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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

SCOTT LEE PETERSON,
Defendant.

San Mateo County Case No.
SC055500A
Stanislaus County Related Case No.
1056770
First District Court of Appeal Case No.
A167615

**PEOPLE'S OPPOSITION TO
PETITIONER'S 2025 "RENEWED"
MOTION FOR POST-
CONVICTION DNA TESTING
(PEN. CODE §1405)**

Dept. 12
The Honorable Elizabeth M. Hill

Come now the People of the State of California, by and through their attorneys JEFF LAUGERO, Stanislaus County District Attorney, AHNNA M. REICKS, VICTORIA VASQUEZ, BIRGIT FLADAGER and DAVID P. HARRIS, Deputy District Attorneys, and submit their Opposition to defendant/petitioner's Renewed Third Motion for DNA Post-conviction Testing (Pen. Code §1405). Petitioner has based his 2025 "renewed" DNA motion contingent on the "new evidence" outlined in his Third Petition for Writ of Habeas Corpus and directed the court to the pending petition and exhibits for support. This court ordered the People to file an informal response to his Third Petition. The People incorporate by reference the People's Informal Response to his Third Petition into this Opposition which will be filed on or before the court's deadline of January 12, 2026.

TABLE OF CONTENTS

I. Introduction.....	6
II. Relevant Procedural History.....	7
III. Request for Judicial Notice.....	13
IV. Applicable Procedural Bars.....	14
A. Petitioner’s 2025 “Renewed” DNA Motion Is Procedurally Barred under Penal Code §1405(k).....	14
B. Petitioner’s 2025 “Renewed” DNA Motion Fails to Attach an Affidavit and Comply with the Rule for Motions for Reconsideration.....	15
C. Petitioner’s 2025 “Renewed” DNA Motion is Procedurally Barred under the Doctrines of Law of the Case, <i>Res Judicata</i> and Collateral Estoppel.....	16
D. Petitioner’s 2025 “Renewed” DNA Motion is a Violation of the State Constitution under Marsy’s Law.....	18
E. Petitioner’s 2025 “Renewed” DNA Motion is Procedurally Barred as Successive, Untimely, and Fails to Meet His Burden under Penal Code 1405(g)(8).....	19
V. Standard of Review.....	23
VI. Relevant Facts.....	23
VII. Law and Argument.....	23
A. Petitioner’s Pleadings and Exhibits are Insufficient to Meet His Prima Facie Burden.....	23
B. Petitioner’s Pleadings Fail to Prove Items He Seeks to Have Tested for DNA Exist and is in a Condition to be Tested.....	30
C. Petitioner’s Pleadings Fail to Demonstrate Materiality as Required by Penal Code 1405(d)(1)(D).....	38
1. Category One – Items Related to Orange Van.....	38
2. Category Two – Items Related to the Bay.....	40
D. Petitioner’s Pleadings Fail to Reveal Results of Prior Biological Tests as Required by Penal Code 1405(d)(1)(E).....	43

1	E. Petitioner’s Pleadings Fail to Prove the Evidence from the Bay has been Subject to	
2	a Sufficient Chain of Custody.....	50
3	F. Petitioner’s Pleadings Fail to Provide the Results of Prior DNA Testing Required	
4	by Penal Code 1405(d)(1)(F).....	50
5	G. Petitioner’s Fails to Prove a Reasonable Probability that in Light of All the	
6	Evidence, His Verdict Would have been More Favorable had the Requested DNA	
7	Testing been Conducted at the Time of His Trial.....	50
8	1. Category One – Items related to the Orange Van.....	51
9	2. Category Two – Items related to the Bay.....	52
10	VIII. Conclusion.....	55

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Brinton v. Bankers Pension Services, Inc.</i> , (1999) 76 Cal.App.4th 550.....	17
<i>Brown v. Ransweiler</i> , (2009) 171 Cal. App. 4th 516.....	41
<i>Clark v. Leshner</i> , (1956) 46 Cal.2d 874, 299 P.2d 865	17
<i>Day v. Sharp</i> , (1975) 50 Cal.App.3d 904	13
<i>Edwards v. Vannoy</i> , (2021) 593 U.S. 255.....	18
<i>Ex parte Connor</i> , (1940) 16 Cal.2d 701	30
<i>Findleton v. Coyote Valley Band of Pomo Indians</i> , (2018) 27 Cal. App. 5th 565.....	17
<i>Herrera v. Collins</i> , 506 U.S. 390 (1993)	18
<i>In re Alberto</i> , (2002) 102 Cal.App.4th 421.....	16
<i>In re Clark</i> , (1993) 5 Cal.4th 750	21, 29, 30
<i>In re Fields</i> , (1990) 51 Cal. 3d 1063.....	39
<i>In re Jessup</i> , (1889) 81 Cal. 408, 468.....	16
<i>In re Lawley</i> , (2008) 42 Cal.4th 1231	30
<i>In re Martinez</i> , (2009) 46 Cal.4th 945	30
<i>In re Reno</i> , (2012) 55 Cal.4th 428	21, 22
<i>In re Robbins</i> , (1998) 18 Cal.4th 770	21
<i>In re Sanders</i> , (1999) 21 Cal.4th 697.....	22
<i>Jointer v. Superior Court</i> , (2013) 217 Cal.App.4th 759.....	51
<i>People v. Kelly</i> , (1976), 17 Cal.3d 24.....	42
<i>Kimberlin v. Quinlan</i> , (D.C. Cir. 1999) 199 F.3d 496.....	16
<i>LaShawn A. v Barry</i> , 87 F.3d 1389 (D.C. Cir. 1996).....	16
<i>Metropolitan Water Dist. v. Adams</i> , (1942) 19 Cal.2d 463	16
<i>Morrison v. Peterson</i> (9th Cir. 2015) 809 F.3D 1059	20
<i>Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism</i> , (2018) 4 Cal. 5th 637.	16
<i>People v. Ayala</i> , (2000) 24 Cal. 4th 243	41

TABLE OF AUTHORITIES (CONT'D.)

Page(s)

Cases

<i>People v. Barragan</i> , (2004) 32 Cal.4th 236.....	17
<i>People v. Castello</i> , (1998) 65 Cal.App.4th 1242	15
<i>People v. Jackson</i> , (2016) 1 Cal.5th 269	42
<i>People v. Peterson</i> , (2020) 10 Cal. 5th 409	42
<i>People v. Rubio</i> , (1977) 71 Cal.App.3d 757	13, 14
<i>People v. Sur. Ins. Co.</i> , (1982) 136 Cal. App. 3d 556	15
<i>People v. Tolbert</i> , (1986) 176 Cal.App.3d 685	13, 15
<i>People v. Vick</i> , (1970) 11 Cal. App. 3d 1058	41
<i>Prost v. Anderson</i> , 636 F.3d 578 (C.A.10 2011)	18
<i>Richardson v. Superior Court</i> , (2008) 43 Cal.4th 1040.....	<i>passim</i>
<i>Santos v. Brown</i> , (2015) 238 Cal.App.4th 398	19
<i>Todhunter v. Smith</i> , (1934) 219 Cal. 690.....	16
<i>Yu v. Signet Bank/Virginia</i> , (2002) 103 Cal. App. 4th 298.....	16

Statutes

C.C.P. §1008.....	15
Cal. Const. art. I, § 28	19
Evid. Code § 780, 788.....	39
Evidence Code § 452	13, 14
Penal Code §1054.9	27, 28
Penal Code §1405	<i>passim</i>

I.

INTRODUCTION

On October 7, 2025, seventeen months after this court denied the petitioner’s 2024 motion for post-conviction DNA testing on items associated with a stolen orange van and other items washed ashore from the San Francisco Bay waters, the petitioner filed another DNA motion. The petitioner’s 2025 “renewed” DNA motion is for the same items the court previously denied. Petitioner never contested the court’s ruling or filed the statutorily required writ of mandamus. His 2025 motion is procedurally barred on several grounds. In addition to Penal Code §1405(k), this motion is also procedurally prohibited based on the doctrines of law of the case, *res judicata* and collateral estoppel and case law prohibiting untimely successive piecemeal claims. The petitioner asserts – as he did two years ago in his 2023 *Pro Se* Second Petition for Writ of Habeas Corpus and his 2024 post-conviction motions – that he has “new evidence” which supports this successive untimely request. The petitioner points the court to his claims contained in his Third Petition for a Writ of Habeas Corpus to support this “renewed” motion. However, he does not provide any admissible evidence herein and, as the People have thoroughly pointed out in the People’s Informal Response, every single one of the petitioner’s claims in his petition is also entirely meritless. There is no “new evidence.”

In this motion, the petitioner snubs the court’s prior findings and his strict pleading requirements. He uses the same tactics employed throughout his Third Petition here including, but not limited to, burden shifting and inflammatory accusations against the People. Apparently, the petitioner believes this technique will distract the court from the 1405 requirements. He contradicts himself. The petitioner accuses the People of destroying evidence and lying to this court in his Third Petition but then claims here that he has a good faith belief that the same evidence exists while simultaneously providing the court screenshots of property logs showing that same evidence is no longer in possession of the police. Aside from the petitioner’s wild theories, suppositions and abstract possibilities, his claim of “new evidence” fails to show any tangible connection between Laci and the orange van or Laci and the Target bag and duct tape debris floating in the Bay. He does not even attempt to make a prima facie showing in this “renewed” DNA motion that there would be a reasonable probability had the

1 DNA testing been conducted on the items from the orange van or Bay, in light of *all* the
2 evidence, that he would have received a more favorable result. The petitioner continues to
3 ignore the overwhelming amount of evidence that points to his guilt. Moreover, after reviewing
4 his Third Petition, the court will likely see that this duplicate and delayed DNA motion has no
5 weight. It only serves to harass the victims' family and abuse our judicial system which is also
6 a violation of our state constitution and Marsy's law.

7 "… To the extent petitioner claims that the DNA testing should have
8 been ordered because the results might be useful to him on habeas
9 corpus or for purposes of executive clemency, we reject the claim.
10 Section 1405 does not require the trial court to order DNA testing
11 because it might be helpful in these contexts but only where the
12 conditions of subdivision (f) are fulfilled."
13 (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1053 Fn. 7)

14 This motion is procedurally barred and deficient in its pleadings and proof. For all
15 these reasons, it should be denied.

16 II.

17 RELEVANT PROCEDURAL HISTORY

18 In addition to the history below, the People hereby incorporate by reference the state of
19 the case as outlined in the People's Informal Response to petitioner's Third Petition.

20 As trial was underway in San Mateo Superior Court, petitioner's defense counsel
21 conducted biological testing on the Target bag, duct tape associated with the Target bag, duct
22 tape from Bay and other items at their private laboratory, Forensic Science Associates. On
23 August 14, 2004, per the defense's request and court's instructions, the People sent these items,
24 including the forensic criminalist notes and reports, to their laboratory for the defense to
25 complete their examination and biological testing. (77RT 14800-14810 [sealed].)

26 The jury convicted Scott Lee Peterson of the premeditated, deliberate and intentional
27 killing of his pregnant wife Laci and second-degree murder of his unborn son Conner on
28 November 12, 2004. The petitioner was sentenced after the court denied his motion for a new
trial. Subsequently, he was appointed counsel and allocated investigators to continue the
investigation on his behalf for his appeal and habeas petition.

1 While his appeal was pending before the California Supreme Court, the petitioner filed
2 his first Motion for DNA testing in 2013 in Stanislaus Superior Court. The petitioner requested
3 testing on pubic hairs affixed to the duct tape that was associated with Laci's remains. The
4 court granted the testing over the People's objection. The results of the 2013 DNA testing were
5 included in the People's 2024 DNA Opposition as JNE Exh. 9 and did not assist petitioner.

6 In 2019, the petitioner made his second request for post-conviction DNA testing relating
7 to cuttings from a mattress found in the back of a stolen van involved in an incendiary fire on
8 December 25, 2002. The same mattress cuttings had been previously tested in 2003 by the
9 Department of Justice, also with negative results. During the 2024 PC § 1405 ruling, this court
10 summarized the results of the prior DNA testing on the mattress cuttings as follows:

11 Testing in 2019 of the two cuttings that are identified as number 1
12 and number 2, resulted in 17 separate sampled areas across the two
13 cuttings. Although, the initial testing that was discussed by Mr.
14 Spitulski at the time of the recovery of the van indicated that there
15 was a faint presumptive positive result for blood. That testing was
16 unable to be replicated with the methods available in 2019. None of
17 the 17 separately sampled areas on those two cuttings even
18 presumptively demonstrated the presence of blood.

19 Under the terms of the stipulation the testing could have stopped
20 there. It didn't. Those areas were subject to further confirmatory
21 testing for human hemoglobin to determine whether or not there was
22 – [whether or not] the lab was able to confirm that the red-brown
23 staining on the mattress was blood. Those tests for human
24 hemoglobin were also negative leading the lab to conclude that they
25 could not verify that the substance on the mattress was blood.

26 Trace amounts of male human DNA were found on the mattress, but,
27 as Ms. Mitchell pointed out in her argument, were not even
28 associated with the red-brown staining areas and could not be
identified as sourced as any kind of blood as opposed to other male
DNA on the mattress.

(*People v. Peterson*, SC55500, Court's 2024 DNA Order, May 29, 2024, p. 81.)

On April 19, 2023, the petitioner filed a *Pro Se* Second Petition in the First District
Court of Appeal. The 2023 petition asserted violations of various claimed rights including
contesting the court's 2022 OSC ruling relating to Juror 7 and claims of "new evidence." He

1 claimed there was “new evidence” that the Medina burglary occurred on December 24th and
2 that Laci witnessed the burglary, confronted the burglars and the burglars kidnapped, killed and
3 dumped Laci’s pregnant body into the Bay to frame the petitioner. His 2023 *Pro Se* Second
4 Petition also accused the People of suppressing evidence relating to the Aponte tip and
5 presenting false testimony when DeVore testified as to Conner’s date of death. On November
6 9, 2023, the Los Angeles Innocence Project substituted as petitioner’s new counsel. Five days
7 later, petitioner sought a motion to suspend briefing pending his filing of post-conviction
8 motions in the trial court.

