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FILED
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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY Cindy Avila DEPUTY

STANISLAUS COUNTY SUPERIOR COURT

STATE OF CALIFORNIA

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D.A. No.1056770

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. SCOTT LEE PETERSON, Defendant.	No.1056770 Amended NOTICE OF MOTION; MOTION TO SEAL, AND MAINTAIN SEAL OF DOCUMENTS; DECLARATION; and ORDER Hrg: 5-27-03 Time: 8:30 a.m. Dept: 2/8

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Comes now the People of the State of California to submit the following Points and Authorities in support of An amended Notice of Motion and MOTION TO SEAL and MAINTAIN SEAL ON DOCUMENTS:

FACTS

The People incorporate by reference the factual statement made in the original motion to seal and add the following:

During the investigation by the Modesto Police Department search warrants were obtained by the police and with court approval some of the warrants were extended or renewed. The

Modesto Police have two additional warrant extensions that they wish to have sealed and considered by the court. The People are hereby moving for an order to seal these extensions as well as the previous request to seal a new search warrant issued on 4-24-03 and the affidavit in support of the Ramey warrant be sealed. This request is made for the following reasons and Pursuant to Rule of Court 243.1 and 243.2 now that a criminal action has been filed.

ARGUMENT

1. Prior Arguments

The People hereby incorporate the arguments previously made in the prior motion filed on May 6, 2003, as if set forth in full here.

2. The Modesto Police Invoke Evidence Code §1040, et.seq.

The attached declaration of Det. Craig Grogan establishes that the police are invoking the protection of the privilege against disclosure of Official Information provided by Evidence Code §1040, et.seq. The People request, if the court determines that the burden to conditionally seal is not met based on the declarations, that the Court conduct a hearing pursuant to Penal Code §915(b) to protect the privileged material contained in the documents which are the subject of this motion.

Evidence Code §915(b) provides that:

> "When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) . . . and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of

all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege is willing to have present."

An in camera hearing pursuant to §915(b) is appropriate whenever the party claiming the privilege declares that showing why the matter is privileged in open court would compromise the privilege. (People v. Torres, (2000) 80 Cal.App.4th 867, 873.) In this case the Modesto Police Department have declared their need to have these documents sealed and cannot discuss the basis for the sealing without risking the disclosure of the confidential information. Therefore, the Court should hold an in camera hearing pursuant to Penal Code §915(b) in order to ascertain the claim of privilege.

"In camera proceedings can effectively protect the government's confidentiality interests while safeguarding the defendant's rights and the integrity of the warrant issuing process. (See 1 LaFave, op. cit. supra (2d ed. 1987) §§ 3.3(g), pp. 709-711.)"

People v. Luttenberger, (1990) 50 Cal.3d 1, 19.

3. In Camera Hearing

The People also request the court conduct an in camera review for the permanent sealing request on May 27, 2003 pursuant to the above cited authorities.

Conclusion

The People submit the following declarations in support of this motion and incorporate the prior declarations as part of

this request to seal and to maintain said seal in this case.

Dated: May 7, 2003

Respectfully submitted,

JAMES C. BRAZELTON

District Attorney

By:

David P. Harris
Deputy District Attorney

STATE OF CALIFORNIA
COUNTY OF STANISLAUS

REQUEST FOR ORDER FOR SEALING OF A SEARCH WARRANT ADDENDUM

I, Detective Craig Grogan, of the Modesto Police Department, request that the Search Warrant Addendum and Search Warrant Return, dated April 21st , 2003, be ordered conditionally sealed by the Magistrate in order to implement the privilege under Evidence Code Section 1041, which states that the public entity has the privilege to refuse to disclose official information and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by public entity to do so, and the disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. Here, in light of the extensive pretrial publicity the case has received, the defendant's ability to receive a fair trial would be compromised should the information contained in the Search Warrant Addendum and Search Warrant Return be released. I request that the information be conditionally sealed and the matter transferred to the Honorable Judge Girolami for a further hearing on May 27, 2003, at 8:30 am in Department TBA. I also believe that this information may be sealed pursuant to Supreme Court Decision in People vs Jane Marie Hobbs (1994) 7.C.4th 948, as it would impair the further investigation of this double murder case.

