective and/or MPD investigator
23 and/or DA Investigator and/or any other law
24 enforcement officer, between January 2003 and
25 today, regardless of who initiated the contact
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1 This request seeks in part material generated
2 post-trial. Penal Code 1054.9 discovery is
3 limited to that which the defendant was given or
4 would have been entitled to at the time of trial.
5 For the material sought existing between January
6 2003 and the time of trial, under Penal Code §
7 1054.9, it is not sufficient for a defendant to
8 simply offer a plausible justification for
9 disclosure of information he has described with
10 some specificity. Section 1054.9's discovery is
11 limited to specific materials that the defendant
12 can show fall into any of the categories of
13 material to which the defendant would have been
14 entitled at the time of trial. When a defendant
15 seeks discovery under section 1054.9, he must
16 identify those materials with sufficient
17 specificity to show that he *would*, in fact, have
18 been entitled to *those* materials at the time of
19 trial. Kennedy v. Superior Court (2006) 145
20 Cal.App.4th 359, at 371. This request does not
21 describe the materials sought with sufficient
22 specificity under Kennedy. Lt. Aponte worked as
23 a watch commander in a state prison. As phrased,
24 the request for "every contact made between Lt.
25 Aponte and ... any other law enforcement officer"
26
27
28

1 would likely encompass every inter-facility
2 inmate transfer he's spoken about since 2003.
3 The request is patently overbroad. This request
4 is denied.

5 **3. Reports, notes, and/or audio/video recordings and**
6 **transcripts thereof documenting the contents of a**
7 **call, or calls, made by the "unnamed" detective**
8 **of the MPD, or any other law enforcement**
9 **representative, to Lt. Aponte or California**
10 **Rehabilitation Center (CRC) in Norco, in late**
11 **January or early February 2003, per Lt. Aponte's**
12 **signed statements, or any time thereafter**

13 This request seeks in part material generated
14 post-trial. Penal Code 1054.9 discovery is
15 limited to that which the defendant was given or
16 would have been entitled to at the time of trial.
17 For the material sought existing between January
18 2003 and the time of trial, defense has not
19 articulated a reasonable basis for believing it
20 falls into any Steele category. Lt. Aponte's
21 descriptions of the calls he received from the
22 MPD detective investigating the Peterson case
23 describe the MPD detective 1) acknowledging
24 receipt of the tip, 2) scheduling an interview
25 with Shawn Tenbrink, and 3) requesting stricter
26
27
28

1 monitoring of Shawn Tenbrink's communications.
2 The tip received was disclosed and Lt. Aponte
3 verified its contents. The interview scheduled
4 did not result in any exculpatory statement by
5 Shawn Tenbrink. Lt. Aponte's statement
6 describing the content of Shawn Tenbrink's call
7 to his mother does not indicate that he ever
8 communicated the content of that call to any
9 other law enforcement officer. This request is
10 denied.
11

12 **4. Reports, notes, and/or audio and video recordings**
13 **and transcripts thereof of interviews by MPD and**
14 **its representatives, or any other law enforcement**
15 **representative or agent with Shawn Tenbrink when**
16 **he was incarcerated at the California**
17 **Rehabilitation Center (CRC) in Norco, California**
18 **regarding any issue, including statements related**
19 **to an individual with knowledge of or confessing**
20 **to committing the crimes for which Mr. Peterson**
21 **was convicted**
22

23
24 Insofar as this request duplicates the earlier
25 demand for the interview Lt. Aponte described
26 with a MPD detective, this request is denied for
27 the same reasons identified in item 1, above.
28 For the remaining material, defense submitted a

1 declaration from investigator Jason DeWitt
2 indicating that he has attempted to interview
3 Shawn Tenbrink on three or four occasions.
4 Defense DNA Motion exhibits, p. 802. On the last
5 occasion described in September 2023, Shawn
6 Tenbrink's response to a request to talk was
7 "what's in it for me?". In an earlier attempted
8 conversation, he indicated he was interviewed "by
9 a guy or guys in suits about a phone call he had
10 with his brother Adam in January 2003, and there
11 was a video camera set up recording the
12 interview." He did not remember the name or
13 names of the officers or detectives who
14 interviewed him. Significantly, he did not
15 describe having more than one conversation with
16 law enforcement while in prison.
17
18 When a defendant seeks discovery under section
19 1054.9, he must identify those materials with
20 sufficient specificity to show that he *would*, in
21 fact, have been entitled to *those* materials at
22 the time of trial. Kennedy v. Superior Court
23 (2006) 145 Cal.App.4th 359, at 371. This request
24 does not describe the materials sought with
25 sufficient specificity under Kennedy, and Shawn
26 Tenbrink's statements give no reasonable basis to
27
28

1 believe he was ever interviewed on any occasion
2 other than the one described by Lt. Aponte, which
3 did not result in the production of any category
4 of Steele material.

5 **5. Reports and/or notes regarding the phone call**
6 **placed by Shawn Tenbrink to his mother indicating**
7 **that he was interviewed by police while**
8 **incarcerated at CRC in Norco, as indicated by Lt.**
9 **Aponte's December 1, 2004 statement, and any**
10 **other calls related to the Medina burglary or**
11 **Laci Peterson**

12 The Court denies the request for "any other
13 calls" on the same basis as identified in item
14 (b) above. Regarding the call placed by Shawn
15 Tenbrink to his mother, Lt. Aponte's December 1,
16 2004 statement does not indicate that he
17 communicated the results of that call to any law
18 enforcement agency investigating the Peterson
19 case. Lt. Aponte observed Shawn Tenbrink's calls
20 in carrying out his duties as a watch commander
21 for the Department of Corrections. For discovery
22 purposes, in connection with its administrative
23 and security responsibilities in housing
24 California felons while they serve their
25 sentences, CDCR is not part of the prosecution

1 team. People v. Superior Court (2000) 80
2 Cal.App.4th 1305. Lt. Aponte's observations of
3 Shawn Tenbrink's call to his mother were not
4 discoverable under Penal Code 1054.1, and the
5 prosecution at trial had no independent duty to
6 search for them. This request is denied.

7
8 **6. Reports and/or notes regarding the monitoring**
9 **and/or surveillance of Shawn Tenbrink's calls,**
10 **mail, visits, and/or other activities while he**
11 **was in custody at NORCO, as indicated by Lt.**
12 **Aponte in his signed statement of December 1,**
13 **2004**

14 Neither of Lt. Aponte's statements described
15 above indicated that his increased monitoring of
16 Shawn Tenbrink's communications actually
17 generated any results related to the Peterson
18 case. Defense has failed to demonstrate a
19 reasonable basis for believing this material
20 exists. The request is denied.

21
22 **2. All materials related to Det. Craig Grogan's search**
23 **for materials related to the Aponte reports, as**
24 **detailed in Det. Grogan's March 9, 2005 affidavit,**
25 **including but not limited to:**

26
27 As to all materials in this category, the Court
28 considered the prosecution's argument that the

1 requests seek materials generated post-trial and
2 therefore outside the ambit of Penal Code § 1054.9.
3 The Court has rejected that argument since the
4 materials sought were generated after the jury's
5 verdict but prior to Mr. Peterson's sentencing in
6 connection with a motion for new trial.

7
8 **a. A complete and thorough description of all locations**
9 **within the MPD's systems for cataloguing and storing**
10 **reports, communications, evidence, and other**
11 **materials in serious felony cases, including**
12 **descriptions of how the above-described items are**
13 **systematically managed and preserved for retrieval,**
14 **in compliance with law enforcement's discovery**
15 **responsibilities and Brady obligations**

16
17 When a defendant seeks discovery under section
18 1054.9, he must identify those materials with
19 sufficient specificity to show that he *would*, in
20 fact, have been entitled to *those* materials at the
21 time of trial. Kennedy v. Superior Court (2006) 145
22 Cal.App.4th 359, at 371. This request does not
23 describe the materials sought with sufficient
24 specificity under Kennedy, and seeks an inventory of
25 Detective Grogan's actions rather than a statement
26 or report that defense has a reasonable basis to
27 believe exists. This request is denied.
28

1 b. A complete and thorough description of all
2 "computerized files" Det. Grogan searched for "the
3 tip listing Shawn Tenbrink referred to by the
4 defense" and the search terms he used as referenced
5 in his March 9, 2005 affidavit
6

7 When a defendant seeks discovery under section
8 1054.9, he must identify those materials with
9 sufficient specificity to show that he *would*, in
10 fact, have been entitled to *those* materials at the
11 time of trial. Kennedy v. Superior Court (2006) 145
12 Cal.App.4th 359, at 371. This request does not
13 describe the materials sought with sufficient
14 specificity under Kennedy, and seeks an inventory of
15 Detective Grogan's actions rather than a statement
16 or report that defense has a reasonable basis to
17 believe exists. This request is denied.
18

19 c. A complete copy of all information and documents
20 collected as a result of a broad and complete search
21 of all MPD systems, including but not limited to
22 which "computerized files" Det. Grogan searched and
23 what search terms were used in responding to the
24 defense's request for Brady material.
25

26 When a defendant seeks discovery under section
27 1054.9, he must identify those materials with
28

1 sufficient specificity to show that he *would*, in
2 fact, have been entitled to *those* materials at the
3 time of trial. Kennedy v. Superior Court (2006) 145
4 Cal.App.4th 359, at 371. This request does not
5 describe the materials sought with sufficient
6 specificity under Kennedy, and seeks an inventory of
7 Detective Grogan's actions rather than a statement
8 or report that defense has a reasonable basis to
9 believe exists. This request is denied.
10

11 **3. A complete and thorough description of all**

12 "handwritten reports" that were searched and reviewed
13 by Det. Grogan for "reports mentioning Aponte or
14 Tenbrink" as referenced in the March 9, 2005 affidavit
15 When a defendant seeks discovery under section 1054.9,
16 he must identify those materials with sufficient
17 specificity to show that he *would*, in fact, have been
18 entitled to *those* materials at the time of trial.
19 Kennedy v. Superior Court (2006) 145 Cal.App.4th 359,
20 at 371. This request does not describe the materials
21 sought with sufficient specificity under Kennedy, and
22 seeks an inventory of Detective Grogan's actions
23 rather than a statement or report that defense has a
24 reasonable basis to believe exists. This request is
25 denied.
26
27
28

1 4. All of the actual communications, correspondence, e-
2 mails, voicemails, recorded messages, and any other
3 forms of requests Det. Grogan sent to Modesto Police
4 Department "detectives, officers, and supervisors
5 involved in the Peterson investigation" requesting
6 "information about an interview between an officer or
7 detective and Shawn Tenbrink" as referenced in Det.
8 Grogan's March 9, 2005 affidavit

9
10 When a defendant seeks discovery under section 1054.9,
11 he must identify those materials with sufficient
12 specificity to show that he *would*, in fact, have been
13 entitled to *those* materials at the time of trial.

14 Kennedy v. Superior Court (2006) 145 Cal.App.4th 359,
15 at 371. This request does not describe the materials
16 sought with sufficient specificity under Kennedy, and
17 seeks an inventory of Detective Grogan's actions
18 rather than a statement or report that defense has a
19 reasonable basis to believe exists. This request is
20 denied.
21

22
23 5. All of the actual communications, correspondence,
24 emails, voicemails, recorded messages, and any other
25 forms of responses Modesto Police Department personnel
26 or any other law enforcement entity sent to Det.
27 Grogan in response to his request for "information
28

1 about an interview between an officer or detective and
2 Shawn Tenbrink" as referenced in Det. Grogan's March
3 9, 2005 affidavit

4 When a defendant seeks discovery under section 1054.9,
5 he must identify those materials with sufficient
6 specificity to show that he would, in fact, have been
7 entitled to those materials at the time of trial.

8 Kennedy v. Superior Court (2006) 145 Cal.App.4th 359,
9 at 371. This request does not describe the materials
10 sought with sufficient specificity under Kennedy, and
11 seeks an inventory of Detective Grogan's actions
12 rather than a statement or report that defense has a
13 reasonable basis to believe exists. This request is
14 denied.
15

16
17 6. All of the actual correspondence between Det. Grogan
18 and "supervisors in the Investigative Services Unit"
19 regarding whether the Modesto Police Department
20 conducted any interviews at the Norco facility related
21 to the Laci Peterson case, as referenced in Det.
22 Grogan's March 9, 2005 affidavit

23 When a defendant seeks discovery under section 1054.9,
24 he must identify those materials with sufficient
25 specificity to show that he would, in fact, have been
26 entitled to those materials at the time of trial.

27 Kennedy v. Superior Court (2006) 145 Cal.App.4th 359,
28

1 at 371. This request does not describe the materials
2 sought with sufficient specificity under Kennedy, and
3 seeks an inventory of Detective Grogan's actions
4 rather than a statement or report that defense has a
5 reasonable basis to believe exists. This request is
6 denied.

7
8 **7. All communications and correspondence between the**
9 **Modesto Police Department and Lt. Aponte of CRC Norco,**
10 **including but not limited to:**

11 **a. The actual fax, including any cover sheet and other**
12 **information Det. Grogan communicated to Lt. Aponte**
13 **when he faxed him a copy of the "tip sheet" in 2005,**
14 **as referenced in Det. Grogan's March 9, 2005**
15 **affidavit**

16
17 Lt. Aponte's declaration was submitted to the trial
18 court in opposition to the defense motion for new
19 trial. Detective Grogan's affidavit was also
20 submitted to the trial court in connection with that
21 motion. The fax Detective Grogan sent is a witness
22 statement pursuant to Penal Code 1054.1 and
23 therefore within Steele category 2. The Court
24 grants this request.

25
26 **b. Lt. Aponte's actual response(s) to Det. Grogan's**
27 **2005 fax, referenced in (1), whether by email,**
28

1 voicemail, fax, or any other means, as indicated in
2 **Lt. Aponte's March 3, 2005 declaration**

3 Lt. Aponte's declaration was submitted to the trial
4 court in opposition to the defense motion for new
5 trial. Detective Grogan's affidavit was also
6 submitted to the trial court in connection with that
7 motion. Any written or oral response made by Lt.
8 Aponte to Detective Grogan is a witness statement
9 pursuant to Penal Code 1054.1 and therefore within
10 Steele category 2. The Court grants this request.
11

12 **c. A digital copy and written transcript of the**
13 **voicemail message(s) left by Lt. Aponte with the**
14 **Modesto Police Department tipline for the**
15 **investigation of the Laci Peterson case as**
16 **referenced in Lt. Aponte's March 3, 2005 declaration**

17 Defense asserts no reasonable basis for believing
18 that the tipline was digitally recorded in January
19 2003, nor that any transcript beyond the material
20 already provided in Bates 15311 exists. Lt. Aponte
21 confirmed that Bates 15311 was the tip he generated.
22

23 **8. All communications and correspondence between the**
24 **Modesto Police Department and the CRC Norco regarding**
25 **any of the following:**

26 When a defendant seeks discovery under section 1054.9,
27 he must identify those materials with sufficient
28

1 specificity to show that he *would*, in fact, have been
2 entitled to *those* materials at the time of trial.
3 Kennedy v. Superior Court (2006) 145 Cal.App.4th 359,
4 at 371. This request does not describe the materials
5 sought with sufficient specificity under Kennedy, and
6 seeks an inventory of Detective Grogan's actions
7 rather than a statement or report that defense has a
8 reasonable basis to believe exists. This request is
9 duplicative of the previous seven categories of
10 material related to the Aponte tip ruled on above.
11 This request and all of its sub-parts are denied.
12

13 **a. The information Lt. Aponte provided to MPD regarding**

14 Steven Todd seeing Laci Peterson on the morning of
15 December 24, 2002
16

17 See ruling above.

18 **b. All recorded conversations between Shawn and Adam**

19 Tenbrink and recorded conversations between Shawn
20 Tenbrink and his mother
21

22 See ruling above.

23 **c. All interviews - telephonic, in person, or otherwise**

24 conducted with Shawn Tenbrink, and audio and video
25 recordings and transcripts thereof
26

