

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

GERAGOS & GERAGOS

A PROFESSIONAL CORPORATION
LAWYERS
39TH FLOOR
350 S. GRAND AVENUE
LOS ANGELES, CA 90071-3480
TELEPHONE (213) 625-3900
FACSIMILE (213) 625-1600

MARK J. GERAGOS SBN 108325
Attorneys for Defendant
SCOTT LEE PETERSON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON, et al.,

Defendant.

FILED
04 JAN 14 AM 8:54
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY *[Signature]* DEPUTY

FILED BY FAX

Case No. 1056770

REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION TO SET ASIDE
INFORMATION

(Penal Code Section 995)

DATE: January 14, 2004

TIME: 8:30 a.m.

PLACE: Dept. 4

LATE FILING

THIS DOCUMENT MAY NOT BE
AVAILABLE IN COURT FOR THE
SCHEDULED HEARING

I. INTRODUCTION

1
2 The District Attorney's Opposition to Scott Peterson's Motion to Set Aside the
3 Information illustrates the enormous gap between the actual evidence in this case (or, more
4 precisely, the lack thereof) and the prosecution's assertions. Although the Opposition argues
5 that the record establishes a corpus delicti and probable cause against Mr. Peterson, it is
6 unable to explain how the evidence presented at the preliminary hearing gives rise to either.
7 The prosecution's argument is at bottom predicated upon default assumptions and nothing
8 more – that is, that the deaths must have been murder and that Mr. Peterson must have
9 committed the crime – rather than upon actual evidence as required. In essence, all that the
10 prosecution has established is that Scott Peterson was an adulterer, and that he was at San
11 Francisco Bay on December 24, 2002, the day Laci disappeared. That, without more, is not
12 enough. The prosecution's mere stringing together of isolated pieces of evidence and
13 assumptions without any coherent theory of the case does not satisfy the People's burden of
14 establishing a corpus delicti or of showing probable cause. The information should be set
15 aside.

II. ARGUMENT

A. The Prosecution Has Not Established A Corpus Delicti For Murder.

18
19 In the Opposition, the prosecution has its corpus delicti argument backwards. It
20 presents three explanations for the cause of Laci's death, declares two of them to be
21 "ludicrous," and concludes that as a result, the only other remaining explanation – homicide –
22 is thus established. The prosecution apparently forgets that it is not the defense's burden to
23 prove alternative explanations for a death in a homicide case, but the prosecution's burden to
24 establish a corpus delicti by way of affirmative evidence. The prosecution's argument tacitly
25 recognizes it has failed to do so.

26 More specifically, the prosecution theorizes that (1) the cause of Laci's death must be
27 either suicide, accident, or homicide; and (2) because the defense has not proven accident or
28

1 suicide, the death must be a homicide. That argument does not prove a corpus.^{1/} As the
2 district attorney acknowledges, it is a basic rule of law that the prosecution must produce
3 evidence, independent of a defendant's own statements, to establish that a crime actually
4 occurred. That is an affirmative obligation. *It is not sufficient merely to cite testimony (as*
5 *the prosecution does here) that would serve to discredit non-criminal alternatives.*

6 As the California Supreme Court explained in *People v. Jones* (1998) 17 Cal. 4th 279,
7 "[t]he corpus delicti of a crime consists of two elements: the fact of the injury or loss or harm,
8 and the existence of a criminal agency as to its cause. In any criminal prosecution, the corpus
9 delicti must be established by the prosecution independently from the extrajudicial
10 statements, confessions or admissions of the defendant." (*Id.* at p. 301.) In the present case,
11 the only supposed "evidence" of a criminal cause of death the district attorney cites is the
12 Contra Costa County coroner's classification of the deaths as "homicides." The prosecution,
13 however, does not cite any authority for the proposition that this is sufficient evidence to
14 establish corpus delicti in a homicide case.

15 The prosecution sets up a "straw man" argument, mischaracterizing the defense
16 position regarding the absence of evidence of a cause of death. The defense does not argue
17 that there cannot be a corpus delicti in the absence of evidence of a cause of death. What the
18 defense does maintain is that the absence of a cause of death coupled with the lack of any
19 other evidence which would establish a corpus precludes any finding of probable cause.

