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9 STANISLAUS COUNTY SUPERIOR COURT
10 STATE OF CALIFORNIA

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11 D.A. No. 1050667
12 THE PEOPLE OF THE STATE OF CALIFORNIA) No. 1050667
13 Plaintiff,) Hrg: 1-14-04
14 vs.) Time: 8:30 am
15 SCOTT LEE PETERSON,) Dept: TBA
16 Defendant.) PEOPLE'S OPPOSITION
17) TO DEFENDANT'S MOTION
18) TO SET ASIDE THE
19) INFORMATION (PENAL
20) CODE SECTION 995

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21 PROCEDURAL HISTORY

22 Between October 29, 2003, and November 18, 2003, the
23 preliminary hearing was held in this case. The Honorable Al
24 Girolami, sitting as a magistrate, held the defendant to answer for
25 two counts of murder, a violation of Penal Code Sec. 187, with the
26 special circumstance of multiple murder, a violation of Penal Code
27 Sec. 190.2(a)(3). An information charging the defendant with the
28 above-listed crimes was filed on December 1, 2003.

1 | instructive. In People v. Jennings, (1991) 53 Cal.3d 334, 369, the
2 | body of the victim, a known prostitute, was found in an irrigation
3 | canal in a rural area. She was unclothed, and although forensic
4 | examination detected she had suffered a broken jaw, the advanced
5 | decomposition of her body made determining whether she had been
6 | sexually assaulted impossible. More specifically, there was no
7 | independent evidence that the defendant ever sexually penetrated
8 | the victim. Despite the lack of any independent evidence of sexual
9 | penetration, the California Supreme Court found that the corpus
10 | delicti of rape was established.

11 | Similarly, in People v. Robbins, (1988) 45 Cal.3d 867, 885-
12 | 886, the evidence showed that the victim, a six year-old boy, was
13 | last seen riding on a motorcycle with an unknown blonde haired man.
14 | The boy's skeletal remains were found three months later. The
15 | victim's neck had been broken and his body was found unclothed.
16 | The defendant had been diagnosed as a pedophile. Although the
17 | decomposed remains of the victim could not establish whether he had
18 | been sexually assaulted before his death, the defendant made an
19 | extrajudicial admission that he abducted the victim and sexually
20 | assaulted him before strangling him. The California Supreme Court
21 | found the trial court properly admitted the confession over a
22 | corpus delicti objection [cite].

23 | "In view of the nature of the offense and the circumstances of
24 | the case (i.e. the body was not discovered for some time,
25 | hence it was impossible to verify the sexual conduct by
26 | scientific evidence, and there were apparently no eyewitnesses
27 | to the crime) we do not believe the corpus delicti rule can be
28 | interpreted to call for more; the law does not require
impossible showings."

Here, the defendant's argument that the corpus delicti was not

1 established consists of the bald assertions that (1) there was no
2 evidence introduced at the preliminary hearing that Conner Peterson
3 died inside Laci's womb; and (2) no evidence was introduced that
4 proved that Laci and Conner's deaths were brought about by criminal
5 means (defendant's brief, page 5).

6 The allegation regarding Conner's death while inside Laci's
7 body should be summarily rejected. Although the defendant chooses
8 to ignore it, there was extensive preliminary hearing testimony by
9 Dr. Brian Peterson regarding his opinion that Conner died in utero
10 and was expelled from Laci's body during the decomposition process
11 shortly before his body washed ashore (RT 1465-1467, 1470, 1485-
12 1486, 1516-1518).

13 Likewise the allegation that there was no evidence that Laci
14 and Conner's deaths were brought about by criminal means should
15 also be dismissed. As Dr. Peterson testified, the Contra Costa
16 Coroner determined that the manner of death in this case was
17 homicide (1477). Thus, the corpus delicti was established.
18 Nothing more was required for preliminary hearing.