27 See ruling above.
28

1 d. Any other matter related to the Laci Peterson case
2 or the Medina burglary

3 See ruling above.

4 C. CROTON WATCH

5 The following summary of the facts surrounding the
6 Croton watch is taken from the parties' pleadings and
7 Court's review of the relevant interviews described by
8 the referenced Bates numbers, which were provided in
9 the prosecution's lodged exhibit Disk D. Scott
10 Peterson told the Detective Grogan that he believed
11 Laci was wearing a diamond encrusted watch on December
12 24, 2002 before she disappeared. When asked about the
13 kind of metal on the watch she was wearing, Peterson
14 said "I don't know, she had a couple of em, I think
15 she has a silver one and a gold one? A couple of gold
16 ones." When asked, "The one she had on, it would be
17 gold probably, the metal?", Peterson said "Yeah...
18 Probably. Better chance than anything else."
19 Prosecution discovery motion opposition, lodged
20 exhibit Disk 4, Bates 0728. Laci's Croton watch was
21 not located in the Peterson's home. The Modesto
22 Police Department attempted to investigate whether the
23 Croton watch was pawned. Relevant to defense request,
24 Detective Grogan directed a Modesto community service
25 officer to search pawn records for the word "Croton"
26
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1 in March 2003. The officer located one pawn record
2 indicating that a woman had pawned a Croton watch on
3 December 31, 2002. According to defense, the pawn
4 shop where this pawn occurred was less than three
5 miles from the Peterson's home. Mr. Peterson's trial
6 counsel introduced the pawn slip from this pawn as
7 evidence at trial on June 17, 2004 as defense exhibit
8 N. At that point, Stanislaus County District
9 Attorney's Office Investigator Lt. Mark Smith
10 determined that Deanna Renfro, the woman who pawned
11 the watch, was living in Oklahoma. Lt. Smith
12 interviewed Ms. Renfro's mother in order to locate Ms.
13 Renfro. Ms. Renfro's mother stated that Ms. Renfro
14 lived with her in December 2002 and January 2003.
15 Although Ms. Renfro's mother told Lt. Smith that Ms.
16 Renfro had a history of stealing jewelry from her and
17 other family members, when shown a photograph of Laci
18 Peterson's watch Ms. Renfro's mother stated she had
19 never seen it before. Lt. Smith arranged for an
20 Oklahoma District Attorney's Office investigator, Marc
21 Saunders, to interview Ms. Renfro and her boyfriend,
22 James Broyer. Saunders interviewed each separately in
23 July 2004. Those interviews were recorded, and
24 defense counsel Pat Harris signed a discovery receipt
25 for them on September 15, 2004. Ms. Renfro stated she
26
27
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1 pawned the watch twice - first on December 31, 2002.
2 The watch was a gift from Broyer. Broyer said that he
3 purchased the watch used before giving it to Renfro.
4 Renfro said she got the watch in mid-November 2002.
5 Broyer said that he bought the watch the week before
6 Valentine's Day 2002 from a girl named Jenny, who said
7 she got it from her mother. Jenny offered to either
8 sell it to him or trade it for "pot". Broyer paid
9 Jenny \$25 and a quarter ounce of marijuana for the
10 watch. Broyer said that when he bought the watch from
11 Jenny, there was a male friend named "Stephen" with
12 her, who he described as late 20's, shorter than 5'9",
13 and bald. (Steven Todd is described in materials
14 attached to Defense DNA reply brief at p. 165 as
15 having been 6'00 tall and age 31 as of March 31, 1999,
16 which meant he would have been at least 34 in August
17 to November 2022.) Stephen drove a white primer
18 colored 280Z. Broyer said he gave Renfro the watch
19 for Valentine's Day, but only knew of one pawn. He
20 asked her about it when he noticed she didn't wear it.
21 She first told him she lost it, then told him she
22 pawned it and used the money to get drunk with Anthony
23 Scarlata. Investigators had a picture of Laci's
24 Croton watch from a video of it that she had taken
25 when attempting to sell it on eBay prior to her
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1 murder. Both Broyer and Renfro were separately shown
2 the photo of Laci's watch. Broyer stated it was not
3 the watch that he gave Renfro. Broyer said the watch
4 he gave Renfro had a rectangular face, Laci's watch
5 had a round face. He also pointed out other
6 differences about the size and shape of the band, and
7 the shape of the links of the band. Renfro stated that
8 Laci's pictured watch was not the watch that she
9 pawned. She redeemed the first pawn at some point,
10 and then pawned the same watch a second time on
11 Valentine's Day 2003 under the name of a man who
12 accompanied her to the pawn shop that day - Anthony
13 Scarlata. She stated that she had been visited by
14 detectives in late February or early March 2003 and
15 interviewed because they were investigating whether
16 the watch that she pawned belonged to Laci Peterson.
17 In her interview with Saunders, Renfro stated that she
18 thought those investigators were private investigators
19 working for Scott Peterson. Because of the visit from
20 detectives, she never redeemed the second pawn. She
21 gave the detectives who interviewed her the pawn slip
22 from the second pawn. Broyer said that he and Renfro
23 were first contacted by a private investigator who
24 provided a business card, but whose name he did not
25 recall. He gave the second pawn slip to that
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investigator, who did not take a written or tape-recorded statement. After that investigator came to his residence inquiring about the watch, two police detectives showed up to ask about it. Lt. Mark Smith of the Stanislaus County District Attorney's Office contacted the Modesto Police Department to try to identify who those interviewers were. Sgt. Mike Zahr told Lt. Smith that he was unable to find any evidence of that interview. Broyer was reinterviewed by Sanders to get a description of the police interviewers. He recalled that they carried guns, drove an unmarked dark blue vehicle, and wore "star" shaped badges on their belts. They were white men between 35-50 years old, between 5'9" and 6'0". Lt. Smith's report indicated that the Modesto Police Department badges are shaped like shields, not stars. In Broyer's second interview with Saunders, he corrected the timing of his purchase of the watch from Jenny. He said that he now recalled that he bought it between August 2002 and Thanksgiving 2002, and that he had confused the date in the first interview because he knew Renfro pawned it on Valentine's Day. Lt. Smith contacted Sam Newman, an employee of the pawn shop where Deanna Renfro pawned the watch both times. Newman examined the pawn slip that defense introduced

1 at trial, which described the watch as a 14K yellow
2 gold quartz watch with scratches, used. Newman stated
3 that the pawn shop has a diamond detection device that
4 employees are required to use, and note if an item of
5 pawned jewelry contains diamonds on the pawn slip.
6 Laci's watch had diamonds around the face. Newman was
7 shown a picture of Laci's watch and stated that if
8 that watch had been pawned, the appraiser for the shop
9 would have prepared a report on it because it was
10 obviously expensive. That did not occur. After the
11 interview where Renfro disclosed that she had pawned
12 the watch a second time under a different name, Lt.
13 Smith recontacted Newman. Newman located the second
14 pawn slip under the name described by Renfro, which
15 matched the date that Renfro said the watch was
16 pawned. The watch was never redeemed and would have
17 been placed in a cabinet for public sale in June 2003.
18 The pawn shop had no way to track who purchased it.
19 Newman checked his display at the time of the
20 interview (July 6, 2004) and the watch was not there.
21 The second pawn slip described the watch as "14KT Y/G
22 WATCH USED AMD WORN", with no brand mentioned and no
23 description of diamonds. Newman told Lt. Smith there
24 was "no chance" that the watch pawned was Laci's
25 Croton watch depicted in the eBay photo he was shown.
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1 He said that once the watch was not redeemed and was
2 available for sale, he would have had it examined by
3 his jeweler and would have known if it had real
4 diamonds. He told Lt. Smith that he checked with his
5 jeweler, and the jeweler did not remember any ladies'
6 watch with diamonds around the face coming through the
7 store. Defense asserts that the prosecution never
8 disclosed any law enforcement interview with Renfro
9 from 2003 and failed to turn over the second pawn slip
10 prior to trial. The prosecution's exhibits
11 demonstrate that the second pawn slip was disclosed to
12 trial defense counsel Pat Harris, who signed for it on
13 September 15, 2004.

15 The declaration of defense investigator Carl Jensen,
16 attached to the defense DNA motion reply, summarizes
17 both law enforcement and Jensen's contact with James
18 Romano. (Declaration of Carl Jensen, p. 131-138,
19 Defense DNA motion reply). Romano told Jensen that he
20 was in jail watching TV and saw a Court TV report
21 about the pawn of a watch that might have been Laci's.
22 Upon seeing the story, he recalled that in mid-
23 February 2003, a friend named Deanna Harbin Renfro and
24 her friend Anthony Scarlata asked him if he wanted to
25 buy a watch. He described the watch that they showed
26 him as medium sized with a lot of diamonds. Jensen
27
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describes listening to the audio-recorded law enforcement interview of Romano, who told law enforcement that the watch was heavily faceted with 1 ct. diamonds with a medium round or oval face, not petite. Romano didn't buy the watch, and "believed" that Renfro and Scarlata then sold it at a pawn shop. Jensen states that he interviewed Romano in custody at the Stanislaus County jail on October 23, 2004, and further states that "the fact that Anthony Scarlata had pawned the watch on Valentine's Day was not known to the defense and was not publicly known prior to Romano calling to provide police with the information he had." Jensen's declaration further describes interviewing Scarlata on October 23, 2004. Scarlata described being with Ms. Renfro on Valentine's Day 2003, pawning the watch, and Renfro getting into a fight with Broyer over pawning the watch. Scarlata gave the pawn slip back to Renfro. Scarlata described the watch as "gold or silver". Jensen showed him a picture of Laci's Croton watch and he stated that he could not say for certain whether it was or was not the watch that Renfro pawned. He told Jensen that no police ever interviewed him about the watch. In addition to the information about the watch, Romano provided other information to both law enforcement and

1 Jensen about overhearing a group of men in the garage
2 of a Modesto residence in February 2003 discussing
3 Laci having interrupted the Medina burglary. Jensen's
4 declaration discusses various steps that Romano took
5 beginning in July 2004 to contact law enforcement with
6 his information. In the Jensen declaration, the first
7 mention by Romano of the watch incident with Renfro
8 occurred on October 15, 2004, to a Deputy Terry
9 Johnson. 'At that point, contrary to Jensen's
10 declaration, the defense had been in possession of the
11 Scarlata pawn slip, the interviews of Renfro and
12 Broyer, and the police investigation reports of those
13 interviews for a month. There is no further
14 information in the defense pleading to document when
15 the Valentine's Day pawn became "publicly known" or
16 reported. In the prosecution's opposition to the
17 discovery motion Disk 4 exhibits, a report documents
18 that Modesto Police Detective Hendee spoke to Romano
19 on October 18, 2004 - three days after the tip to
20 Deputy Johnson and six days before Jensen's interview.
21 Hendee's report began by stating that Police Clerk
22 Lisa McOwen told Hendee that Deputy Terry Johnson was
23 contacted by Romano (the contact noted by Jensen's
24 declaration to have occurred on October 15). That was
25 the reason Hendee was asked to interview Romano. In
26
27
28

1 addition to the information Romano later conveyed to
2 Jensen, Romano told Hendee he was about to be
3 transferred to state prison to serve a sentence on
4 drug charges. While he began the interview by stating
5 he did not want any consideration, at the end of the
6 interview he asked Hendee to contact his parole
7 officer to recommend that he be allowed to get into
8 truck driving school. Romano also described having
9 been in the hospital on December 25, 2002 for
10 appendicitis, which resulted in emergency surgery. He
11 was in the hospital recovering for two weeks. He
12 described his memory after the surgery as "somewhat
13 clouded" for an undetermined period of time. Later he
14 told Hendee that he was a long-time drug user, and his
15 memory was "sketchy" throughout the phase of his life
16 where he obtained the information he was giving about
17 the Peterson case.
18
19

20 **1. A complete copy of the MPD and Stanislaus County**
21 **District Attorney Office's investigation into the**
22 **Croton watch that was pawned on December 31, 2002 by**
23 **Deanna R. and a watch that was pawned on February**
24 **14, 2003 by Anthony S.**

25 Under Penal Code § 1054.9, it is not sufficient for
26 a defendant to simply offer a plausible
27 justification for disclosure of information he has
28

1 described with some specificity. Section 1054.9's
2 discovery is limited to specific materials that the
3 defendant can show fall into any of the categories
4 of material to which the defendant would have been
5 entitled at the time of trial. When a defendant
6 seeks discovery under section 1054.9, he must
7 identify those materials with sufficient specificity
8 to show that he *would*, in fact, have been entitled
9 to *those* materials at the time of trial. Kennedy v.
10 Superior Court (2006) 145 Cal.App.4th 359, at 371.
11 The request for "a complete copy" of the
12 investigation, when defense pleadings acknowledge
13 that they have Lt. Smith's report, Investigator
14 Saunders' report, the audio recordings of Deanna
15 Renfro's interview (see Defense Reply, p. 26 for
16 description of content of Renfro's recorded
17 interview), and both pawn slips, is insufficiently
18 specific to identify what materials they are
19 actually entitled to under Steele, either for file
20 reconstruction or to obtain material not originally
21 provided. Further, the person who purchased the
22 used watch (Broyer); the person who twice pawned the
23 used watch (Renfro); and the pawn shop owner who
24 maintained the pawn records for both transactions
25 (Newman) all stated that the watch pawned was not
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and could not have been Laci's watch. The only other percipient witness to the second pawn transaction (Scarlata) could not identify Laci's Croton watch as the pawned watch. To demonstrate a reasonable basis for believing material related to the Croton watch is potentially exculpatory, defense cites the statement of James Romano - a felon with an admittedly "sketchy" memory due to long-term drug use, who asked law enforcement for a favor after providing the information, and stated he was triggered to come forward after he saw the watch on Court TV while in jail. Despite defense investigator Jensen's opinion to the contrary, the first document demonstrating Romano's mention of the Renfro/watch transaction (as opposed to other information he also provided) was made in October 2004, one month after the information about the second pawn had been provided to the defense and five months after the first pawn receipt naming Renfro had been introduced in open court. Romano's knowledge of Renfro and Scarlata pawning a watch on Valentine's Day 2003 is not potentially exculpatory - only his identification of that watch as Laci's would be potentially exculpatory. In view of all of the evidence, Romano's statement about the watch

1 does not persuade the Court that there is a
2 reasonable basis to believe that information about
3 the watch beyond that already provided to defense is
4 potentially exculpatory. The defense has failed to
5 meet its burden to demonstrate that any
6 investigative materials into the pawned watch not
7 previously provided are within any of the Steele
8 categories. This request is denied.
9

10 2. All notes, reports, correspondence, and
11 communications including written correspondence,
12 emails, voicemail recordings, faxes, photos, audio
13 and video recordings, and written transcripts
14 thereof, related to the MPD's (and/or any other law
15 enforcement agency's) 2004 investigation into the
16 Croton watch Deanna R. pawned on December 31, 2002
17 and February 14, 2003
18

19 This request is denied for the same reasons stated
20 in item 1 above.
21

22 3. All notes, reports, correspondence, photos, audio
23 and video recordings, and written transcripts
24 thereof, photographs, and/or other documents related
25 to law enforcement's interview(s) with Deanna R. and
26 James B. regarding the Laci Peterson investigation,
27 including but not limited to:
28

1 a. All reports and statements made by James B. and
2 Deanna R. to law enforcement regarding the Croton
3 watch from 2003 to the present date, including
4 but not limited to their statements describing
5 the watch that was pawned before they were shown
6 a photo of Laci's Croton watch, and the interview
7 Inv. Mark Sanders conducted with James B. and
8 Deanna R. when he showed James B. a photograph of
9 a watch and Deanna R. a photograph of a watch
10 This request is denied for all of the reasons
11 stated above in item 1. Further, this request
12 seeks material generated post-trial, which is
13 outside the permissible discovery authorized by
14 Penal Code § 1054.9.
15

16
17 b. All reports, notes, correspondence between Lt.
18 Mark Smith and Inv. Mark Sanders regarding the
19 investigation into the Croton watch Deanna R.
20 pawned
21

22 This request is denied for all of the reasons
23 stated above in item 1.

24 c. All photographs of watches Inv. Sanders showed to
25 James B. and Deanna R. including but not limited
26 to the Croton watch
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1. This request is denied for all of the reasons
2. stated above in item 1.

3. 4. All notes, reports, correspondence, photos, audio
4. and video recordings, and written transcripts
5. thereof, related to the February and/or early March
6. 2003 interview MPD or any other law enforcement
7. agency conducted with Deanna R. at her residence on
8. Rimrock, Modesto or any other interview at any other
9. time
10.

11. This request is denied for all of the reasons stated
12. above in item 1.

13. 5. All notes, reports, correspondence, photos, audio
14. and video recordings, and written transcripts
15. thereof, related to the surveillance MPD and/or
16. other law enforcement performed at Deanna R.'s
17. Rimrock residence in 2003, including but not limited
18. to surveillance conducted by Officer Hicks
19.

20. This request is denied for all of the reasons stated
21. above in item 1.

22. 6. Identify the "confidential reliable informant" known
23. as X, Officer Hicks used to enter Deanna R.'s
24. residence at Rimrock and purchase methamphetamine
25. from Deanna R.
26.
27.
28.

1 This request is denied for all of the reasons stated
2 above in item 1.

3 7. All notes, reports, correspondence, photos, audio
4 and video recordings, and written transcripts
5 thereof, and/or other documents related to law
6 enforcement's interactions with Sam N. and/or The
7 Pawn Shop, between 2003 and the present date,
8 regarding the Croton watch Deanna R. pawned on
9 December 31, 2002 and February 14, 2003, under the
10 name of Anthony S.

11 This request is denied for all of the reasons stated
12 above in item 1. Further, this request seeks
13 material generated post-trial, which is outside the
14 permissible discovery authorized by Penal Code §
15 1054.9.

16 8. All notes, reports, correspondence, photos, audio
17 and video recordings, and written transcripts
18 thereof, and/or other documents related to the
19 information James Romano provided to the Modesto
20 Police Department in 2004 regarding the abduction of
21 Laci Peterson, including, but not limited to:
22 a. All statements made by James Romano to law
23 enforcement officers and/or correctional facility
24 staff regarding information he had relating to
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1 the Laci Peterson investigation, including, but
2 not limited to, his statements made to:

3 **1. Modesto Police Clerk Lisa McOwen**

4 Bates 042986-042990, Det. Hendee's report of
5 his interview with James Romano, demonstrates
6 that Lisa McOwen told Hendee that "a tip had
7 come in" and that Romano contacted Deputy Terry
8 Johnson. In Romano's interview with Hendee,
9 Romano identified the law enforcement officers
10 he contacted directly regarding his information
11 as Sergeant Campbell, Deputy Safford, and
12 Deputy Johnson. Romano never said that he
13 spoke to McOwen, and McOwen never said she
14 spoke to Romano. The defense has not
15 demonstrated a reasonable basis for believing
16 that Romano ever spoke directly to Lisa McOwen.
17 This request is denied.

18 **2. Stanislaus County Sheriff Dep. Terry Johnson**

19 Det. Hendee's report does state that Romano
20 spoke directly to Deputy Terry Johnson, as does
21 McOwen's statement to Det. Hendee. The defense
22 has demonstrated a reasonable basis for
23 believing that this material exists. If true,
24 the information that Romano provided regarding
25 overhearing discussion of Laci confronting the
26
27
28

1 Medina burglars is potentially exculpatory.

2 Defense would have been entitled to it at trial
3 pursuant to Penal Code § 1054.1(e), and is now
4 entitled to it as Steele category 2 material.
5 This request is granted.