9 On January 17, 2024, petitioner filed another Penal Code §1405 motion asking for post-
10 conviction DNA Testing on 14 different items.¹ These items included:

11 **Category One – Items from Orange Van**

- 12 Item 1: “Cloth from mattress;”
13 Item 2: “A piece of partially burned mattress cloth;”
14 Item 3: “Cloth from Van Fuel Tank” of orange van;
15 Item 4: “Metal fuel container in the center on a mattress;”

16 **Category Two – Items from the Bay**

- 17 Item 5: “Target bag” with four packages of marine debris¹;
18 Item 6: “Duct Tape” recovered from the “Target bag;”
19 Item 7: Four packages of debris collected from “Target bag;”
20 Item 10: “Duct tape from bay,” labeled Item 1-11, MPD #G82;118
21 Item 11: “Black Tarp” discovered on Tuesday, April 15, 2003;;
22 Item 12: “Black Tarp” recovered from Point Isabel on May 11, 2003;

23 **Category Three – Items from Medina Burglary**

- 24 Item 13: Work glove or swabbed evidence; and
25 Item 14: Hammer or swabbed evidence collected from the hammer.

26 **Category Four – Items Associated with the Remains of Laci or Conner**

- 27 Item 8: “50-inch-long tape or twine;
28 Item 9: “15.5-inch Length of Duct Tape” recovered from Laci Peterson’s
29 pants;

¹ Simultaneously, the petitioner also submitted a concurrent second motion for post-conviction
discovery, requesting over 630 distinct items.

1 At the conclusion of the May 29, 2024 DNA hearing, this court made its ruling. DNA
2 testing on the duct tape from Laci's pants was to be granted but denied for the other thirteen
3 items. Regarding the thirteen items, the court found that the petitioner had failed to meet his
4 prima facie burden and/or the strict 1405 pleading requirements. In making its decision, the
5 court exercised its discretion on the basis of all the evidence introduced at trial and not on
6 argument or what the petitioner might find helpful. (*Id.* at p. 83.) The court ruled that,
7 considering all of the evidence, the petitioner failed to demonstrate a reasonable probability that
8 if DNA testing had been available at the time of trial, that testing would have resulted in a more
9 favorable outcome.

10 Relevant to this current motion, in 2024 the court denied the petitioner's request to test
11 the orange van's mattress cloth (Items 1 & 2), cloth from the van fuel tank (Item 3) and metal
12 fuel container (Item 4) because the petitioner failed to show any reasonable probability that Laci
13 had ever been in the orange van during the commission of her murder. (*Id.* at pp. 80-84.) As
14 to the materiality of the orange van, the court held:

15 The only way this Court would find that any evidence associated with
16 the orange van would be material to Mr. Peterson's identity as the
17 perpetrator of these crimes would be if there was reasonable
18 probability developed that Laci Peterson had ever been in the orange
19 van at some point during the commission of the crime.
20 (*Id.* at pp. 81-82.)

21 The court also found the petitioner failed to properly establish a sufficient chain of
22 custody on some of the items the petitioner sought to be tested or that the item was still available
23 and in a condition that would permit the DNA testing to be completed. Relevant here, the court
24 further held that as to Items 3 and 4 involving the orange van, the court ruled:

25 In addition, based on the argument that was articulated today, the
26 Court finds that there has been failure to demonstrate a sufficient
27 chain of custody or that the items available – are still available to be
28 tested and in a condition that would permit the DNA testing to be
completed as to Items 3 and 4 that were described in the defense
motion.
(*Id.* at pp. 83-84.)

1 In considering the requests under Category Two relating to various items recovered
2 from the Bay, the court found the Target bag (Item 5); duct tape from the Target bag (Item 6);
3 four packages of debris collected from Target bag (Item 7); duct tape from the Bay (Item 10);
4 black tarp located on April 15, 2003 (Item 11); and the black tarp found on May 11, 2003 (Item
5 12) were not associated with the remains of Laci or Conner directly. (*Id.* at p. 85.)

6 Relevant here are the court's holding and findings as they relate to Category Two items:

7 As to those items 5, 6, 7, 10, 11, and 12, the Court finds that the defense
8 has failed to make a prima facie showing that this evidence is material
9 to the issue of the convicted person's identity as a perpetrator or
10 accomplice to the crime or that the requested DNA results would raise
11 a reasonable probability in light of all of the evidence that the convicted
12 person's sentence would have been more favorable if the results of DNA
13 testing had been available at the time of conviction.

14 The reasons for the Court's findings as to items 5, 6, 7, and 10, these are
15 the duct tape items and the Target bag associated with some of the duct
16 tape. Physical examination of the duct tape conducted at the laboratory
17 at the time of the original trial demonstrated that based on the structure
18 and the thread count of that tape none of those items were consistent
19 with the type of tape that was found adhering to Laci Peterson's remains.
20 Their condition, a lack of barnacles or associated adipocere – spelled a-
21 d-i-p-o-c-e-r-e -- also suggest these items were in the water for a
22 different amount of time than the victim's remains and suggests a lack
23 of connection to the remains.

24 None of the witnesses or the witnesses offered through multiple layers
25 of hearsay that the defense has referenced in their initial pleadings or in
26 their reply pleadings suggest any connection between any kind of
27 wrapping or covering the remains of Laci or Conner, nor any connection
28 between any of the third party culpable alleged suspects alleged to have
been involved and the construction site where the Target bag came from
or originated.

The totality of the evidence suggests that a large amount of unrelated
debris washed up in the area where Laci and Conner's remains were
found after a powerful storm immediately before they were found.

There were references today to Gene Ralston's underwater scanning,
side scanning and sonar that revealed what appeared to Mr. Ralston to
be the presence of Laci Peterson's body in an area different from Brooks

1 Island shipping channel north towards the Richmond shipping channel.

2 What Mr. Ralston's report did not indicate and what nothing of Mr.
3 Ralston's declarations indicated was that his side scanning or his sonar
4 indicated any presence of any wrapping, covering, or plastic materials
5 associated with the remains or with what he thought were the remains
6 that he observed.

7 So even if I credit the evidence that the defense has presented in the
8 form of Mr. Ralston's declaration and Mr. Ralston's reporting, his sonar
9 was apparently sufficiently sensitive to see material that he identified as
10 potentially consistent with the pants and the condition of the pants that
11 were on Laci's body at the time they were recovered. He saw nothing
12 that looked like a Target bag, plastic.

13 There were no barnacles on the Target bag. There are no barnacles on
14 the tape that's associated with the Target bag. There's no adipocere on
15 any of it. The physical conditions and the weight of the evidence
16 associated with these items does not demonstrate any more than an
17 abstract possibility that they might be somehow associated with the
18 bodies. That does not rise to the level of a reasonable probability that
19 the Court is required to find in order to order the testing requested. The
20 defense request to test these items is respectfully denied.

21 (*Id.* at pp. 85-88.)

22 The petitioner did not contest the court's ruling. Instead, on April 18, 2025, the
23 petitioner filed his Amended Second Petition in the First District Court of Appeal. One year
24 after this court issued its PC §1405 ruling, the Court of Appeal dismissed claims two through
25 nineteen without prejudice and directed the petitioner to file a new habeas petition in the San
26 Mateo Superior Court. On August 4, 2025, the petitioner submitted his Third Petition for Writ
27 of Habeas Corpus in this court. Two months later, on October 7, 2025, the petitioner filed a
28 "Renewed Motion for DNA Testing Based on Newly Discovered Evidence (Pen. Code §1405)."
In it, the petitioner is asking this court to grant DNA testing on the same Category One items
from the orange van (Items 1, 2, and 4) and Category Two unrelated items found in the Bay
(Items 5, 6, and 10) that were previously denied. This constitutes his fourth request for DNA
testing in this case.

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III.

REQUEST FOR JUDICIAL NOTICE

Evidence Code § 452 states:

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

- (a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.
- (b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.
- (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.
- (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.
- (e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.
- (f) The law of an organization of nations and of foreign nations and public entities in foreign nations.
- (g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.
- (h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

(Evid. Code § 452.)

While this court may take judicial notice of the legal history and records of this case, including the petitioner's conviction, the prior California Supreme Court rulings against the legal and factual claims of his appeal and the denial of his First Petition, and petitioner's *Pro Se* Second Petition and Amended Second Petition, including exhibits, it may not accept his claimed facts in pleadings and exhibits as evidence in this proceeding.

In *People v. Tolbert*, the court held:

Judicial notice may be taken of the records of a court of this state (Evid.Code, § 452, subd. (d); *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914). This is not to say, however, that judicial notice may be taken of the truth of facts asserted in every document in a court record. (*Day*, at p. 904; *People v. Rubio* (1977) 71 Cal.App.3d 757, 766, 139 Cal.Rptr.

750.) Ordinarily a court may notice the existence of another court's findings of fact and conclusions of law in support of a judgment, because they are conclusive and uncontrovertible in character and not reasonably subject to dispute. **But judicial notice cannot be taken of hearsay allegations as being true, even those made by a judge-declarant, just because they are part of a court record or file** (*Day*, 50 Cal.App.3d at p. 914,; *Rubio*, 71 Cal.App.3d at p. 766; see also Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, § 47.2, at pp. 1757–1759.)

(*People v. Tolbert* (1986) 176 Cal.App.3d 685, 690, boldface added; see also *People v. Sur. Ins. Co.* (1982) 136 Cal. App. 3d 556, 564 [court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file].)

The People ask this court to take judicial notice of the same items requested in the Third Petition, including but not limited to the 2024 post-conviction motions, the Supreme Court's decision affirming the petitioner's conviction in No. S132449 and all of the petitioner's prior filings, including his *Pro Se* Second Petition and the Amended Second Petition. Lastly, the People encourage this court to take judicial notice as to whatever it deems appropriate under Evid. Code §452.

IV.

APPLICABLE PROCEDURAL BARS

A. PETITIONER'S 2025 "RENEWED" DNA MOTION IS PROCEDURALLY BARRED UNDER PENAL CODE § 1405(k).

Penal Code § 1405, subdivision (k) states [with emphasis added]:

An order granting or denying a motion for DNA testing under this section shall not be appealable and shall be subject to review only through petition for writ of mandate or prohibition filed by the person seeking DNA testing, the district attorney or the Attorney General. The petition **shall be filed within 20 days after the court's order** granting or denying the motion for DNA testing. In a noncapital case, the petition for writ of mandate or prohibition shall be filed in the court of appeal...

(Pen. Code §1405, subd. (k); *Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1046, referring to then-subdivision (j) before statutory amendments changed numbering.)

1 In this case, the petitioner never filed a writ of mandamus contesting the court’s prior
2 DNA ruling on May 29, 2024. This fourth request for DNA testing is for exactly the same items
3 the court previously considered and denied. The petitioner has failed to follow the legislature’s
4 statutory rules and, therefore, this motion is procedurally barred.

5 **B. PETITIONER’S 2025 “RENEWED” DNA MOTION FAILS TO ATTACH AN**
6 **AFFIDAVIT AND COMPLY WITH THE RULE FOR MOTIONS FOR**
7 **RECONSIDERATION.**

8 Petitioner attempts to skirt the statutory procedural bar by using the words “renew” and
9 “reconsider” in his 2025 DNA motion. (See 2025 DNA Mtn. at pp. 1-3 40.) He uses the same
10 tactic throughout his Third Petition by inserting the words “new evidence” into multiple
11 allegations regardless of how long ago the petitioner and his prior or current counsel knew or
12 should have reasonably known of the information. Moreover, the petitioner and his counsel
13 repeatedly fail to follow the California Supreme Court’s rules relating to pleading and proving
14 a successive habeas claim.

15 Even under the motion to reconsider standards, the petitioner fails to follow the rules.
16 California Code of Civil Procedure (CCP) defines a rule for Motions for Reconsideration when
17 dealing with civil matters as follows:

18 A party who originally made an application for an order which was
19 refused in whole or part, or granted conditionally or on terms, may make
20 a subsequent application for the same order upon new or different facts,
21 circumstances, or law, in which case it **shall be shown by affidavit**
22 what application was made before, when and to what judge, what order
23 or decisions were made, and what new or different facts, circumstances,
24 or law are claimed to be shown. For a failure to comply with this
25 subdivision, any order made on a subsequent application may be
26 revoked or set aside on ex parte motion.

27 (Code Civ. Pro. §1008(b) [emphasis added].) ²

28 ² *People v. Castello* noted that CCP. section 1008 must be treated as directory only. (*People v. Castello*
(1998) 65 Cal.App.4th 1242, 1249.) The court in *Castello* stated “section 1008 requires courts to exercise
due consideration before modifying, amending or revoking prior orders.” (*Id.*, p. 1250.) However, the
Castello court recognized that, “In criminal cases, there are few limits on a court’s power to reconsider
interim rulings.” (*Id.* at p. 1246.) “[T]he power to grant rehearings is inherent, is an essential ingredient

Neither petitioner nor his counsel has submitted any updated affidavit or declaration attesting to why the court should reconsider his prior 2024 request for DNA testing 17 months after the court’s ruling. He asserts on page 2 that:

“New exculpatory evidence that came to light *after* this Court’s May 29, 2024 ruling undermines the prosecution’s entire theory of how and when the crimes in this case occurred, which should compel this Court to reconsider its ruling denying DNA testing as to certain items of evidence, as set forth herein.”

(Def. 2025 DNA Mtn. p. 3, italics in the original.)

Once again, the petitioner fails to meet his strict pleading requirements. Neither he nor his counsel provides this court with a new declaration explaining precisely what came to light “after” the court’s May 29th ruling. Instead, he reattaches his original November 2023 declaration as support for to his request to “reconsider” this ruling.

C. PETITIONER’S 2025 “RENEWED” DNA MOTION IS PROCEDURALLY BARRED UNDER THE DOCTRINES OF THE LAW OF THE CASE, *RES JUDICATA* AND COLLATERAL ESTOPPEL.

The doctrines of the law of the case, *res judicata* and collateral estoppel serve as an additional bar to petitioner’s 2025 “renewed” DNA motion. “The law-of-the-case doctrine rests on a simple premise: ‘the same issue presented a second time in the same case in the same court should lead to the same result.’ *LaShawn A. v Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996) (en banc).” (*Kimberlin v. Quinlan* (D.C. Cir. 1999) 199 F.3d 496, 500.) Or, as said by another court: “Litigants are not free to continually reinvent their position on legal issues that have been resolved against them by an appellate court. “It would be absurd that a party who has chosen not to argue a point on a first appeal should stand better as regards the law of the case than one who had argued and lost.”” (*Yu v. Signet Bank/Virginia* (2002) 103 Cal. App. 4th 298, 312, as modified on denial of reh’g (Nov. 25, 2002), and disapproved of by *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal. 5th 637; [*Yu* cited again for the portion

of jurisdiction, and ends only with the loss of jurisdiction.” (*Id.* at p. 1248 citing *In re Jessup* (1889) 81 Cal. 408, 468; accord, *Metropolitan Water Dist. v. Adams* (1942) 19 Cal.2d 463, 469.) (See also *In re Alberto* (2002) 102 Cal.App.4th 421, 427.)