19 The defendant makes the claim, however, based on that fact
20 that Dr. Peterson was unable to determine the cause of death of
21 either Laci or Conner due to their states of decomposition (RT
22 1474). There is no requirement in the law that, in order to prove
23 a murder, the cause of death of the victim must be shown. If that
24 were the case, it would foreclose prosecution of any murder where
25 the body was too decomposed to determine the cause of death. The
26 law does not impose such stringent requirements [See, People v.
27 Weaver (2001) 26 Cal.4th 876, 931-932; People v. Kraft (2000) 23
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1 Cal.4th 978, 1057; People v. Jennings (1991) 53 Cal.3d 334, 369;
2 and, People v. Smart (1986) 179 Cal.App.3d 860, 865-866.]

3 In fact, it is well established that the prosecution does not
4 even have to produce a body in order to successfully prosecute a
5 murder. In People v. Scott (1959) 176 Cal.App.2d 458, 489, the
6 defendant murdered his wife. Her body was never recovered. The
7 defendant in that case made the exact claims made being made here.

8 "Appellant contends that since no body was produced, no direct
9 evidence of death was introduced and there was no confession,
10 the People's case was based upon mere suspicion and
11 conjecture."

12 "If this contention is valid it would mean that a man could
13 commit a secret murder and escape punishment if he was able to
14 completely destroy the body of his victim, however complete
15 and convincing the circumstantial evidence of guilt. No one
16 would say the law should be powerless to uncover such a crime
17 and inflict punishment unless the accused had made a
18 confession. The question, however, is whether it is so
19 inadequate. We hold it is not."

20 "All that is required to prove death is circumstantial
21 evidence sufficient to convince the minds of reasonable men of
22 the existence of the fact." Scott, supra 490.

23 [See also, Government of the Virgin Islands v. Harris (1991)
24 938 F.2d 401, 411-416, also, fn 10-14; People v. Johnson (1991),
25 233 Cal.App.3d 425, 440-4442; and People v. Ruiz (1988) 44 Cal.3d
26 589, 610-611.]

27 Here, testimony was introduced that On April 13th and 14th,
28 2003, Conner and Laci Peterson's bodies were found washed up on the
29 shoreline along the San Francisco Bay (Stipulation of Parties).
30 Both bodies were in an advanced state of decomposition (RT 1470),
31 and Laci's body had been in a marine environment for a period of
32 months (RT 1473). In contrast, Conner's body had been in the water
33 for, at most, only a few days (RT 1506). When found, Laci's body

1 was clothed in khaki colored maternity pants, a bra, and panties.
2 There was a strand of duct tape attached to the waistband of Laci's
3 pants that ran to her back (RT 1462); Laci Peterson last spoke to
4 Sharon Rocha on December 23, 2002, at 8:30 p.m. According to Ms.
5 Rocha, Laci confirmed plans to meet them for dinner on December 24,
6 2002 (RT 429). Laci was happy about her pregnancy and eagerly
7 awaiting the birth of her son (RT 424). Amy Rocha testified that
8 she last saw Laci at 5:45 p.m. on December 23, 2002 when Laci and
9 the defendant arrived at her hair salon. Laci was wearing khaki
10 colored maternity pants at that time (RT 397).

11 There are only three possible scenarios that would explain how
12 Laci and Conner's bodies came to be located in the San Francisco
13 Bay: (1) a pregnant Laci was killed at the hands of another [the
14 defendant] and placed into the San Francisco Bay (therefore proving
15 the corpus delicti); (2) a pregnant Laci was in an accident that
16 somehow resulted in both bodies being in the San Francisco Bay; or
17 (3) a pregnant Laci committed suicide at the San Francisco Bay.
18 Obviously, the second two "possibilities" are ludicrous. There has
19 never been any evidence that supports either that Laci was in an
20 accident at the Bay, or that she committed suicide at the Bay.

21 The defendant did not make any statements that Laci
22 accompanied him to the San Francisco Bay. In fact, the defendant
23 said that Laci was mopping the floor when he left home on December
24 24th (RT 793). There was also no other evidence that Laci
25 voluntarily left her home to go to the San Francisco Bay. Her Land
26 Rover automobile was parked in the driveway when the police
27 arrived (RT 768-769); her keys, purse, and other personal effects
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1 were still in her bedroom (RT 479).