6 **3. Modesto Police Department Det. Dodge Hendee**

7 Detective Hendee spoke directly to Romano and
8 recorded the interview. Additionally, Det.
9 Hendee was a trial witness. Defense counsel at
10 oral argument acknowledged that defense is in
11 possession of Hendee's report, but indicated
12 that some of the audio tapes in the defense
13 file were blank. Counsel was unable to specify
14 which tapes were blank. The defense has
15 established a reasonable basis to believe that
16 the tape exists. It was provided at the time
17 of trial and therefore falls into Steele
18 category 1 to the extent that a useable copy is
19 no longer in defense possession, and Steele
20 category 2 as a statement of a trial witness.
21 The Court grants this request in part - the
22 prosecution is ordered to provide a replacement
23 copy of the recordings of Det. Hendee's
24 interviews with Romano.

25 **4. Stanislaus County Sheriff Sgt. Campbell**

1 Det. Hendee's report states that Romano had
2 direct contact with Sgt. Campbell. For the
3 same reason identified in item 2 above related
4 to Deputy Johnson, the Court grants this
5 request.

6 **5. Deputy Safford**

7 Det. Hendee's report states that Romano had
8 direct contact with Deputy Safford.

9 Additionally, investigator Jensen's report
10 establishes that Deputy Safford called the MPD
11 tip line as a result of his contact with
12 Romano. For the same reasons identified in
13 item 2 above related to Deputy Johnson, the
14 Court grants this request.

15 **6. Deputy Johnson**

16 This request is duplicative of item 2, above.

17 The Court makes the same ruling.

18 **9. All reports, memoranda, or other documents authored**
19 **by individuals relating to the information James**
20 **Romano provided to law enforcement**

21 When a defendant seeks discovery under section
22 1054.9, he must identify those materials with
23 sufficient specificity to show that he *would*, in
24 fact, have been entitled to *those* materials at the
25 time of trial. Kennedy v. Superior Court (2006) 145

1 Cal.App.4th 359, at 371. Defense has failed to do
2 so, and this request is denied.

3 **10. All notes, reports, statements, or other**
4 **investigatory documents relating to subjects named**
5 **by James Romano in the report(s) he provided to law**
6 **enforcement, including, but not limited to:**

7
8 When a defendant seeks discovery under section
9 1054.9, he must identify those materials with
10 sufficient specificity to show that he *would*, in
11 fact, have been entitled to *those* materials at the
12 time of trial. Kennedy v. Superior Court (2006) 145
13 Cal.App.4th 359, at 371. Defense has failed to do
14 so regarding all of the sub-parts below, and this
15 request is denied in its entirety.

16
17 **a. James Romano**

18 See above.

19 **b. James B.**

20 See above.

21 **c. Micheline P.**

22 See above.

23 **d. Anthony S.**

24
25 See above. In addition, no reasonable basis to
26 believe material exists, since Scarlata told
27 defense investigator Jensen he was never
28 interviewed by police.

1 e. Curtis S.

2 See above.

3 f. Tim S.

4 See above.

5 g. Rayborn S.

6 See above.

7 h. Deanna R.

8 See above.

9 i. Jimmie G.

10 See above.

11 11. All audio and/or video recordings of interviews
12 with James Romano and James B. and Micheline P.,
13 and/or any other witness named in the information
14 James Romano provided to law enforcement
15
16 When a defendant seeks discovery under section
17 1054.9, he must identify those materials with
18 sufficient specificity to show that he *would*, in
19 fact, have been entitled to *those* materials at the
20 time of trial. Kennedy v. Superior Court (2006) 145
21 Cal.App.4th 359, at 371. This request fails to
22 identify how any statement by "James B.", who was
23 not a trial witness, is potentially exculpatory.
24 Investigator Jensen's declaration in the defense DNA
25 motion reply states that Michelene P. had no
26 recollection of the overheard conversation related
27
28

1 by James Romano. Michelene P. was also not a
2 witness at trial. Jensen indicated that Michelene
3 P. told him that Romano left her a bizarre note
4 about being "in fear for his life" for having
5 information about the Peterson case. Michelene P.
6 never related to Det. Hendee or Carl Jensen that
7 Romano had ever shared what information he claimed
8 to have with her. Her only apparent relevance was
9 her opinion that it would be out of character for
10 Romano to fabricate something like that. Since
11 Romano's alleged information was inadmissible
12 hearsay, he could not have testified to it at trial.
13 Since he was not a trial witness, character evidence
14 related to him was not potentially exculpatory or
15 otherwise discoverable within the meaning of Penal
16 Code § 1054.1. This request is denied.

17
18
19 **12. All internal correspondence by and between law**
20 **enforcement officers and/or correctional facility**
21 **staff regarding the information James Romano**
22 **provided, including, but not limited to:**

23 **a. Sgt. Mike Zahr's request to Lisa McOwen to have**
24 **Det. Hendee interview James Romano**

25 Neither Sgt. Zahr nor Ms. McOwen testified at
26 trial. Romano never stated that he spoke
27 directly to either of them. Defense has failed
28

1 to articulate a basis for believing this material
2 falls into any Steele category. The request is
3 denied.

4 **b. Lisa McOwen's request to Det. Hendee to interview**
5 **James Romano**

6 Denied for the same reason articulated in 12(a).

7
8 **c. Sgt. Campbell's request to Deputy Safford to**
9 **interview James Romano**

10 None of the mentioned individuals were trial
11 witnesses. Romano spoke to both Sgt. Campbell
12 and Deputy Safford, and the Court has found that
13 the defense has articulated a reasonable basis
14 for believing that Romano's statements are
15 discoverable. Defense has not articulated any
16 reason to believe that either Sgt. Campbell or
17 Deputy Stafford's statements to each other would
18 be exculpatory. There is no other basis under
19 Steele to require disclosure. This request is
20 denied.
21

22 **d. Det. Dodge Hendee's conversation with Det. George**
23 **Stough regarding his investigation into the**
24 **Medina burglary**

25 Detective Hendee testified at trial. His
26 statements to Det. Stough would be statements of
27 a trial witness discoverable under Penal Code §
28

1 1054.1 and fall into Steele category 2. His
2 report at Bates 42989 documents that the
3 referenced conversation occurred. Defense has
4 demonstrated a reasonable basis for believing
5 this material exists and entitlement to it. This
6 request is granted.
7

8 13. All reports, copies of correspondence, and
9 other records documenting the surveillance of James
10 Romano's outgoing mail while incarcerated at
11 Stanislaus County Public Safety Center between 2003
12 and 2004, including any letters in which James
13 Romano indicated to "Friends Outside" that he had
14 information related to the Laci Peterson
15 investigation
16

17 Penal Code § 1054.9 is limited to information in the
18 possession of the prosecution and law enforcement
19 agencies assisting in the investigation on behalf of
20 the prosecution. For discovery purposes, in
21 connection with its administrative and security
22 responsibilities in housing California felons while
23 they serve their sentences, CDCR is not part of the
24 prosecution team. People v. Superior Court (2000)
25 80 Cal.App.4th 1305. By analogy, the Stanislaus
26 County Public Safety Center when conducting
27 administrative and security responsibilities for
28

1 housing county inmates is not part of the
2 prosecution team. This request is denied.

3 **14. Booking photos of Anthony S., Curtis S., Deanna**
4 **H., and James B. and the "CDL photograph" of**
5 **Michelene P., shown to James Romano on October 19,**
6 **2004**

7
8 Det. Hendee's report documents that these photos
9 were shown to James Romano during Hendee's
10 interview, and that he correctly named each
11 individual in the photograph. Romano did not
12 testify at trial. Defense has failed to articulate
13 a reasonable basis for believing that copies of the
14 actual photos used are potentially exculpatory,
15 given that no party in the action appears to
16 question Romano's correct identification of the
17 individuals pictured. This request is denied.

18
19 **15. All reports, communications, correspondence,**
20 **photos, notes, audio and video recordings and**
21 **transcripts thereof, and/or other documents relating**
22 **to all contacts between MPD personnel and James B.**
23 **in relation to the Laci Peterson investigation,**
24 **including but not limited to the incident in which**
25 **he provided law enforcement with a pawn ticket for a**
26 **watch made out to Anthony S.**
27
28

1 This request misstates James Broyer's statements.
2 Broyer twice told law enforcement that the
3 individual to whom he gave the second pawn ticket
4 was a private investigator hired by the Peterson
5 family, not a member of the Modesto Police
6 Department. While Gary Ermoian has averred under
7 penalty of perjury that he never interviewed Renfro
8 or Broyer, the record demonstrates that Ermoian was
9 not the only investigator that has worked on Mr.
10 Peterson's case. Further, Ermoian worked with
11 attorneys who accompanied him to interviews, whom
12 Broyer might have believed were investigators. In
13 any event, Broyer was clear that the pawn ticket was
14 not given to police. The record demonstrates that
15 when Broyer was interviewed, the material was
16 disclosed at trial - including the second pawn
17 ticket. The defense has not demonstrated a
18 reasonable basis to believe that any other material
19 exists, or that it would be material since Broyer
20 said the watch pawned was not Laci's watch. The
21 request is denied.
22
23

24 **16. All reports, notes, correspondence, or other**
25 **documents regarding any contacts of MPD or other law**
26 **enforcement related to the investigation into "The**
27 **Pawn Shop", located at 1612 Oakdale Rd., where James**
28

1 Romano indicated Deanna H. had pawned a watch in or
2 around February 2003

3 This request is denied for the same reasons
4 articulated in item 1, above.

5
6 17. All reports, records, notes, correspondence, or
7 other documents describing all efforts made by law
8 enforcement to identify a man who was in possession
9 of items of jewelry from the Medina burglary and
10 goes by the street name "Fireman".

11 The defense asserts this material exists based on
12 Romano's statement to Det. Hendee that a former
13 cellmate, Rayborn Smith, told Romano that some of
14 the Medina burglary jewelry and "possibly" Laci's
15 jewelry ended up in Donald Glenn Pearce's house and
16 "an unknown guy who goes by the street name
17 'Fireman'." According to Smith's statement to
18 Romano, the police went to "Glen's" house and didn't
19 find any of the jewelry. "Glen" then called
20 "Fireman" after the police left and "Fireman" got
21 rid of the jewelry before the police came to
22 "Fireman's" house. MPD Sgt. Helton testified at
23 trial that 1) police did find jewelry from the
24 Medina burglary at Donald Glenn Pearce's residence
25 and 2) Donald Glenn Pearce was arrested at the scene
26 before the police left his house. Sworn trial
27
28

1 testimony demonstrated that Smith's hearsay
2 statement to Romano was false. The defense has
3 provided no reasonable basis to believe that law
4 enforcement ever made efforts to identify "Fireman",
5 and has thereby failed to demonstrate a reasonable
6 basis to believe that the requested material exists.
7 This request is denied.
8

9 **18. All statements by James Romano in his October**
10 **18, 2004 interview identifying someone named "Coyle"**
11 **as having been involved in the Medina burglary, as**
12 **indicated in his October 19, 2004 interview**

13 The Court has already granted the defense request to
14 require production of the audio recordings of James
15 Romano's interviews with Det. Hendee on October 18
16 and 19, 2004. This request is duplicative. The
17 Court's ruling is as stated in item 8(a)(3) above.
18

19 **19. All records, reports, or other documents**
20 **related to and/or describing or summarizing James**
21 **Romano's criminal case history, including sentencing**
22 **proceedings at the time he came forward with**
23 **information regarding the disappearance of Laci**
24 **Peterson in 2004, as represented to the Court by DDA**
25 **David Harris at RT 19699.**

26
27 Defense withdrew this request at oral argument.
28

1 D. DECEMBER 25, 2002 VAN FIRE IN AIRPORT DISTRICT
2 A complete copy of Modesto Police Department Case No.
3 02-142687 and Modesto Fire Department (MFD) case No.
4 SMF02019142, concerning the investigation of an
5 incendiary fire of an orange van containing a mattress
6 with apparent bloodstains, located in the alley
7 between 612 Thrasher and 607 Empire, less than one
8 mile from the Petersons' home, in the early morning of
9 December 25, 2002, the day after Laci Peterson was
10 reported missing. The items requested include but are
11 not limited to the following:
12

13
14 The prosecution's duty of disclosure under Penal Code
15 1054.1 is broader than its due-process duty under
16 Brady. Materiality is relevant in considering a
17 claimed discovery violation after trial has occurred,
18 but does not govern the scope of the duty to disclose
19 in the first place, which encompasses all exculpatory
20 evidence. People v. DeLeoz (2022) 80 Cal.App.5th 642,
21 659. Exculpatory evidence is that which "casts doubt
22 on the defendant's guilt" and "impeaching evidence
23 that calls into question the credibility of government
24 witnesses." People v. DeLeoz, *supra*, at 656. Penal
25 Code § 1054.9, in turn, requires the Court to evaluate
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the defense entitlement to the material at the time of trial.

The orange van evidence was not "impeaching material that called into question the credibility of the prosecution's witnesses." It would fall within Penal Code § 1054.1(e)'s requirement to turn over "any exculpatory evidence" only if it "cast doubt" on the defendant's guilt. Additionally, Penal Code § 1054.1(c), requires the prosecuting agency to turn over "all relevant real evidence seized or obtained as part of the investigation of offenses charged" that is either in the possession of the prosecuting agency or known by the prosecution to be in the possession of the investigating agencies. "Relevant" means having any tendency in reason to prove or disprove a disputed fact that is of consequence to the determination of the action. Evidence Code § 210.

Bryan Spitulski's declaration, submitted at p. 2-13 of the defense DNA motion exhibits, states that upon his initial response to the scene of the orange van fire he was unaware of the missing persons investigation regarding Laci Peterson. Later in the same declaration, Spitulski states that when he became aware of the Peterson investigation and the reported potential connection to a van, he contacted Modesto

1 Police Department Detective Shipley. Spitulski
2 accompanied Det. Shipley, who was investigating the
3 Peterson case, to the premises of the registered owner
4 of the van. He further documents that a search of the
5 van was conducted December 31, 2002. The
6 prosecution's opposition states on p. 193 (p. 205 of
7 the .pdf electronically filed version) that the
8 stolen/burned orange van case was cross-referenced to
9 the Peterson case. The Court does not view the orange
10 van evidence as casting doubt on Peterson's guilt,
11 because no witness or forensic evidence obtained ever
12 established that Laci Peterson was in the orange van.¹
13 However, it is apparent based on the involvement of
14 Detective Shipley and the cross-referencing of the
15 investigation of the two cases that the orange van was
16 "part of the investigation of the offenses charged".
17 The prosecution was therefore required by Penal Code §
18 1054.1(c) to turn over all "relevant real evidence
19
20
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22

23 ¹ Tom Harshman's statement was cited in defense papers, but Harshman's
24 description of the van was completely inconsistent with the color, markings, and
25 window position of the orange van investigated by Spitulski. In addition,
26 Harshman allegedly saw the van on 12/28/2002, which is after the orange van
27 investigated by Spitulski had been burned. Leora Garcia's description of the van
28 she saw associated with a scuffle described it as "light" and "beige, not
white". Her description of the partial plate number and state on the van she
saw were inconsistent with the plate on the orange van located. Mike Chiavette
never saw the woman he identified as Laci in the van or interacting with any of
the man or men he said he saw associated with the van. Homer Maldonado
identified a van he saw at a gas station in proximity to a woman he identified
as Laci Peterson walking her dog, but described the van as having a roof rack,
rear mounted ladder, and window curtains - inconsistent with the burned van.
Obviously inmate J.E.'s 2023 statement cited in reply was not available to

1 seized or obtained" to the defense. Relevance as
2 defined by Penal Code § 210 is a low bar - it requires
3 only a tendency in reason to disprove a disputed fact.
4 Even if not exculpatory, the defense at trial would
5 have been entitled to this material under Penal Code §
6 1054.1(c) had it been requested. It is therefore
7 discoverable under Penal Code § 1054.9 under Steele
8 categories 2 and 4.
9

10 **1. Digital copies of all 911 calls reporting the**
11 **incendiary vehicle fire in the alley between 612**
12 **Thrasher and 607 Empire in Modesto the morning of**
13 **December 25, 2002**

14 Bryan Spitulski's report and declaration reference
15 responding to the scene based on a witness's call,
16 but does not state that it was a 911/emergency call.
17 There is a CAD history (Bates 4095) in the People's
18 exhibits to the DNA motion opposition Disk 4. The
19 defense has not articulated a reasonable basis for
20 believing that the call was made to a recorded
21 emergency line, or that material beyond what has
22 already been provided ever existed. This request is
23 denied.
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28 either side at the time of trial - which is the relevant time period for the
Court's analysis of the defense entitlement to the material sought.

