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COURT OF APPEAL  
FIFTH APPELLATE DISTRICT  
**FILED**

MAY 5 - 2003

Eve Sproute Court Administrator/Clerk  
By \_\_\_\_\_

Deputy

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS  
COUNTY,

Respondent,

THE MODESTO BEE,

Real Party in Interest.

F042848

(Super. Ct. No. 1045098)

**OPINION**

**THE COURT**

ORIGINAL PROCEEDINGS; petition for writ of mandate. Roger M.  
Beauchesne, Judge.

James C. Brazelton, District Attorney, and David P. Harris, Deputy District  
Attorney, for Petitioner.

No appearance for Respondent.

Riegels Campos & Kenyon, and Charity Kenyon, for Real Party in Interest.

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Before Dibiaso, Acting P.J., Vartabedian, J. and Buckley, J.

Petitioner contends the superior court abused its discretion in failing to maintain the confidentiality of search warrants, affidavits and returns (hereafter Materials) filed and sealed in connection with Stanislaus County Superior Court action No. 1045098. We agree.

**FACTS**

The Materials were filed in connection with the investigation into the disappearance of Laci P. and her unborn child. When the expected delivery date passed and the mother did not seek medical assistance with the birth, the investigation was reclassified as a homicide.

Real party in interest McClatchy Newspapers, Inc. (hereinafter McClatchy) filed a petition to unseal the Materials.

The superior court conducted an in camera hearing concerning the Materials and filed an order on April 10, 2003. In detailed findings (hereafter Findings) in that order, the trial court concluded that prejudice to both the investigation and any suspect would result from the disclosure of the Materials and that no feasible means less restrictive than complete sealing was practicable. The court therefore denied McClatchy's petition "in its entirety." However, the order also provided that the absolute seal would continue only until July 9, 2003, and that "[i]n the event a criminal complaint is filed ... the Court's order sealing the eight (8) search warrants, affidavits, and returns in their entirety shall be vacated and each of the documents shall become a public record."

This court has been informed that a criminal complaint against one Scott P. has been filed by petitioner.

**DISCUSSION**

**I.**

The trial court's Findings were as follows:

"Testimony adduced at the hearing held on April 9, 2003, revealed that the investigation has been reclassified from a missing person case to a homicide case. Since Laci [P.] was approximately eight (8) months

—pregnant at the time of her disappearance, any potential prosecution related to this case could result in capital charges being filed by prosecuting authorities.

“Therefore, it is paramount that the investigation be thorough and unhampered, in part because of the potential penalty of death.

“Testimony at the hearing also established that revelation of confidential information contained in the warrants, affidavits and returns would irreparably harm the investigation. Investigation techniques, clues and focus on future avenues of inquiry by law enforcement personnel would unduly alert any potential suspect. Evidence would likely be destroyed and witnesses would be reluctant to provide information.

“Any information released at this time from any of the documents in question would harm the reliability of information already gleaned and to be gleaned in the future. Furthermore, any information released to the public at this time would adversely impact future tips to law enforcement who must discern whether or not information provided to them by tipsters is based upon public information or independently verifiable. The Court has considered the requirements of California Rule[s] of Court[,] [rule] 243.1 and attempted to adopt the least restrictive means of sealing.

“In the Court’s opinion, there is no reasonable likelihood that sealing only portions of all eight (8) search warrants, affidavits and returns would achieve a just result.

“The Court also concludes that unsealing any of the documents in issue would likely impair any suspects’ rights to a fair trial. Moreover, the Court concludes that the official privilege exception of Evidence Code § 1040 (b) (2) is applicable to the facts of this case because disclosure of any of the information sought to be unsealed is against the public interest and because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.

“The Court has considered the competing interests of the public’s right to know and the news media’s concomitant obligation to report facts, even during an investigation, together with the obligation of law enforcement to conduct a thorough investigation. [¶] . . . [¶]

“Pursuant to California Rule[s] of Court[,] [rule] 243.2 (d), the Court orders all eight (8) search warrants, affidavits, and returns sealed in their entirety because there exists an overriding interest (previously identified) that overcomes the right of public access. The overriding interest supports sealing. A substantial probability exists that the overriding interest will be

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prejudiced if the records in issue are not sealed in their entirety. The Court cannot conceive of a sealing which could be more narrowly tailored and the Court finds there is no less restrictive means to achieve the overriding interest."