2 Likewise, there was no evidence that Laci committed suicide at
3 the Bay. On December 15, 2002 Laci spent the evening with Sharon
4 Rocha and Ron Grantski who did not detect any emotional problems
5 with her (RT 427); she was extremely happy with her pregnancy (RT
6 424); she had made plans to spend the holidays with her family (RT
7 429); other than complaining about nausea and dizziness while
8 walking, she was in good physical health (RT 1274-1279). Finally,
9 her Land Rover, keys, and other personal effects were found at her
10 home on December 24, clearly indicating she did not leave
11 voluntarily.

12 Thus, the evidence leads only to the conclusion that Laci was
13 killed at the hands of another [the defendant] and her pregnant
14 body was deposited in the San Francisco Bay. Clearly, the corpus
15 delicti of Laci and Conner's murder was established at the
16 preliminary hearing.

17 II. STANDARD AT PRELIMINARY HEARING IS PROBABLE CAUSE

18 Penal Code section 866 was amended to redefine, in subdivision
19 (b), the purpose of a preliminary hearing as follows:

20 It is the purpose of a preliminary examination to
21 establish whether there exists probable cause to believe
22 that the defendant has committed a felony. The
examination shall not be for the purposes of discovery.

23 The sole purpose of the preliminary examination is to
24 establish whether there exists probable cause to believe that the
25 defendant has committed a felony. The evidence presented was
26 sufficient for the magistrate to make a finding that there was the
27 requisite probable cause. This is all that is required for a
28 preliminary hearing. It is no longer meant to be a mini-trial.

1 The evidence presented at the preliminary hearing was clearly
2 sufficient to meet the requirements for an order to hold the
3 defendant to answer. The burden on the People at a preliminary
4 examination is to "produce evidence that there is a reasonable
5 probability, enough to induce a strong suspicion in the mind of a
6 man of ordinary caution or prudence, that a crime has been
7 committed and that defendant is guilty." (Garabedian v. Superior
8 Court (1963) 59 Cal.2d 124, 126-127.)

9 The rules governing what constitutes a "strong suspicion" are
10 well established. They are:

11 1. Evidence need not be sufficient to support a
12 conviction. (People v. Hampton (1981) 116 Cal.App.3d 193,
200.)

13 2. The evidence need only show a "reasonable suspicion"
14 of the defendant's guilt. (People v. Hall (1972) 3 Cal.3d
992, 996; People v. Park (1978) 87 Cal.App.3d 550, 561.)

15 3. If some evidence supports the information the
16 sufficiency of the evidence is not in issue. (Rideout v.
Superior Court (1967) 67 Cal.2d 471, 474; (People v.
Patino (1978) 95 Cal.App.3d 11, 25.)

17 4. The reviewing court may not substitute its judgment
18 for the judgment of the magistrate as to the weight of
19 the evidence. (Rideout v. Superior Court, supra; People
v. Hall, supra; People v. Patino, supra; People v. Park,
supra; People v. Claflin (1978) 87 Cal.App.3d 1, 6.)

20 5. Conflicts in the evidence are resolved in favor of
21 the magistrate's determination. (People v. Hall, supra;
People v. Park, supra; People v. Martin (1972) 23
22 Cal.App.3d 444, 446; People v. Beasley (1967) 250
23 Cal.App.2d 71, 78.) The magistrate heard the testimony
and was able to evaluate on a first-hand basis the
24 truthfulness and accuracy of the witnesses.

25 6. All legitimate inferences are drawn in favor of the
26 information, (Coughlin v. Superior Court (1971) 4 Cal.3d
461, 464-465; People v. Hall, supra; People v. Patino,
27 supra; People v. Hampton, supra; Rideout v. Superior
Court, supra; People v. Park, supra; People v. Claflin,
28 supra.) and the reviewing court may not draw inferences
contrary to those reasonably drawn by the magistrate.

1 (People v. O'Leary (1977) 70 Cal.App.3d 323, 328; People
2 v. Lovejoy (1970) 12 Cal.App.3d 883, 885.)