1 2. A complete color copy of the DOJ Central Valley
2 Crime Laboratory file, including but not limited to
3 all bench notes, diagrams, DNA reports including
4 electronic data, gas chromatographs, photos, lab
5 request forms, all documents regarding the
6 examination and forensic testing of all items of
7 evidence collected from the van, including but not
8 limited to the mattress cutting, the rag collected
9 from the fuel tank, any fingerprints and/or palm
10 prints lifted from the scene

11
12 This request is granted for the same reasons
13 identified in the general heading of category D.
14

15 3. All reports, notes, correspondence, communications,
16 audio and video recordings and transcripts thereof,
17 concerning the fire department and/or law
18 enforcement's decision to send the stained mattress
19 fabric found in the back of the van to the DOJ
20 Central Valley Crime Lab for testing in 2003

21 Defense withdrew this request at the hearing.
22

23 4. All documents related to the collection of
24 fingerprints, palm prints, and/or latent prints from
25 the van, as requested in the Incident History Report
26 and any subsequent examination, analysis, or
27 comparisons of that print evidence
28

1 This request is granted for the same reasons
2 identified in the general heading of category D.

3 **5. A complete color copy of MFD Fire Investigator Bryan**
4 **Spitulski's entire investigation file in Modesto**
5 **Fire Department Case No. SMF02019142**

6 This request is granted for the same reasons
7 identified in the general heading of category D. In
8 addition, the discovery receipts attached to the
9 prosecution's DNA motion opposition on Disk 4 show
10 that at least some of this material was turned over
11 pre-trial and signed for by defense investigator
12 William Pavelic on May 2, 2003. Since it was
13 already produced, it is also within Steele category
14 1.
15

16 **6. Color copies of all "photographs" and "scene**
17 **diagrams" created of the orange van, the scene where**
18 **it was located, and any/all evidence collected**
19 **therefrom, including but not limited to:**

20 **a. Full-sized, color copies of the black and white**
21 **thumbnails, titled PC240013.jpg-PC240042.jpg**

22 This request is granted for the same reasons
23 identified in the general heading of category D.

24 **b. All "scene diagrams" created by Fire Investigator**
25 **Bryan Spitulski and/or by any other investigator**
26
27
28

1 This request is granted for the same reasons
2 identified in the general heading of category D.

3 **c. Color copies of all photographs of the orange van**
4 **and its contents, including the stained mattress,**
5 **concrete cinder blocks, metal cans, and other**
6 **items located inside the van taken at the tow**
7 **yard and MPD evidence locker during the**
8 **examinations and collection of evidence from the**
9 **van**

10 This request is granted for the same reasons
11 identified in the general heading of category D.

12 **d. Photographs depicting the cutting and sampling of**
13 **the mattress fabric at the "covered secure area"**

14 This request is granted for the same reasons
15 identified in the general heading of category D.

16 **7. Property and Evidence logs and records, including**
17 **chain of custody from December 25, 2002 to the**
18 **present, detailing the current location and**
19 **condition of the following items of evidence and**
20 **where applicable, color photographs of the packaging**
21 **for the following items:**

22 **a. The burned orange van with license plate 6S66512**

23 This request seeks material generated post-trial,
24 which is outside the scope of permissible
25
26
27
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1 discovery under Penal Code § 1054.9. This
2 request is denied.

3 **b. The mattress fabric sample and other mattress**
4 **material samples collected from the above-**
5 **described burned orange van**

6 Defense withdrew this request at oral argument.

7
8 **c. The glass vial used for presumptive testing of**
9 **the mattress fabric sample, which tested**
10 **presumptively positive for the presence of blood**
11 **as indicated in color photographs**

12 Defense withdrew this request at oral argument.

13
14 **d. The red fuel container, metal fuel container, and**
15 **yellow fuel containers observed in the burned-out**
16 **orange van**

17 Defense withdrew this request at oral argument.

18 **e. The towel found sticking out of the gas tank of**
19 **the burned-out van described above**

20 This request seeks material generated post-trial,
21 which is outside the scope of permissible
22 discovery under Penal Code § 1054.9. This
23 request is denied.

24
25 **f. The gas cap found lying on the ground near one of**
26 **the tires of the burned-out van described above**

1 This request seeks material generated post-trial,
2 which is outside the scope of permissible
3 discovery under Penal Code § 1054.9. This
4 request is denied.

5 **g. The cement cinder blocks found inside the burned**
6 **van**

7 This request seeks material generated post-trial,
8 which is outside the scope of permissible
9 discovery under Penal Code § 1054.9. This
10 request is denied.

11 **h. The fabric cut from the "pillow"**

12 This request seeks material generated post-trial,
13 which is outside the scope of permissible
14 discovery under Penal Code § 1054.9. This
15 request is denied.

16 **i. All other items collected from the van and/or the**
17 **surrounding areas not listed above**

18 This request seeks material generated post-trial,
19 which is outside the scope of permissible
20 discovery under Penal Code § 1054.9. This
21 request is denied.

22 **j. All destruction orders associated with the van**
23 **and/or evidence collected therefrom**

24 This request seeks material generated post-trial,
25 which is outside the scope of permissible
26
27
28

discovery under Penal Code § 1054.9. This request is denied.

8. MPD Policy and Training Manuals in effect in

2002=2005, including Homicide Detective Manuals, Police Investigation Manuals, and any other policy and procedures in effect governing the following:

Defense withdrew this request at oral argument. All sub-parts below are denied based on the withdrawal.

a. Documentation, collection, and preservation of physical evidence

See above.

b. Procedures for interviewing witnesses and suspects, including the recording and documenting of such interviews

See above.

c. The utilization and administration of hypnosis on eyewitnesses

See above.

d. Avoiding confirmation bias and other biases in police investigations

See above.

e. Documentation and disclosure of incentives offered to prosecution witnesses in exchange for testimony

1 See above.

2 **f. All policies and procedures pertaining to the**
3 **administration, documentation, and recording of**
4 **polygraphs, including pre-polygraph and post-**
5 **confession interviews**

6 See above.

7 **g. All policies and procedures pertaining to the use**
8 **of confidential informants, documentation of the**
9 **identities of confidential informants, decisions**
10 **to offer leniency and/or deals in exchange for**
11 **cooperation with law enforcement, evaluation of**
12 **Brady and other discovery obligations when using**
13 **informants, and all other documents governing the**
14 **use of confidential informants**

15 See above.

16 **9. MPD and MFD forensic evidence collection policies**
17 **and procedures in effect in 2002 and 2003**

18 Defense withdrew this request at oral argument.

19 **10. The initial report(s) that MPD Evidence ID Tech**
20 **Lovell's "Supplemental Report" supplements**

21 This request is granted for the same reasons
22 identified in the general heading of category D.

23 **11. All notes, reports, emails, voicemail**
24 **recordings, and/or other internal communications**

1 between MPD and MFD personnel on December 31, 2002,
2 regarding the presumptive positive blood test result
3 from the mattress fabric cutting, about which the
4 police chief, fire chief, and city manager were all
5 informed and who then responded to the evidence
6 locker to view the evidence
7

8 Defense withdrew this request at oral argument.

9 12. All MPD and MFD reports, notes, photos, audio
10 and video recordings and transcripts thereof,
11 documenting and/or memorializing all investigatory
12 actions taken in relation to sightings of a similar
13 van in the La Loma neighborhood, immediately prior
14 to it being reported on fire the morning of December
15 25, 2002, including but not limited to:
16

17 Defense withdrew this request at oral argument. The
18 Court denies all sub-parts in light of the
19 withdrawal.
20

21 a. Mike Chiavette's interview with MPD reporting
22 that he saw a "bright orange Blazer type vehicle
23 in East La Loma Park" that resembled the color of
24 a "Cal Trans" van with suspicious looking men
25 standing nearby, and that he also saw a dog he
26 recognized as the Petersons' dog, McKenzi, in the
27 park on the morning of December 24, 2002
28

1 See above.

2 b. The report called in by Patty R., who informed
3 MPD that on December 25, 2002, at 6:30 AM, a
4 "rust colored" van stalled out on her street in
5 front of her home on Highland Drive, within 1,000
6 feet of the Petersons' home, and a woman knocked
7 on her door asking for gas, which her husband
8 provided to her
9

10 See above.

11 c. All reports related to any investigatory efforts
12 to obtain information related to an "orange
13 Blazer", as indicated by the information called
14 in by Hession H., and all information and/or
15 witness statements obtained pursuant to those
16 efforts
17

18 See above.

19 13. All MPD and MFD reports, notes, photos, audio
20 and video recordings and transcripts thereof,
21 documenting and/or memorializing all investigatory
22 actions taken regarding the theft of the orange van,
23 prior to its burning, including but not limited to:
24 The Court's rulings on the specific materials
25 identified are indicated below. To the extent that
26 the heading articulated a broader request, it is
27
28

1 denied for lack of sufficient specificity under
2 Kennedy, supra.

3 **a. Interviews with all witnesses, including but not**
4 **limited to:**

5
6 **1. Terry Borden**

7 Both Detective Shipley's and Bryan Spitulski's
8 investigative reports reflect that Borden was
9 interviewed, but neither indicated that any
10 recordings were made of the interview. The
11 reports documenting the contents of the
12 statements were contained in the defense DNA
13 motion exhibits, and the defense has not
14 articulated a reasonable basis for believing
15 any other materials specified above existed.
16 This request is denied.
17

18 **2. Dorth Borden**

19 Bryan Spitulski's fire investigation report
20 (Exhibits to prosecution's DNA motion
21 opposition, Disk 4) lists this individual in a
22 section called "Names to Appear", but does not
23 indicate that any statement was taken. The
24 Court was unable to locate any other material
25 in the record referencing an interview with
26 this person. The defense has failed to
27
28

1 demonstrate a reasonable basis to conclude this
2 was done, and the Court denies this request.

3 **3. Mark F.**

4 Denied for the same reasons stated regarding
5 Dorth Borden, above. Spitulski's declaration
6 indicates that although his report contains
7 this name, he has no recollection of who it was
8 or why the name was in the report.
9

10 **4. Robert S. AKA Bobby R.**

11 Detective Shipley's report (p. 814-815 of
12 Defense DNA motion exhibits) reflects this
13 person was interviewed. The report does not
14 indicate the interview was recorded. The
15 defense has not demonstrated a reasonable basis
16 for believing that any materials sought other
17 than the report already provided ever existed.
18 This request is denied.
19

20 **5. Any of the other individuals encountered at the**
21 **Borden property on December 31, 2002**

22 When a defendant seeks discovery under section
23 1054.9, he must identify those materials with
24 sufficient specificity to show that he *would*,
25 in fact, have been entitled to *those* materials
26 at the time of trial. Kennedy v. Superior
27
28

1 Court (2006) 145 Cal.App.4th 359, at 371. This
2 request is denied.

3 **b. All reports submitted by all MFD personnel**

4 present on the scene, including but not limited
5 to Bryan Spitulski, Matthew Curless, Michael
6 Peterson, Django Valledor, and Delbert Jolly

7 The defense pleadings demonstrate that they are
8 already in possession of both of Bryan
9 Spitulski's investigative reports. Although
10 Spitulski's report states that the other
11 mentioned fire personnel were present at the
12 scene, there is no reference in Spitulski's
13 report to any of the others having written a
14 report. Spitulski's declaration does not state
15 that any of the other fire personnel present
16 wrote reports. The defense has not demonstrated
17 a reasonable basis for believing this material
18 exists. The request is denied.

19 **c. Police and fire reports, notes, interviews,**
20 **and/or other documents concerning the theft of**
21 **another vehicle or trailer from the Borden's**
22 **business property roughly two weeks prior to the**
23 **van fire on December 25, 2002 as Terry Borden**
24 **relayed to Fire Investigator Bryan Spitulski**

1 Investigative efforts into thefts of other
2 vehicles from Borden are not "relevant real
3 evidence seized or obtained as part of the
4 investigation of the offenses charged" within the
5 meaning of Penal Code § 1054.1(c). The defense
6 would not have been entitled to the requested
7 materials at the time of trial. This request is
8 denied.
9

10 **d. Investigation into all individuals who had access**
11 **to the Borden van prior to its apparent theft,**
12 **including but not limited to a list of Borden's**
13 **employees**

14 When a defendant seeks discovery under section
15 1054.9, he must identify those materials with
16 sufficient specificity to show that he *would*, in
17 fact, have been entitled to *those* materials at
18 the time of trial. Kennedy v. Superior Court
19 (2006) 145 Cal.App.4th 359, at 371. This request
20 is denied.
21

22 **e. Investigation into whether the key to the van was**
23 **with the van and/or whether a copy of the key was**
24 **in the possession of anyone associated with the**
25 **van**

26 When a defendant seeks discovery under section
27 1054.9, he must identify those materials with
28

1 sufficient specificity to show that he *would*, in
2 fact, have been entitled to *those* materials at
3 the time of trial. Kennedy v. Superior Court
4 (2006) 145 Cal.App.4th 359, at 371. This request
5 is denied. Defense has provided no reasonable
6 basis to believe that such an investigation was
7 ever undertaken.
8

9 **f. Investigation into Robert S.'s (AKA Bobby R.)**

10 **criminal history including the burglary he was on**
11 **probation for, which rendered him searchable, as**
12 **indicated in Det. Shipley's January 23, 2003**
13 **report**

14 The requested material is not "relevant real
15 evidence seized or obtained as part of the
16 investigation of the offenses charged" within the
17 meaning of Penal Code § 1054.1(c). The defense
18 would not have been entitled to the requested
19 materials at the time of trial. This request is
20 denied.
21

22 **g. All documents, audio and video recordings,**

23 **inventory of evidence collected related to MPD's**
24 **search of Robert S.'s residence, located on River**
25 **Road, on December 31, 2002 or any other date, in**
26 **connection with the investigation into the**
27
28

1 disappearance of Laci Peterson, the Medina
2 burglary, and/or the intentionally set van fire
3 reference above the morning of December 25, 2002,
4 including but not limited to the "miscellaneous
5 tools, safe, and additional items" found in
6 Robert S.'s possession on December 31, 2002
7
8 Detective Shipley's report indicates that the
9 referenced search was conducted. This material
10 would have been discoverable either under Steele
11 categories 2 or 4. This request is granted.

- 12 14. All reports, notes, recordings, or other
13 documents detailing statements made by witnesses at
14 the scene of the van fire, including but not limited
15 to the name and full statement made by the reporting
16 party, who stated that the van was not present in
17 the alleyway when he went to sleep the night before
18 Spitulksi's report and the CAD log referenced above
19 that were included in the prosecution's materials
20 reference this. Spitulski's declaration, submitted
21 with Defense DNA motion exhibits, states in
22 paragraph 9: "I recall consulting with Captain
23 Jolly, who informed me that **there were no witnesses**
24 **around,** but that a neighbor had called the fire in."
25 In paragraph 10, Bryan Spitulski states that he
26
27
28

1 spoke with the reporting party, obtained the
2 statement summarized in the heading for this
3 request, and **"did not conduct any further canvas of**
4 **the neighborhood for witnesses to the fire,"** partly
5 because it was Christmas morning and partly because
6 the neighborhood was "notorious" for crime.
7 Spitulski did not write the name of the reporting
8 party in his report (Defense DNA motion exhibits, p.
9 515), nor did the report document his later-
10 remembered conversation with the reporting party.
11 Spitulski's report does not indicate that Detective
12 Shipley or any other fire personnel at the scene
13 made a report or spoke to any witness, including the
14 reporting party. The CAD log referenced above
15 contained a telephone number for the reporting
16 party, but the listed name was "citizen". The
17 defense pleadings reflect that they are now in
18 possession of the reports written by Spitulski.
19 Spitulski failed to document the conversation he now
20 remembers, and there is no indication in any of the
21 material cited that demonstrates a reasonable basis
22 for assuming that another source exists. This
23 request is denied.

- 24
25
26
27 15. A complete and thorough description of all
28 locations within the MFD and MPD's systems for

1 cataloguing and storing reports, evidence, photos,
2 and communications that Det. Grogan searched for
3 discovery that is responsive to Mr. Peterson's
4 request in 2016 for investigation materials related
5 to the van fire, including but not limited to:
6

7 Defense withdrew this request and all sub-parts at
8 oral argument. All are denied.

9 a. All correspondence, including but not limited to
10 email communications, by and between District
11 Attorney Birgit Fladager and Det. Craig Grogan
12 requesting a search for evidence related to the
13 incendiary van fire, as referenced in Det.
14

15 Grogan's 2016 report

16 Withdrawn at oral argument.

17 b. The complete MFD case file related to the
18 investigation of the van fire, MFD Case No. 02-
19 19142, as referenced in Det. Grogan's 2016 report
20

21 Withdrawn at oral argument.

22 c. The complete MPD case file related to the
23 investigation of the van fire, MPD Case No. 02-
24 0142687, as referenced in Det. Grogan's 2016
25

26 report

27 Withdrawn at oral argument.
28

1 d. Correspondence by and between Det. Grogan and the
2 Department of Justice Central Valley Crime
3 Laboratory regarding the mattress cuttings, as
4 referenced in Det. Grogan's 2016 report
5
6 Withdrawn at oral argument.

7 e. A complete copy of the Central Valley Crime
8 Laboratory report regarding the examination and
9 forensic testing of the mattress cuttings,
10 including but not limited to serology testing and
11 reports, bench notes, color photographs, and all
12 internal and external correspondence concerning
13 the testing of those items, as referenced in Det.
14 Grogan's 2016 report
15
16 Withdrawn at oral argument.

17 E. REPORTS OF POST-DECEMBER 24 LACI PETERSON SIGHTINGS

18 1. All reports, audio and video recordings and
19 transcripts thereof, photos, notes, and/or other
20 documents detailing investigative actions taken in
21 response to eyewitness accounts reporting sightings
22 of Laci Peterson on or after December 24, 2002,
23 including, but not limited to:

24 a. Maps of search areas, the names of officers
25 assigned, and the search areas assigned to each
26 officer. Materials developed or used by law
27
28

1 enforcement in 2002 and/or early 2003 while Laci
2 was missing to note or track possible December
3 24, 2002 neighborhood sightings of Laci, McKenzi,
4 or of a woman walking a dog

5 Defense withdrew this request at oral argument.

6
7 b. All reports reflecting any interview(s) by Det.
8 Reid or any other officer with Colleen F., who
9 reported to MPD on December 30, 2002 that "on
10 12/24 between 1000-1030 hrs she was backing out
11 of her driveway when she saw someone that looked
12 like Laci."

13
14 Defense asserts Bates 14828 as the basis for
15 believing this material exists. The Court
16 reviewed Bates 14828, provided by the prosecution
17 in their discovery opposition on lodged Exhibits
18 Disk 4 at p. 281. The tip states that the caller
19 "saw someone that looked like Laci", but went on
20 to describe the person as "heavy set", walking a
21 "very large dog", wearing a "white jacket with
22 brownish trim". The dog she saw "seemed much
23 bigger" than the picture of the dog she saw "in
24 the press". She was "uncertain" if the woman she
25 saw was pregnant. A handwritten note on the tip
26 states that it was given to Detective Reid. The
27 defense has demonstrated a reasonable basis for
28

1 believing that this material exists. Information
2 that cast doubt on the prosecution's trial
3 timeline, if believed, would be potentially
4 exculpatory and material within the meaning of
5 Brady and falls within Steele category 2. The
6 Court grants this request.