1 “[I]tigators are not free to continually reinvent their position on legal issues that have been
2 resolved against them by an appellate court.” by *Findleton v. Coyote Valley Band of Pomo*
3 *Indians* (2018) 27 Cal. App. 5th 565, 571.)

4 This court has made its ruling and the petitioner has offered this court nothing to change
5 that result, so he is estopped from his course of action.

6 As generally understood, “[t]he doctrine of res judicata gives certain
7 conclusive effect to a former judgment in subsequent litigation
8 involving the same controversy.” (7 Witkin, Cal. Procedure (4th ed.
9 1997) Judgment, § 280, p. 820.) The doctrine “has a double aspect.”
10 (*Todhunter v. Smith* (1934) 219 Cal. 690, 695, 28 P.2d 916.) “In its
11 primary aspect,” commonly known as claim preclusion, it “operates as
12 a bar to the maintenance of a second suit between the same parties on
13 the same cause of action. [Citation.]” (*Clark v. Leshner* (1956) 46 Cal.2d
14 874, 880, 299 P.2d 865.) “In its secondary aspect,” commonly known
15 as collateral estoppel, “[t]he prior judgment ... ‘operates’ ” in “a second
16 suit . . . based on a different cause of action . . . ‘as an estoppel or
17 conclusive adjudication as to such issues in the second action as were
18 actually litigated and determined in the first action.’ [Citation.]” (*Ibid.*)
19 “The prerequisite elements for applying the doctrine to either an entire
20 cause of action or one or more issues are the same: (1) A claim or issue
21 raised in the present action is identical to a claim or issue litigated in a
22 prior proceeding; (2) the prior proceeding resulted in a final judgment
23 on the merits; and (3) the party against whom the doctrine is being
24 asserted was a party or in privity with a party to the prior proceeding.
25 [Citations.]” (*Brinton v. Bankers Pension Services, Inc.* (1999) 76
26 Cal.App.4th 550, 556, 90 Cal.Rptr.2d 469.)

27 (*People v. Barragan* (2004) 32 Cal.4th 236, 252-253.)

28 Accordingly, the petitioner is prohibited from filing successive post-conviction motions,
requesting the same DNA tests, on the same items, while presenting the same arguments in the
same court over and over again. He does not get endless opportunities to develop new evidence
or re-litigate his case based on his skewed narrative. This court made its ruling when it denied
his request for DNA testing on the items associated with the orange van and from the Bay that
were not associated with the remains – a final judgment that has conclusive effect once

petitioner failed to seek a writ.³ The petitioner is collaterally estopped from asking for the same thing. These doctrines prohibit this motion.

D. PETITIONER’S 2025 “RENEWED” DNA MOTION IS A VIOLATION OF THE STATE CONSTITUTION UNDER MARSY’S LAW.

[F]inality, “the idea that at some point a criminal conviction reaches an end, a conclusion, a termination, ‘is essential to the operation of our criminal justice system.’ ” *Prost v. Anderson*, 636 F.3d 578, 582 (C.A.10 2011). ...But if the rule of law means anything, it means the final result of proceedings in courts of competent jurisdiction establishes what is correct “in the eyes of the law.” *Herrera v. Collins*, 506 U.S. 390, 399–400, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993).
(*Edwards v. Vannoy* (2021) 593 U.S. 255, 290–291, J. Gorsuch and Thomas concurring.)

The People reassert their argument that the petitioner’s repetitive motions are a violation of our California Constitution and in conflict with the victims’ Marsy’s law rights. The circumstances have changed since the court was “unwilling” to find the People’s prior argument regarding Marsy’s law persuasive. (Court 2024 DNA Order at pp. 75-76.) The petitioner’s relentless and repetitive filing of post-conviction motions constitutes undue harassment and undermines the finality of the judgment. As the court will see, his untimely fourth request for post-conviction DNA testing is barred and entirely meritless. Even after the court spelled out what was required for pleading and proof in the 2024 motion, the petitioner completely ignores the court and the rules. This motion is a prime example of harassment and abuse as he makes yet another collateral attack on the final judgment without meeting any of his pleading or proof requirements. The People are not asking the court to find the statute of Penal Code §1405 unconstitutional, per se. Instead, we respectfully invite this court, in addition to the procedural bars and deficient pleading and proof problems, to also deny the petitioner’s successive 2025 DNA motion as a violation of the state’s constitutional Marsy’s law.

³ The record demonstrates that petitioner knows how to seek a writ after a trial court ruling. After an evidentiary hearing, the Honorable Anne-Christine Massullo issued an order denying relief on the claim regarding Juror Number Seven; petitioner then sought a writ in the First District Court of Appeal. The First DCA denied the writ August 1, 2025 and resolved the last remaining issue from either his original appeal to the Supreme Court or his First Petition.

1 Victims and their families are entitled to the rights provided under the California
2 Constitution. “The rights of victims . . . include broader shared collective rights that are held in
3 common with all of the People of the State of California and that are enforceable through the
4 enactment of laws and through good-faith efforts and actions of California’s elected, appointed,
5 and publicly employed officials.” (Cal. Const. art. I, § 28(a)(4)). “Marsy’s Law clearly demands
6 a broad interpretation protective of victims’ rights.” (*Santos v. Brown* (2015) 238 Cal.App.4th
7 398, 418.) An individual right of the victim provided by Marsy’s Law guarantees, inter alia, “a
8 prompt and final conclusion of the case and any related post-judgment proceedings.” (Cal.
9 Const. art. I, § 28(b)(9).)

10 In addition to a guarantee of finality, the California Constitution also provides that
11 victims shall be “be treated with fairness and respect for his or her privacy and dignity, and to
12 be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice
13 process.” (Cal. Const. art. I, § 28(b)(1) [reciting the victim’s rights afforded under the state
14 constitution that preserves and protects a victim’s rights to justice and due process].) The
15 petitioner’s constant duplicative barrage of post-conviction pleadings is undue harassment and
16 a violation of finality in judgment. Therefore, the People respectfully request the court find the
17 petitioner’s successive, untimely motion in violation of and in conflict with our state
18 constitution as an additional basis for denying this motion.

19 **E. PETITIONER’S 2025 “RENEWED” DNA MOTION IS PROCEDURALLY**
20 **BARRED AS SUCCESSIVE, UNTIMELY AND FAILS TO MEET HIS**
21 **BURDEN UNDER PENAL CODE §1405(g)(8).**

22 The October 2025 timing of the petitioner’s latest “renewed” motion for DNA testing is
23 intriguing. Generally, a petitioner files a post-conviction DNA motion in *preparation* for and
24 prior to filing his appeal or habeas petition. The purpose of section 1405 is “to provide
25 defendants with a narrowly circumscribed **opportunity to develop new evidence in**
26 **preparation for** a [habeas petition or] new trial motion based on newly discovered evidence.”
27 (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1047 (*Richardson*).)

28 This is why the California Supreme Court has cautioned the reviewing courts:

1 “[I]t is important for the trial court to bear in mind that the question
2 before it is whether the defendant is entitled to develop potentially
3 exculpatory evidence and not whether he or she is entitled to some form
4 of ultimate relief such as the granting of a petition for habeas corpus
5 based on that evidence. As the Ninth Circuit observed in an analogous
6 decision, ‘Obtaining post-conviction access to evidence is not habeas
7 relief.’ [Citation.] Therefore, the trial court does not, and should not,
8 decide whether, assuming a DNA test result favorable to the defendant,
9 that evidence in and of itself would ultimately require some form of
10 relief from the conviction.”

11 (*Id.* at p. 1051; see also *Morrison v. Peterson* (9th Cir. 2015) 809 F.3D 1059, fn. 6 [holding
12 PC 1405 chain of custody and reasonable probability requirements constitutional].)

13 Except in this case, this court is uniquely situated as it must decide both the petitioner’s
14 Third Petition for Writ of Habeas Corpus and now what would legitimately be considered his
15 fourth request for “Renewed DNA Testing” at the same time. In fact, this 1405 motion asserting
16 “new evidence” is contingent on the outcome of his latest habeas petition. The petitioner has
17 incorporated by reference his Third Petition and requests that this court refer to his 659-page
18 petition and 53 exhibits totaling 2,702 pages as support for this untimely fourth DNA request.
19 In this motion, he asks this court:

20 “For the sake of brevity, because Mr. Peterson’s renewed motion for
21 DNA testing **relies on the same new evidence** set forth in his Petition
22 pending before this Court, he will refer to the new evidence by citing to
23 the Petition exhibit numbers (“Pet. Exh.”) assigned to that evidence and
24 will not attach additional copies of those exhibits, which are
25 voluminous, to this motion.”

26 (See Def. 2025 DNA Mtn. p. 2, Fn 2, emphasis added.)

27 Petitioner’s sole reasoning for re-raising another DNA motion after this court has
28 already rejected his request for DNA testing on the very same items in 2024 is based on his
renewed claim of “new evidence” contained within his Third Petition. Thus, this fourth request
is dependent on the court’s determination of whether the petitioner has met his prima facie
burden of showing “new evidence” under Penal Code § 1473(b)(1). However, by filing another
motion for DNA testing, the petitioner has essentially conceded that he has not met his Penal

Code §1473 burden because he wants an **opportunity to develop new evidence** for presumably what would constitute yet another successive habeas petition.

When petitioner filed his Amended Second Petition in April 2025, he had the foresight to incorporate exhibits that had nothing to do with his 14 habeas claims but do relate to DNA testing or incorporate his DNA coordinator/expert. The petitioner attached the following:

- Exhibit 38: declaration from his DNA expert Mehul Anjara dated January 16, 2024 (attached to his prior 2024 DNA motion);
- Exhibit 22: another declaration from DNA expert Mehul Anjara dated April 2, 2025;
- Exhibit 2: declaration from DNA coordinator Danielle Leaf dated April 17, 2025;
- Exhibit 37: declaration from Matthew Dalton dated December 13, 2023 regarding the Target bag investigation (attached to his prior 2024 DNA motion).

Four months later, the petitioner reattached these same DNA affiliated exhibits to his Third Petition filed in August 2025. Yet, he waited until October 7, 2025 to bring this successive renewed DNA motion. "In this state a defendant is not permitted to try out his contentions piecemeal by successive proceedings attacking the validity of the judgment against him." (*In re Clark* (1993) 5 Cal.4th 750, 767-768.)

Circling back to timing, the petitioner's assertion that his "new evidence" was discovered "after" this court's May 29, 2024 ruling would suggest an attempt to avoid the procedural bar. The People point out in their Informal Response that the petitioner consistently fails to state specific facts regarding when this "new evidence" was truly discovered. He does not state with specificity the facts as to when the information was known to him or should have been reasonably known to him. Rather, he generally tells this court in conclusory fashion that it was "after" its May 29, 2024 decision.

"It is not sufficient simply to allege in general terms that the claim was recently discovered, . . ., or to produce a declaration from present or former counsel to that general effect." (*In re Reno* (2012) 55 Cal.4th 428, 461-462.) The petitioner has the burden to establish the absence of substantial delay, and to meet that burden he "must allege, *with specificity*, facts showing when information offered in support of the claim was obtained, and that the information neither was known, nor *reasonably should have been known*, at any earlier time." (*In re Reno, supra*, 55 Cal. 4th 428, 461 emphasis added; quoting *In re Robbins* (1998) 18 Cal.4th 770, 780.) "Substantial

1 delay is measured from the time *the petitioner* or his counsel knew, *or reasonably should have*
2 *known*, of the information offered in support of the claim and the legal basis for the claim.” (*In re*
3 *Reno, supra*, 55 Cal. 4th 428, 461, emphasis added; see *In re Sanders* (1999) 21 Cal.4th 697, 704;
4 boldface added.)

5 For instance, the petitioner attaches many of the same following exhibits to his Third
6 Petition that he attached in his post-conviction motions. (See People’s Inf. Resp. Claim Four.)
7 The People further demonstrated in our informal response to the court that nearly all the exhibits
8 he attached to his Third Petition which he purports to be “new” conveniently omit the dates of
9 when the petitioner’s defense team first contacted the declarant or when the petitioner was
10 aware of the information the declarant had to offer. For example, Exhibit 1, the declaration
11 from Dr. Peter Doubilet, dated November 2, 2024 is silent as to when the petitioner’s counsel
12 contacted him or when Doubilet provided them his “new” opinion. Similarly, Prof. Russell
13 Feagin’s declaration dated March 14, 2025 admits Feagin conducted 300 hours of work creating
14 and analyzing a computer model for this case, but it fails to provide the facts regarding when
15 the petitioner requested him to conduct or start this “new” experiment. It is the same with
16 Exhibit 4: Misty Rodriguez Morales’s declaration dated January 25, 2025 states that she met
17 with the petitioner’s counsel in 2025 and was shown a picture of the orange van. However,
18 Exhibit 4, his petition and this fourth DNA motion do not provide this court with the specific
19 facts regarding when the petitioner was first aware of Rodriguez Morales – only the time they
20 met for her to sign the declaration and claim the information is “new.”

21 It is the petitioner’s burden to plead and prove that this motion is not being brought just
22 to cause delay. (See Pen. Code §1405(g)(8) [“The motion is not made solely for the purpose of
23 delay.”].) Why did petitioner wait until October 7, 2025 – six months after filing his Amended
24 Second Petition with his “new evidence” and two months after submitting his Third Petition
25 based on his same “new evidence” – to bring this renewed DNA motion?

26 The bottom line is petitioner is seeking a fourth bite of the apple, but he has failed to
27 follow any of the rules to demonstrate that he deserves one. This motion, like his Third Petition,
28 is procedurally barred.

V.

STANDARD OF REVIEW

The applicable standard of review for rulings under section 1405 is abuse of discretion. (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1043.)

VI.