3 7. If there was a rational ground for the magistrate to
4 assume the possibility that the defendant is guilty of
5 the offense, the Information may not be set aside.
6 (People v. Hampton, supra; People v. Mardian (1975) 47
7 Cal.App.3d 16, 38, overruled on other grounds.)

8 People v. Harmon (1973) 33 Cal.App.3d 308, is also
9 illustrative on the reviewing standard that the Superior Court must
10 employ when ruling on a 995 motion. In that case, the defendant,
11 a woman, walked into the Los Angeles Police Department and said "I
12 want to report a murder." She gave her name, address, and
13 identification and stated that "I shot him. He jumped on me and I
14 shot him," or "I killed him." In Harmon, the court was ruling on
15 whether or not a 995 motion was properly granted dismissing an
16 information against the defendant for murder. The court held that
17 it was not. The court stated that "An information will not be set
18 aside if there is some rational ground for assuming the possibility
19 that an offense has been committed and the accused is guilty of
20 it," Harmon, supra, quoting Rideout v. Superior Court (1967) 67
21 Cal.2d 471, 474, the court went on to say,

22 "On a motion to set aside an information, the question of the
23 guilt or innocence of the defendant is not before the court, nor
24 does the issue concern the quantum of evidence necessary to sustain
25 a judgment of conviction. The court is only to determine whether
26 the magistrate, acting as a man or ordinary caution or prudence,
27 could conscientiously entertain a reasonable suspicion that a
28 public offense had been committed in which the defendant had
29 participated," Harmon at 310.

30 Here, the defendant claims that there was insufficient
31 evidence for the magistrate to hold the defendant to answer. At
32 the outset, it must be noted that the defendant ignores most of the
33 evidence presented at the preliminary hearing. Thus, the People

1 will not rehash every piece of evidence admitted at the preliminary
2 hearing. The People will limit their response solely to the
3 defense allegations. The People will assume that the reviewing
4 court is familiar with the whole record and all physical exhibits
5 introduced as evidence.

6 III. THE PHYSICAL EVIDENCE SUPPORTING PROBABLE CAUSE

7 The defendant first claims that there is no physical evidence
8 which supports a finding of probable cause. That is not correct.
9 There was extensive testimony that two hair fragments were attached
10 to a pair of needle nose pliers found under the seat in the
11 defendant's boat. The hair was found wrapped around and through
12 the jaws of the pliers (RT 1536-1537). Both fragments had crushed
13 and splayed ends as if a mechanical force was applied to them (RT
14 1364-1366). Both hair fragments were missing a root. Shed hairs
15 typically show evidence of a type of hair root (RT 1401-1402).
16 Thus, the inference is that the hairs got onto the pliers through
17 some mechanical means. They weren't shed or transferred passively
18 onto the pliers.

19 Both hair fragments matched Laci Peterson's hair by
20 microscopic examination (RT 1357-1358). One hair fragment was
21 tested further for mitochondrial DNA comparison and it matched Laci
22 Peterson's mitochondrial DNA profile. That fragment was
23 positively excluded as coming from Scott Peterson (RT 129-130).

24 There was no evidence that Laci Peterson had been inside the
25 boat, or warehouse, or that she even knew that the defendant had
26 bought a boat. The defendant purchased the boat on December 9,
27 2002 (RT 795-796). Sharon Rocha testified that she did not know
28

1 the defendant had bought the boat until December 24th. She also
2 testified that she and Ron Grantski had dinner with Laci and the
3 defendant on December 15th; neither mentioned the boat in spite of
4 the fact that both Laci and the defendant knew that Ron Grantski
5 was an avid fisherman and would have been interested in hearing
6 about the boat (RT 426-428). Sharon Rocha also testified that Laci
7 frequently told her about purchases she and the defendant made
8 including new cars, furniture, and a pool for their home (RT 449).
9 Similarly, Amy Rocha testified that she was with Laci and the
10 defendant on December 23rd and neither mentioned the boat (RT 404).
11 It logically follows that, if Laci did not know about the boat and
12 her hair fragments weren't passively transferred there, the only
13 way the hair fragments got onto the pliers and into the boat was if
14 the defendant caused them to be there. The clear inference from
15 the evidence is that the defendant used the pliers in his attempt
16 to hide Laci Peterson's body in the boat and her hair fragments
17 stuck to the pliers.