7
8 c. All reports reflecting any interview(s) regarding
9 information Homer and/or Helen Maldonado provided
10 to Sgt. Ron Cloward on January 3, 2003, while
11 Laci was still missing, that Mr. Maldonado saw
12 Laci Peterson walking her dog in the La Loma
13 neighborhood on December 24, 2002, and all
14 reports reflecting any follow up interview
15 regarding that same information Homer and/or
16 Helen Maldonado provided to MPD Chaplain Crocker
17 on January 14, 2003

18 Defense withdrew this request at oral argument.

19
20 d. All reports reflecting any interview (s) while
21 Laci was still missing with Tony Freitas, who
22 reported to MPD on December 30, 2002, that he
23 "saw Laci on 12-24-02 about 10:00 AM" walking the
24 dog in a northwest direction on La Loma, near the
25 location where Homer Maldonado reported seeing
26 Laci around that same time
27
28

1 Defense withdrew this request at oral argument.

2 e. All reports reflecting any interview(s) while
3 Laci was still missing by Det. Grogan or any
4 other officer to interview Sharon P., who
5 reported she "might have seen Laci Peterson" on
6 La Loma just south of the bridge on Christmas
7 Eve, not far from the location where Maldonado
8 and Freitas reported seeing Laci, the morning of
9 December 24, 2002
10

11 Defense withdrew this request at oral argument.

12 f. All reports reflecting any interview(s) while
13 Laci was still missing with Rebecca J., who
14 reported on December 26 and 27, 2002 that her
15 neighbors at 215 Covenia saw the "missing person
16 walking her golden retriever west on La Loma Ave
17 near Santa Barbara"
18

19 Defense withdrew this request at oral argument.

20 g. All reports reflecting any interview(s) while
21 Laci was still missing with Frank and Martha
22 Aguilar at 215 Covenia
23

24 Defense references Bates 2745 as the basis for
25 believing this material exists. Bates 2745
26 reflects a neighborhood canvas report on December
27 27, 2002 by an Officer Applegate. Officer
28

1 Applegate did not speak to Frank or Martha
2 Aguilar, but to a neighbor of theirs who told him
3 that they had told her that they saw "the missing
4 person walking her golden retriever west on La
5 Loma Ave near Santa Barbara. She was not wearing
6 a coat and had on a white t-shirt." Officer
7 Applegate went to 215 Covenia but got no answer.
8 Bates 2745 does not reflect that any other
9 officer was assigned to follow up on Officer
10 Applegate's report. Defense investigator Gary
11 Ermoian's declaration submitted in the defense
12 DNA exhibits (p. 427) states that he interviewed
13 Martha Aguilar and she told him that she did not
14 report what she saw to the police. She said her
15 husband spoke to a reporter. Frank Aguilar's
16 declaration was submitted by the defense in their
17 DNA motion exhibits (p. 470) and does not
18 indicate he ever spoke to the police. The
19 defense has not demonstrated a reasonable basis
20 for believing that the requested material ever
21 existed. This request is denied.

24 **h. All reports reflecting any interview(s) while**
25 **Laci was still missing with Vivian (Reagan**
26 **[sic]) Mitchell who called MPD on January 1, 2003**
27 **to report that on December 24, 2002 between 10:00**
28

1 and 10:30 AM she "saw a lady who fits the
2 description of Laci who was walking a golden
3 retriever."

4 Defense references Bates 14871 as the basis for
5 believing this material exists. The Court was
6 unable to locate Bates 14871 in either the
7 defense motion exhibits, the Defense DNA motion
8 exhibits, or the prosecution's lodged Disk 4
9 discovery opposition exhibits. Prosecution Bates
10 13682, on Disk 4 of the discovery opposition,
11 contains an e-mail to the Modesto Police
12 Department attaching a Modesto Bee article dated
13 February 27, 2003 with an interview by Vivian
14 Mitchell reporting her alleged sighting of Laci
15 Peterson and stating that the police had not
16 called her back. The Court also located, on p.
17 147 of the defense DNA motion exhibits, a
18 transcript of a recorded interview conducted by
19 Gary Ermoian with Vivian Mitchell on May 22,
20 2003. In that transcript, Ermoian asked Ms.
21 Mitchell if anyone from the police department
22 ever got back to her after she called the tip
23 line. She said, "not for a long time." The
24 defense DNA motion exhibits contain a declaration
25 of Homer Maldonado (p. 261), where he states that
26
27
28

1 when he talked to Gary Ermoian in May 2003, he
2 explained to Ermoian that Vivian Mitchell told
3 Maldonado that she felt like she was "going
4 crazy" because when she spoke to police officers
5 they tried to get her to change her story to say
6 that the woman she saw had blonde hair. William
7 Mitchell's declaration, attached to the defense
8 DNA exhibits at p. 476, described Vivian's
9 statement and their interview by the defense, but
10 did not say that Vivian Mitchell was ever
11 interviewed by the police while Laci was still
12 missing. The defense has not demonstrated a
13 reasonable basis for believing the requested
14 material exists. This request is denied.

15
16 **i. All reports reflecting any interview(s) while**
17 **Laci was still missing by Inv. Bertalotto or**
18 **other officer with Gene Pedrioli who reported to**
19 **MPD that he saw Laci the morning of her**
20 **disappearance on the west side of the park with**
21 **her dog**

22
23 The defense cites Bates 13586, a tip by a co-
24 worker of Pedrioli identifying Pedrioli and
25 providing his contact information. In their
26 opposition, the prosecution provided Bates 38571
27 on Disk 4, p. 1879, reflecting Investigator
28

1 Bertalotto's report of his interview with both
2 Pedrioli and his wife. In that interview,
3 Pedrioli denies ever having been interviewed by
4 any police officer before Bertalotto. The
5 prosecution demonstrated that Bertalotto's report
6 was discovered to defense at the time of trial,
7 and defense has not identified Bates 38571 as
8 missing from its existing materials. The defense
9 has not demonstrated a reasonable basis for
10 believing any material other than what was
11 already provided exists. This request is denied.
12

13 **j. All reports reflecting any interview(s) while**
14 **Laci was still missing with Rachel B., who**
15 **reported seeing a woman walking her dog on Wilson**
16 **Avenue and "was yelling at her dog to 'come back,**
17 **come back' because the dog had gotten away from**
18 **her"**
19

20 The defense identified Bates 4556 and 15052 as
21 the basis for believing this material exists.
22 Bates 15052 is a tip from Rachel B.'s landlord
23 identifying her, her contact information, and a
24 possible sighting of Laci but "not sure of the
25 details." Bates 4556 reflects an interview of
26 Rachel (reproduced exactly at Bates 15831, so
27 disclosed twice) by an Officer Locke. Rachel
28

1 said was awoken by a woman walking her dog at 10
2 AM on 12/24/2002 wearing black pants and a white
3 T-shirt yelling for the dog to come back because
4 it had gotten loose. Rachel B. said she didn't
5 notice if the woman was pregnant and that it
6 could have been her neighbor Julie. Defense has
7 not identified any of the three cited Bates
8 numbers as missing from their existing materials,
9 and has provided no reasonable basis for
10 believing either that any more material on this
11 topic exists or that it would be discoverable
12 within any Steele category if it did. The Court
13 denies this request.
14

15 **k. Det. Grogan's notes or report detailing his**
16 **December 26, 2002 interview with Mike Chiavette,**
17 **as referenced by Detective Brocchini. Chiavette**
18 **reported seeing the Peterson's dog being walked**
19 **on the footpath where Covenia dead-ends**
20 Detective Grogan testified a p. 18,284, L. 18-22
21 that he never interviewed Mike Chiavette. He
22 further testified that he "researched" that
23 interview and related its contents without
24 hearsay objection from the defense. The defense
25 has provided no reasonable basis to conclude that
26
27
28

1 the material sought exists. This request is
2 denied.

3 **1. All reports reflecting any interview(s) while**
4 **Laci was still missing by Det. Grogan or any**
5 **other officer on the December 29, 2002 call from**
6 **city worker John Brazil, who reported seeing a**
7 **white, pregnant woman walking a dog in La Loma**
8 **Park the morning of December 24, 2002**

9
10 Defense moving papers cited Bates 2106 as the
11 basis for believing this material exists. At
12 oral argument, defense stated that they didn't
13 know if further interviews were conducted or were
14 not. The cited Bates page reflects an interview
15 by Detective McGill with Brazil. Brazil stated
16 that while working in La Loma park sometime
17 between 8:30 AM and 10 AM he saw a pregnant woman
18 walking a dog on a leash that got away from her.
19 She was wearing dark colored sweat pants and a
20 big tan sweatshirt. He saw the Peterson's dog on
21 the news and "believe[d]" it was the same dog,
22 but could not say that the woman walking the dog
23 was Laci. He also "believe[d]" he saw the dog
24 and woman closer to 10 AM but was not sure of the
25 time. The report closes with "Forward to
26 Detective Craig Grogan for his review and
27
28

1 disposition." There is no indication in the
2 report that Detective Grogan ever personally
3 interviewed Brazil, and the defense cites no
4 other part of the discovery or trial record that
5 suggests such an interview happened. The defense
6 has failed to demonstrate a reasonable basis for
7 believing the requested material exists. This
8 request is denied.
9

10 m. All reports reflecting any interview(s) while
11 Laci was still missing with Thomas (Tom)
12 Harshman, who reported to MPD on December 28,
13 2002 that he had just seen a pregnant woman
14 fitting Laci's description who appeared to be
15 under duress getting into a van on Scenic Road,
16 near Claus Road
17

18 Defense withdrew this request at oral argument.

19 n. Any photos of Laci Peterson or other women used
20 during interviews with eyewitnesses to determine
21 whether they saw Laci, or in the alternative,
22 identified another woman
23

24 When a defendant seeks discovery under section
25 1054.9, he must identify those materials with
26 sufficient specificity to show that he *would*, in
27 fact, have been entitled to *those* materials at
28

1 the time of trial. Kennedy v. Superior Court
2 (2006) 145 Cal.App.4th 359, at 371. This request
3 does not specify the specific witnesses with whom
4 the allege photos were used, or make any attempt
5 to explain how those particular witness's
6 statements would have been within a Steele
7 category of discovery. The Court denies this
8 request.
9

10 o. Any photos of the Peterson dog, McKenzi, or other
11 dogs that were used during eyewitness interviews
12 to determine whether they saw McKenzi, or in the
13 alternative, identified another dog
14

15 Defense withdrew this request at oral argument.

16 p. The identity of the "two other pregnant women
17 walking that day" as described by Det. Brocchini
18 in his interview with Fox News Correspondent
19 Laura Ingle that aired March 30, 2023
20

21 Defense's own pleadings contain a number of
22 photographs of pregnant women introduced as trial
23 evidence for the purpose of attempting to
24 demonstrate that eyewitness "Laci" sightings
25 might have confused her with other pregnant women
26 walking dogs in the same area. To be entitled to
27 Penal Code § 1054.9 production, the defense is
28 required to demonstrate a "good faith effort to

1 obtain discovery materials from trial counsel"
2 that was not successful. In making this
3 discovery demand, the defense cites to no Bates
4 material nor any portion of the trial record for
5 the purpose of demonstrating that they have made
6 a good faith effort to determine if they already
7 have the materials described above in their
8 possession. To the extent that this request
9 seeks an order requiring now-retired Detective
10 Brocchini to author a new report describing which
11 two pregnant dog-walking women he was referring
12 to in a 2023 news interview, that is material
13 that the defense could not have been entitled to
14 "at the time of trial" since Brocchini's
15 statement was made in 2023. This request is
16 denied.
17

18 **q. Notes of interviews with any eyewitnesses who**
19 **reported seeing Laci Peterson alive on December**
20 **24, 2002 in the possession of and/or created by**
21 **the Stanislaus County District Attorney's Office**
22 **Defense withdrew this request at oral argument.**
23

24 **F. REPORTS OF SIGHTINGS OF PETERSON DOG ON DECEMBER 24**

25 **1. All reports, audio and video recordings and**
26 **transcripts thereof, reflecting any interview(s)**
27 **while Laci was still missing, with the following**
28

1 witnesses who called MPD and reported seeing a dog
2 fitting McKenzi's description walking alone,
3 unattended in the La Loma neighborhood the morning
4 of December 24, 2002:

5 a. Leora Garcia reported to the MPD on January 7,
6 2003 that she was a driving instructor and was
7 in the La Loma neighborhood the morning of
8 December 24 when she saw an older orange dog by
9 itself, with a leash. On January 10, 2003,
10 Officer Hicks reported that he spoke to Ms.
11 Garcia by telephone and determined the dog not
12 to be the same dog. Mr. Peterson seeks
13 discovery explaining the basis for that
14 determination

15 The defense has not demonstrated a reasonable
16 basis for believing any additional material
17 explaining Officer Hicks' conclusion exists.
18 This request is denied.

19 b. Victoria Pouches reported to MPD Officer R.
20 Beffa on December 25, 2002 that she was jogging
21 in the park the day before between 9:30 and
22 10:00 AM on December 24 and saw a gold-colored
23 dog with a leash on. The dog was on the north
24 side of Dry Creek, pacing back and forth and
25
26
27
28

1 barking "like crazy". Pouches was contacted
2 again on January 1, 2003 by an officer doing a
3 door-to-door canvas and she again reported that
4 she saw a large yellowish dog running loose in
5 the park, north of the Covenia dead end which is
6 near the Petersons' home
7

8 Defense withdrew this request at oral argument.

9 c. Barbara B. called the MPD and reported that she
10 had seen a golden retriever-type dog with a red
11 leash walking by itself at approximately 11:30
12 AM
13

14 Defense withdrew this request at oral argument.

15 d. John H. called MPD on December 27, 2002 to
16 report that "a couple of days ago" he saw a
17 large golden dog running around loose in the
18 Haddon area and that the dog was wearing a
19 collar but he did not notice a leash
20

21 Defense withdrew this request at oral argument.

22 e. Linda S. called MPD on December 27, 2002 and
23 reported that she was out walking her dog two
24 or three days prior and saw a golden retriever
25 with a collar and tags that ran away from her
26

27 Defense withdrew this request at oral argument.

28 G. MISSING BATES PAGES

1 1. Pages that have a top center Bates stamp number
2 generally used by MPD

3 a. 2495 (likely handwritten)

4 Defense reply brief acknowledges that the
5 prosecution has produced this.¹
6

7 b. 2592 (likely handwritten)

8 Defense reply chart indicates this item has not
9 been produced. The prosecution's Disk 4¹ does
10 not contain it. The Court did not find
11 persuasive the prosecution's argument that the
12 defense has failed to demonstrate the existence
13 of the material because they did not prove that
14 MPD used a sequential numbering system to track
15 document production. The voluminous materials
16 produced that do appear to use a sequential
17 number system support the reasonable inference
18 that if there are gaps in the sequence that are
19 not otherwise explained, then there is material
20 missing. The Court finds that for all
21 unexplained numbered discovery sequence gaps, the
22 defense has demonstrated a reasonable basis for
23 believing the material exists. The Court further
24
25
26

27 ¹ In reviewing the pleadings while drafting this order, the Court found
28 defense's reply chart related to the missing Bates pages and the prosecution's
 corresponding Disk 4 extremely helpful. The Court appreciates both parties'
 efforts and organization in this aspect of the briefing.

1 finds that all such material falls within Steele
2 category 1 - file reconstruction. This request
3 is granted.

4 **c. 12260-12265**

5 Defense reply chart indicates this item has not
6 been produced. The prosecution's Disk 4 does not
7 contain it. This request is granted.

8 **d. 14340-14402**

9
10 Defense reply chart indicates this item has not
11 been produced. The prosecution's Disk 4 does not
12 contain it. This request is granted.

13 **e. 16469-16491**

14 The defense reply brief acknowledges receipt of
15 this material.

16 **f. 17220-17595**

17
18 Defense reply chart indicates this item has not
19 been produced. The prosecution's Disk 4 does not
20 contain it. This request is granted.

21 **g. 25889**

22 Defense reply chart indicates this item has not
23 been produced. The prosecution's Disk 4 does not
24 contain it. This request is granted.

25 **h. 26712-26713**

26
27
28 ¹ For all references to "Prosecution Disk 4" in this section, the Court is
referring to Disk 4 lodged with the prosecution's discovery motion opposition.

1 The defense reply brief acknowledges receipt of
2 this material.

3 **2. Pages that have a bottom right Bates stamp number**
4 **a. 4759 (likely has handwritten 4751 at top center)**

5 Defense maintains that this page is still
6 "unaccounted for". The prosecution's Disk 4
7 demonstrates that they produced exactly what the
8 defense described as missing in the original
9 motion. On the page that was produced, in lieu
10 of a stamped Bates number in the bottom right
11 corner of the document is a handwritten number
12 4759A. The next page in the sequence, stamped
13 page 4760, is labeled at the bottom center with
14 the words "Detective P. McLaughlin, Page 2 of 2".
15 The page hand-numbered 4759A bears the words
16 "Detective P. McLaughlin, Page 1 of 2" with the
17 same date. Read together, the two pages are a
18 complete report of Detective McLaughlin's
19 interview of a single witness. The Court finds
20 no reasonable basis to believe that any stamped
21 page 4759 other than page 4759A exists. This
22 request is denied.

23 **b. 5300-5309**

24 Prosecution Disk 4 contains a memorandum
25 generated at the time of the original pre-trial
26
27
28

1 discovery production documenting that the Bates
2 machine page count was off due to the machine
3 pulling 2 sheets instead of one. The memo
4 indicates that this sequence of pages was skipped
5 because of the malfunction. The defense requests
6 a sworn declaration from a custodian of records
7 detailing a diligent search. The Court denies
8 that request, and finds based on the existing
9 memorandum that the defense has not demonstrated
10 a reasonable basis for believing this material
11 exists.
12

13 **c. 10147**

14 Defense acknowledges receipt of this material.
15

16 **d. 10652**

17 Defense acknowledges receipt of this material.
18

19 **e. 10681-10684**

20 Prosecution Disk 4 contains a memorandum
21 generated at the time of the original pre-trial
22 discovery production documenting that the Bates
23 machine page count was off due to the machine
24 pulling 2 sheets instead of one. The memo
25 indicates that this sequence of pages was skipped
26 because of the malfunction. The defense requests
27 a sworn declaration from a custodian of records
28 detailing a diligent search. The Court denies

1 that request, and finds based on the existing
2 memorandum that the defense has not demonstrated
3 a reasonable basis for believing this material
4 exists.