## II.

The trial court's Findings are thorough, complete and unambiguously establish that the court carefully balanced all of the factors relevant under the case law, the provisions of Penal Code section 1534, and the California Rules of Court. (E.g., *Press-Enterprise Co. v. Superior Court of Cal.* (1984) 464 U.S. 501; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178; Pen. Code, § 1534; Cal. Rules of Court, rules 243.1-243.4; Advisory Com. com., West's Ann. Codes, Rules (2002) foll. rule 243.1, p. 172.) The trial court's findings that prejudice to both the prosecution and the defense would result from disclosure of the Materials stand unchallenged; McClatchy has not in its opposition or in a separate writ petition put the propriety of any of those Findings in issue. We therefore must accept them as valid and justified by the record evidence. Because these unquestioned Findings support the trial court's decision to seal the Materials, and to the extent the trial court's order directed unconditional sealing, the court's order was not an abuse of its discretion.

## III.

Though the portion of the trial court's order which sealed the Materials is legally sound, the portion of the order which requires disclosure of the Materials upon the filing of a criminal complaint and, in any event, by July 9, 2003, is so fundamentally inconsistent with the Findings as to constitute a manifest abuse of discretion.<sup>1</sup> A criminal investigation does not automatically cease upon the filing of a complaint or upon the passage of an arbitrary period of time. The Findings themselves implicitly recognize that

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<sup>1</sup> In fact, the court's actual ruling – "The petition to unseal is **DENIED** in its entirety" – does not mention the release conditions expressed in these paragraphs.

the investigation would likely continue for a substantial period, certainly more than the 11 days which elapsed before the complaint was filed.

Moreover, the Findings expressly recognize that the disclosure of the "[i]nvestigation techniques, clues and focus on future avenues of inquiry by law enforcement personnel would unduly alert any potential suspect. Evidence would likely be destroyed and witnesses would be reluctant to provide information." These considerations would conceivably disappear only if the complaint was filed against the actual perpetrator or perpetrators, but an accurate identification of a perpetrator has yet to be made and legally will not be made by the filing of a complaint against a particular suspect. As we see it, the portion of the trial court's order requiring disclosure upon the filing of a complaint or the arrival of a specific date in the future is based upon an erroneous assumption -- that an arrest or the lapse of time would remove the possibility, among others, that a "potential suspect" would be alerted, that evidence would be destroyed, or that witnesses would be discouraged.<sup>2</sup>

IV.

An expeditious decision settling the issues in this court serves the interest of all parties and other interested persons. The petition in this proceeding was filed on April 18th. Opposition was filed on April 23d by real party. Absent the stay ordered by this court, the trial court's order sealing the Materials would have expired no later than July 9, 2003. Any further proceedings before this court, such as the issuance of an order to show cause, would consume substantial time within which real party could otherwise use to seek additional review.

<sup>2</sup> The superior court also substantially underestimated both the applicability and weight of the exceptions, described in the case law relied upon by McClatchy (e.g., *People v. Hobbs* (1994) 7 Cal.4th 948), to the confidentiality of criminal investigations and their results.

Petitioner is entitled to appropriate relief. (Code Civ. Proc., § 1085; see *Whimney's at the Beach v. Superior Court* (1970) 3 Cal.App.3d 258, 266.) A peremptory writ of mandate is proper and should issue. (Code Civ. Proc., § 1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180-181; *Goodenough v. Superior Court* (1971) 18 Cal.App.3d 692, 697.)

**DISPOSITION**

Let a peremptory writ of mandate issue directing the trial court to enter an order modifying its order filed on April 10, 2003, in Stanislaus County Superior Court action No. 1045098. The modification to be ordered by the trial court shall vacate **ONLY** the first two paragraphs in the section identified as "TV" on page 3 of the trial court's April 10, 2003 order, which two paragraphs direct disclosure of the materials when a complaint or indictment is filed or on July 9, 2003. In all other respects, including but not limited to the Findings set out in it, the trial court's order denying McClatchy's "petition to unseal ... in its entirety" and directing that the Materials be unconditionally sealed is affirmed.

The order filed in this proceeding on April 18, 2003, staying the automatic disclosure provisions of the trial court's order of April 10, 2003, as modified in this court's order filed on May 5, 2003, shall remain in effect until this opinion is final in all the courts of this state, the superior court complies with this disposition, or the Supreme Court grants a hearing, whichever shall first occur; thereafter the stay is dissolved.

Insofar as petitioner requests relief in addition to that granted above, the request is denied.

Nothing in this order forecloses any interested person or entity from re-applying to the superior court for a release order at an appropriate time in the future and upon a showing of a change in circumstances.