RELEVANT FACTS

The People hereby incorporate by reference the relevant facts contained in the People's 2024 post-conviction oppositions, the California Supreme Court decision and the People's Informal Response to the Third Petition. The People invite the court's attention to their 2024 Opposition to DNA Testing which outlines the facts relating to the orange van, the Target bag, duct tape attached to the Target bag and Item I-11 which is the other duct tape from the Bay.

VII.

LAW AND ARGUMENT

For brevity's sake, the People hereby incorporate by reference the argument, case law and legal reasoning contained in the People's 2024 post-conviction DNA opposition relating to all the deficiencies in the petitioner's pleadings and proof.

A. PETITIONER'S PLEADINGS AND EXHIBITS ARE INSUFFICIENT TO MEET HIS PRIMA FACIE BURDEN.

Penal Code §1405 is the statute that governs motions for post-conviction DNA analysis and it contains two similar substantive requirements – the first governing the pleading itself and the second describing the eight specific elements a defendant must meet with competent evidence.

Penal Code § 1405(d)(1) establishes that such a motion must be verified by the convicted person under penalty of perjury and must include all the following:

- (A) A statement that he or she is innocent and not the perpetrator of the crime.
- (B) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.
- (C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.

- 1 (D) Explain, in light of all the evidence, how the requested DNA testing would raise a
2 reasonable probability that the convicted person's verdict or sentence would be more
3 favorable if the results of the DNA testing had been available at the time of conviction.
4 (E) Reveal the results of any DNA or other biological testing that was conducted previously
5 by either the prosecutor or defense, if known.
6 (F) State whether any motion for testing under this section previously has been filed and
7 the results of that motion if known.

8 (Pen. Code § 1405, subd. (d)(1).)

9 The post-conviction statutes state that *only* if the pleading requirements are met – which
10 they are not – the court should then fully consider the motion on its merits. Because the
11 petitioner has failed to make a prima facies case for DNA testing in his pleadings, the court
12 need not consider the subdivision (g) requirements.

13 Under Penal Code § 1405(g) the court is only directed to grant a motion for DNA testing
14 if all the following are then established:

- 15 (1) The evidence to be tested is available and in a condition that would permit the DNA
16 testing requested in the motion.
17 (2) The evidence to be tested has been subject to a chain of custody sufficient to establish
18 it has not been substituted, tampered with, replaced or altered in any material aspect.
19 (3) The identity of the perpetrator of the crime was, or should have been, a significant issue
20 in the case.
21 (4) The convicted person has made a prima facie showing that the evidence sought to be
22 tested is material to the issue of the convicted person's identity as the perpetrator of . . .
23 the crime . . . that resulted in the conviction or sentence. The convicted person is only
24 required to demonstrate that the DNA testing he or she seeks would be relevant to, rather
25 than dispositive of, the issue of identity. The convicted person is not required to show a
26 favorable result would conclusively establish his or her innocence.
27 (5) The requested DNA testing results would raise a reasonable probability that, in light of
28 all the evidence, the convicted person's verdict or sentence would have been more
favorable if the results of DNA testing had been available at the time of conviction. The
court in its discretion may consider any evidence whether or not it was introduced at
trial. In determining whether the convicted person is entitled to develop potentially
exculpatory evidence, the court shall not decide whether, assuming a DNA test result
favorable to the convicted person, he or she is entitled to some form of ultimate relief.
(6) The evidence sought to be tested meets either of the following conditions:
a) The evidence was not tested previously.
b) The evidence was tested previously, but the requested DNA test would
provide results that are reasonably more discriminating and probative of the
identity of the perpetrator or accomplice or have a reasonable probability of
contradicting prior test results.

1 (7) The testing requested employs a method generally accepted within the relevant scientific
2 community.

3 (8) The motion is not made solely for the purpose of delay.

4 (Pen. Code, § 1405, subd. (g).)

5 The petitioner has included the identical declaration dated November 29, 2023 which
6 was previously submitted as the basis for his 2024 DNA motion in this 2025 “renewed” DNA
7 motion. (See 2025 DNA Exh. 5, declaration of Scott Peterson dated 11/29/2023.)

8 In its 2024 ruling, this court made it abundantly clear that the petitioner’s pleadings were
9 insufficient. It pointed out that his declaration and his pleadings failed to establish chain of
10 custody, materiality and make a prima facie case that there was a reasonable probability if the
11 DNA testing had been conducted there would have been a more favorable outcome at trial.

12 Remarkably, the petitioner asks this court to reconsider its 2024 ruling and then fails to
13 follow the statute’s basic requirements or address the court’s prior holding. Instead, he attaches
14 the same 2023 declaration that failed to resolve any of the issues the court recited in its opinion.
15 Moreover, his 2023 declaration fails to include anything regarding the results of biological
16 testing his defense team did in 2004 on the items at issue here as required under subdivision
17 (d)(1)(E) and the results of his 2024 DNA motion as required under subdivision (d)(1)(F).

18 The People have previously addressed many of these defects in their prior opposition
19 and will not restate all the same issues here but respectfully invite the court to review the
20 People’s 2024 opposition addressing the inadequacies in his pleadings. Accordingly, the
21 People’s Opposition focuses on the additional shortcomings in the 2025 “renewed” DNA
22 motion and supporting exhibits.

23 Petitioner attaches a declaration from his counsel, Paula Mitchell, dated July 30, 2024
24 as DNA Exhibit 4 which is discussed in further detail below. (See 2025 DNA Exh. 4,
25 declaration of Paula Mitchell dated 07/30/2024.) This declaration fails to address the court’s
26 May 29th findings, the timing of this “renewed” motion or any of the other strict requirements
27 under the statute.

28 Another exhibit the petitioner attaches as support for this 2025 renewed motion, Exhibit
3, is from his DNA coordinator Danielle Leaf. This is the only new declaration and is dated

October 8, 2025 – the same day he filed his “renewed” DNA motion. DNA Exhibit 3 is quite interesting for a few reasons. First, the petitioner’s defense team apparently either *just recently* discovered or previously discovered and are *just now producing* another document contained within their own files that they want to offer as “new evidence,” i.e., a fax directed to Kirk McAllister, a criminal defense attorney who was hired by petitioner and/or his family in late December 2002. (1CT 093-094 [Stanislaus Superior Court Minute Order dated 05/05/2003 re: McAllister second counsel and declaration of McAllister dated 05/05/03, see also Third Petn. Exh. 13 ¶7 [re: petitioner’s family hired McAllister and private investigator Gary Ermoian in December 2002.)

DNA Exhibit 3 states that Leaf is the LAIP DNA Coordinator and has assisted Paula Mitchell, petitioner’s current counsel, in his habeas and DNA cases. (2025 DNA Mtn. Exh. 3 ¶¶ 1-2.) Since beginning their investigation in 2023, Leaf has participated in 40 interviews and states she is aware that Paula Mitchell has interviewed more than 100 people. (*Id.* at ¶ 5.) Leaf’s declaration does not indicate if Misty Rodriguez Morales was among these 100 people who they claim to have previously interviewed and when.

Leaf’s October 2025 declaration also states that she (Leaf) assisted Mitchell by “thoroughly reviewing” the discovery as well as “reviewing” the trial record (RT and CT); post-conviction record including appellate and habeas pleadings and transcripts from post-conviction hearings; and their investigation files produced by defense counsel and investigators. (2025 DNA Mtn. Exh. 3 ¶¶ 2-3.) Mitchell’s prior declaration also states that she has reviewed their files and records. (See 2025 Exh. 4 ¶¶ 3-4, 7 (discussed in more detail in section D below).) ⁴

⁴ Paula Mitchell has submitted several declarations during her tenure on the case in the First District Court of Appeal and in San Mateo County Superior Court. These declarations represented to the court her search and review of the defense files and records. Relevant here, Mitchell has repeatedly declared:

- ¶ 5, pg. 8: In May 2023, I met with Petitioner’s prior counsel, who encouraged me to review new evidence uncovered or developed in Petitioner’s case, some of which was physical evidence – evidence *not* addressed in his *pro se* Petition – to determine whether it may be appropriate for DNA testing.
- ¶ 6, pg. 8: LAIP attorneys **immediately began collecting, assembling, reconstructing, and reviewing the trial file**, which includes over 43,000 pages of discovery, the trial transcript

On May 6, 2024, petitioner attached another declaration from Paula Mitchell to his 2024 § 1405 Reply to People’s Opposition as Exhibit 34. In this declaration, Mitchell declared that they had just located a lost Box 1261 of defense files in November 2023 (the date is accurate) containing Carl Jensen’s investigation and audio and video tapes. Upon defense counsel’s review of this box, she was offering new information to the court. (See 2024 Def. Reply 1405 Exh. 34, Dec. Paula Mitchell, dated 05/06/2024, at pp. 1-2 ¶¶ 5-7, 9 [locating lost Box 1261 of defense files in November 2023].) During

which records the testimony of over 150 witnesses and comprises over 120 volumes, and the briefing and opinions in Petitioner’s prior direct appeal and petition for writ of habeas corpus filed in the California Supreme Court, **materials that were gathered from several of Petitioner’s prior counsel.**

- ¶ 7, pgs. 8-9: After reviewing the new evidence and the case materials preliminarily, LAIP staff attorneys and I met with Petitioner on July 6, 2023, and agreed to **conduct a more fulsome review of the evidence in the case...**
- ¶ 10, pg. 10: As a result, I directed that a **complete and thorough review be made of the audio and videotapes produced to the defense** at the time of trial in Petitioner’s case...
- ¶ 11, pg. 10: Based on **my review of the materials produced at the time of trial...**
- ¶ 14, pg. 11: Based on **my review of the evidence presented at trial in this case**, the *pro se* Petition pending before the Court, and the new evidence uncovered...

(Declaration Paula Mitchell, November 14, 2023 DCA Mtn. to Suspend Informal Briefing at p. 8-11.)

In 2024, Mitchell further declared in her January 17, 2024 declaration for the post-conviction discovery that she had obtained prior trial counsel’s files:

- ¶ 3: In March 2023, I was contacted by Scott Peterson’s prior counsel at Habeas Corpus Resource Center (HCRC) and asked if LAIP would be in a position to investigate potentially exculpatory DNA evidence in Mr. Peterson’s case. Over the following months, I **instructed, assisted, and supervised LAIP staff attorneys in assembling the voluminous discovery (over 40,000 pages) and the trial and appellate record in Mr. Peterson’s case, in an effort to recreate the police investigation file and related crime lab reports and trial counsel files.**
- ¶ 4: LAIP staff attorneys and I **also contacted Mr. Peterson’s prior counsel and obtained from them Mr. Peterson’s case materials that were in their custody, possession, and control.**

(2024 PC § 1054.9 Exh. 1, Dec. Paula Mitchell dated 01/17/2024; same as 2024 Reply 1405 Exh. 34, Dec. Paula Mitchell at pp. 1-2 ¶¶ 3—4; Second Amended Petn. Exh. 22, Dec. of Paula Mitchell 04/18/2025; Third Petn. Exh. 22 same Dec. Paula Mitchell dated 01/17/2024; See also e.g. Dec. Paula Mitchell 05/15/2024 DCA Mtn.to Further Suspend at pp. 11-13 ¶¶5-8, 10.)

1 the second day of the PC §1054.9 hearing, Mitchell represented to this court for the first time
2 that Mitchell believed they could not locate additional items and wanted several audio
3 recordings and tapes. (See Reporter’s Transcript of §1054.9 July 16, 2024 Proceedings, starting
4 at p. 178 [defense just discovered items missing and seeking more discovery].)

5 Taking this information into account, it is now October 2025 and the petitioner’s defense
6 team has reported that it has suddenly discovered a fax that was sent to the petitioner’s original
7 attorney, Kirk McAllister. The fax, which is date stamped February 9th with an unintelligible
8 year depicted, relates to an anonymous tip involving a van fire in the Airport District.⁵
9 Assuming that the fax was received in February 2004, this would reinforce the petitioner’s
10 knowledge and awareness of the arson reports they received in discovery and acknowledged by
11 then trial attorney Pat Harris that they did not give this tip much weight as it failed to fit their
12 narrative in 2004. (Third Petn. Exh. 17, declaration of Pat Harris, at ¶ 27 [*“I recall knowing
13 about that fire but there was no indication in the discovery the defense was provided that there
14 was any potential exculpatory evidence related to that crime, or that it was in any way related
15 to the Medina burglary or to Laci’s disappearance.”*]). As discussed below and throughout the
16 People’s Informal Response to his Third Petition, there is still no exculpatory evidence that the
17 van fire was related to Laci’s disappearance or connected to the burglary. Moreover, the
18 petitioner does not get to claim this McAllister fax is “new evidence” simply because his DNA
19 coordinator stumbled upon it during a search of their files.

20 One last note warrants the court’s attention. The petitioner has continued to drop hints
21 both in his Third Petition and in 2025 DNA Exhibit 3 that he will file additional successive
22 petitions regardless of the state constitution or California Supreme Court rules. Specifically,
23 the petitioner has informed this court his investigation is on-going.

24 The People point out in their Informal Response that the petitioner has added a new
25 allegation in Claim Four that he did not previously make in his Amended Second Petition. In
26 his Claim Four, the petitioner states that his investigation is still on-going in paragraph 86:

27 ⁵ Petitioner represents that the date on the fax was February 9, 2004. However, the screenshots depicted
28 both on page 73 of his 2025 DNA motion or Leaf’s Exhibit 3 page 3 the last number of the year stamped
on the fax is unreadable. It appears the defense stamped that they received it in between 2003-2009.

“¶ 86. Counsel is currently investigating a report by a witness who has come forward with information that a longtime acquaintance confessed that he is the person responsible for putting the bodies in the bay. (See. Exh. A at ¶¶ 33-37;...”

(Third Petn. p. 333 at ¶86.) The petitioner failed to attach “Exh. A” which he cites to as his source of information to support this allegation. Then Leaf submits her October 2025 declaration and claims the following in DNA Exhibit Three:

“ ¶ 7. One witness has come forward with information about a person confessing to them in the 2018–2019 timeframe that they are the person responsible for placing Laci’s body in the bay. My research indicates that the person who made this confession appears to have deep ties to individuals from the Airport District in Modesto and groups referred to as the Peckwoods, Aryan Brotherhood, and the Modesto Hardcore Skinheads. (See Pet. Exh. 2 at 50–54, 100, 105.)