5 **f. 15821**

6 Defense reply brief states this page has not been
7 produced. Prosecution Disk 4 contains three
8 pages in this sequence demonstrating that Bates
9 pages 15820 and 15822 were produced. Between the
10 copies of those two pages, there is a discovery
11 receipt from the time of trial signed by trial
12 counsel Mark Geragos acknowledging receipt of a
13 "CDR-RPTS-#8" consisting of Bates range 15798 to
14 17034. The documents are tip sheet logs. Bottom
15 Bates 15820 has a top stamped number 15766.
16 Bottom Bates 15822 has a top stamped number
17 15767. Based on the sequential top numbers, it
18 appears to the Court that there was an error with
19 the bottom Bates sequencing for this page number.
20 The Court finds that the defense has not
21 demonstrated a reasonable basis for believing
22 this page is missing. This request is denied.

23 **g. 16220**

24 Prosecution Disk 4 contains bottom Bates 16219,
25 which also bears a top stamped number 16165.
26
27
28

1 Bottom Bates 16221 bears a top stamped number
2 16166. Based on the sequential top numbers, the
3 Court finds that this was a likely sequencing
4 error on the bottom numbers and finds no
5 reasonable basis to conclude that any additional
6 material exists. This request is denied.
7

8 **h. 16505-16509**

9 Defense acknowledges receipt of this material.

10 **i. 16523-16544 (likely has Bates 16569-16491 at top**
11 **center)**

12 Defense acknowledges receipt of this material.

13 **j. 17272**

14 Prosecution alleges this number was skipped.
15 Based on its examination of the provided Bates
16 17271 and 17273, the Court agrees. The bottom
17 Bates stamp on 17273 is upside down and smeared,
18 and there are two sequential handwritten numbers
19 immediately adjacent to the Bates stamp. The
20 Court finds a reasonable basis to believe that
21 the Bates machine malfunctioned in this sequence
22 and that no additional material exists. The
23 request is denied.
24

25 **k. 20323-20324**

26 Prosecution Disk 4 contains a memorandum
27 generated at the time of the original pre-trial
28

1 discovery production documenting that this
2 sequence of pages was skipped. The defense
3 requests a sworn declaration from a custodian of
4 records detailing a diligent search. The Court
5 denies that request, and finds based on the
6 existing memorandum that the defense has not
7 demonstrated a reasonable basis for believing
8 this material exists.
9

10 **1. 21696-21697 (likely has Bates 21303-21304 at top**
11 **center)**

12 Defense acknowledges receipt of this material.

13 **m. 22527**

14 Defense alleges this material was not provided.
15 The prosecution alleges it does not exist, and
16 states in its opposition that this number appears
17 to have been skipped. Disk 4 contained the next
18 bottom Bates page in the sequence, numbered
19 22528. That page has a stamped top number of
20 21814. The Court compared the top-stamped number
21 to the list of top-stamped numbered pages the
22 defense has asserted it does not have, 21813 was
23 not on that list. The Court finds that the
24 defense has not, in this instance, demonstrated a
25 reasonable and good faith effort to determine
26 whether this page is in their existing materials
27
28

1 and that their attempt to obtain this material
2 from trial counsel was unsuccessful. This
3 request is denied.

4 **n. 22871**

5 The prosecution maintains this bottom Bates page
6 number was skipped. Prosecution Disk 4 contains
7 bottom Bates pages 22870 and 22872. They are
8 part of a transcript of a recorded conversation
9 between Peterson and Amber Frey. The transcript
10 contains both internal page numbers and top
11 stamped numbers. The top stamped numbers on
12 22870 and 22872 are sequential. The internal
13 transcript page numbers are sequential. Despite
14 this, the defense requests that the Court order
15 an affidavit from an evidence technician or
16 custodian of records that the page was skipped.
17 The Court finds no reasonable basis to conclude
18 the skipped Bates page exists. This request is
19 denied.
20
21

22 **o. 23908-23909**

23 Defense acknowledges receipt of this material.

24 **p. 25029**

25 Defense acknowledges receipt of this material.

26 **q. 25315**

1 The prosecution maintains that this page was
2 skipped. Prosecution Disk 4 contains Bates pages
3 25313, 25314, and 25316. They appear to be
4 monthly training logs for a scent dog, although
5 neither the name of the dog nor handler is
6 specified. Page 25313 is the monthly log for
7 November 2001, page 25314 is the monthly log for
8 December 2001, and page 25316 is the monthly log
9 for January 2002. The Court agrees with the
10 prosecution that the page number was skipped in
11 error, and finds no reasonable basis to conclude
12 any additional material exists. This request is
13 denied.
14

15 **r. 26313-26314**

16 The defense acknowledges receipt of this
17 material.
18

19 **s. 26511**

20 The prosecution maintains that this Bates number
21 was skipped. Disk 4 contains Bates pages 26510
22 and 26512. They are portions of a transcript of
23 a conversation between Scott Peterson and a
24 person who did not testify at trial. The
25 transcript contains sequential internal page
26 numbers with no missing pages in the internal
27 sequence. The defense has not alleged that the
28

1 underlying recording was not provided, and has
2 not alleged any review of the recording to
3 evaluate whether the transcript is inaccurate.
4 The Court finds no reasonable basis to believe
5 this Bates page exists, and denies this request.

6 **t. 26771-26778**

7 The defense acknowledges receipt of this
8 material.

9 **u. 32850**

10 Prosecution Disk 4 contains Bates 32849, followed
11 by a sequence of pages starting at Bates 32851
12 that are labeled with the words "RAP", the name
13 of an individual who did not testify at trial,
14 and "DOB:" with no date of birth specified.
15 Bates 32849 is a property record relating to
16 property retained for safekeeping by the Modesto
17 Police Department in connection with the apparent
18 arrest of the named individual. Bates 32849
19 contains the personal identifying information of
20 that individual. The prosecution asserts that
21 Bates 32850 appears to be a missing placeholder
22 page for a criminal history record provided to
23 defense in discovery. The defense requests an
24 affidavit from an evidence technician or
25 custodian of records. The defense does not
26
27
28

1 allege any search of the materials obtained from
2 trial counsel to determine if the underlying
3 criminal history report of the arrested
4 individual is already in their possession. The
5 Court denies this request for failure to allege a
6 good faith effort to determine if the production
7 from original trial counsel contained this
8 material.
9

10 **v. 32892**

11 Prosecution Disk 4 contains Bates pages 32891 and
12 32893. In addition to the bottom right Bates
13 numbers, these pages contain top-stamped numbers.
14 The bottom right Bates number on 32893 is smeared
15 and hand-initialed. The top stamped numbers on
16 32891 and 32893 are sequential. The defense
17 nevertheless requests an affidavit from a
18 custodian of records verifying the absence of the
19 page. The Court finds no reasonable basis to
20 conclude that any additional material exists.
21 This request is denied.
22

23 **w. 33770**

24 Prosecution Disk 4 contains Bates 33769, which is
25 the last page of a criminalist's report. The
26 next provided Bates page is 33771. Bates pages
27 33771-37777 are placeholder pages for a criminal
28

1 history report, similar to the description of
2 Bates 32850 above. Unlike Bates 32850 above, the
3 placeholder sheets here contain only the first
4 name and date of birth of the individual, and
5 there is no adjacent Bates material that contains
6 sufficient personal identifying information of
7 that individual for the defense to determine if
8 the materials that they obtained from trial
9 counsel already contain the criminal history.
10 Since the record demonstrates that the criminal
11 history was provided at the time of the original
12 trial and the "placeholder" does not allow the
13 defense to verify that they have it, the Court
14 finds that the underlying criminal history is
15 Steele category 1 material. The prosecution is
16 ordered to provide to the defense a complete copy
17 of the criminal history information of the
18 individual identified in the placeholder Bates
19 33771-33777.
20
21

22 **x. 34030-34031**

23 Defense acknowledges receipt of this material.

24 **y. 35082**

25 Defense acknowledges receipt of this material.

26 **z. 35088-35089**
27
28

1 Prosecution Disk 4 contains Bates 35087, a copy
2 of the first page of a subpoena duces tecum to
3 Sprint. The first page of the subpoena does not
4 describe the records sought, but says "see
5 attachment A". There is no attachment A in the
6 Bates records. The next page in the sequence is
7 Bates 35090, the first page of a letter from a
8 Sprint subpoena processing employee that
9 describes materials apparently produced in
10 response to the subpoena. The prosecution
11 asserts the missing pages are skipped Bates
12 pages. Based on its examination of the records,
13 the Court finds that it is reasonably likely that
14 the omitted Bates pages are the "attachment A"
15 describing the materials subpoenaed. The defense
16 has demonstrated a reasonable basis to believe
17 that the omitted pages exist. The Court grants
18 this request.
19
20

21 **aa. 37005**

22 The defense acknowledges the receipt of this
23 material.

24 **bb. 38181**

25 Prosecution Disk 4 contains Bates 38180 and
26 38182. They appear to be part of a larger 40-
27 page Modesto Police Department document. In
28

1 addition to the bottom right Bates numbers, each
2 of the two bracketing pages has a bottom page
3 number internal to the document (eg Page 25 of
4 40) and a stamped top center page number. The
5 stamped top center page numbers on 38180 and
6 38182 are sequential, as are the bottom internal
7 paginations. The Court agrees with the
8 prosecution that this is a skipped Bates number,
9 and finds no reasonable basis to conclude any
10 additional material exists. The requests for
11 production and/or a verified affidavit from a
12 custodian of records are denied.
13

14 **cc. 38627-38629**

15 The prosecution's responsive lodged exhibits on
16 Disk 4 contain, on page 1885, a discovery log
17 provided on March 25, 2004 indicating that this
18 sequence was "skipped due to Bate stamper",
19 signed as received by defense trial counsel Pat
20 Harris on March 25, 2004. The Court therefore
21 concludes there is insufficient reasonable basis
22 to conclude that this material ever existed.
23
24 This request is denied.

25 **dd. 41297**

26 Prosecution Disk 4 contains Bates 41296. It is a
27 fax cover page from Richmond Police Officer T.
28

1 Gard to Det. Grogan indicating a 2-page fax
2 including the cover sheet on June 14, 2004. The
3 prosecution asserts that Bates 41297 is a missing
4 stamp, but does not provide Bates 41298 for the
5 Court to assess that argument. It appears
6 reasonable to conclude that Bates 41298 is the
7 second page of Officer Gard's 2-page fax.
8
9 However, the cover sheet also bears a stamped top
10 number - 27539. The Court has examined defense's
11 list and supplemental list of missing top-stamped
12 numbers, and 27540 is not on that list. The
13 Court finds that the defense in this instance has
14 not asserted a good faith and reasonable effort
15 to determine if the materials already provided by
16 trial counsel contain this document. The request
17 is denied.

18
19 **ee. 41737-41747 (likely has Bates 27818-27827 at**
20 **top center)**

21 Defense acknowledges receipt of this material.

22 **ff. 42545**

23 Defense acknowledges receipt of this material.

24 **gg. 42857-42903**

25 Defense acknowledges receipt of this material.

26 **hh. 43084-43088**
27
28

1 The parties' briefing is in conflict on this
2 issue. The defense indicates the request was
3 refused. The prosecution's opposition states
4 that it was discovered, and asserts no apparent
5 objection to production. Disk 4 does not contain
6 this material. The Court grants this request.
7

8 **ii. 43098-43152**

9 The prosecution asserts this material was
10 "discovered", which the Court assumes refers to a
11 previous production. It was not on Disk 4.
12 Defense reply states that it was refused as
13 having been generated post-trial. The opposition
14 states that "many" are post-trial reports and
15 therefore not discoverable under Penal Code §
16 1054.9. The prosecution lodged the same
17 objection to earlier material that was generated
18 after the jury's verdict but prior to
19 pronouncement of Mr. Peterson's original
20 sentence. The Court views "post-trial" for
21 purposes of Penal Code § 1054.9 as meaning post-
22 sentencing, since information relevant to a
23 motion for a new trial would be subject to the
24 prosecution's ongoing discovery obligation even
25 after a jury's verdict. The Court grants this
26 request and orders production of any material in
27
28

this Bates range dated on or before March 16,
2005.

jj. 43214 and above

The parties have the same dispute for this material as for item ii, above. The Court's ruling is the same. The Court grants this request and orders production of any material in this Bates range dated on or before March 16, 2005.

H. GENE RALSTON BAY SEARCH DATA

1. Any reports or notes authored by MPD Sgt. Cloward, and/or correspondence between Gene Ralston and Sgt. Cloward, regarding their mid-February 2003 discussion about an object captured by sonar imaging on January 24, 2003, that measured 5.3 feet in length and appeared to have two small objects on opposite sides of one end, referenced in Gene Ralston's 2003 report

The defense asserts this material exists based on Gene Ralston's 2003 report at Bates 26854, which states in relevant part: "At that time, with approval of Sergeant Cloward, I called Kevin Pehle of Inshore Divers in Pittsburg, California." (Prosecution Lodged Exhibit Disk 4 to the PC § 1054.9 motion). The report indicates that the

1 request to Pehle was made because search conditions
2 were poor for attempting to image two targets, and
3 Ralston was attempting to see if Pehle could assist
4 with either more powerful equipment or more divers.
5 The report makes no reference to any report by Sgt.
6 Cloward existing. The defense has provided no
7 reasonable basis to believe that Sgt. Cloward
8 actually generated a separate report of conveying
9 his approval of Ralston's request. This request is
10 denied.
11

12 **2. All names of CARDA personnel and animals that**

13 "responded during the weekend of March 6 and 7" to
14 assist Ralston & Associates with searches, and all
15 reports, notes, logs, photos, and audio or video
16 recordings detailing the searches and alerts that
17 occurred during this search
18

19 Defense withdrew this request at oral argument.

20 **3. Any photos or video footage obtained when Ralston**

21 suggested "the video camera be used to tape the
22 monitor output" that members of the search team
23 viewed of the ROV aboard the boat
24

25 Gene Ralston's report at Bates 26854 states in
26 summary that while attempting to image underwater
27 objects that he believed resembled human remains,
28 the video image was "insufficient to determine for

1 absolute certainty that the object was in fact a
2 human body." Prosecution Opposition Lodged Exhibits
3 Disk 4, PC § 1054.9, p. 1748. To attempt to resolve
4 the uncertainty, the searchers attempted to rig a
5 video camera to record the image, which did not
6 work. Ralston then suggested using the video camera
7 to record the monitor output directly. Ralston
8 stated that "the attempt was only partially
9 successful due to the monitor scan rate being out of
10 sync with the camera." The prosecution first
11 asserts that this material does not exist because
12 Ralston said the attempt to video "did not work".
13 More precisely, Ralston said the attempt was "not
14 successful", but he did not say that no physical
15 recording of the unsuccessful attempt was generated.
16 The prosecution next argues that any resulting video
17 is not in any Steele category. The Court disagrees.
18 The recording made on the video camera, successful
19 or otherwise, is "relevant real evidence seized or
20 obtained as part of the investigation of the
21 offenses charged" pursuant to Penal Code § 1054.1.
22 The prosecution was therefore obligated to disclose
23 it the time of trial, and it falls into Steele
24 category 2. Ralston's report provides a reasonable
25
26
27
28

1 basis for believing that it existed at the time of
2 the investigation. This request is granted.

3 **4. All video recordings made of Targets 1 and 2,**
4 **referenced in the Ralston report**

5 Gene Ralston's report indicates only one attempt to
6 use a video camera to record the monitor output of
7 the remote vehicle used to attempt to image the
8 suspected human remains. His report indicates that
9 each subsequent time that attempts were made to
10 position the ROV near the objects, they were
11 unsuccessful because of tidal currents or waves.
12 Once conditions improved sufficiently to allow the
13 search to resume on March 26, 2003, neither of the
14 two objects were visible any longer on the side
15 scan. Conditions worsened and the scanning was
16 terminated for the day. On March 27, 2003, a diver
17 searched the former locations of the two objects on
18 hands and knees and found nothing. The defense has
19 not demonstrated any reasonable basis to believe
20 that any video recordings other than the one
21 identified in item 3 exist. This request is denied.

22 **5. All screen captures, photos, or other images of the**
23 **video images or video of the object Gene Ralston**
24 **considered to be of a human body at Target 1 or any**
25 **other location**
26
27
28

1 Gene Ralston's report indicates only one attempt to
2 use a video camera to record the monitor output of
3 the remote vehicle used to attempt to image the
4 suspected human remains. His report indicates that
5 each subsequent time that attempts were made to
6 position the ROV near the objects, they were
7 unsuccessful because of tidal currents or waves.
8 Once conditions improved sufficiently to allow the
9 search to resume on March 26, 2003, neither of the
10 two objects were visible any longer on the side
11 scan. Conditions worsened and the scanning was
12 terminated for the day. On March 27, 2003, a diver
13 searched the former locations of the two objects on
14 hands and knees and found nothing. The defense has
15 not demonstrated any reasonable basis to believe
16 that any video recordings other than the one
17 identified in item 3 exist. This request is denied.

