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COUNTY OF STANISLAUS

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STANISLAUS COUNTY SUPERIOR COURT

STATE OF CALIFORNIA

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10 D.A. No.1056770

11 THE PEOPLE OF THE STATE OF CALIFORNIA)

No.1056770

12 Plaintiff,)

) OPPOSITION TO MOTION
) FOR CHANGE OF VENUE
) REBUTTAL TO REPLY

13 vs.)

14 SCOTT LEE PETERSON,)

) Hrg: 1-8-04
) Time: 9:30 a.m.
) Dept: 2

15 Defendant.)

16 -----oOo-----

17 Comes now the People of the State of California to submit the
18 following OPPOSITION TO DEFENDANT'S MOTION FOR A CHANGE OF VENUE
19 REBUTTAL TO REPLY:

20 REBUTTAL

21 Rather than addressing any of the legal, and legitimate,
22 arguments made by the People, the defendant has attempted to hurl
23 invectives and accusations in an attempt to inflame the court. The
24 defense claims of harms suffered by his client is the same claim
25 made in the "Modesto Bee file" attached to his motion as exhibit A,
26 Article #80-- where the defense allegedly had to endure "scowls,"
27 and where bystanders "threw things at him on his way to court" and
28 these related to other cases - not the Scott Peterson case.

1 The defense attempts to rectify his previously defective motion
2 by adding a survey of Stephen Schoenthaler. This is still
3 inadmissible and the People object to it unless Schoenthaler
4 testifies.

5 The defense also attacks Dr. Ebbesen's survey because it was
6 designed to duplicate what happens in court rather than follow the
7 format of the traditional opinion polls used by the defense. The
8 traditional defense survey, as was pointed out by Dr. Ebbesen, fails
9 to ask the most crucial question: whether the jurors can set aside
10 any preconceived notions about the case.

11 The defense seems fixated that the prosecution has had to
12 expend funds to counter his motion; this didn't seem to matter
13 before the preliminary hearing when the People requested to conduct
14 a survey that would have saved taxpayer funds - they objected. It is
15 this prior request with which the defendant now takes great issue.
16 The defendant has constantly claimed that any attempt to talk to
17 prospective jurors is an attempt to "tamper with the jury." To
18 follow his logic, then his survey committed the same violation.

19 The defense also faults Dr. Ebbesen's survey because he claims
20 it violates the court's protective order. This is flat out wrong. To
21 make the claim, the defense says, at page 14, that DDA Harris made
22 certain statements in court which implied that Ebbesen was bound by
23 the protective order. However, the statement was made PRIOR to the
24 preliminary hearing and dealt with a different survey. The People's
25 survey was NOT conducted with waiting jurors or even an old juror
26 list because of a logistical problem at the Jury Commissioner's
27 Office; since the defense did not receive a jury list from the Jury
28

1 Commissioner, he is well aware that the People's survey was a
2 "telephone survey." [This was also described in the People's
3 Opposition to this Motion.]

4 Since the People's survey occurred after the preliminary
5 hearing where evidence was presented in open court, no violation of
6 the protective order occurred. As the court's protective order
7 states, the order does not include public records of the court, such
8 as the preliminary hearing transcripts (exception #4). The defense
9 citation to Dustin in this context proves a total misunderstanding
10 of the law.

11 The defense also misunderstands what evidence is and isn't - at
12 pages 13-14, the defense argues that the People somehow have tried
13 to "taint" the jury pool by 1) the prosecution having no objection
14 to the preliminary hearing being open, 2) asking the court for
15 permission to conduct a venue survey before the preliminary hearing,
16 and 3) filing a legal document with the court (which the court has
17 placed on its website).

18 This misunderstanding is also apparent in the defense
19 accusation that the prosecution (at page 7) leaked a document to the
20 media. It should be noted that the publication that received this
21 document showed two photographs of the document both of which
22 clearly hide the lower right corner of the document - the place
23 where the traditional discovery stamp is placed on documents
24 released to the defense. Although the accusation could be made that
25 it was the defense who leaked the document to fund the cost of this
26 case, it does no good to speculate or make accusations without
27 evidence.

1 It is evidence that this court must consider and it is evidence
2 that the defendant must present. The evidence before the court at
3 this point mandates that People v. Manson, (1976)61 Cal.App.3d 102,
4 controls. The defendant argues both sides saying that this court
5 should not follow Manson (at page 10), but then uses the same case
6 to argue that venue should be moved to Los Angeles (at page 11).
7 Manson is controlling and no amount of twisted logic will change
8 that.

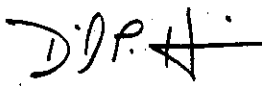
9 The People request that this court require the defendant to
10 produce admissible evidence to support his motion.

11 Dated: 1-6-04

Respectfully submitted,

JAMES C. BRAZELTON
District Attorney

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14 By:


David P. Harris
Sr. Deputy District Attorney

AFFIDAVIT OF SERVICE BY MAIL (C.C.P 1013a)

STATE OF CALIFORNIA)
(
COUNTY OF STANISLAUS)

I, the undersigned, say:

That I am a citizen of the United States, over 18 years of age, a resident of Stanislaus County, and not a party to the within action.

That affiant's business address is Stanislaus County Courthouse, Modesto, California.

That affiant served a copy of the attached **OPPOSITION TO MOTION FOR CHANGE OF VENUE REBUTTAL TO REPLAY** by placing said copy in an envelope addressed to **MARK GERAGOS, 350 S. Grand Ave, Los Angeles, CA 90071-3480** which envelope was then sealed and postage fully prepaid thereon, and thereafter was on January 6, 2004 deposited in the United States mail at Modesto, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place or mailing and the place addressed.

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

Executed this 6th day of January, 2004, at Modesto, California.



People v. Peterson
D.A. No. 1056770
Court No. 1056770

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