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2 District Attorney
3 Stanislaus County
4 Courthouse
5 Modesto, California
6 Telephone: (209) 525-5550
7 Attorney for Plaintiff

FILED
SAN MATEO COUNTY

MAY 26 2004

Clerk of the Superior Court
By *Janette Gralich*
DEPUTY CLERK

7 SAN MATEO COUNTY SUPERIOR COURT
8 STATE OF CALIFORNIA

9 -----o0o-----

10 THE PEOPLE OF THE STATE OF CALIFORNIA	)	No. SC55500
)	
11 Plaintiff,	)	OPPOSITION TO MOTION
	)	FOR SANCTIONS AND
12	)	MOTION TO EXCLUDE
13	)	WITNESS DIANE JACKSON
	)	AND REQUEST FOR
14 vs.)	DISCOVERY
)	
15 SCOTT LEE PETERSON,)	Time: 9:30
)	Dept: 2M
16 Defendant.)	Date: May 27, 2004

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18 The People oppose defendant's motion for sanctions and to
19 allow hypnotized witness Diane Jackson's testimony. The People
20 separately move in-limine to prevent any defense evidence of
21 alleged third party culpability without a sufficient showing
22 pursuant to People v. Hall, infra. The People also request defense
23 discovery pursuant to Penal Code Sec. 1054.3.
24

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1 POINTS AND AUTHORITIES

2 I

3 **THE DEFENDANT'S CLAIM OF PROSECUTORIAL MISCONDUCT IS FALSE**

4 Like the proverbial boy who cried wolf, the defendant is once
5 again falsely accusing the prosecution of misconduct. This defense
6 team's modus operandi seems to be that when they have neither the
7 law nor the facts to support them, they resort to allegations of
8 prosecutorial misconduct.

9 The court will remember the multiple false statements of
10 prosecutorial misconduct alleged by these attorneys in regards to
11 the wiretap litigation. Every single claim was either abandoned by
12 the defense or found not true by this court (RT pages 1975, 1978-
13 1979).

14 The defense also falsely claimed prosecutorial misconduct
15 during the presentation of the dog tracking motion (RT page 1537).
16 The court found that claim untrue (RT page 1538).

17 Clearly, this action is a tactical decision by the defense to
18 denigrate the prosecution with false statements. Such a tactic is
19 in violation of Rule 5-200(A) of the CA Rules of Prof. Conduct, and
20 CA Bus. and Prof. Code Sec. 6068(d).

21 II

22 **TROMBETTA DOES NOT APPLY; HOWEVER, EVEN IF IT DOES, THE WITNESS
23 MUST STILL BE EXCUSED**

24 The defense makes an argument pursuant to California v.
25 Trombetta (1984) 467 U.S. 479, and Arizona v. Youngblood (1988) 488
26 U.S. 51, that the situation here regarding hypnotized witnesses is
27 somehow akin to the prosecution destroying exculpatory physical
28 evidence. There is nothing in either cited case that supports that

1 contention; even if there were, the Trombetta standard does not
2 provide the defendant any relief.

3 Trombetta's standards are clear. There are three criteria
4 that must be met before any relief can be given.

5 (A) The evidence must possess exculpatory value that is
6 apparent before the evidence is destroyed;

7 (B) The defendant must show bad faith on the part of the
8 prosecution;

9 (C) The evidence must be of such a nature that the defendant
10 would be unable to obtain comparable evidence by other reasonably
11 available means.

12 **(A) DIANE JACKSON'S TESTIMONY IS NOT EXCULPATORY; IT WOULD NOT**
13 **BE ADMISSIBLE EVEN IF SHE HADN'T BEEN HYPNOTIZED**

14 Ms. Jackson says that at 11:40 a.m. on December 24, 2002, she
15 saw three dark-skinned males, but not African-American, standing
16 near a van parked on the street in front of 516 Covena Ave. She
17 stated that she initially thought they were landscapers but changed
18 her mind because they looked up and watched her as she drove by.
19 She said that she changed her mind because landscapers normally
20 continue working and don't watch traffic going by. She stated that
21 she initially told the officers the van was white, but that upon
22 thinking about it she believed the van was darker, either a tan, or
23 brown color. That's it. That is all she said. Ms. Jackson had no
24 information regarding seeing Laci Peterson that morning or even
25 that these three people were doing anything improper.