18
19
20 **6. Copies of any computer hard drives and/or computer**
21 **files that contain the images displayed by the ROV**
22 **employed in connection with Gene Ralston's searches**
23 **in the bay referenced in his 2003 report**

24 Defense withdrew this request at oral argument.

25
26 **7. Video of the Klamath County, Oregon search locating**
27 **victims which Ralston believed resembled "the form**
28 **and substance observed in the video of Target 1"**

1 Defense withdrew this request at oral argument.

2 **8. Gene Ralston's images and search data referenced in**
3 **Det. Hendee's report dated July 31, 2003**

4 Defense references Bates 22019 through 22020. Det.
5 Hendee's report states that after a Modesto Bee
6 article quoted Gene Ralston as stating that he
7 believed the targets of the March 12 and 13 searches
8 were probably the remains of Laci Peterson, Det.
9 Hendee contacted Ralston to obtain the images from
10 those search dates to forward to other experts for
11 review to determine if they agreed with Ralston's
12 conclusion. Det. Hendee's report states that
13 Ralston forwarded "a number" of images - not to Det.
14 Hendee, but to Crayton Fenn, one of the experts
15 whose opinion was sought. Fenn then forwarded the
16 images to a John DeMille, also an expert in reading
17 sidescan sonar images. Det. Hendee spoke with both
18 Fenn and DeMille after their review of the images.
19 Both disagreed with Ralston and did not believe the
20 images depicted a body. Fenn told Det. Hendee that
21 "he had viewed all of 18 or 19 images that Gene
22 Ralston sent him. These images included the March
23 12th/13th images that Ralston thought was a body."
24 Based on this description, the Court concludes that
25 Ralston sent Fenn a total of 18 or 19 images, since
26
27
28

1 Fenn's statement to Det. Hendee indicates that was
2 what he looked at and he looked at "all" of what was
3 sent to him. This request seeks the same material
4 as item 9, below. See item 9 for ruling.

5 **9. The 18 or 19 images sent to Clayton Fenn of**
6 **Interspace Exploration, including images from March**
7 **12-13, 2003 that Ralston thought were images of a**
8 **body, referenced in Det. Hendee's report dated July**
9 **31, 2003**

10 At oral argument, defense counsel acknowledged that
11 these 18 or 19 images had been provided, but that
12 the defense was unsure if they could actually view
13 them because of software incompatibility. The Court
14 denies the request for further production. The
15 prosecution satisfies its discovery duty when it
16 discloses the existence of the material and makes it
17 available for inspection and copying. "So long as
18 the defense had access to the actual physical
19 evidence, it was not necessary for the prosecutor to
20 search the world to see whether there's proper
21 technology to do the transfer." People v. Zaragoza
22 (2016) 1 Cal.5th 21, at 51.

23 **10. All side scan sonar images and video taken on**
24 **March 28 and 29, 2003 referenced in Gene Ralston's**
25 **2003 report**

1 Defense withdrew this request at oral argument.

2 11. All communications and correspondence from
3 January 1, 2003 to date, including but not limited
4 to email correspondence and text messages, between
5 MPD including Sgt. Ron Cloward, and Gene or Sandra
6 Ralston, concerning any evidence in this case and
7 the search for Laci Peterson

8
9 Under Penal Code § 1054.9, it is not sufficient for
10 a defendant to simply offer a plausible
11 justification for disclosure of information he has
12 described with some specificity. Section 1054.9's
13 discovery is limited to specific materials that the
14 defendant can show fall into any of the categories
15 of material to which the defendant would have been
16 entitled at the time of trial. When a defendant
17 seeks discovery under section 1054.9, he must
18 identify those materials with sufficient specificity
19 to show that he *would*, in fact, have been entitled
20 to *those* materials at the time of trial. Kennedy v.
21 Superior Court (2006) 145 Cal.App.4th 359, at 371.
22 This request does not describe the materials sought
23 with sufficient specificity under Kennedy. It is
24 denied.
25
26
27
28

1 This request also seeks, in part, post-trial
2 materials that outside the scope of permissible
3 discovery under Penal Code § 1054.9.

4 **12. All communications and correspondence from**
5 **January 1, 2003 to date, including but not limited**
6 **to email correspondence and text messages, between**
7 **any personnel from other agencies and/or other**
8 **parties involved in the San Francisco Bay searches**
9 **and Gene or Sandra Ralston.**

10 Under Penal Code § 1054.9, it is not sufficient for
11 a defendant to simply offer a plausible
12 justification for disclosure of information he has
13 described with some specificity. Section 1054.9's
14 discovery is limited to specific materials that the
15 defendant can show fall into any of the categories
16 of material to which the defendant would have been
17 entitled at the time of trial. When a defendant
18 seeks discovery under section 1054.9, he must
19 identify those materials with sufficient specificity
20 to show that he *would*, in fact, have been entitled
21 to those materials at the time of trial. Kennedy v.
22 Superior Court (2006) 145 Cal.App.4th 359, at 371.
23 This request does not describe the materials sought
24 with sufficient specificity under Kennedy. It is
25 denied.
26
27
28

1 This request is also denied because it seeks, in
2 part, post-trial material to which the defense is
3 not entitled under Penal Code § 1054.9. It further
4 denied based on seeking correspondence between
5 "personnel from other agencies and/or other parties"
6 without making a showing that those unspecified
7 other agencies or parties are part of the
8 prosecution team for discovery purposes under Penal
9 Code § 1054.1 and Brady.
10

11 13. All MPD reports, notes, memoranda, and
12 communications with other law enforcement agencies
13 involved in underwater searches in San Francisco
14 Bay, discussing the merits of Mr. Ralston's opinion
15 that Laci Peterson's body was not deposited in the
16 location MPD and the prosecution claimed and the
17 reasons for rejecting his opinion
18 Defense withdrew this request at oral argument.
19

20 I. ALL OTHER BAY SEARCH DATA

21 1. MPD Sgt. Ron Cloward's report detailing his
22 activities at the San Francisco Bay on March 11,
23 2003
24

25 Contrary to counsel's statement in oral argument
26 that the discovery letter has Bates numbers, neither
27 the defense motion or defense exhibit A discovery
28 letter identifies any material in the record or in

1 the discovery provided indicating that Sgt. Cloward
2 wrote a report detailing his activities on March 11,
3 2003. Their exhibit A discovery demand letter does
4 not articulate their asserted reason for believing
5 this material exists, and the Court declines to
6 search the 20,000+ page trial record and collective
7 2,000+ pages of motion pleadings, attachments, and
8 lodged exhibits to try to find such a basis. This
9 request is denied.
10

11 **2. MPD Det. Owen's report detailing his activities at**
12 **the San Francisco Bay on March 11, 2003, as referred**
13 **to in Det. Grogan's report**

14 For this request, defense cites top center number
15 663 in the discovery as the basis for asserting that
16 a report by Detective Owen exists. The cited page
17 is part of a report by Detective Craig Grogan. In
18 relevant part it says, "Gene Ralston and Sgt.
19 Cloward and Det. Phil Owen continued a search of the
20 area in order to identify other potential objects of
21 interest." It does not contain any reference to
22 Det. Owen locating any objects of interest or
23 writing a report about them. The defense has failed
24 to establish a reasonable basis to believe this
25 material exists. The request is denied.
26
27
28

1 **3. Report obtained from Deputy Rick Rutherford of**
2 **Tuolumne County detailing his activities at the San**
3 **Francisco Bay on March 11, 2003**

4 Deputy Rutherford was not called as a trial witness.
5 Contrary to counsel's statement in oral argument
6 that the discovery letter has Bates numbers, neither
7 the defense motion or Defense exhibit A discovery
8 letter identifies any material in the record or in
9 the discovery provided indicating that Deputy
10 Rutherford wrote a report detailing his activities
11 on March 11, 2003. Their exhibit A discovery demand
12 letter does not articulate their asserted reason for
13 believing this material exists, and the Court
14 declines to search the 20,000+ page trial record and
15 collective 2,000+ pages of motion pleadings,
16 attachments, and lodged exhibits to try to find such
17 a basis. This request is denied.

18 **4. MPD Det. Phil Owen's report detailing the activities**
19 **at the San Francisco Bay on March 17, 18, and 19,**
20 **2003**

21 For this item, defense cites Bates 21639-21640, a
22 report by Sgt. Al Carter cross-referencing a "full
23 detailed report by Det. Phil Owens" regarding search
24 activities on March 17-19, 2003. The defense has
25 asserted a reasonable basis for believing this
26 27
28

1 material exists. Detective Owens was not a trial
2 witness. The defense has not articulated a basis
3 for believing that any observations he made or
4 documented on March 17-19, 2003¹, are exculpatory or
5 otherwise within any Steele category of material.
6

7 **5. All of MPD Det. Grogan's communications with the FBI**
8 **regarding underwater searches conducted in San**
9 **Francisco Bay**

10 In the pleadings, defense cited Bates 91832 as the
11 basis for believing this material exists. At oral
12 argument, they corrected the citation to Bates
13 21832. The Court was unsuccessful locating either
14 in the materials provided, and the defense pleadings
15 did not articulate any narrative basis for believing
16 this material exists or that it falls within a
17 Steele category of disclosure.
18

19 Under Penal Code § 1054.9, it is not sufficient for
20 a defendant to simply offer a plausible
21 justification for disclosure of information he has
22 described with some specificity. Section 1054.9's
23
24

25 ¹ Gene Ralston's report at Bates 22854 states: "We accompanied the TCSO team
26 back to Point Richmond on Sunday afternoon, March 16th. All attempts to position
27 the ROV near either target using the scanning sonar during the next three days
28 were all prevented by the strong tidal currents and wind generated waves. It
was decided at that time to suspend all activities until the following week when
the Inshore dive team would be available to assist." The three days of "strong
tidal currents and wind generated waves" referred to by Ralston would have been
March 17th, 18th, and 19th - rendering it implausible that Det. Owens' report
would have contained exculpatory material.

1 discovery is limited to specific materials that the
2 defendant can show fall into any of the categories
3 of material to which the defendant would have been
4 entitled at the time of trial. When a defendant
5 seeks discovery under section 1054.9, he must
6 identify those materials with sufficient specificity
7 to show that he *would*, in fact, have been entitled
8 to *those* materials at the time of trial. Kennedy v.
9 Superior Court (2006) 145 Cal.App.4th 359, at 371.
10 This request does not describe the materials sought
11 with sufficient specificity under Kennedy. It is
12 denied.
13

14 **6. All photos, images, video, reports taken by John**
15 **Demille from Marine Sonic on May 22, 2003**

16 For this request, the defense states that they have
17 received discovery related to John DeMille labeled
18 "Day 1 through Day 3" and "Day 5", but has not been
19 provided with Day 4. The Court finds that the
20 defense has articulated a reasonable basis to
21 believe that this material exists. DeMille was not
22 a trial witness, and the defense has not made any
23 offer that the Days 1 through 3 or Day 5 materials
24 contain observations favorable to the defense that
25 would provide a reasonable basis for believing that
26 Day 4 would do so as well. Gene Ralston's report's
27
28

1 only reference "of note" to the May 2003 Bay search
2 was his observation of an orange flag that blew off
3 of a buoy near the Richmond shipping channel and
4 floated in the current in a direction toward the
5 location where Laci and Conner's remains were
6 found.¹

7 **7. All reports from law enforcement personnel or others**
8 **assisting law enforcement in the San Francisco Bay**
9 **searches, including from the following (list on pp.**
10 **50-57 of motion filed 1/17/2024) personnel who were**
11 **present during the searches.**

12 Under Penal Code § 1054.9, it is not sufficient for
13 a defendant to simply offer a plausible
14 justification for disclosure of information he has
15 described with some specificity. Section 1054.9's
16 discovery is limited to specific materials that the
17 defendant can show fall into any of the categories
18 of material to which the defendant would have been
19 entitled at the time of trial. When a defendant
20 seeks discovery under section 1054.9, he must
21 identify those materials with sufficient specificity
22 to show that he *would*, in fact, have been entitled
23 to those materials at the time of trial. Kennedy v.

24
25
26
27
28 ¹ Bates 26856.

1 Superior Court (2006) 145 Cal.App.4th 359, at 371.

2 This request does not describe the materials sought
3 with sufficient specificity under Kennedy. It is
4 denied.

5 **J. COMPUTER FORENSICS**

6 **All reports, notes, communications, analysis, and**
7 **other discovery regarding Det. Grogan's determination**
8 **that Mr. Peterson turned on his computer at the office**
9 **in his warehouse at approximately 10:00 AM on December**
10 **24, 2002.**

11 The defense motion contains no substantive argument
12 on this point other than the heading repeated
13 verbatim above. Defense's attached Exhibit A
14 discovery letter articulates the request in this
15 manner: "10. COMPUTER FORENSICS. Please provide all
16 notes, reports, communications, memoranda, audio and
17 video recordings, and other records documenting
18 MPD's use of scent dogs in See Bates 179. Mr.
19 Peterson was not provided with any computer forensic
20 reports indicating what time he turned on his work
21 computer at his office on December 24, 2002." The
22 letter contains no other text related to this
23 request articulating a reason to believe that this
24 material exists or that it falls within a Steele
25 category. The cited discovery page (p. 9,

1 Prosecution Discovery Opposition Lodged Exhibits
2 Disk 4) states in relevant part "On Friday, 1-10-
3 2003 from 900 to 1030 hours, I [Det. Grogan]
4 attended a briefing with the tactical patrol units
5 assigned to the search for Laci Peterson. I went
6 over time periods in which Scott could potentially
7 travel between 12-23-2002 at about 2030 hours to
8 approximately 1000 hours on 12-24-2002 when the
9 computer at his shop was turned on." There is
10 absolutely no indication in the cited material that
11 Det. Grogan's estimate of the time that Scott
12 Peterson turned on his computer was based on a
13 forensic analysis of the computer. Two separate law
14 enforcement forensic analysts testified at trial
15 about their process of making clones of Mr.
16 Peterson's hard drives and examining various data
17 found there - Kirk Stockman and Detective Lydell
18 Wall. The trial record of Detective Wall's
19 testimony identified the start time for the computer
20 identified as "Dell Work PC 4" as 10:30 AM¹. This
21 request is denied.
22
23

24 **K. SCENT DOGS**
25
26
27

28

1 RT 14421, L.13-15.

1 All notes, reports, communications, memoranda, audio
2 and video recordings, and other records documenting
3 MPD's use of scent dogs in the search for Laci
4 Peterson in 2002 and 2003, including but not limited
5 to the following:
6

7 1. All notes, audio and video recordings, drawings,
8 maps, reports, recorded radio transmissions,
9 voicemails, and other communications between MPD and
10 Contra Costa Sheriff's Department Search and Rescue
11 scent dog handler Cindee Valentin related to her
12 scent dog Merlin's search on the evening of December
13 26, 2002, that commenced at 523 Coven Avenue and
14 terminated in the Airport District
15

16 The prosecution argued in their opposition and at
17 oral argument that the requested information was the
18 subject of an earlier Penal Code § 1054.9 motion by
19 former counsel. The Court has reviewed the minute
20 order of November 18, 2011 regarding Judge Scott T.
21 Steffen's ruling on the prior Penal Code § 1054.9
22 motion. Contrary to the prosecution's
23 representation, Judge Steffen did not articulate a
24 final ruling on the merits as required for issue
25 preclusion. Judge Steffen denied the former request
26 for dog scent discovery without prejudice, and
27
28

1 specifically stated that the court would revisit the
2 issue if counsel for Mr. Peterson was unable to
3 locate the information in their files. At the
4 subsequent status hearing on January 6, 2012, the
5 transcript provided by the People indicated that
6 Judge Steffen made no ruling on the dog scent
7 information from CARDA - he directed counsel to call
8 CARDA to see if they would voluntarily produce the
9 material and report back. Neither party attached
10 either a minute order or transcript of the
11 subsequent hearing scheduled for January 30, 2012 to
12 support the determination that a ruling was made, or
13 that it related to the material sought above.
14
15 Defense at oral argument specifically limited this
16 request and noted that they are not seeking CARDA
17 records in this request or item 2. The Court does
18 not find that the requested materials are subject to
19 issue preclusion. However, in both their motion and
20 their supporting discovery letter, the defense fail
21 to articulate what material they already have in
22 their possession regarding this topic. The
23 pleadings submitted in connection with the defense
24 DNA motion clearly reference materials related to
25 this topic that they do have in their possession -
26 including police reports related to the searches and
27
28

1 transcripts of the trial court hearings regarding
2 motions related to their admissibility. The record
3 clearly establishes a reasonable basis to believe
4 that the requested material exists. The record also
5 establishes that in pleading this part of the
6 motion, the defense has failed to demonstrate that
7 they were unsuccessful in obtaining at least some of
8 this material from former counsel, and they have
9 failed to identify with any level of specificity
10 what they are missing. This request is denied.

11
12 **2. All audio and video recordings, photos, drawings,**
13 **maps, reports, recorded radio transmissions,**
14 **voicemails, and other communications between MPD and**
15 **Contra Costa Sheriff's Department Search and Rescue**
16 **dog handler Cindee Valentin related to her scent dog**
17 **Merlin's search on the evening of December 26, 2002**
18 **that occurred in the vicinity of 1027 N. Emerald**
19 **Ave.**

20
21 For the same reasons described in item 1, above, the
22 Court denies this request.