20 In each of the opinions cited by the prosecution where there was an absence of
21 physical evidence of a criminal act, there was other evidence of a crime which satisfied the
22 corpus delicti requirement. For example, in *People v. Scott* (1959) 176 Cal App. 2d 458, not
23 only had the defendant's wife disappeared, but he delayed reporting the disappearance to the
24 police, and (most importantly) engaged in a series of forgeries to steal his wife's substantial

25
26
27 ^{1/}The prosecution makes a cryptic comment in its Opposition regarding an "allegation
28 regarding Conner's death while inside the womb." (Opposition 4:6-12). Although the defense
cannot decipher the point the prosecution is trying to argue, that paragraph appears to confirm that
the district attorney takes the position that Conner died *in utero*, and that the charges regarding both
Laci and Conner, therefore, would share the same corpus delicti.

1 assets after her disappearance. (*Id.* at p. 499.) That additional criminal conduct was found
2 sufficient to provide a corpus delicti in the absence of a body. (See also, e.g., *People v.*
3 *Weaver* (2001) 26 Cal. 4th 876, 931-932 [discovery of body of victim, who disappeared at
4 time of another murder, buried in defendant's backyard, established corpus delicti]; *People v.*
5 *Kraft* (2000) 23 Cal. 4th 978, 1057 [body being bound in a trash bag on side of road raised
6 reasonable inference of criminal agency in death]; *People v. Jennings* (1991) 53 Cal. 3d 334,
7 369 [Fact that female victim's body was unclothed at time of discovery, with trauma,
8 provided reasonable inference of rape, satisfying corpus delicti]; *People v. Smart* (1986) 179
9 Cal. App. 3d 860, 865-66 [fact that dead infant was found wrapped in blanket and concealed
10 under pile of debris showed criminal agency]; *Government of Virgin Islands v. Harris* (1991)
11 938 F.2d 401, 417-18 [among other things, defendant in "no body" case seen at time of
12 victim's disappearance with blood on his clothing and in bedroom, had made threats toward
13 victim]; *People v. Johnson* (1991) 23 Cal. App. 3d 425, 440-41 [in "no body" case the
14 defendant had a history of violence against the victim]; *People v. Ruiz* (1988) 44 Cal. 3d 586,
15 610-11 [where defendant showed no concern regarding disappearance of prior wife,
16 subsequent wife and son were shot and buried in defendant's yard, and all victims had
17 expressed fear of defendant's violent nature, there was sufficient evidence to support corpus
18 delicti for murder of the victim who had disappeared even in absence of body].)

19 Here, in contrast, the district attorney has failed to provide any evidence that a
20 criminal agency caused Laci's and Conner's deaths - no realistic criminal motive, no
21 surrounding criminal conduct, no history of violence, and no physical evidence. Thus, the
22 prosecution here has failed to satisfy even the liberal standard established by the "no body"
23 cases it relies upon in the Opposition. That being the case, the information should be set
24 aside.

25 **B. The Physical Evidence Does Not Support Probable Cause.**

26 The prosecution relies on its alleged "hair evidence" to establish probable cause. The
27 prosecution states: "the clear inference from the evidence is that the defendant used the pliers
28 in his attempt to hide Laci Peterson's body in the boat and her hair fragments stuck to the

1 pliers." The prosecution is gravely mistaken, and its reliance on this evidence is unfounded.

2 First, the evidence was found on a pair of rusted pliers that were shown not to have
3 been recently used. Second, a single hair found on a pair of pliers belonging to a husband is
4 not in itself extraordinary or incriminating, and is therefore not worthy of any weight in this
5 death penalty case.

6 Third, the testimony at the preliminary hearing established that the manner in which
7 the hair on the pliers was handled exposed the hair evidence to a significant risk of
8 contamination and alteration. This was illustrated by the transmutation of the single stand
9 into two. Reports prepared over a course of two months by the officers present during the
10 search of the warehouse indicated that only a single hair was collected, and the photograph of
11 the pliers taken during the search showed only a single hair. Yet when detectives obtained
12 the evidence to conduct a forensic examination, the single hair had somehow become two.
13 (RT 1408).