26 Karen Servas testified at the preliminary hearing that she
27 found Laci Peterson's dog, standing alone in the street in front of
28 her house, with his leash still attached, at 10:18 a.m. on December

1 24th. Thus, it would have been impossible for these individuals to
2 have abducted Laci because any alleged abduction would have already
3 happened over an hour and a half before.

4 The law regarding the admissibility of third party culpability
5 is clear; there must be some nexus or connection to the crime.
6 "Evidence of mere motive or opportunity to commit the crime in
7 another person, without more, will not suffice to raise a
8 reasonable doubt about a defendant's guilt; there must be direct or
9 circumstantial evidence linking the third person to the actual
10 perpetration of the crime." People v. Hall (1986) 226 Cal.Rptr.
11 112, 117, People v. Adams (2004) 115 Cal.App. 4th 243.

12 Here, there is no evidence linking these alleged persons to
13 Laci Peterson's disappearance. Neither Diane Jackson, nor any
14 other person connects these three people, or their van, to anything
15 related to this case. No one says they saw Laci in this particular
16 van, or with these people. As such, any testimony from Diane
17 Jackson would be inadmissible and improper.

18
19 **(A) (1) THE PEOPLE MOVE TO PREVENT ANY EVIDENCE OF THIRD PARTY
20 CULPABILITY WITHOUT A SUFFICIENT SHOWING PURSUANT TO
21 PEOPLE V. HALL**

22 The People hereby move in-limine to prevent the defense from
23 introducing any evidence of third party culpability without a
24 sufficient showing pursuant to People v. Hall, supra. The People
25 object to any mention of: a cult of satanists, individuals painting
26 pictures at the Albany bulb, any mystery woman, including Amanda
27 H., any brown van, or of any other third party culpability, without
28 the defense first putting forth evidence sufficient to meet the
People v. Hall standard.

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(B) THE PROSECUTION DID NOT ENGAGE IN BAD FAITH

The defense states that the prosecution "just last week turned over reports disclosing an interview with a witness who saw Laci Peterson being pulled into a van by at least two men." The defense does so in order to mislead the court, and anyone else who reads their motion, to suggest that this is completely new information that wasn't previously provided to them.

The defense neglects to tell the court that the alleged sighting took place on December 28, 2002 (four days after Laci Peterson disappeared) and that the witness had previously spoken to Modesto Police Detective Denis Holmes on that same date. Further, the witness's description of the woman's clothing did not match the clothing Laci Peterson was wearing when she was ultimately found. Finally, the witness's name, address, telephone number and a description of his statement were **previously provided to the defense on May 14, 2003** in the initial discovery (Bates No. 14791, see attached discovery log signed by Bill Pavelic).

It is true that Modesto Detective Craig Grogan did recently re-interview the man and obtained a more detailed statement from him. Once Det. Grogan's report regarding that interview was completed it was discovered to the defense. **As the court knows, such action is completely proper and is part of routine trial preparation.** The People would be remiss in their duties if they did not fully prepare to rebut all potential defense evidence.

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(B) (1) MODESTO DETECTIVES ACTED PROPERLY REGARDING THE HYPNOSIS

The defense also claims that the prosecution knowingly permitted Ms. Kristin Dempewolf and Ms. Diane Jackson to be

1 hypnotized on January 17, 2003 by an unqualified hypnotist solely
2 to prevent Ms. Jackson from testifying. That claim is patently
3 absurd. On January 17, 2003 (less than one month into the
4 investigation, and months before Laci and Conner's bodies were
5 found), the prosecution was not even aware that either witness was
6 going to be hypnotized by Dr. Pennington, or that Dr. Pennington
7 was not a licensed psychologist in California.

8 The only reason that either witness underwent hypnosis on
9 January 17th, was an attempt by the Modesto Police to have each
10 witness more fully recall what she might have seen on December 24,
11 2002. Nothing more. There was no improper motive by any law
12 enforcement personnel regarding these two witnesses. Further, Ms.
13 Jackson's statement to defense investigator Gary Ermoian proves
14 this fact. She told him on January 16, 2003, that "Tomorrow (1-17-
15 2003) she is scheduled for hypnosis at the Modesto Police
16 Department, in an attempt for her to **remember more about what she**
17 **saw."**

18 Modesto Police Detective Stough's police report regarding this
19 incident also proves this fact. In it he writes,

20 "Dr. Pennington was contacted by Det. Sebron Banks to assist
21 us in attempting to obtain **further information** from witnesses
22 regarding a suspicious van. The witnesses to be contacted are
23 Kristen Dempewolf listed in Det. Schmierer's supplemental
dated 1/9/03 under this case number. The second individual to
be interviewed was Diane Jackson listed as a witness in Det.
Stough's supplemental dated 12/27/02."