23
24 **3. All audio and video recordings, photos, drawings,**
25 **maps, reports, recorded radio transmissions,**
26 **voicemails, and other communications between MPD and**
27 **Contra Costa Sheriff's Department search and rescue**
28

1 dog handler Eloise Anderson related to her cadaver
2 dog Twist's search of Mr. Peterson's truck on
3 December 27, 2002, and Det. Hendee's decision that a
4 cadaver dog should not be put into the Petersons'
5 truck as part of MPD's investigation into Laci
6 Peterson's disappearance, despite law enforcement's
7 suspicion that Mr. Peterson transported his wife's
8 body in the back of his truck
9

10 Defense withdrew this request at oral argument.

11 4. All audio and video recordings, photos, drawings,
12 maps, reports, recorded radio transmissions,
13 voicemails, and other communications not previously
14 provided in discovery related to the many cadaver
15 dog alerts that occurred on the San Francisco Bay
16 during the underwater searches from January through
17 October 2003, including the searches that Mr.
18 Ralston and numerous law enforcement agencies
19 participated in around Buoy 4
20

21 Under Penal Code § 1054.9, it is not sufficient for
22 a defendant to simply offer a plausible
23 justification for disclosure of information he has
24 described with some specificity. Section 1054.9's
25 discovery is limited to specific materials that the
26 defendant can show fall into any of the categories
27
28

1 of material to which the defendant would have been
2 entitled at the time of trial. When a defendant
3 seeks discovery under section 1054.9, he must
4 identify those materials with sufficient specificity
5 to show that he *would*, in fact, have been entitled
6 to *those* materials at the time of trial. Kennedy v.
7 Superior Court (2006) 145 Cal.App.4th 359, at 371.
8 This request does not describe the materials sought
9 with sufficient specificity under Kennedy. It is
10 denied.
11

12 5. All audio and video recordings, photos, drawings,
13 maps, reports, recorded radio transmissions,
14 voicemails, and other communications documenting the
15 activities of scent and cadaver dogs deployed at the
16 Berkeley Marina, including reports by all witnesses
17 who observed the scent dog alerting to Laci's scent
18 on the west dock, rather than on the east dock,
19 where Mr. Peterson tied up his boat when he put it
20 in the water on December 24, 2002
21

22 Defense withdrew this request at oral argument.
23

24 **L. MODESTO POLICE AND STANISLAUS DISTRICT ATTORNEY POLICY**

25 Defense asserts as a basis for disclosure of this
26 material the declaration of George Gudgell, Defense
27 Motion Exhibit 8, p. 321, P. 69-70 that while staying
28 at the hotel utilized by the prosecution team during

1 trial in hopes of "establish[ing] a relationship" with
2 them, he observed "progressively familiar"
3 interactions between trial prosecutor Fladager and
4 Modesto Police Detective Grogan. He further states
5 that he "was told by colleagues that there were
6 rumors" of a romantic relationship, that he "heard
7 other detectives speculating" about why Grogan
8 continued to stay at the hotel, and that he "later
9 confirmed" with an unidentified source "who had
10 personal knowledge" that an extra-marital affair had
11 occurred. The declaration does not specify when
12 Gudgell interviewed the unidentified source, the basis
13 for the asserted "personal knowledge", or when that
14 source indicated the affair allegedly occurred - pre-
15 trial, during trial, or post-trial. The Court finds
16 the above-described speculation, innuendo, and
17 anonymous hearsay inadequate as a basis for
18 establishing that any of the materials sought in this
19 sub-part fit any of the required Steele categories.
20 All requests in Part L are denied.

21
22
23 **1. MPD policy manuals, human resources policies and**
24 **procedures for employees, and all other information**
25 **setting forth the policies in place in 2002-2005**
26 **requiring that management be notified of any**
27 **personal and/or romantic relationship with another**
28

1 member of law enforcement, including employees of
2 the Stanislaus County District Attorney's Office,
3 for purposes of avoiding a conflict of interest
4 Denied for the reasons articulated above.

5
6 2. Stanislaus County District Attorney's Office policy
7 manuals, human resources policies and procedures for
8 employees, and all other information setting forth
9 the policies in place in 2002-2005 requiring that
10 management be notified of any personal and/or
11 romantic relationship with another member of law
12 enforcement, including employees of MPD, for
13 purposes of avoiding a conflict of interest
14 Denied for the reasons articulated above.

15
16 3. Policies in place at MPD and/or the Stanislaus
17 County District Attorney's Office from 2002-2005
18 governing the handling of conflicts of interest,
19 including the disclosure to defendants of personal
20 and/or romantic relationship between a member of law
21 enforcement investigating a defendant's case and a
22 trial prosecutor, including but not limited to the
23 notification requirement when a trial prosecutor is
24 involved with an investigating officer she calls to
25 the stand and examines as part of the prosecution's
26 case in chief
27
28

1 Denied for the reasons articulated above.

2 4. All disclosures provided and waivers sought by MPD
3 and/or Stanislaus County District Attorney's Office
4 informing Mr. Peterson's defense of any conflicts of
5 interest among trial prosecutors and testifying MPD
6 officers
7

8 The defense withdrew this request at oral argument.

9 M. POST-CONVICTION REPORTS, EVIDENCE, AND TIPS

10 Any new reports, leads, evidence, or tips received by
11 MPD or any other law enforcement agency since the date
12 of Mr. Peterson's conviction identifying individuals
13 other than Mr. Peterson as possibly involved or
14 responsible for the disappearance and deaths of Laci
15 and Conner Peterson
16

17 This request seeks material generated post-trial.
18 Penal Code 1054.9 discovery is limited to that which
19 the defendant was given or would have been entitled to
20 at the time of trial. This request is denied.
21

22 N. INTERVIEWS AND SURVEILLANCE OF DEFENDANT

23 1. All audio and video recordings of MPD's interviews
24 with Mr. Peterson beginning December 24, 2002, through
25 April 30, 2003, including but not limited to the
26 following:
27
28

1 At oral argument, the defense indicated that they have
2 been provided with written reports of the statements,
3 and the following requests are limited to audio and
4 video recordings of the statements. The prosecution
5 objects based on their view that the defense has
6 failed to demonstrate a reasonable basis for believing
7 the recordings exist. For any statement of Mr.
8 Peterson, it is clear that Penal Code § 1054.1(b)
9 requires disclosure by the prosecution and any such
10 recordings would be Steele category 2 material.
11

12 **a. Interviews various MPD officers conducted with Mr.**

13 Peterson on December 24, 2002, beginning at
14 approximately 6:30 PM up to Det. Brocchini's
15 videotaped interview with him at MPD, which has been
16 provided to the defense. This request includes
17 recordings made in Det. Brocchini's official vehicle
18 while he was driving Mr. Peterson around Modesto on
19 the evening of December 24, 2002 and interviewing
20 him throughout that time
21

22 The record in this matter demonstrates that Mr.
23 Peterson was interviewed on December 24, 2002, and
24 that various MPD rooms are equipped with recording
25 devices. It further demonstrates that law
26 enforcement during the course of the investigation
27 made special efforts to record statements made by
28

1 Mr. Peterson. The defense has articulated a
2 reasonable basis for believing this material exists,
3 and has offered a sufficiently narrow and specific
4 time frame for this request for the prosecution to
5 identify and produce any recordings. The Court
6 grants this request.

7 **b. Interviews MPD officers, including Det. Craig**

8 **Grogan, conducted with Mr. Peterson on December 25,**
9 **2002, while Mr. Peterson was at the MPD located in**
10 **various rooms, including interview rooms. This**
11 **request includes all recordings of the pre-polygraph**
12 **interview Doug Mansfield conducted or attempted to**
13 **conduct on that date**

14 The record in this matter demonstrates that Mr.
15 Peterson was interviewed on December 25, 2002, and
16 that various rooms in the MPD are equipped with
17 recording devices. It further demonstrates that law
18 enforcement during the course of the investigation
19 made special efforts to record statements made by
20 Mr. Peterson. The defense has articulated a
21 reasonable basis for believing this material exists,
22 and has offered a sufficiently narrow and specific
23 time frame for this request for the prosecution to
24 identify and produce any recordings. The Court
25 grants this request.

1 c. Video recordings made by cameras at the MPD lobby,
2 captured at approximately 4:00 - 5:00 PM on December
3 25, 2002, showing Lee and Jackie Peterson asking for
4 their son to be released from custody;

5 This request is denied. Statements and/or images of
6 Lee and Jackie Peterson are not statements of the
7 defendant subject to disclosure under Penal Code
8 1054.1(b). Mr. Peterson was a competent adult at
9 the time of his interviews, so the presence of his
10 parents is irrelevant to the admissibility of any of
11 his statements. The defense has failed to
12 articulate a basis that this material falls into any
13 Steele category.
14

15 d. Interviews MPD officers, including Chris Boyer,
16 Craig Grogan, Allen Brocchini, and others conducted
17 with Mr. Peterson at his home prior to executing
18 search warrants on his property on December 26, 2002

19 This request is denied. Unlike interviews conducted
20 in police-controlled environments like stations or
21 patrol vehicles, the record does not demonstrate
22 that law enforcement had the ability to pervasively
23 record Mr. Peterson within his home. The defense in
24 this request has not identified their basis for
25 believing that Officer Boyer, Det. Grogan, or Det.
26 Brocchini used a recording device during their
27
28

1 interviews at Peterson's home on December 26. They
2 have further failed to identify any written reports
3 of statements taken by "others" on the relevant date
4 that would support a reasonable basis to believe a
5 recording exists.

6 **e. Interviews MPD officers, including Det. Craig**

7 **Grogan, conducted with Mr. Peterson on January 3,**
8 **2003, while he was in various interview rooms at MPD**

9 The record in this matter demonstrates that Mr.
10 Peterson was interviewed on January 3, 2003, and
11 that various rooms in the MPD are equipped with
12 recording devices. It further demonstrates that law
13 enforcement during the course of the investigation
14 made special efforts to record statements made by
15 Mr. Peterson. The defense has articulated a
16 reasonable basis for believing this material exists,
17 and has offered a sufficiently narrow and specific
18 time frame for this request for the prosecution to
19 identify and produce any recordings. The Court
20 grants this request.

21 **f. Interviews MPD officers, including Det. Craig**

22 **Grogan, conducted with Mr. Peterson on January 3,**
23 **2003, while he was being transported to and from a**
24 **facility to provide biological samples, and while he**
25
26
27
28

1 was being searched, fingerprinted, and photographed
2 pursuant to a search warrant

3 The record in this matter demonstrates that Mr.
4 Peterson was interviewed on January 3, 2003. It
5 further demonstrates that law enforcement during the
6 course of the investigation made special efforts to
7 record statements made by Mr. Peterson. The
8 prosecution even made oral argument that particular
9 recordings of Mr. Peterson existed because officers
10 placed recording devices in the car, as a means of
11 distinguishing why there was no reasonable basis to
12 believe that recordings of other witnesses during
13 police transport existed. The defense has
14 articulated a reasonable basis for believing this
15 material exists, and has offered a sufficiently
16 narrow and specific time frame for this request for
17 the prosecution to identify and produce any
18 recordings. The Court grants this request.

19
20
21 2. All audio and video recordings of MPD's surveillance
22 of Mr. Peterson beginning December 24, 2002, through
23 April 30, 2003, not yet provided, including but not
24 limited to video recordings captured by the pole
25 camera MPD surreptitiously placed outside the
26 Petersons' home in December 2002-January 2003
27
28

1 By including the words "not yet provided", defense
2 indicates that it has been provided with some
3 surveillance in the relevant period. It does not
4 specify what materials it already has, so there is no
5 reasonable basis by which the Court or the prosecution
6 can discern what material is properly requested under
7 Penal Code §1054.9 as "unsuccessfully" sought from
8 prior counsel after exercise of reasonable and good
9 faith efforts. Neither the motion, the discovery
10 letter, nor the reply brief by the defense offer any
11 more specific description of the materials they
12 believe are missing. This request is denied.
13

14 **O. TRACY TIP**

15 All audio and video recordings of the call MPD
16 received on January 10, 2003 reporting as referenced
17 on Bates 15137 a call at 1430 hours by an anonymous
18 Hispanic male calling from a cell phone. All
19 investigation reports, police reports, witness
20 statements, recorded statements, photographs, and any
21 other information obtained by San Joaquin County law
22 enforcement who looked for the location described in
23 the tip. Any and all reports from San Joaquin County
24 Sheriff's Department Deputies M. Smith, S. Stewart,
25 and R. Gillingwater; and San Joaquin Sheriff's
26
27
28

1 Department Air One flyover with a heat sensor, and
2 Alameda County Sheriff's Department Deputy Hesselein
3 The defense informal discovery letter did not include
4 this request. The motion contains a copied tip from
5 Bates 15137 by an anonymous person on January 10, 2003
6 purporting to describe Laci Peterson being held
7 hostage and abused in a van. The tipster gave vague
8 directions from "Eastbound 205 past Tracy", but did
9 not specify any road names. Defense included no
10 substantive argument in their brief or reply other
11 than stating the request. At oral argument, counsel
12 articulated that the defense did not know if any such
13 investigation had been done (despite including the
14 names of specific officers), but wanted the Court to
15 order disclosure in case it was. The prosecution
16 cited to the trial testimony of Officer Beffa and
17 Deputy Mears regarding the follow-up conducted on this
18 tip. Deputy Mears mentioned that a "Mr. Gillingwater"
19 was his trainee and Deputies Stewart and Smith
20 assisted him in driving around rural locations looking
21 for the location described by the tipster. On cross-
22 examination Deputy Mears testified that he did request
23 a helicopter flyover. The helicopter detected a heat
24 signature but was unable to distinguish if it came
25 from storage tanks, people, or a marijuana grow at the
26
27
28

1 location. The location surveilled did not match the
2 description of the route provided by the tipster, nor
3 did it match the appearance of the buildings. Deputy
4 Mears testified that they found nothing relevant to
5 the Peterson investigation after four days of
6 intermittent searching. None of the individuals named
7 in the defense request testified at trial. Based on
8 the cited portions of the trial record, the Court
9 finds that the defense has not demonstrated a
10 reasonable basis for believing that the material
11 sought was exculpatory or falls within any other
12 Steele category. This request is denied.

14 **P. CURRENT EVIDENCE/PROPERTY AND CHAIN OF CUSTODY LOGS**

15 **Current Property & Evidence Logs, Inventory Logs,**
16 **Chain of Custody Logs, and all other related documents**
17 **reflecting the status and custody of all evidence**
18 **items collected in this case from December 24, 2002 to**
19 **the present**

21 This request seeks, in part, material generated post-
22 trial. Penal Code 1054.9 discovery is limited to that
23 which the defendant was given or would have been
24 entitled to at the time of trial.

25 Under Penal Code § 1054.9, it is not sufficient for a
26 defendant to simply offer a plausible justification
27 for disclosure of information he has described with
28

1 some specificity. Section 1054.9's discovery is
2 limited to specific materials that the defendant can
3 show fall into any of the categories of material to
4 which the defendant would have been entitled at the
5 time of trial. When a defendant seeks discovery under
6 section 1054.9, he must identify those materials with
7 sufficient specificity to show that he *would*, in fact,
8 have been entitled to *those* materials at the time of
9 trial. Kennedy v. Superior Court (2006) 145
10 Cal.App.4th 359, at 371. This request does not
11 describe the materials sought with sufficient
12 specificity under Kennedy. This request is denied.

14 **III. ITEMS OF DISCOVERY SOUGHT IN REPLY BRIEFING**

15 In their written reply brief, defense made a number of
16 supplemental requests for discovery.

18 **A. DESTRUCTION ORDERS REGARDING ORANGE VAN EVIDENCE**

19 This request was already made in the original motion
20 at section II, subsection D, item 7, subpart j. The
21 Court denied the request for the reasons stated in
22 that section of this order.

23 **B. AUDIO RECORDING OF JULY 2003 INTERVIEW WITH AMY ROCHA**

24 The defense articulated no reason in their briefing
25 why they could not have pled this request in their
26 original motion. The prosecution had no opportunity
27 to respond in writing, and the manner of pleading
28

1 reflects the lack of a reasonable effort to ascertain
2 what materials under Penal Code § 1054.9 had not been
3 successfully obtained by prior counsel prior to filing
4 the motion. The Court sustains the prosecution's
5 objection to this request, and it is denied.
6

7 **C. COMPLETE SET OF DISCOVERY RECEIPTS**

8 Discovery receipts do not fall within any category of
9 material required under Penal Code § 1054.9. The
10 defense has articulated no basis at all for concluding
11 that they fall within any Steele category, much less a
12 reasonable basis. This request is denied.
13

14 **D. COMPUTER HARD DRIVES**

15 Penal Code § 1054.9(d) provides that in response to a
16 motion satisfying the conditions in subdivision (a),
17 the Court may order that the defendant be provided
18 access to physical evidence for the purpose of
19 examination, including, but not limited to, any
20 physical evidence relating to the investigation,
21 arrest, and prosecution of the defendant *only* upon a
22 showing that there is good cause to believe that
23 access to physical evidence is reasonably necessary to
24 the defendant's effort to obtain relief. At oral
25 argument, the defense indicated that they had been
26 provided hard drive mirrors for the computers seized
27 from Mr. Peterson during the investigation. This is
28

1 consistent with the testimony of the law enforcement
2 forensic computer examiners who testified at trial
3 discussed in section J above. The defense stated at
4 oral argument that their expert "can't open" the hard
5 drive mirror images, but has not provided any
6 competent pleading by their expert to that effect
7 explaining what the problem is or why the expert
8 believes that access to the original hard drives is
9 necessary to solve it. The Court finds that the
10 defense has failed to adequately plead or prove good
11 cause to believe that physical access to the drive is
12 reasonably necessary to Mr. Peterson's effort to
13 obtain relief. This request is denied.
14

15 **E. LETTER REGARDING GUDGELL AUGUST 2015 CPRA REQUEST**

16 This request seeks material generated post-trial.
17 Penal Code 1054.9 discovery is limited to that which
18 the defendant was given or would have been entitled to
19 at the time of trial. This request is denied.
20

21 **IV. REQUESTS ARTICULATED FOR THE FIRST TIME AT ORAL ARGUMENT**

22 On the second day of oral argument on the motion
23 immediately prior to submission, defense counsel
24 listed a series of VHS tapes, CDs, and DVDs that they
25 indicate are not in the materials provided by trial
26 counsel. The prosecution objected to the Court's
27 consideration of those requests because they had no
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notice and no opportunity to respond. The objection
is well taken and those requests are denied.

DATED: October 7, 2024



ELECTRONICALLY SIGNED

Elizabeth M. Hill
Judge
Superior Court of California,
County of San Mateo

Judge Elizabeth M. Hill
I am approving this
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