I believe this information must remain confidential and sealed for the following reasons. Detectives of the Modesto Police Department are still actively investigating this double murder case. The missing person case was reported on December 24, 2002. During that investigation, certain specific details have been established at the scene of the search warrants and statements of key witnesses in this investigation are part of the affidavit. The details present in this affidavit are known to police detectives and law enforcement officials, but not to the general public.

Disclosure of these details to the public would compromise the defendant's ability to receive a fair trail because such information will be widely disseminated through the media. Disclosure of the information would also frustrate further investigation for the same reasons. Based on the fact that there are now 9,000 leads in this case, some of which may require additional follow-up, the case specific details are used to eliminate false leads and inaccurate statements. The intense media interest in this case ensures that a release of the details in this affidavit would quickly be relayed to the public and could jeopardize the investigation as well as further impact on the defendant's ability to receive a fair trial.

C. Grogan

Craig Grogan, Detective

STATE OF CALIFORNIA
COUNTY OF STANISLAUS

REQUEST FOR ORDER FOR SEALING OF A SEARCH WARRANT ADDENDUM

I, Detective Craig Grogan, of the Modesto Police Department, request that the Search Warrant Addendum and Search Warrant Return for the 30 day extension of the Search Warrant, dated February 27th, 2003, be ordered conditionally sealed by the Magistrate in order to implement the privilege under Evidence Code Section 1041, which states that the public entity has the privilege to refuse to disclose official information and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by public entity to do so, and the disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. Here, in light of the extensive pretrial publicity the case has received, the defendant's ability to receive a fair trial would be compromised should the information contained in the Search Warrant Addendum be released. I request that the information be conditionally sealed and the matter transferred to the Honorable Judge Girolami for a further hearing on May 27, 2003, at 8:30 am in Department TBA. I also believe that this information may be sealed pursuant to Supreme Court Decision in People vs Jane Marie Hobbs (1994) 7.C.4th 948, as it would impair the further investigation of this double murder case.

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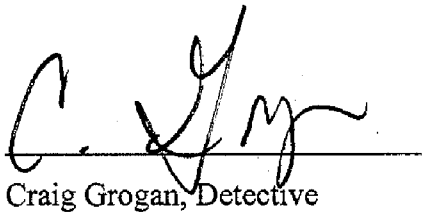

Craig Grogan, Detective

JAMES C. BRAZELTON
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Telephone: 525-5550

Attorney for Plaintiff

STANISLAUS COUNTY SUPERIOR COURT

STATE OF CALIFORNIA

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D.A. No.1056770

THE PEOPLE OF THE STATE OF CALIFORNIA	)	No.1056770
	)	
Plaintiff,	)	ORDER PENDING HEARING
vs.	)	
	)	
SCOTT LEE PETERSON,	)	Hrg: 5-27-03
	)	Time: 8:30 a.m.
Defendant.	)	Dept: 2/8

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It is hereby ORDERED by the court pursuant to California Rule of Court rule 243.2 that the search warrant, affidavit, and return issued on April 24, 2003, the search warrant addendum dated February 27th, 2003, the affidavit and return; the search warrant addendum dated April 21st, 2003, the affidavit and return, and the affidavit in support of the Ramey warrant are hereby sealed pending further order of this court.

Dated: _____

_____
A. Girolami
Judge of the Superior Court

DECLARATION OF PERSONAL SERVICE

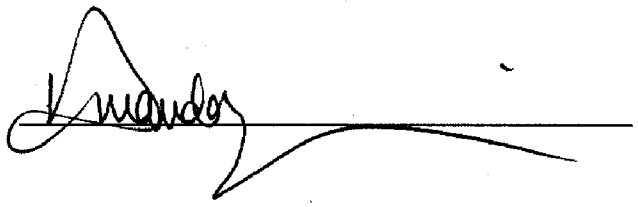
I, the undersigned, say:

I was at the time of service of the attached **AMENDED NOTICE OF MOTION; MOTION TO SEAL, AND MAINTAIN SEAL OF DOCUMENTS; DECLARATION; AND ORDER; DECLARATIONS OF C. GROGAN; ORDERING PENDING HEARING** over the age of eighteen years and not a party to the above-entitled action. I served a copy of the above-entitled document(s) on the 7th day of May, 2003, by delivering a copy thereof to the office(s) of:

Kirk McAllister
1012 11th Street, Suite 101
Modesto, California 95354

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

Executed this 7th day of May, 2003, at Modesto, California



People v. Peterson

D.A. No. 1056770

Court No. 1056770

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