24
25 Finally, to show how ridiculous the defense allegation really
26 is, if the Modesto Police Department only wanted to prevent Ms.
27 Jackson from testifying why did they also have Ms. Dempewolf
28 undergo hypnosis? Ms. Dempewolf is a witness who has information

1 favorable to the prosecution's case. Her information was also
2 known to the Modesto Police Department on January 17, 2003.
3 Obviously, if the Modesto Police Department had solely wanted to
4 keep Ms. Jackson from testifying, she would have been the only
5 witness who would have undergone hypnosis.

6
7 **(C) THE EVIDENCE SHOULD NOT BE ADMITTED SO TROMBETTA'S
8 THIRD REQUIREMENT DOES NOT APPLY**

9 Trombetta's third requirement is that the evidence must be of
10 such a nature that the defendant would be unable to obtain
11 comparable evidence by other reasonably available means. Here, it
12 is immaterial that Diane Jackson was the only person to have seen
13 these three males standing near the van. Since the evidence is not
14 exculpatory and therefore inadmissible, the fact that no one else
15 saw these people, or this van is not relevant.

16 **III**

17 **DR. PENNINGTON WAS NOT A QUALIFIED HYPNOTIST**

18 The court has previously ruled that Dr. Pennington was not a
19 qualified hypnotist pursuant to Evid. Code Sec. 795 and therefore
20 excluded the testimony of witness Kristen Dempewolf. The same
21 standards must apply to the proposed defense witness Diane Jackson
22 as she also underwent hypnosis in the same fashion as Ms.
23 Dempewolf.

24 Evidence Code §795 sets forth the conditions under which
25 testimony of a witness who has previously undergone hypnosis may be
26 admissible in a criminal proceeding.

27 One of the conditions required to permit testimony of a
28 witness who was previously hypnotized is addressed in Evidence Code
§795(a)(2), which states that the testimony is admissible if

1 (t)he substance of the prehypnotic memory was
2 preserved in written, audiotape, or videotape
3 form prior to the hypnosis."

4 Here, the defendant attempts to introduce a statement
5 from Ms. Jackson preserved in a one-page and two-line report taken
6 by defense private investigator Gary Ermoian on January 16, 2003.
7 In light of the court's previous ruling regarding Ms. Dempewolf's
8 statement, such a recording is clearly not adequate.

9 Dr. Pennington was not a licensed psychologist pursuant to
10 Evid. Code Sec. 795.

11 The required procedure in Evidence Code §795(a)(3)(D) is that
12 (t)he hypnosis was performed by a licensed medical
13 doctor, psychologist, licensed clinical social worker, or
14 a licensed marriage and family therapist experienced in
15 the use of hypnosis, and independent of and not in the
16 presence of law enforcement, the prosecution, or the
17 defense.

18 While Dr. Pennington has a doctorate in psychology, he is not
19 a licensed psychologist. As such, he does not fall under the
20 definition of psychologist as stated in Bus. & Prof. Code Sec.
21 2903. The court has previously found Dr. Pennington to not be a
22 qualified psychologist under Evid. Code Sec. 795 and therefore
23 excluded the testimony of witness Kristen Dempewolf. As the
24 conditions were exactly the same for witness Diane Jackson, the
25 court must also exclude her testimony.

