

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICARDO VELASQUEZ,
Petitioner,
v.
STU SHERMAN,
Respondent.

No. 1:15-cv-01288-AWI-BAK (SAB) (HC)
ORDER GRANTING PETITIONER'S
MOTION FOR DISCOVERY AND
VACATING SEPTEMBER 7, 2022 MOTION
HEARING
(ECF No. 81)

Petitioner, represented by counsel, is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner moves the Court for an order authorizing: (1) a subpoena commanding the attendance of Petitioner's trial counsel, Antonio A. Reyes, to testify at a deposition, which shall be recorded by transcription; and (2) a subpoena duces tecum directing the custodian of record of the Tulare Police Department to produce test results of fingerprint evidence collected by the Tulare Police Department from the Jeep Grand Cherokee on or about October 5, 2009, in Tulare Police Department case number TG0909066. (ECF No. 81.) Respondent does not oppose the motion. (ECF No. 82.)

Discovery is available pursuant to Rule 6 of the Rules Governing Section 2254 Cases at the Court's discretion and upon a showing of good cause. Bracy v. Gramley, 520 U.S. 899, 904 (1997); McDaniel v. U.S. District Court (Jones), 127 F.3d 886, 888 (9th Cir. 1997); Jones v.

1 Wood, 114 F.3d 1002, 1009 (9th Cir. 1997); Rule 6(a), Rules Governing Section 2254 Cases.
2 Good cause is shown “where specific allegations before the court show reason to believe that the
3 petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to
4 relief.” Bracy, 520 U.S. at 908–09 (citing Harris v. Nelson, 394 U.S. 287 (1969)). If good cause
5 is shown, the extent and scope of discovery is within the court’s discretion. See Rule 6(a), Rules
6 Governing Section 2254 Cases. “[A] district court abuse[s] its discretion in not ordering Rule
7 6(a) discovery when discovery [i]s ‘essential’ for the habeas petitioner to ‘develop fully’ his
8 underlying claim.” Smith v. Mahoney, 611 F.3d 978, 997 (9th Cir. 2010) (alterations in original)
9 (internal quotation marks omitted) (quoting Pham v. Terhune, 400 F.3d 740, 743 (9th Cir.
10 2005)).

11 In the instant case, the Ninth Circuit reversed the denial of habeas relief and remanded for
12 an evidentiary hearing on Petitioner’s claims of ineffective assistance of counsel for trial
13 counsel’s alleged failure to investigate Fernandez as the shooter and alleged failure to pursue
14 fingerprint evidence. (ECF No. 53.) In light of the Ninth Circuit’s remand order, the Court finds
15 that Petitioner has established good cause for his discovery request.

16 Accordingly, the Court HEREBY ORDERS:

- 17 1. Petitioner’s motion for discovery (ECF No. 81) is GRANTED; and
- 18 2. The motion hearing set for September 7, 2022, is VACATED.

19 IT IS SO ORDERED.

20 Dated: August 22, 2022

21 
22 _____
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28