18 The defendant next claims that Department of Justice
19 Criminalist Sarah Yoshida's examination showed that the pliers were
20 rusted and had not been used for a substantial period of time. That
21 was correct at the time of the her examination. However, as
22 Criminalist Rod Oswalt testified, the pliers were not examined by
23 Ms. Yoshida until February 26, 2003-two full months after December
24 24, 2002 (RT 1405). Mr. Oswalt also testified items, such as
25 tools, will start to rust immediately after being exposed to salt
26 water (RT 1405-1406). One would fully expect the pliers to be
27 rusted after being exposed to salt water (from their trip to the
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1 San Francisco Bay with the defendant) and then not being examined
2 until two months later.

3 IV. CIRCUMSTANTIAL EVIDENCE SUPPORTS PROBABLE CAUSE

4 The defendant next makes the untenable argument that there was
5 no circumstantial evidence admitted at the preliminary hearing from
6 which one could infer the defendant's guilt. All of the
7 circumstantial evidence admitted at the preliminary hearing was
8 clear and unequivocal evidence of the defendant's guilt.

9 The fact that the defendant said he went "fishing" in the
10 exact area where the bodies were found (RT 802) was enough evidence
11 in and of itself for the magistrate to hold the defendant to
12 answer. Coupled with the additional facts that Laci's body had
13 been in the water for a period of months (the exact time frame from
14 when she was reported missing on December 24th), and that the
15 defendant couldn't say what he was fishing for (RT 483), there is
16 no question that the defendant was properly held to answer.

17 Additionally, evidence was introduced that the defendant met
18 Shawn Sibley in October 2002 and asked for help in finding a
19 serious relationship. Shawn Sibley then introduced the defendant
20 to Amber Frey (RT 1160-1161). The defendant began an affair with
21 Ms. Frey on November 19, 2002. On December 6th, Ms. Sibley learned
22 the defendant was married. Upon confronting the defendant with
23 that information, the defendant started to cry and became
24 hysterical. He told Ms. Sibley that he had lost his wife. He
25 begged her not to tell Amber, and that he would tell her himself
26 (RT 1162-1163).

27 On December 8th, the defendant researched tide information for
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1 the San Francisco Bay (RT 1587).

2 On December 9th, the defendant bought a 14-foot aluminum boat
3 (RT 795) and tearfully told Amber that he lost his wife and that
4 this would be his first holiday season without her (RT 1656). He
5 accompanied Amber to her Christmas formal on December 14th (RT
6 1657). Also, during the latter part of December 2002, he told
7 Amber that he was out of the country and would be back around the
8 end of January 2003. He said that they would be able to be more
9 exclusive with each other after that time (RT 818, 1661, People's
10 149).

11 The defendant contacted Amber numerous times after Laci was
12 reported missing and continued to lie to her about his true status
13 as Laci's husband. It wasn't until Amber confronted him on
14 January 6, 2003 that the defendant finally admitted that he was
15 Laci Peterson's husband and that he had been lying all along. The
16 defendant continued to contact Amber even after that time; he
17 finally stopped when Amber told him not to contact her on February
18 19th (RT 1663).

19 During the month of January 2003, extensive searches were
20 being made of the San Francisco Bay by law enforcement (defendant's
21 exhibit of Modesto Bee articles). Testimony was introduced that
22 the defendant made surreptitious trips to the Berkeley Marina on
23 January 5th, January 6th, and January 9th (RT 1152-1158). Each time
24 the defendant gazed briefly out over the San Francisco Bay and then
25 quickly left the marina.

26 Laci Peterson was last seen by Amy Rocha with the defendant on
27 December 23rd wearing khaki colored maternity pants (RT 397). The
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1 last time anyone other than the defendant spoke to Laci was when
2 Sharon Rocha briefly spoke to her at 8:30 p.m. on December 23rd (RT
3 429). On April 14th Laci Peterson's body was recovered along the
4 shore of the San Francisco Bay wearing khaki colored maternity
5 pants (RT 1462).