26 IV

27 PEOPLE'S REQUEST FOR DISCOVERY

28 The People have previously requested defense discovery
multiple times both informally and through court pleadings. In
fact, each and every time the People have provided discovery in
this case, a written request for reciprocal discovery was included.
Further, the People have formally requested discovery through a

1 motion filed on December 11, 2003 in Stanislaus County Superior
2 Court (See attached). To date, the People have received a defense
3 witness list consisting of 18 names, 35 pages of reports of defense
4 witness interviews, one audiotape of an interview of Diane Campos,
5 and a videotape showing interviews of [REDACTED], [REDACTED]
6 [REDACTED] and [REDACTED], and [REDACTED]

7 The People have provided over 40,000 pages of written
8 material, hundreds of photographs, dozens of audiotapes, and
9 numerous videotapes. The People have provided the results of all
10 scientific tests that have been completed, including the bench
11 notes of the scientists who personally performed the testing. The
12 People have had evidence tested at the CA Department of Justice at
13 the defense request, and have made numerous other efforts to
14 accommodate defense requests for discovery.

15 In contrast, the People have not received any discovery from
16 any named defense expert including [REDACTED] [REDACTED]
17 or [REDACTED]. The People's investigators have separately
18 made requests directly to these experts in an attempt to obtain
19 discovery. Despite being assured by [REDACTED] that "anything they
20 asked for" would be provided, no discovery has been forthcoming.

21 The People are aware that [REDACTED] and [REDACTED] both have
22 conducted examinations of evidence in this case, and both
23 participated in defense autopsies of Laci and Conner's remains.
24 The People are aware that numerous photographs and videotapes were
25 taken by the defense during these autopsies, and at other times and
26 locations.

27 The People are specifically requesting copies of all
28 photographs, and all videotapes taken during those autopsies, or

1 while visiting the residence at 523 Covenia, or at any other time
2 during their investigation, including any personal photographs
3 taken by [REDACTED] or [REDACTED]

4 The People continue to request all discovery as required by
5 Penal Code Sec. 1054.3, and previously requested on December 11,
6 2003; including any evidence, or witnesses, the defendant intends
7 to offer during the penalty phase in this trial.

8 **CONCLUSION**

9 Based on the above facts and law, the People respectfully
10 request that the defense motion be denied and that the People's
11 request for relief be granted.

12 Dated this 26th day of May, 2004, at Modesto, California.

13 Respectfully submitted,

14 JAMES C. BRAZELTON
15 District Attorney

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17 By 

18 RICK DISTASO
19 Deputy District Attorney
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Stanislaus County District Attorney's Office

Discovery Request and Record

DA#: 1056770

DEF: SCOTT PETERSON

Discovered to:

CA I [] CA II []
PD [] PVT [X]

DDA: RICK DISTASO / DAVE HARRIS

Date: 5/13/03

Name: MARK GERAGOS

MISD []

Court #: 1056770

Address:

FEL [X]

Event Date:

APPT [X]

Agency #: MPD 02-142591

Phone:

PVT []

Charges: 187 PC

Table with 4 columns: Description, Seq, #. Rows include Blood Alcohol, Booking Sheet, Calibration, CII/FBI/DMV, Drug/Intox., Photos, Police Reports, Registration, AUTOPSY, X REPORTS #C5 & #C6 2. Total: 2

Reciprocal Discovery Request:

Pursuant to Penal Code §§ 1054.3, James C. Brazelton, District Attorney of Stanislaus County, requests that within ONE (1) week of the date of the pretrial hearing you disclose to the District Attorney the following information and evidence which relate to the case described above:

- 1. The names and addresses of persons (excluding the Defendant) you intend to call as witnesses at the trial;
2. Any relevant written or recorded statements of the person described in item 1 above, including reports and statements of experts made in connection with the connection with the case, and the results of physical and mental examinations, scientific tests, experiments, and comparisons which you intend to offer in evidence at the trial.
3. Any real evidence you intend to offer at the trial. This request is a continuing request intended to include not only material currently in existence, but also all material which comes into existence prior to the conclusion of this case.

Pursuant to Penal Code §§ 1054.1 (a), you are advised that the names and addresses of all persons that the District Attorney intends to call as witnesses at trial, are listed on the accompanying police reports and any attached exhibits, to the extent currently known. As additional witnesses become known, their names and addresses will be provided in the same manner. The attached material is also provided in furtherance of the People's duty of discovery pursuant to Penal Code §§ 1054.1 (b) through (f).

Please Note: A minimum charge of \$10.00 each will be charged for audio tapes unless a blank is provided. Video tapes are \$35.00 each unless a blank is provided. ***PHOTOS ARE NOW AVAILABLE ON 3.5 DISKS OR CD-R.*** Disks will be used unless the volume of photos exceeds capacity, at which time a CD will be used. Disks are \$4.00 and CD-R's are \$8.00. Color printouts of the pictures are available for \$.50 a page.