14 In addition, the color of the two strands of hair were different from each other.
15 Criminalist Rod Oswald testified that one hair was brown to light brown, whereas the other
16 strand of hair was considerably darker. (RT 1379, 1386, 1391). Moreover, Mr. Oswald
17 testified that there was a considerable difference in the cuticle thickness between the two
18 hairs. (RT 1389). One hair had a cuticle thickness of 2.5 micrometers, whereas the other
19 had a cuticle thickness of 3.5 micrometers. (RT 1390).

20 Furthermore, there was no testimony indicating that the hairs had not been transferred
21 passively onto the pliers. In fact, Mr. Oswald specifically denied the district attorney's
22 contention that these hairs were torn and not shed. (RT 1401). Mr. Oswald testified that one
23 could not discern whether or not the hairs were shed because there was no root present.^{2/}

24
25

26 ^{2/}It is also important to note that Detectives Darren Ruskamp and Hendee were the detectives assigned
27 to search the 14-foot aluminum boat, which was found inside the warehouse. Both Detective Ruskamp and
28 Detective Hendee, however, were at the Peterson residence earlier that day, where they conducted a search
of the child's room. Detectives Ruskamp and Hendee together searched the entire room, including the crib,
the dressers, and the closet, and made a close examination of the floor. Therefore, it is possible (and very
likely) that the detectives inadvertently transferred some hairs of Laci Peterson's from the residence to the
boat which they subsequently searched.

1 **C. The Circumstantial Evidence Does Not Support Probable Cause.**

2 The prosecution has essentially admitted that it is pursuing a circumstantial case
3 against Mr. Peterson, but in cobbling together various scraps of circumstantial evidence it has
4 failed to establish probable cause that Mr. Peterson killed Laci and Conner. Instead, the
5 prosecution mixes together various unrelated portions of testimony, and hopes that an
6 inference of guilt emerges by some sort of alchemy. Fortunately, the law requires something
7 more than this to establish probable cause. The Opposition provides no explanation about
8 how an inference of guilt may be inferred from the scattershot testimony the prosecution has
9 tossed together.

10 The prosecution's argument starts with the assertion that Mr. Peterson's statement that
11 he went fishing in San Francisco Bay was the "exact area" where the bodies were found, and
12 that fact alone is sufficient to satisfy probable cause. In fact, however, the bodies were not
13 found in the "exact area" where Mr. Peterson said he went fishing, but in the same large body
14 of water in the middle of a major metropolitan area of many millions of people, crisscrossed
15 by bridges and boats, with a vast shoreline. Using the prosecution's logic, there would be
16 probable cause to bind over for trial any person who had access to the Bay. Mr. Peterson's
17 presence at the Bay (along with tens of thousands of other people that day) is not sufficient to
18 establish probable cause.

19 The Opposition implies that there was something insidious about Mr. Peterson's
20 purchase of a fishing boat in early December, but fails to explain how the testimony that
21 family members did not know about the boat could possibly support a finding of probable
22 cause. Although opaque, the Opposition appears to urge two contradictory theories regarding
23 the boat and the fishing trip: One, that Mr. Peterson planned the fishing trip and purchase of
24 the boat to establish an alibi and dispose of the body; and two, that Mr. Peterson "hid" the
25 purchase of the boat to conceal his plans to do away with Laci. The prosecution does not
26 attempt to reconcile these theories, and they cannot be reconciled. If Mr. Peterson's "alibi"
27 was going to be a fishing trip, why would he keep the boat purchase a secret? And if the boat
28 purchase was a secret, why would he use a fishing trip as an alibi? Finally, how does the

1 prosecution think Mr. Peterson was going to "hide" a fourteen-foot skiff upon the
2 disappearance of his wife? This supposed "evidence" does not speak for itself. It was the
3 prosecution's obligation to describe some coherent theory of probable cause connecting the
4 circumstances of the boat purchase to a homicide.³ It has failed to do so.

5 In the absence of any coherent theory of probable cause, the Opposition mixes
6 mentions of the boat purchase with testimony regarding Mr. Peterson's statements to his
7 mistress Amber Frey - apparently in the hopes that proximity on the page would serve as a
8 substitute for actual probable cause. Again, the Opposition does not explain how one may
9 deduce probable cause from the testimony, it merely assumes probable cause. In fact, Mr.
10 Peterson's supposed statements to his mistress are not proof of murder - they are proof of
11 adultery. Reasonably viewed, the evasive statements are nothing more than what they appear
12 to be, the maneuvers by an unfaithful husband to keep a mistress. They do not support an
13 inference of murder.