¶ 8. This witness stated that after watching Mr. Peterson’s recent court hearing on YouTube and hearing Ms. Mitchell advocate for keeping specific witness names out of the public domain for safety reasons, it gave them the courage they needed to reach out to Mr. Peterson’s attorneys.

¶ 9. As part of our due diligence in investigating this information, we have attempted to determine whether this possible suspect, who appears to have been incarcerated for most of his adult life, was in custody during the relevant time period, from December 24, 2002, to April 14, 2003, as a critical first step in corroborating the witness’s account.

¶ 10. Records I have obtained indicate that this possible suspect was in custody in Modesto in the fall of 2002, but his release date is not reflected in publicly available records I have been able to obtain...

(2025 DNA Exh. 3, ¶¶ 7-10.)

Petitioner’s implication that he intends to file additional successive pleadings conflict with the law. The California Supreme Court has held, that “[a]bsent a change in the applicable law or the facts, the court will not consider repeated applications for habeas corpus presenting claims previously rejected. The court will also refuse to consider newly presented grounds for relief which *were known* to the petitioner at the time of a prior collateral attack on the judgment. [Citations.]” (In re *Clark*, (1993) 5 Cal.4th 750, 767-768, superseded by statute as stated in *In*

1 *re Friend* (2021) 11 Cal.5th 720; see also *In re Martinez*, (2009) 46 Cal.4th 945, 956, [emphasis
2 added].) “In this state a defendant is not permitted to try out his contentions piecemeal by
3 successive proceedings attacking the validity of the judgment against him.” (Ex parte *Connor*,
4 (1940) 16 Cal.2d 701, 705; accord *Clark*, *supra*, 5 Cal.4th at p. 770.) Moreover, a prisoner
5 cannot through argument in a post reference brief expand his claims beyond those alleged in
6 the petition for writ of habeas corpus and made the basis of the court's order to show cause. (See
7 *In re Lawley* (2008) 42 Cal.4th 1231, 1248 [If an order to show cause is issued, it is limited to
8 the claims raised in the habeas corpus petition and the factual bases for those claims alleged in
the petition.])

9 **B. PETITIONER’S PLEADINGS FAIL TO PROVE THAT ITEMS HE SEEKS TO**
10 **HAVE TESTED FOR DNA EXIST AND ARE IN A CONDITION TO BE**
11 **TESTED.**

12 Under subdivision (g)(1), the petitioner is required to demonstrate in his pleadings that
13 the evidence to be tested is available and in a condition that would permit the requested DNA
14 testing. The court already found that the metal fuel canister and the cloth from the orange van
15 no longer exist during its 2024 ruling. ⁶ In Claim 11-F of petitioner’s new petition, where the
16 petitioner accuses the prosecution of committing *Brady* violations for destroying evidence
17 associated with the orange van, the petitioner further acknowledges these items do not exist.
18 (See People’s Inf. Resp. Claim 11-F.) Yet, he files this renewed motion two months later and
attempts to shift his pleading burden onto the People. In doing so, the petitioner makes serious
accusations that the prosecution made false representations to this very court regarding the

19 ⁶ As stated by the court:

20 “Category 1 are Items 1 through 4 that are articulated in the Petitioner's motion, items from the
orange van. They're identified as:

21 Cloth from the mattress, Item 1; ¶

22 A piece of partially burnt mattress cloth, Item 2; ¶

23 Cloth from the van fuel tank in Item 3; ¶

24 And metal fuel container in Item 4.¶

25 Argument today has revealed -- has resulted in the revelation that apparently Items 3 and 4 are
no longer in the custody of law enforcement or capable of being tested, and that the chain of
custody is insufficient to test them. We simply don't have them anymore.”

26 (Reporters Transcript, *People v. Peterson*, San Mateo Superior Court Hearing and Order of May 29,
2024 at Page 79-80.)

1 status of the items associated with the van. In his lengthy footnote #4, the petitioner states in
2 one breath that he has a *good faith belief* to allege that the evidence he seeks to test *exists*. In
3 the next breath, he blatantly accuses the People of prosecutorial misconduct while he
4 simultaneously represents in his screenshot that the van was destroyed. Finally, after faulting
5 the court for believing the prosecution in its ruling, the petitioner deflects his burden back onto
6 the court and requests that the court order discovery from the People to show some type of
7 additional proof, aside from the documentation he currently possesses, that the fuel tank no
8 longer exists. This is another example of the petitioner shifting his burden onto others. (See
9 2025 DNA Mtn. at pp. 4-6 depicted below.)

Below is the petitioner's Footnote 4:

⁴ Mr. Peterson has a good faith basis to allege that the evidence he seeks to test and re-test exists and is in a condition that would permit the DNA testing requested based on MPD's General Orders that were in place in 2002 and which set forth policies for evidence collection, handling, and preservation, cited herein.

In 2024, the prosecution refused to provide Mr. Peterson with a copy MPD's current chain of custody records and/or current Evidence and Property Records (EPR) documenting the current state of the evidence he sought to test and re-test, i.e., whether it had been preserved and is in a condition to be tested, with the chain of custody intact. This Court denied Mr. Peterson's discovery requests seeking that information, both in his DNA motion and in his post-conviction discovery motion pursuant to Penal Code section 1054.9. (See May 29, 2024, Afternoon Hrg. Tr. at pp. 99–101 [Court exercised its discretion and denied Mr. Peterson's discovery requests set forth in his DNA motion, except as to Item 9 [tape from pants], including evidence MPD recovered from the van fire crime scene and from the recovery sites in the bay, "without prejudice to anything under 1054.9 to the extent that has yet to be litigated," on the ground that the requests were "outside the scope of what the Court has ordered tested"]; see also, October 7, 2024 Order re § 1054.9 post-conviction discovery requests at pp. 124–128, 203–204 [denying post-conviction discovery requests for current MPD EPRs as to items of physical evidence collected from the van fire crime scene and from the bay recovery site areas that would establish the current status of that evidence for purposes of DNA testing, on the ground that the requests "seek[] material generated post-trial, which is outside the scope of permissible discovery under Penal Code § 1054.9."].)

Mr. Peterson was therefore hamstrung by the prosecution's refusal to provide current MPD EPRs showing the status of the evidence he sought to test and by this Court's denial of his requests for that discovery; he could not in 2024 and cannot now establish the condition or status of the evidence he seeks to test without that information, which he is required to do under Penal Code section 1405, but which *only* the prosecution possesses.

Based on the new evidence set forth in the Petition supporting Mr. Peterson's claim of innocence, the Court should, as an initial matter, order the prosecution to produce the discovery requested herein, including current MPD EPRs for the evidence he seeks to test, so it can be determined by the parties and by the Court whether the evidence Mr. Peterson seeks to test or re-test by way of this motion exists and has been preserved in a manner that make it suitable for testing.

Such an order is especially appropriate here, where recently discovered evidence shows that the police and prosecution repeatedly mishandled, suppressed, and intentionally destroyed evidence related to the Medina burglary and the van fire crime scene [see, e.g., Pet. Exh. 7], and hid the fact that evidence had been destroyed, and where the record further shows the prosecution suppressed evidence at the time of trial related to the van fire and remains opaque to this day about the status of that evidence. As the Court may recall, the prosecution suppressed crime scene photos and other parts of MPD's investigation file related to the van fire at the time of trial and only turned that evidence over to Mr. Peterson in 2016, when his habeas counsel learned of its existence from a reporter and requested it from the Attorney General's Office.

In addition, at the May 29, 2024 hearing on Mr. Peterson's DNA motion, the prosecution falsely represented to the Court that it had documentary evidence showing that the evidence from the van fire crime scene, which Mr. Peterson sought to have DNA tested, had been destroyed. (See Exh.1 [*People v. Peterson* SC055500A, May 29, 2024, Morning

Hrg. Tr.] at p. 92 [Dave Harris, waving around an unidentified document during his argument and stating: “The property sheet for the van says that it was towed and then, again there is the dispo where it’s been released. You know, I doubt that they are going to be keeping a burnt van in storage where it says it was towed 20 something years later.”].)

Based in part on Mr. Harris’s assertion, the Court denied Mr. Peterson’s request to test the cloth from the van fuel tank and metal fuel can found inside the burned van (labeled Items 3 and 4 in the 2024 DNA motion). (Exh. 2 [People v. Peterson SC055500A May 29, 2024, Afternoon Hrg. Tr.] at pp. 79–80 [the Court: “Cloth from the van fuel tank in Item 3; and metal fuel container in Item 4. Argument today has revealed -- has resulted in the revelation that apparently Items 3 and 4 are no longer in the custody of law enforcement or capable of being tested, and that the chain of custody is insufficient to test them. We simply don’t have them anymore.”].)

Mr. Harris’s representation made to this Court at the May 29, 2024 hearing was the first time counsel had learned the van and its contents had purportedly been destroyed. As set forth more fully *infra*, further research shows that the document Mr. Harris waved around and represented was evidence showing the destruction of the van and its contents does not, in fact, indicate that those items have been destroyed.

The document Mr. Harris waved around is an EPR for the orange van that contained the metal fuel can (and presumably the mattress and the gas cap, according to MFD Fire Investigator Bryan Spitulski). There is no disposition code noted on the EPR indicating that the evidence has been destroyed, nor is there is any indication or notation elsewhere on the document indicating that the van or its contents have been destroyed; instead, written in the box where the “Final Dispo Date” should be recorded is: “TOW,” and below that, “1-2-03,” as shown below:

Item #	Subject (1-3)	Serial#	Property Sign	Dispo	Bar Code Label
3	89 ORANGE CHEVY VAN	124151	ORANGE	TOW	MODESTO PD EVIDENCE
	1-2-03				000012864

MPD General Orders required that vehicles be stored at a tow storage facility. (Pet. Exh. 2B at AHCP-260.) In other words, the property record Mr. Harris represented to the Court was evidence of its destruction is more fairly characterized as a property record documenting that the van was towed to A&R Towing on January 1, 2003, and not that it has been destroyed.

In addition, MPD’s General Orders provide that before destroying the van, physical evidence should have been removed and processed including photographed, videoed, fingerprinted, and smaller evidence items should have been removed and booked into evidence. (Pet. Exh. 2B at AHCP-261–262.) Furthermore, authorizing this van for destruction on January 2, 2003, as the prosecution has stated, would require that an officer or detective note the final disposition prior to the evidence being purged. (Pet. Exh. 2B at AHCP-265.) There was no final disposition of any of the cases in question on January 2, 2003, as Laci was still missing, the Medina burglary was yet to be solved, and the prosecution concedes that, to this day, the van fire is an “unsolved” crime. The records provided to Mr. Peterson do not contain any signatures noting who authorized the disposition or the disposition code as required by MPD General Orders. (Pet. Exh. 2B at AHCP-301.)

Despite the prosecution’s obfuscation and refusal to state the status of the evidence collected from the van fire crime scene and the Court’s denial of Mr. Peterson’s discovery requests for current EPRs, the Court nevertheless faulted Mr. Peterson for the “failure to demonstrate a sufficient chain of custody or that the items are still available to be tested and in a condition that would permit the DNA testing to be completed as to Items 3 and 4.” (Exh. 2 [May 29, 2024, Afternoon Hrg. Tr.] at pp. 83–84.)

27 The Court should order the prosecution to provide current EPRs or other records documenting the current status
28 of the evidence Mr. Peterson seeks to test or re-test by way of this motion.

6
NOTICE OF MOTION AND MOTION FOR DNA TESTING; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

This is another tactic where the petitioner makes baseless inflammatory accusations to deflect from his burden of proof. He has consistently repeated this same tactic throughout his entire Third Petition.

While it is the petitioner's burden to meet the requirements of PC §1405, the People provide the full screenshots of these Evidence Property Records (EPRs) – he asks the court to order discovery but which are contained in the petitioner's exhibits and he already possesses. (See Third Petn. Exh. 2B ACHP 042-043.)⁷ As the court can see from the screenshots the first Evidence Property Record shows that on January 2, 2003 pursuant to Det. Shipley's orders, the orange van with the metal fuel tank contained inside was released. A & R Towing picked the vehicle up from 1124 F Street which was the address for the Modesto Police Department Evidence Storage Facility and released pursuant to a Ceres Recovered Stolen Vehicle. (See screenshots below)

It is not as if the petitioner does not understand and know how to read the property logs. He asserts several allegations in his Third Petition that the People destroyed the cloth from the fuel tank on July 29, 2010. In fact, he uses the same tactic and goes so far to try to make this routine disposal of items in a closed case somehow look corrupt by making attenuated accusations tying it to the district attorney. For example, petitioner contends:

“New evidence shows that within weeks of Petitioner's arrest MPD began destroying evidence related to the Medina burglary that had exculpatory value. **Newly discovered evidence** further **shows** that (i) on June 3, 2010, MPD arrested T.L. for a traffic violation, (ii) on June 11, 2010, R.Z. was arrested in the parking lot of a mobile home park on 9th Street in Modesto120, (iii) on July 27, 2010, T.L. was arraigned, (iv)

⁷ Petitioner attached these same EPRs as Exhibit 3 to his 2024 Reply to People's DNA Opposition

on June 28, 2010, then-DA Fladager announced that R.Z. was sentenced to three years in prison for auto theft [Exh. 2B at AHCP-105], and, (v) the very next day, on July 29, 2010, the prosecution inexplicably destroyed the “cloth from fuel tank” MPD recovered during the burned van fire investigation, without informing Petitioner or anyone on his defense team. (Exh. 2B at AHCP-043.)

On July 29, 2010, when the prosecution destroyed that physical evidence collected from the burnt van, Petitioner’s conviction was not yet final—indeed, he had not even filed his automatic appeal challenging his conviction and death sentence—a sentence the Supreme Court later determined was unconstitutional and vacated.”

(Third Petn. at p 221)

“¶ 139. In 2016, the prosecution informed Petitioner that the last remaining physical evidence except the bloodstained mattress fabric was *destroyed* on July 29, 2010, without explanation and before Petitioner’s direct appeal had even been filed in the California Supreme Court. (Exh. 2B at AHCP-041–044.)”⁸

141. The other man identified as possibly involved in the Medina burglary, T.L., was also arrested by MPD and arraigned on July 26, 2010. (Exh. 2B at AHCP-202–203.) **Then-DA Birgit Fladager was running for re-election at the time.**

¶ 142. Three days later, on July 29, 2010, the physical evidence from the burned orange van—marked “*HOLD*”, and “5-4-05 OPEN XREF: 02-142591 (Peterson Case),” was inexplicably destroyed, just weeks after Fladager announced the arrest of R.Z., and three days after T.L. was arraigned on other charges.”