Prepared By:

Received By:

Charges: 0

Initial: JWG

X

Amt. Due: 0

Print:

Cash:

Date: 5/13/03

Date:

Check:

Melony Discovery Log

Def: SCOTT PETERSON

DA#: 1056770

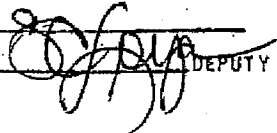
Page 1

Date	# pg's	Officer	Description	Bates #
5/13/03	CD-R	VARIOUS	PGS 10685-14200	C5
5/13/03	CDR	VARIOUS	PGS 14201-15767	C6
Total:	0		Grand Total (all pages):	

FILED

03 DEC 11 AM 8:59

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY  DEPUTY

1 JAMES C. BRAZELTON
District Attorney
2 Stanislaus County
Courthouse
3 Modesto, California
Telephone: 525-5550
4
5 Attorney for Plaintiff

7 STANISLAUS COUNTY SUPERIOR COURT
8 STATE OF CALIFORNIA

9 -----o0o-----

10	D.A. No.1056770		
11	THE PEOPLE OF THE STATE OF CALIFORNIA	)	No.1056770
)	
12	Plaintiff,)	
		)	PEOPLE'S INFORMAL
13		)	REQUEST FOR DISCOVERY
)	
14	vs.)	
		)	Hrg: 12-12-03
15	SCOTT LEE PETERSON,	)	Time: 8:30 am
		)	Dept: 2
16	Defendant.)	

17 -----o0o-----

18 The People informally request reciprocal discovery pursuant
19 to Penal Code Section 1054.3.

20 Specifically, the People request; any real evidence that the
21 defendant intends to offer at trial, the names and addresses of
22 persons, other than the defendant, he intends to call as
23 witnesses at trial, together with any relevant written or
24 recorded statements of those persons, including any reports or
25 statements of those persons, including any reports or statements
26 of experts made in connection with the case, and including the
27 results of physical or mental examinations, scientific tests,
28 experiments, or comparisons which the defendant intends to offer

1 in evidence at the trial. Calif. Penal Code Sec. 1054.3.

2 Dated: December 8, 2003

3 Respectfully submitted,

4 JAMES C. BRAZELTON
5 District Attorney

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7 RICK DISTASO
8 Deputy District Attorney

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AFFIDAVIT OF SERVICE BY FACSIMILE

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 PEOPLE'S INFORMAL REQUEST FOR DISCOVERY by facsimile to The Law Office of Mark Geragos, fax number 213-625-1600.

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

Executed this 10th day of December, 2003, at Modesto, California.

K. Barra

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

AFFIDAVIT OF SERVICE BY FACSIMILE

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 PEOPLE'S INFORMAL REQUEST FOR DISCOVERY by facsimile to The Law Office of Kirk McAllister, fax number 209-575-0240.

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

Executed this 10th day of December, 2003, at Modesto, California.

K. Barra

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

PROOF OF SERVICE BY FAX

Case No. SC55500

My name is Deborah Padilla. My main business address is:

X Office of the District Attorney
400 County Center, 3rd Floor
Redwood City, CA 94063

Office of the District Attorney
400 County Center, 4th Floor
Redwood City, CA 94063

Office of the District Attorney
1050 Mission Road
South San Francisco, CA 94080

Office of the District Attorney
21 Tower Road
San Mateo, CA 94402

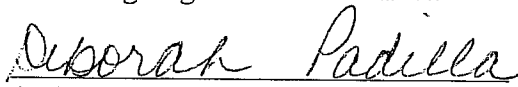
I am over the age of eighteen (18) years and not a party to the cause. On May 26, 2004, I served the attached:

OPPOSITION TO MOTION FOR SANCTIONS AND MOTION TO EXCLUDE WITNESS
DIANE JACKSON AND REQUEST FOR DISCOVERY

on the hereinafter named, by placing a true copy thereof in a fax machine and ordering it delivered to fax machine telephone number (213) 625-1600, the fax number for the Law Offices of Geragos and Geragos.

Executed at Redwood City, California.

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


Deborah Padilla