14 The prosecution accuses Mr. Peterson of "lying" about whether he left the house at
15 9:30 or 10:00. The prosecution has no evidence, however, that the half-hour discrepancy was
16 deliberate, and does not explain how Mr. Peterson's possible error about the precise time he
17 left home amounts to probable cause of murder. Nor does the prosecution explain how a
18 supposed "lie" about the color of the pants Laci was wearing the morning of her
19 disappearance supports probable cause. Likewise, the Opposition states that Mr. Peterson,
20 after news reports about searches for Laci in the Bay, visited the Berkeley Marina, but does
21 not provide a clue about how that evidence would support a probable cause finding.

22 In short, the prosecution appears not to have any coherent theory of its case. To
23 oppose Mr. Peterson's Motion to Set Aside the Information, the district attorney was
24 obligated to explain how the testimony elicited at the preliminary hearing would lead a
25 reasonable person to believe Mr. Peterson was guilty of murder. Instead, the prosecution
26 chose to work backward. It simply assumes that Scott Peterson is guilty, repeats the raw

27

28 ³The prosecution misrepresents the evidence that Mr. Peterson viewed "tide tables" on the internet. In fact, the tide information was part of a fishing web site that was accessed on Mr. Peterson's computer. (RT 1588).

1 testimony made before the preliminary hearing, and ignores the wide gap between the
 2 evidence and the conclusion. The prosecution cannot muster a logical and reasonable theory
 3 of the case to bridge that gap.

4 The Opposition provides an excellent example of the prosecution's attitude toward
 5 this case. The district attorney defends the Modesto Police Department's failure, only two
 6 days into the missing-person investigation, to follow-up on Diane Campos's statement that on
 7 the day Laci disappeared she had seen a woman matching Laci's description confronted by
 8 two hostile men. The district attorney baldly states that it was "impossible for the woman
 9 who Diane Campos claimed to have seen to be Laci Peterson." (Opp. 15:23-24). That has
 10 been the police and prosecution position since the beginning of this case. According to them,
 11 for anyone but Mr. Peterson to have caused this tragedy is "impossible." That unfortunate
 12 attitude infected the investigation of Laci's disappearance, it infected the investigation of
 13 Laci's and Conner's death, and it infects Mr. Peterson's prosecution.


14 The prosecution must be held to a higher standard. There is no probable cause in this
 15 case. The information must be set aside.

16
 17 **III. CONCLUSION**

18 For the reasons set forth above, the Court should grant the Defendant's Motion, and
 19 should set aside the Information.

20
 21 Dated: January 13, 2004

Respectfully submitted,
 GERAGOS & GERAGOS

22
 23
 24 By: 
 25 **MARK J. GERAGOS**
 26 Attorney for Defendant
 27 SCOTT LEE PETERSON
 28

PROOF OF SERVICE BY FAX
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 350 S. Grand Avenue, 39th Floor, Los Angeles, California 90071.

On execution date set forth below, I served the following
DOCUMENTS OR DOCUMENTS DESCRIBED AS:

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION
TO SET ASIDE INFORMATION

 placing a true copy thereof enclosed in sealed envelopes with postage thereon fully prepaid, to the attorneys and their perspective addresses listed below, in the United States Mail at Los Angeles, California.

 X transmitting by facsimile transmission the above document to the attorneys listed below at their receiving facsimile telephone numbers. The sending facsimile machine I used, with telephone number (213) 625-1600, complied with C.R.C. Rule 2003(3). The transmission was reported as complete and without error.

 personally delivering the document(s) listed above to the party or parties listed below, or to their respective agents or employees.


PARTIES SERVED BY FAX:

**Rick Disatso, DDA
David P. Harris, DDA
Fax No.: 209-525-5545**

**Kirk McAllister
McAllister & McAllister
Fax No.:209-575-0240**

Executed on January 13, 2004, at Los Angeles, California.

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



JOSLIN RUDD