

2008

## Digest: Richardson v. Superior Court

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### Recommended Citation

Holly Buchanan, *Digest: Richardson v. Superior Court*, 12 CHAP. L. REV. 249 (2008).

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*Digest: Richardson v. Superior Court*

*Holly Buchanan*

Opinion by Moreno, J., with Kennard, J., Baxter, J., Werdegar, J., and Corrigan, J. Dissenting Opinion by Chin, J., with George, C.J.

Issues

(1) What is the correct standard of review for a ruling on a motion for DNA testing under Penal Code section 1405?

(2) What must be established to satisfy the “materiality” and “reasonable probability” requirements under Section 1405?

Facts

On September 12, 1989, petitioner Charles Keith Richardson was charged with residential burglary, rape, sodomy, “lewd and lascivious acts on a child under the age of 14,” and the murder of eleven-year-old April Holley.<sup>1</sup> Four pubic hair samples recovered from the crime scene were admitted at trial.<sup>2</sup> The prosecution’s hair analysis experts disputed whether all four of the samples matched petitioner’s DNA.<sup>3</sup> Petitioner’s experts disagreed with the conclusions of the prosecution’s experts that any of the hair samples were consistent with the petitioner’s.<sup>4</sup> Petitioner was convicted on all counts and sentenced to death.<sup>5</sup> Upon automatic appeal to the Supreme Court of California, the Court affirmed the judgment.<sup>6</sup>

On May 24, 2004, petitioner filed a motion under Section 1405 seeking DNA testing of the hair samples.<sup>7</sup> The trial court denied the motion because petitioner failed to show that the evidence was material and that there was a reasonable probability that he would have obtained a more favorable result.<sup>8</sup> Petitioner filed a petition for writ of mandate or prohibition.<sup>9</sup> The Supreme Court of California denied the petition.<sup>10</sup>

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<sup>1</sup> Richardson v. Superior Court, 183 P.3d 1199, 1201 (Cal. 2008).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1201–02.

<sup>9</sup> *Id.* at 1202.

<sup>10</sup> *Id.* at 1208.

## Analysis

## 1. Relevant Subdivisions of Section 1405

Section 1405(a) provides that an inmate convicted of a felony may make a written motion for DNA testing of evidence.<sup>11</sup> The trial court may only grant the motion if eight conditions are met.<sup>12</sup> Subdivision (f)(4) requires the moving party to make a prima facie showing that "the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence."<sup>13</sup> Subdivision (f)(5) requires the moving party to make a prima facie showing that "[t]he requested DNA testing results would raise a reasonable probability that the convicted person's verdict or sentence would have been favorable if the results of DNA testing had been available at the time of conviction."<sup>14</sup> Subdivision (j) authorizes appellate review of the order granting or denying the motion through a writ of mandate or prohibition.<sup>15</sup>

## 2. Standard of Review

The Court rejected petitioner's argument that the correct standard of review for a Section 1405 motion is substantial evidence.<sup>16</sup> The Court said that the correct standard is abuse of discretion, because a trial court must weigh the evidence in determining whether the requirements of the statute have been met.<sup>17</sup> The Court found this conclusion supported by comparing the statute's purpose to Penal Code section 1181(8), which authorizes a trial court to grant a new trial based on newly discovered evidence.<sup>18</sup> The standard of review of a trial court's denial of a new trial under Section 1181 is abuse of discretion.<sup>19</sup>

## 3. Meaning of "Materiality" and "Reasonable Probability"

The Court noted that Section 1405(f)(4) does not define "material."<sup>20</sup> The Court found that the test for materiality differs in other contexts.<sup>21</sup> The standard used in *Pitchess v. Superior Court* requires a showing that the evidence be admissible.<sup>22</sup> The standard used in *Brady v. Maryland*, on the other hand, requires a showing that there be a reasonable probability that the result of the trial would have been more favorable.<sup>23</sup> The Court adopted

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11 *Id.* at 1202 (citing CAL. PENAL CODE § 1405(a) (2005)).