(*Id.* at p 344-345.)

“¶ 211. On June 3, 2010, T.L. was arrested for a traffic violation. T.L. was arraigned on July 27, 2010. (Exh. 2B at AHCP-202–203.) **EPR 3 notes that the “cloth from fuel tank” was destroyed two days later on July 29, 2010.**

¶ 212. On July 29, 2010, the prosecution destroyed physical evidence collected from the burnt van that was intentionally set on fire early in the morning on December 25, 2002, just hours after Laci was reported missing.”

⁸ The petitioner continues to mischaracterize the mattress fabric as “bloodstained” in his petition and motions.

(Id. at 467.)

Clearly, the petitioner understands how to read the property evidence log and cannot claim some confusion as to the disposition of the orange van or metal fuel container which it indicates, as DDA Harris told the court on May 29, 2024, no longer exists. The log shows the van and its contents were released as a recovered stolen vehicle on January 2, 2003.

Int #344998
DA#1056770

X-REF MOD # 02-17142

Location Deposited (Locker#, Annex, etc.)		MODESTO POLICE DEPARTMENT		Case #	
Date/Time Deposited		Evidence/Property Record		107-#142687	
Investigating Officer/Detective (Name & IBM#)		Location/Address Items Found/Seized		Incident Type-Crime Code	
B. SP. TULSKI # 98499		[REDACTED]		451	
Evidence/Property Booked By (Name & IBM#)		[REDACTED]		☒ Felony ☐ Misdemeanor	
☐ Firearm ☐ Drugs ☐ Money ☐ Search Warrant ☐ Asset Seizure ☐ 5150/8102 Hold ☐ Destroy					
SUBJECT INFORMATION Subject Type: S - Suspect V - Victim RP - Reporting Party O - Owner					
Subject #	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
1	B. B. B. TERRY	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Subject Type	Date of Birth	Address (work)		Phone (work)
	[REDACTED]	[REDACTED]	SAME		[REDACTED]
Subject #	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
2					
	Subject Type	Date of Birth	Address (work)		Phone (work)
Subject #	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
3					
	Subject Type	Date of Birth	Address (work)		Phone (work)
PROPERTY INFORMATION					
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
2			104		MODESTO PD EVIDENCE
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	104				
	Description	CLOTH FROM MATTRESS			
		(PER SHIRLEY) 12/1/03			
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
3			12/1/03	ABR	MODESTO PD EVIDENCE
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	104	CHEVY VAN	ORANGE	1-2-03	
	Description	89 ORANGE CHEVY VAN			
		65112510			
		SERIES PD REC. SECT			
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	104				
	Description	3 GAL FUEL (IN VAN)			
		CONTAINER			
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	104				
	Description				

Int #344998
DA#1056770

MIDP
X-REF 02-19142

Location Deposited (Locker#, Annex, etc.) #1		MODESTO POLICE DEPARTMENT		Case # 02-19142687	
Date/Time Deposited 12-25-02		Evidence/Property Record Location/Address Items Found/Seized MONTGOMERY & THRAASHER (ALLEY)		Incident Type-Crime Code 451	
Investigating Officer/Detective (Name & IBM#) B. SPITULSKI #9899		Evidence/Property Booked By (Name & IBM#) SAME		☒ Felony ☐ Misdemeanor	
☐ Firearm ☐ Drugs ☐ Money ☐ Search Warrant ☐ Asset Seizure ☐ 5150/8102 Hold ☐ Destroy					
SUBJECT INFORMATION Subject Type: S – Suspect V – Victim RP – Reporting Party O – Owner					
Subject #	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
1	BORDEN TERRY	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Subject Type	Date of Birth	Address (work)		Phone (work)
	V	[REDACTED]			
Subject #	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
2					
	Subject Type	Date of Birth	Address (work)		Phone (work)
Subject #	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
3					
	Subject Type	Date of Birth	Address (work)		Phone (work)
PROPERTY INFORMATION					
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	MODESTO PD EVIDENCE  000012345
1			413	MED	
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	Description				
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	Description				

Both exhibits – in the petitioner’s possession as the People stated during the May 2024 hearing – show the evidence has been disposed of. It is astonishing that he can claim naivety or ignorance while also accusing the prosecution of intentionally deceiving the court. Moreover, the petitioner is aware of these facts because his defense team interviewed Spitulski and he possesses Spitulski’s supplemental reports. One report, which the petitioner neglects to mention, relates to an insurance adjuster named Paula Brevig contacting Spitulski on January 6, 2003 (four days after the van was released). At that time, Brevig questioned the van owner’s insurance claim. The van owner, Terry Borden, was attempting to file two stolen vehicle claims on the same incident instead of reporting them separately. The insurance adjuster asked Spitulski where the van was located. He provided the information for A&R Towing which collected the vehicle after its release. Brevig said she was going to contact the insurance

underwriter about the claims and obtain the Modesto and Ceres police reports. This report is numbered ACHP-030-031 in the petitioner’s Exhibit 2-B. This report validates that the van was towed and released for final disposition. Furthermore, at no time has the petitioner ever explained to any court why he has failed to contact the insurance company or the towing company to examine those third parties’ records instead of attempting to shift his burden onto the People.

Based on this, the petitioner needs to explain his “good faith belief” that the metal fuel canister exists and his brazen accusations of the prosecution making a misrepresentation to this court. This constitutes an abuse of our judicial system and ongoing harassment of the victims; it is the result of frivolous filings and baseless accusations.

C. PETITIONER’S PLEADINGS FAIL TO DEMONSTRATE MATERIALITY AS REQUIRED BY PENAL CODE §1405(d)(1)(D).

The statute requires the petitioner to establish materiality in his pleadings. Subdivision (d)(1)(C) instructs the petitioner to “explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person’s verdict or sentence would be more favorable if the results of the DNA testing had been available at the time of conviction.” (Pen. Code §1405, subd. (d)(1)(C); see also §1405(g)(4).)

A petitioner meets the materiality requirement in subdivisions (d)(1)(C) and (g)(4) by demonstrating that the DNA testing he seeks would be relevant to the issue of identity, rather than dispositive of it. (*Richardson, supra*, 43 Cal.4th at p. 1049.)

1. Category One – Items related to Orange Van

As to the materiality of the items associated with the orange van (cuttings from mattress cloth and fuel canister), the People incorporate by reference their prior 2024 DNA Opposition argument, as well as the cases and legal reasoning contained in their Informal Response to Claims 4 and 11-F. This is a work van that was eventually reported stolen by the owner of a crane business in the neighboring city of Ceres. After the battery was removed, the vehicle was set on fire in Modesto on Christmas Day 2002. The petitioner has never been charged with either vehicle theft or arson of this van.

1 Last year, the court held, in part, “The only way this Court would find that any evidence
2 associated with the orange van would be material to Mr. Peterson’s identity as the perpetrator
3 of these crimes would be if there was a reasonable probability developed that Laci Peterson had
4 ever been in the orange van at some point during the commission of the crime.” (Reporters
5 Transcript, *People v. Peterson*, San Mateo Superior Court Hearing and Order re: 2024 Pen.
6 Code §1405 Mtn. 05/29/2024 at pp. 81-82.)

7 Petitioner exhaustively tries to tie the Medina burglars to the arson of an orange van that
8 was previously stolen from a crane business in a nearby city and set on fire in Modesto on
9 Christmas Day 2002 in his Third Petition, but fails to do so. He refers to a declaration from
10 Misty Rodriguez Morales, a convicted felon, as his basis for “new evidence” linking Laci to the
11 van.

12 As outlined in the People’s Informal Response, the timing of this declaration dated
13 January 25, 2025 and attached as petitioner’s Exhibit 4 to his petition is quite suspect. It
14 suddenly comes into fruition merely months after this court denied petitioner’s prior request for
15 post-conviction DNA testing on items related to this same orange van.

16 The People have established that this 23-year delayed declaration is inadmissible and
17 based on multiple layers of hearsay. (See *In re Fields* (1990) 51 Cal. 3d 1063, 1070 [unless the
18 issue has been conceded by respondent, habeas corpus relief cannot be granted on the basis of
19 inadmissible hearsay].) Rodriguez Morales was not present during the Medina burglary and,
20 thus, she is not a percipient witness or anyone with first-hand knowledge of the events. It is
21 irrelevant that she has feelings or a hunch the burglary occurred on Christmas Eve or she had
22 an “impression” Richard Zarate and Tony Lugo were involved.

23 Moreover, Rodriguez Morales has credibility issues and her account of events is
24 factually impossible. At the time when Laci disappeared, Rodriguez Morales had been
25 previously released from serving concurrent prison sentences for welfare fraud and drug related
26 charges, as well as a violation of parole for an assault causing serious bodily injury conviction.
27 (Evid. Code §§ 780, 788 [using prior felony convictions and crimes of moral

1 turpitude/dishonesty to impeach witness's credibility].)⁹ After being shown a photo of the
2 orange van, Rodriguez Morales suddenly recalls that she had seen several people driving this
3 orange van -- which is a work vehicle belonging to a crane business in Ceres -- around the
4 Airport District in Modesto. (See Third Petn. Exh. 4, Declaration Misty Rodriguez Morales, at
5 p. 1 ¶¶ 7-8.) She goes on to list a number of men and includes the two men convicted for the
6 Medina burglary as the people she had allegedly seen riding around in this van. For Rodriguez
7 Morales's statement to be true, she would have had to make her observations of these four men
8 riding around in the orange van two years before Laci was murdered. As provided in the
9 People's Informal Response, some of the men Rodriguez Morales accuses of being part of the
10 burglary, riding around in an orange van, and having conversations 23 years ago about the
11 burglary were incarcerated on December 24, 2002 and her statements are factually impossible.
12 Also, according to the arson reports, at Bates page 4097, Dottie Borden (the co-owner of the
13 business that owned the van) reported to dispatch on December 25, 2002 that the van should
14 have been parked behind the business and the van was listed as an unreported "10851." ¹⁰ The
15 arson report itself eliminates the possibility the van was being driven around for two years.
16 Petitioner's Third Petition Exhibit Four, like all his other exhibits, fails to show a reasonable
17 probability that Laci had been in the orange van during the commission of the murder. Thus,
18 the petitioner has failed to establish materiality. There is no new evidence to bring this
19 untimely, successive and baseless fourth DNA motion.

2. Category Two – Items related to the Bay

20 As to the materiality of the items associated with the Bay, the duct tape, the 2025
21 "renewed" DNA Motion references a police report from Detective Grogan memorializing a
22 conversation that he had with a San Francisco forensic pathologist during the on-going
23 investigation before the bodies had been recovered in an flimsy effort to speculate that Laci was

⁹ The People hereby incorporate by reference the People's Informal Response Exhibit relating to certified felony convictions of Misty Rodriguez Morales.

¹⁰ As pointed out in our Opposition to Post Conviction Discovery (at page 47) - The arson investigation reports involving the orange van, Bates pages 4095-4110, were provided to the defense prior to trial on May 2, 2003 and the corresponding discovery receipt was signed by William Pavelic. (Bates 4095-4110.)

1 wrapped in the Target bag. (See 2025 DNA Mtn. at p. 36-39.) This type of speculation in the
2 claimed form of evidence is frowned upon. (See *People v. Vick* (1970) 11 Cal. App. 3d 1058,
3 1069 [All that appellant offers is speculation: If the coroner had not surrendered the body to the
4 family and If appellant had been arraigned at an earlier time, Something (we are not told what)
5 might have been done.]; *People v. Ayala* (2000) 24 Cal. 4th 243, 267 [We will not reverse the
6 judgment on the basis of speculation regarding theoretical possibilities of the type discussed
7 above.]; See *Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 525–26, relating to civil
8 summary judgement [An issue of fact can only be created by a conflict of evidence. ¶ It is not
9 created by ‘speculation, conjecture, imagination or guess work.’ [Citation.] Further, an issue of
10 fact is not raised by ‘cryptic, broadly phrased, and conclusory assertions’ [citation], or mere
11 possibilities [citation]. ‘Thus, while the court in determining a motion for summary judgment
12 does not “try” the case, the court is bound to consider the competency of the evidence
13 presented.’ [Citation.]”.)

14 In this report, Grogan was attempting to determine how a body would decompose in a
15 marine environment presumably with the intention of providing the divers and search teams
16 with some tangible evidence to focus their search. Grogan’s interview was with Chief Medical
17 Examiner Dr. Boyde Stephens. Grogan proffered a series of scenarios and Dr. Stephens offered
18 his opinion as to what the conditions of the remains might be or whether it was possible to find
19 them based on facts of the proffered scenario and the doctor’s experience. This was the extent
20 of the conversation. Stephens did not examine Laci’s or Conner’s remains after they were
21 recovered in April 2003 or evaluate any of the evidence from the Bay that this petitioner seeks
22 to have tested in this instant motion. Moreover, the petitioner has had this information in Bates
23 17448-17450 prior to his 2004 trial and cannot rely on this report as “new evidence.” In fact,
24 it should be noted that the petitioner directs this court to Exhibit 26 ¶ 82 which is the same
25 declaration from Paige McGrail that he attached to his initial 2024 DNA motion. He does not
26 get another chance to re-argue what he has already put before this court and the court has
27 reviewed and denied.

28 Petitioner’s “renewed” DNA motion further faults the court’s 2024 ruling by
questioning the court’s findings as to the barnacles on the Target bag, duct tape attached to the

1 Target bag, and the wad of duct tape from the Bay. Upon reviewing all the photos of the various
2 duct tapes, the petitioner and his counsel offer the court their opinion as to what the barnacles
3 show and thread count. (See 2025 DNA Mtn. pp. 39-44.) To support his opinion, the motion
4 cites to a book the petitioner found on Google and provides the court with the Google link.
5 Petitioner and his attorney do not provide declarations that indicate they are forensic scientists
6 who have received training and experience to be able to look at photographs and accurately
7 advise the court about the type of barnacle or spores that are growing on it with any degree of
8 scientific certainty. In fact, neither of them bothered to complete a fresh declaration when they
9 submitted this successive petition. Their opinion¹¹ and book are entirely baseless, inadmissible
and irrelevant.