6 The defendant told Det. Brocchini that he left home at 9:30
7 a.m. on December 24th and traveled directly to his shop at 1027
8 North Emerald Street. (RT 799). The defendant's shop is serviced
9 by a cell phone tower at 929 Woodland Ave. (RT 1621). The
10 defendant's home at 523 Covena is serviced by a cell phone tower
11 located at 1250 Brighton Avenue. Cell phone records show that the
12 defendant used his phone at 10:08 a.m. on December 24th and the call
13 started at the 1250 Brighton cell phone tower. The call finished
14 at the cell phone tower located at 10th and "D" streets indicating
15 the defendant was traveling west and had not yet arrived at his
16 shop (RT 1620).

17 The defendant told Det. Brocchini that when he left the house
18 at 9:30 a.m. on December 24th Laci was mopping the floor. She was
19 wearing black pants and a white shirt. He also said that Laci had
20 plans to walk the dog and prepare for a Christmas brunch (RT 798).
21 The defendant also denied that he was involved in an extramarital
22 affairs.

23 Karen Servas testified that she found the defendant's dog in
24 the street in front of her house at 10:18 am (RT 1217).

25 As was later proven, everything the defendant said to Det.
26 Brocchini was a lie. He did not leave his home until sometime
27 after 10:00 a.m.; Laci was not wearing black pants; the maid had
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1 mopped the floor the previous day (RT 372); and, he was involved in
2 a very serious extramarital affair.

3 As the above facts readily prove, there was more than
4 sufficient evidence for the magistrate to hold the defendant to
5 answer. Indeed, the defendant himself doesn't appear to seriously
6 question that he was properly held to answer. Instead, the
7 defendant claims throughout his motion that the Modesto Police
8 Department "ignored extremely credible leads" that would lead to
9 other suspects, or scenarios. The defense lists only one example
10 in support of this allegation--that being the statement of Diane
11 Campos who was interviewed by Det. Phil Owen. The defense takes
12 offense at Det. Owen stating that he felt that Diane Campos's
13 information wasn't going in the right direction. That this is the
14 only example that can be cited by the defense in support of their
15 allegation speaks volumes about the credibility of their claim.

16 Diane Campos told Det. Owen that, on December 24th, she saw a
17 woman who looked like Laci Peterson walking through Dry Creek park
18 with two men and a golden retriever near Scenic Hospital. She said
19 the woman was pregnant and was wearing a white top and sweat pants
20 of unknown color (RT 1310-1311). She said she saw these people at
21 10:45 a.m. (RT 1413). Now, it is hard to imagine what the defense
22 is complaining about. It is undisputed that Karen Servas found the
23 defendant's dog in the street at 10:18 a.m. It would, therefore,
24 be impossible for the woman who Diane Campos claimed to have seen
25 to be Laci Peterson and any such contention should be rejected.

26

27

28

1 CONCLUSION


2 Based on the law, the physical exhibits, and the testimony at
3 the preliminary hearing, it is clear that the defendant was
4 properly held to answer.

5 Therefore, the People respectfully request that the
6 defendant's motion to dismiss the information pursuant to Penal
7 Code Section 995 be denied.

8 Dated this 8th day January, 2003, at Modesto, California.

9 Respectfully submitted,

10 JAMES C. BRAZELTON
11 District Attorney

12 
13 Rick Distaso
14 Deputy District Attorney

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AFFIDAVIT OF SERVICE BY FAX

1
2 STATE OF CALIFORNIA)
3 COUNTY OF STANISLAUS) (ss.

4 I, the undersigned, say:

5 I was at the time of service of the attached PEOPLE'S
6 OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE THE INFORMATION
7 (PENAL CODE SECTION 995) over the age of eighteen years. I served
8 by fax a copy of the above-entitled document(s) on the 7th day of
9 January, 2004, delivering a copy thereof to the office(s) of:

10 Mark Geragos
11 Attorney for Defendant
12 Fax No. (213) 625-1600

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

15 Executed this 7th day of January, 2004, at Modesto,
16 California.

17 
18 _____

19 dmh
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