12 *Id.*

13 *Id.* (citing CAL. PENAL CODE § 1405(f)(4) (2005)).

14 *Id.* (citing CAL. PENAL CODE § 1405(f)(5) (2005)).

15 *Id.* (citing CAL. PENAL CODE § 1405(j) (2005)).

16 *Id.* at 1202-03.

17 *Id.* at 1203.

18 *Id.*

19 *Id.*

20 *Id.* at 1204.

21 *Id.*

22 *Id.* (citing *Pitchess v. Superior Court*, 522 P.2d 305 (Cal. 1974)).

23 *Id.* (citing *Brady v. Maryland*, 373 U.S. 83 (1963)).

the lower *Pitchess* threshold because that case, like Section 1405(f)(4), concerned the discovery of evidence.<sup>24</sup> The Court found this conclusion to be supported by the legislative history.<sup>25</sup>

The Court noted that the term “reasonable probability” has been interpreted by courts in other contexts to mean a reasonable probability that the result would have been more favorable in the absence of the error.<sup>26</sup> The Court adopted this interpretation, concluding that Section 1405(f)(5) requires the defendant to show that, “had the DNA testing been available, in light of all 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.”<sup>27</sup>

Applying these principles to the present case, the Court concluded that petitioner had established that the DNA test of the hair samples would have been material to the issue of the identity of the perpetrator.<sup>28</sup> But the Court found that the trial court did not abuse its discretion by denying petitioner’s motion because the court found that there was other substantial evidence linking him to the crime.<sup>29</sup> Since the hair samples were not conclusive on the issue of his guilt, the court found that he failed to satisfy the “reasonable probability” requirement.<sup>30</sup>

### Holding

The Court held that the correct standard of review for a trial court’s denial of DNA testing of newly discovered evidence under Section 1405 is abuse of discretion.<sup>31</sup> The Court also held that the trial court did not abuse its discretion in denying petitioner’s Section 1405 motion because he failed to establish that there was a “reasonable probability” of a more favorable result.<sup>32</sup> The Court discharged the order to show cause and denied the petition.<sup>33</sup>

### Dissent

Justice Chin decried the expense of the four years of litigation created by the trial court’s ruling.<sup>34</sup> He said that the majority interpreted subdivision (f)(5) too literally and that this section does not require such

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1205 (citing *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Watson*, 299 P.2d 243 (1956)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1206.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 1206–07.

<sup>31</sup> *Id.* at 1203.

<sup>32</sup> *Id.* at 1206.

<sup>33</sup> *Id.* at 1208.

<sup>34</sup> *Id.* at 1208–09.

extensive and thorough analysis of the evidence.<sup>35</sup> He said that “the Legislature did not intend to make litigation over whether to conduct testing more time-consuming and costly than the testing itself.”<sup>36</sup>

Instead, Justice Chin explained, Section 1405 should be interpreted to “require only a *preliminary* assessment of whether testing results would raise a reasonable probability of a different outcome.”<sup>37</sup> He said that this assessment should be based on the evidence and arguments set forth in the motion for testing itself, not the entire trial court record.<sup>38</sup> This, he said, would be consistent with legislative intent not to permit routine testing in all cases and would be less time-consuming and expensive.<sup>39</sup>

Justice Chin recommended that the legislature amend Section 1405 to impose a lower threshold for DNA testing.<sup>40</sup> He also said that a preliminary assessment of the evidence in this case would have satisfied the requirements of Section 1405(f)(4) and (f)(5).<sup>41</sup>

### Legal Significance

This decision clarifies the standard of review for a ruling on a motion for DNA testing and the “materiality” and “reasonable probability” requirements under Section 1405. The relatively low thresholds of materiality and reasonable probability will make it easier to prevail at the trial court level on a Section 1405 motion. The high abuse of discretion standard, however, will insulate the trial court’s decision from review.

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<sup>35</sup> *Id.* at 1209.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 1210.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*