10 The trial evidence shows that Department of Justice Criminalist Pin Kyo photographed
11 and examined the Target products bag with a piece of duct tape associated with it and an item
12 labeled as 1-11 which contained three additional pieces of duct tape. (90RT 17073, 17075-
13 17077, 17165, 17169-17170; People’s Trial Exh. 251: A-B.) Kyo’s examination of the other

14 ¹¹ When admission of expert testimony relating the use of novel scientific methods or
15 techniques is at issue, the proponent of the evidence must demonstrate the technique's
16 reliability through testimony from an expert qualified to opine on the subject. The
17 technique's reliability, in turn, depends on a showing that it has achieved general
18 acceptance among practitioners in the relevant field. Finally, the proponent of the evidence
19 must show any procedures necessary to ensure the technique's validity were properly
20 followed in the given case. ([*People v.*] *Kelly*, *supra*, [(1976)] 17 Cal.3d [24,] at p. 30.) The
21 purpose of these threshold requirements — commonly referred to as the Kelly test — is to
22 protect against the risk of credulous juries attributing to evidence cloaked in scientific
23 terminology an aura of infallibility. (*Id.* at pp. 31–32.) ¶ Not every subject of expert
24 testimony needs to satisfy the Kelly test. Courts determining whether Kelly applies must
consider, first, whether the technique at issue is novel, because Kelly “ ‘only applies to that
limited class of expert testimony which is based, in whole or part, on a technique, process,
or theory which is new to science and, even more so, the law.’ ” (*People v. Jackson* (2016)
1 Cal.5th 269, 316 (*Jackson*).) Second, courts should consider whether the technique is one
whose reliability would be difficult for laypersons to evaluate. A “Kelly hearing may be
warranted when ‘the unproven technique or procedure appears in both name and
description to provide some definitive truth which the expert need only accurately
recognize and relay to the jury.’ ” (*Jackson*, at p. 316.) Conversely, no Kelly hearing is
needed when “[j]urors are capable of understanding and evaluating” the reliability of expert
testimony based in whole or in part on the novel technique. (*Jackson*, at p. 317.)

25 (*People v. Peterson* (2020) 10 Cal. 5th 409, 444.)

duct tape was to evaluate whether it had any association with the duct tape that was on Laci's remains. (90RT 17167.) She did not locate any barnacles on either the duct tape located on the Target bag or on the Target bag labeled 1-10, or the three duct tapes from the bay labeled item 1-11. (90RT 17076.) Nor were there any tissues or any fat/adipocere or decomposition type materials found on either the Target bag, the duct tape attached to the Target bag or the three pieces of loose duct tape. (*Id.*) Kyo found that the duct tape attached to the Target bag contained a thread count of 44 and the three pieces of duct tape, labeled 1-11, contained thread counts of 42, 42 and 40, but she further explained that the one with 40 threads had missing threads which she was definitively unable to count. (90RT 17077.) Based on her examination, Kyo found the duct tape from the Target bag and three loose pieces of duct tape were distinguishable from the duct tape found on Laci's remains.

Based on the evidence from trial – not the petitioner's speculation – the court concluded in 2024 that the Target bag and duct tape were not associated with Laci in its 2024 decision. The petitioner has not offered anything but speculation to argue otherwise. Thus, he fails to demonstrate why the Target bag, duct tape attached to the Target bag and the other duct tape from the Bay are associated with Laci aside from washing up with all the rest of the debris after the big storm on April 12, 2003.

D. PETITIONER'S PLEADINGS FAIL TO REVEAL RESULTS OF PRIOR BIOLOGICAL TESTS AS REQUIRED BY PENAL CODE §1405(d)(1)(E).

During the 2024 DNA litigation, the People informed the court that the petitioner had not provided his Forensic Science Associates report/results to the court as is required under Penal Code § 1405(d)(1)(E) ["The motion for DNA testing shall be verified by the convicted person under penalty of perjury and shall include all of the following:...Reveal the results of any DNA or *other biological testing* that was conducted previously by either the prosecution or defense, if known."].

1 On May 29, 2024, the court asked petitioner’s counsel, Paula Mitchell, if there was any
2 testing conducted by Forensic Science Associates (FSA) on Item 9, which was the duct tape
3 recovered from Laci’s body.¹² (Ct. DNA Order at p. 108.) Mitchell responded:

4 “Item 9, I believe so, Your Honor, but I would have to – I would have
5 to go and see what we have. We’ve been assembling trial files; so I’ll
6 have to see what is in there.”
(*Id.* at pp. 108-109.)

7 The court ordered the defense to file and serve on the prosecution an updated declaration
8 specifying whether there was any prior testing on Item 9, (hereinafter referred to as Item I-5)
9 conducted by FSA at the defense request and specifying the results of any testing performed no
later than June 21st. (*Id.* at p. 109.)

10 On June 21, 2024, the People filed the People’s Status Conference Statement and
11 Exhibits pertaining to the DNA testing on Item I-5 and requested the court to order defense to
12 comply with the order regarding the results of the FSA testing conducted in 2004. (People’s
13 Stat. Conf. Statement, 06/21/2024.) Later that day, Mitchell filed a declaration with the court
14 that indicated she had searched their prior trial, appellate and post-conviction counsel’s files but
15 was unable to locate any documentation that FSA conducted forensic testing on Item I-5. (See
16 Declaration from Paula Mitchell dated 06/21/2024.) Mitchell stated she only found an email
17 between Deputy District Attorney Dave Harris and Mark Geragos titled “target bag” and dated
18 August 13, 2004. In the email, Geragos provided the address of Forensic Science Associates
19 for DOJ to send the requested items to be tested. (*Id.*)

20 The court addressed the 2004 FSA report and the defense search for the records during
21 its July 11, 2024 status conference hearing:

22 THE COURT: ... Okay. The next issue that we need to take up is the extent
23 to which 1405 requires, and the prosecution has requested that the Court order
24 disclosure by the defense of any prior DNA testing conducted on the materials,
either that the Court has ordered testing of, or any other materials, either in
2004, contemporaneous with the time of the original trial, or subsequently
through SERI. The prosecution has made that request under 1405 subdivision
(d)(1) and subdivision (e).

25 ¹² Defense requested “Item 9” was also known as Item I-5 (duct tape recovered from Laci’s remains)
26 based on the Modesto Property Evidence log number.

1 The defense has objected to any -- the Court ordered disclosure of any testing
2 that was performed on anything other than the one piece of evidence that the
3 Court has ordered tested in the context of this hearing, asserting a work product
4 privilege, and further asserted there is no indication that any of the testing that
5 was obliquely referenced by FSA in 2004 was ever actually conducted,
6 essentially filing a declaration that stated the original trial counsel, Pat Harris,
said nobody ever ordered forensic testing of 1-5, and that a review of the
defense file has indicated that there are no lab reports, invoices, or other
records, communications suggesting that FSA ever performed any testing that
may have been inquired about.

7 So I will -- Ms. Mitchell, I'm going to give you the first opportunity to comment
8 on this. And I may have a couple of questions for you. And then I will give
the District Attorney's Office an opportunity to respond. So your comments.

9 MS. MITCHELL: Thank you, Your Honor. With respect to any prior testing
10 on Item 9, the duct tape, as I stated in my declaration, I searched the entire trial
11 file -- all of the files actually, that we have for Mr. Peterson's case, and there is
12 absolutely no record that any testing, DNA or otherwise, was done on Item 9
13 by FSA or any other lab at the direction of the defense. So I'm kind of at a loss
as to why they're still asking for evidence of that. Most importantly, based on
the chain-of-custody records that they provided, the tape was checked back in
2004 and never again left the custody of law enforcement.

14 So there's absolutely no evidence anywhere that I've been able to find that the
15 tape was tested at the direction of the defense ever, period, full stop.

16 THE COURT: And then in terms of there was apparently one suggestion that
17 some other item, which was identified in your declaration as an item labeled
18 G82, which were sections of duct tape stuck together, that there was a chain-
of-custody log indicating that at some point that was sent to Forensic Science
19 Associates by BFS, but there was nothing in the declaration that discusses
whether there were any tests on that item that were done by Forensic Science
20 Associates. You indicate you've looked through the file, and you haven't found
any lab report or any invoices indicating that that testing was ever completed.

21 You spoke to Mr. [Pat] Harris. He didn't have any recollection or did not
22 indicate that that testing was performed. Did you ever contact Forensic Science
Associates to determine directly from them whether they did any testing on it?

23 MS. MITCHELL: Forensic Science Associates no longer exists. And the only
24 reason I included that information in my declaration, Your Honor, was just to
25 be thorough; and in the event there was any confusion about something that
was actually sent to FSA, to ensure assure the Court it was not Item 9 or the
duct tape that --

1 THE COURT: So bottom line, if FSA did any testing on the other item that is
2 not Item 9, those results have not been given to you, and you have searched
3 diligently and have not been able to find any results –

4 MS. MITCHELL: That is correct.

5 THE COURT: -- or anything that would indicate those tests were done. Since
6 the agency no longer exists, it's beyond your ability to verify with them directly.

7 MS. MITCHELL: That is correct, Your Honor.

8 THE COURT: Okay. Now, that covers Item 9, and it covers the item that was
9 -- where there's a suggestion in the chain-of-custody logs that testing may have
10 been done.

11 With regard to any other testing, has the defense ordered or conducted any
12 testing, not only on Item 9, but on any of the items that were sought under this
13 motion to be retested?

14 MS. MITCHELL: No, Your Honor, we have not.

15 THE COURT: Okay. There has been no testing?

16 MS. MITCHELL: Correct.

17 THE COURT: All right. Comments by the prosecution?

18 (Reporter's Transcript, Status Conference Hearing July 11, 2024 at pp. 20-24.)¹³

19 THE COURT: Okay. And then the other question I have for you is the pleading
20 requirement for all prior testing results requires that those rest results be plead,
21 if known. In a situation where we have a testing entity that no longer exists,
22 and the defense has asserted under penalty of perjury, basically, I've done a
23 diligent search of all of the prior defense files that have been provided to me,
24 and I haven't been able to find anything to indicate -- not a bill, not a lab report,
25 not a conversation, not anything that indicates that any of this testing that was
26 asserted to have been contemplated in 2004 was actually done. How is the

27 ¹³ For brevity's sake, the People hereby invite the court to review the People's comments and relevant
28 points and authorities beginning at page 24 in the reporter's transcript. The People's comments during
this 2024 hearing remain relevant to the petitioner's statutory burden to reveal the results of prior
biological testing in his 2025 "renewed" DNA motion.

1 defense supposed to comply with an order if the agency that did the testing
2 doesn't exist anymore and the records are presumably gone?

3 MS. REICKS: If the defense truly doesn't know if there's any prior testing
4 done, then they've made a good-faith basis. And you're right, it says "if
5 known." However, the defense has limited their declaration to you as being
6 only Item 1-5, and then they've only spoken about G82, the duct tape. They
7 have not addressed any and all of those other items that have been previously
8 listed in their request of the 14 –

9 THE COURT: They've not done that under penalty of perjury.

10 MS. REICKS: Yes, Your Honor.

11 THE COURT: All right. Anything else you want to add before I turn back to
12 Ms. Mitchell?

13 MS. REICKS: No. Thank you.

14 THE COURT: Okay. Thank you. Ms. Mitchell, go ahead.

15 MS. MITCHELL: For the record, as an officer of the Court, I can state that I
16 searched all of Mr. Peterson's files that we have, and there are many, for any
17 testing done by FSA. And I found none.

18 THE COURT: None of anything, not just none of –

19 MS. MITCHELL: Of anything. Anything at all.

20 THE COURT: -- not just duct tape.

21 MS. MITCHELL: What I found, I represented in my sworn declaration, was
22 it appeared defense reached out, asked for rate schedules, asked for -- I think
23 there was another -- I'm not recalling what it was. It appeared to me from
24 reviewing the file that they were considering doing testing, but that never
25 happened. So just to put that issue to rest, there are no reports, there are no --
26 no records of any evidence leaving MPD or DOJ, other than the one record that
27 I indicated to you that it appears that was sent from DOJ to FSA, and that was
28 it. I don't have any other record or report indicating that any testing was done
on that.

With respect to -- does that satisfy the Court with respect to prior testing by
FSA on anything?

1 THE COURT: A preview. I intend to order you file that as a declaration under
2 penalty of perjury, but I'm assuming if that happens, it will.

3 MS. MITCHELL: I will do so.

4 (*Id.* at pp. 36-38.)

5 At the conclusion of the hearing on July 11, 2024, this court ordered Paula Mitchell to
6 provide the court with a sworn declaration under penalty of perjury that the defense had not
7 conducted DNA or biological testing of *any* materials sought to be tested in their 2024 DNA
8 motion. (*Id.* at p. 38)

9 On July 30, 2024, Mitchell submitted a declaration stating she conducted another
10 “diligent search” and “was unable to locate any records or reports indicating FSA conducted
11 testing on any evidence in the matter of *People v. Scott Peterson* at the direction of the defense.”
12 Petitioner has incorporated the same declaration in his 2025 DNA Exhibit 4. (See 2025 DNA
13 Mtn. Exh. 4 at ¶ 7, declaration of Paula Mitchell dated 07/30/2024.)¹⁴ In DNA Exhibit 4,
14 Mitchell restates that she was only able to find the email correspondence from August 13, 2004
15 discussed above. (*Id.* at ¶ 8.) Mitchell declared that she then contacted petitioner’s prior habeas
16 attorney, Andras Farkas, at HCRC and they located a report from FSA dated September 16,
17 2004. (*Id.* at ¶ 10.) After receiving this report from HCRC, Mitchell looked through their files
18 again and then found this same report from FSA dated September 16, 2004 *contained within*
19 *their own* files. (*Id.* at ¶ 14, emphasis added.)

20 Despite the stringent pleading requirements in Penal Code §1405(d)(1)(E) requiring a
21 petitioner to reveal the results of any DNA or other biological testing that was conducted
22 previously by the defense, if known, the petitioner and his counsel still have not filed this 2004
23

21 ¹⁴ The People would direct the court to the trial record at 77RT 14800-14810 for the August 12, 2004
22 conversation regarding arrangements for the People to provide the defense with the Target bag, duct tape
23 on the Target bag, four packages of debris associated with the Target bag and additional duct tape from
the Bay so defense could conduct biological testing at their private laboratory. (77RT 14800-14810
[sealed].)

1 FSA report with the court in his “renewed” 2025 DNA motion.¹⁵ Instead, petitioner submits
2 Mitchell’s July 30, 2024 declaration that summarizes the content of the report, based on her
3 interpretation, which states the following:

4 **“¶ 11. After reviewing the FSA report, I saw a reference on page six**
5 **of the report indicating that “[p]ossible biological evidence from the**
6 **large bag, Item 5, is being evaluated and will be the subject of a**
7 **subsequent report,”** so I re-contacted Mr. Farkas at HCRC and asked
8 him to search his database again and see whether FSA ever issued the
“subsequent report,” referenced in FSA’s report of September 16, 2004.
On July 30, 2024, Mr. Farkas confirmed that there are no other FSA
reports in HCRC’s files for Mr. Peterson’s case.

9 **¶ 12. Based on my reading of FSA’s report of September 16, 2004,**
10 none of the items FSA examined for the defense in 2004 that were the
11 subject of Mr. Peterson’s motion for DNA testing, i.e., the Target bag
12 and the debris and duct tape related thereto, were ever examined for the
13 presence of DNA. **The only biological testing conducted was for the**
14 **presumptive presence of blood on the interior of the Target bag and**
15 **related duct tape and those tests were negative with one exception**
16 **where a test on the interior of the Target bag resulted in “a weak**
17 **positive reaction,” which “was not characteristic of blood, but**
18 **samples were taken for further examination.”** While the FSA report
19 states that “[t]he results of that examination will be reported in a
20 subsequent report,” no subsequent report has been found.”

21 (*Id.* at ¶¶11-12, emphasis added.)

22 Petitioner’s counsel’s interpretation of what the biological testing from the FSA report
23 reveals does not satisfy the pleading requirements under subdivision (d)(1)(E). The statute
24 requires the court to evaluate whether the evidence sought to be tested was previously tested,
25 but the requested DNA test would provide results that are reasonably more discriminating and
26 probative of the identity of the perpetrator or accomplice or have a reasonable probability of

27 ¹⁵ Defense counsel’s July 30, 2024 declaration states that she provided a copy of the FSA September 16,
28 2004 report to the court and prosecution but she did not file the report as required by the statute “due to
the sensitive nature of the content.” (*Id.* at ¶ 10.) If this report supposedly contained “sensitive” content
the petitioner could have sought to seal the record as required under Rules of Court 2.550 and 2.551. He
did not. Nor has he revealed the results of the defense testing. Because the petitioner has not included
this report in his 2025 DNA motion, he has failed to meet his pleading requirements.

contradicting prior test results. (Pen. Code, § 1405 subd. (g)(6)(B).) The court cannot conduct its evaluation if it does not know the results of the prior tests. This is why the statute required the petitioner to reveal these prior DNA or biological test results to the court as part of his pleadings. He failed to do so in 2024 and he still has not done so now.

E. PETITIONER’S PLEADINGS FAIL TO PROVE THE EVIDENCE FROM THE BAY HAS BEEN SUBJECT TO A SUFFICIENT CHAIN OF CUSTODY.

Petitioner must show that the Target bag, duct tape attached to the bag and the other various duct tape recovered from the Bay which was privately tested in August-September 2004 by Forensic Science Associates has sufficiently followed the proper chain of custody. Penal Code §1405 (g)(2) requires the petitioner to prove that the evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect. (Penal Code §1405, subd. (g)(2).) His “renewed” motion does not address his burden.

F. PETITIONER’S PLEADINGS FAIL TO PROVIDE THE RESULTS OF PRIOR DNA TESTING REQUIRED BY PENAL CODE §1405(d)(1)(F).

The petitioner’s 2023 declaration and his counsel’s July 2024 declaration do not provide this court with the results of the 2024 DNA testing as required under subdivision (d)(1)(F).

This court emphasized in its ruling on May 29, 2024 that the pleading requirements are strict. (Ct. 2025 DNA Order at p. 83.) Suffice it to say, like his Third Petition, his “renewed” DNA motion fails to meet its pleading requirements and should be denied on this basis, too.

G. PETITIONER FAILS TO PROVE A REASONABLE PROBABILITY THAT, IN LIGHT OF ALL THE EVIDENCE, HIS VERDICT WOULD HAVE BEEN MORE FAVORABLE HAD THE REQUESTED DNA TESTING BEEN CONDUCTED AT THE TIME OF HIS TRIAL

It is the petitioner’s burden to show that there is a reasonable probability of a more favorable result if the results of DNA testing on these items associated with the orange van and the items related to the Bay had been available at the time of his conviction. (*Richardson, supra*, 43 Cal.4th at 1050.) Therefore, to prevail on a section 1405 motion, the petitioner must

demonstrate that, had the DNA testing been available, in light of all of the evidence there is a reasonable probability—that is, a reasonable chance and not merely an abstract possibility—that the defendant would have obtained a more favorable result. (*Id.* at p. 1051 [“ ‘ “We have made clear that a ‘probability’ in this context does not mean more likely than not, but merely a reasonable chance, more than an *abstract possibility*.” ’ ” (*Id.* at p. 1050, italics in original)] .)

As *Richardson* instructs, the petitioner is not entitled to DNA testing by merely making a prima facie showing of materiality. The trial court must further assess whether “in light of all the evidence” the DNA results would raise a reasonable probability the convicted person's verdict would have been more favorable if the results of DNA had been available at the time of conviction. In this context, a reasonable probability means a reasonable chance and not merely an abstract possibility that the defendant would have obtained a more favorable result. (*Richardson, supra*, 43 Cal.4th at pp. 1050-1051, see also *Joiner v. Superior Court* (2013) 217 Cal.App.4th 759, 765.) In making an assessment of reasonable probability, the trial court assumes the DNA test comes back favorable to the defendant. Again, the People have addressed his failure to meet this burden in our prior 2024 DNA opposition and move to incorporate by reference those same arguments here.

1. Category One – Items related to the Orange Van

It has been determined that male DNA is present on the mattress fabric discovered in the orange van. The court has noted in its ruling that no blood was found during the testing conducted in 2003 and 2019. A male DNA profile was identified on the unstained portion of the mattress cuttings. The court presumes that this DNA does not belong to the petitioner. The petitioner has failed to show this court that there would be a reasonable probability with this male DNA test that he would have received a more favorable result at trial in light of all the evidence. Contrary to the petitioner's assertion, biological evidence retrieved from the mattress fabric has no relevance to the murder because the petitioner has not shown any evidence that Laci was associated with the stolen van. This DNA could belong to the man who committed the arson or the man who stole the van or took its battery or any of the male employees at the crane business or former fire investigator Spitulski or community service officer Lovell. The point is that it makes no difference and the petitioner has not met his burden. Petitioner's wild

1 theories and abstract possibilities have failed to show that Laci was ever in this van so these
2 male DNA results are absolutely irrelevant.

3 **2. Category Two – Items related to the Bay**

4 As it relates to the Target bag, duct tape affixed to the Target bag and the other duct
5 tape recovered from the waters and shore of the San Francisco Bay, it will be assumed that test
6 results would not match the petitioner's profile. The jury heard the testimony from Richard
7 Atkinson, an employee of TARGET Products Limited, which was a manufacturer of
8 cementitious products that are used in the construction industry. (97RT 17240-17242.)
9 Atkinson confirmed that People's Trial Exhibit Number 251-A, i.e. "the Target bag," was a
10 photograph of one of their Target Products Limited waterproof pallet covers, referred to as a
11 "poly cap." (97RT 17243-17244; People's Trial Exh. 251A.) In 2003, Atkinson's company had
12 a large job at the Richmond/San Rafael bridge in the Bay – just north of where Laci's remains
13 were found – which required four-to-five thousand pallets and 3000 bulk bin bags of material
14 for the job, shipped over a period of several weeks. (97RT 17246.) This job equated to
15 approximately 8000 poly cap bags. The poly caps are not returned to their company and are
16 usually considered garbage and disposed of at the job site. (97RT 17246-17247.)

17 Atkinson was aware that at the Richmond/San Rafael bridge project the contractor had
18 a large holding yard, referred to as a lay-down yard, where he would order the material,
19 sometimes five truckloads a week, and have it stockpiled there so that it could be put on barges
20 and hauled back and forth to the middle of the bridge spans when it was required. (97RT 17248.)

21 The jury heard evidence at trial how it was common practice for duct tape to be placed
22 on the poly caps. Atkins explained that when loading the bulk bin bags, the material was moved
23 from the holding area and loaded onto the barge by a forklift. The employees used a small
24 crane, called a cherry-picker, to pick up the bulk bin bags. In order for the crane to pick these
25 up, the workers would cut the stretch wrap off and remove the Poly cap so the crane can connect
26 to the lugs located on the top of the bulk bin bag, pick up the bag and move it to the location on
27 the bridge. The workers would then place the Poly cap back on and since there is no stretch
28 wrap the crew will frequently use duct tape, wrapping it around the bottom of the poly cap bag
to secure it in place to weatherproof their concrete materials. (97RT 17249-17250.) Atkinson

acknowledged that the wind at the Bay could easily pick up a loose poly cap bag, i.e. Target bag, and blow it away. (97RT 17250.)

Thus, one of these imaginary DNA profiles could belong to the person who prepared the Target product for shipping and placed the poly cap, or the person who was running the forklift and moving the pallet to the cherry picker, or the person who was assisting the cherry picker operator by cutting off the stretch wrap and removing the polycap, or the person on the barge who placed the Target bag back on the pallet and secured it with duct tape, or the person who disposed of the Target bag and duct tape in their stationed dumpster after they used the product. Essentially, the DNA could belong to any one of these men before the bag and various duct tape blew into the Bay. Furthermore, the evidence adduced at trial shows that Laci's body was in the marine environment for a minimum of three and as long as six months. (92RT 17528-17529.) Forensic pathologist Dr. Bruce Peterson confirmed that the condition of Laci's remains, including the barnacles, indicated she had been in the water for months and he was not comfortable stating a specific time of death but that it had been months. (92RT 17471.)¹⁶ Even assuming Laci's DNA profile was on the Target bag or these various pieces of duct tape, it likely brushed against her as they were also floating in the Bay with her remains or became tangled around her like the tape did on Conner's neck. Thus, contrary to the petitioner's assertion, biological evidence retrieved from the Target bag or various duct tape from the Bay would not necessarily be from the murderer.

The circumstantial evidence against the petitioner is overwhelming as previously noted by the Supreme Court. Petitioner had motive, means and the opportunity to kill his pregnant wife and dispose of her body in the San Francisco Bay on Christmas Eve day. His conduct, statements and demeanor were more than a little suspicious. He was caught in lie after lie after lie. The jury heard many of these inconsistencies from his own mouth. At trial, the prosecution

¹⁶ Dr. Peterson explained that adipocere resulted when body fat body was exposed to a cold, moist environment which causes the fat to turn into a "crumbly white material" and appears soapy. (91RT 17404, 17415.) Dr. Peterson told the jury that a marine environment could cause this change, developing over a period of weeks to months. (91RT 17405.) The presence of adipocere, mineralization, barnacles on the thigh bone and stony deposits on her clothing confirmed that the body had been in a marine environment. (91RT 17408-17409.)

1 played the Amber Frey recordings where the petitioner could not explain how he predicted Laci
2 would go missing two weeks before she was missing. They heard his jovial voice claiming he
3 was listening to music and celebrating New Year's Eve in Paris while nearly 800 people,
4 including family and friends, were simultaneously attending a candlelight vigil and praying for
5 Laci's safe return at Dry Creek Park. The jury heard the petitioner's statements to the press
6 regarding the patio umbrellas and Laci allegedly knowing about the affair. They compared his
7 ability to turn on the alligator tears when interviewed by a reporter to his nonchalant attitude
8 and chuckles when being interviewed by Det. Brocchini on Christmas Eve night about his
9 pregnant wife missing. The jury listened to the various wiretap recordings where he lied about
10 his whereabouts, laughed at his mother's suggestion Laci might have been sighted in
11 Washington, and whistled in relief when the divers did not recover Laci's body but found a boat
12 anchor instead in January. The People provided the jury with the GPS tracking data and
13 witnesses who testified to the petitioner's surreptitious and brief trips to the Bay while the divers
14 searched the waters. Laci had been missing a short time when the petitioner upgraded his cable
15 to hardcore porn channels, sold her car, turned the nursery into a storage room and tried to sell
16 the house fully furnished. The evidence shows that Laci did not leave her house alive after
17 December 23rd. When her remains were found she was still wearing the same pants she wore
18 on December 23rd. Fragments of her hair were wrapped and embedded within the teeth of the
19 petitioner's pliers that were lying on the bottom of his boat after he returned from the Bay.
20 Computer forensic evidence showed he researched the same Bay waters even before he
21 purchased his secret boat. Detectives uncovered a concrete manufacturing station in his
22 warehouse with four or five voids in the powder consistent with the size of his homemade
23 anchor that was inside his boat with no rope attached. Conversely, there is no evidence to
24 support the petitioner's 23-year theory that burglars killed Laci, initially motivated by the desire
25 to escape apprehension but subsequently with the intent to frame him for her murder. Against
26 the weight of this evidence, favorable DNA test results would raise no more than only an
27 abstract, indeed speculative, possibility of a more favorable verdict. Thus, the petitioner has
28 entirely failed to meet his 1405 pleading burden.

///

VIII.

CONCLUSION

For the foregoing reasons, the defendant's fourth request for post-conviction DNA testing should be summarily denied and he should not be entitled to continue his quest to develop speculative evidence to fit his fantasy narrative.

Dated this 5th day of January 2026, at Modesto, California.

Respectfully submitted,

JEFF LAUGERO
DISTRICT ATTORNEY



AHNNA M. REICKS
Deputy District Attorney

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COUNTY OF STANISLAUS)

I, the undersigned, declare as follows:

That I am over the age of 18 years and am not a party to this action and I am employed by the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

That I served a copy of the **People’s Opposition to Petitioner’s 2025 “Renewed Motion for Post-Conviction DNA Testing (Pen. Code §1405)** by electronic service on:

Paula Mitchell
Los Angeles Innocence Project
Paula.Mitchell@InnocenceLA.org

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

Executed this 5th day of January 2026, at Modesto, California.

Dasgupta

Declarant

Case No. SC055500A
People v. Peterson
Dept. 12 / 2D