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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,	)	
vs.	)	OPPOSITION TO MOTION TO SUPPRESS WIRETAP AUDIO RECORDINGS
SCOTT LEE PETERSON,	)	Hrg: 9-09-03 Time: 8:30 a.m.
Defendant.	)	Dept: 2

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Come now the People of the State of California in opposition to the defense motions concerning audio recordings authorized by Stanislaus County Wiretap Nos. 2 and 3. The People request that any hearing on this motion be held in open court and object to any closed hearing.

The People note that any facts stated in this opposition will be subject to judicial notice, or testified to by law enforcement officers of the Modesto Police Department and Stanislaus County District Attorney's Office.

I. BACKGROUND INFORMATION

See previous submissions.

II. THE WIRETAP STATUTE APPLIES TO ALL VIOLATIONS OF PENAL CODE SECTION 187

The defense initially argues that "[I]f Congress had envisioned the use of electronic surveillance under the circumstances present here, it would have so stated" and "[F]rom *Dalia, (infra)*, it is clear that Congress envisioned restricting the use of wiretaps to cases where there was a criminal enterprise operating clandestinely, thereby thwarting law enforcement's ability to obtain evidence through ordinary investigative techniques" (defense brief, pgs. 4-5).

Although it is unclear why the wiretaps should be suppressed based on either statement, presumably the defense makes this argument to imply that a single violation of Penal Code Section 187 is not a situation where Congress meant to establish wiretap authorization.

The defense cites *United States v. Dalia* (1979) 441 U.S. 238, 252, fn 13, in support of their statements. *Dalia* does not support the defense position in any way. In *Dalia*, the U.S. Supreme Court ruled that federal law enforcement agents may make covert entry into a defendant's home in order to carry out a valid electronic surveillance order. That is all. It does not limit law enforcement's ability to conduct electronic surveillance in any way.

In fact, the paragraph immediately preceding the section in *Dalia*, supra, quoted by the defense states:

> "Title 18 U.S.C. Sec. 2516 specifies that authorization for electronic surveillance may be sought only with respect to certain enumerated crimes. These include espionage,

> sabotage, treason, kidnaping, robbery, extortion, murder, various corrupt practices, and counterfeiting. According to the Senate Report concerning Title III, "[e]ach offense has been chosen either because it is **intrinsically serious** (emphasis added) or because it is characteristic of the operations of organized crime." S.Rep. No. 1097, 90th Cong., 2d Sess., 97 (1968). Dalia, supra, fn 13.

Thus, the defense contention that Congress intended to limit wiretapping to organized criminal enterprises is not correct. Congress expressly stated that it meant wiretapping to be authorized for certain intrinsically serious crimes and murder is specifically listed.

Penal Code Section 629.52(a)(2) also specifically lists murder as one of the enumerated crimes where wiretap authorization is permitted. Thus, the law is clear and unambiguous that wiretaps may be authorized for *any* murder investigation. (See also, *People v. Zepeda*, (2001) 87 Cal.App.4th 1183).

The defense further states that "[T]he defense team having over a century of collective criminal defense experience is unaware of any alleged case of domestic violence in which the prosecution has sought a wiretap, much less been granted one" (defense brief, pg. 9). While the prosecution questions the precedential authority of the defense experience with domestic violence homicide, the fact that no member of the defense team has previously dealt with wiretap evidence certainly doesn't mean that the wiretap authorization was improper.

III. THE NECESSITY REQUIREMENT WAS MET

A. The Law of Wiretap "Necessity"

The court should take note that the defense has come full circle in their analysis. In their earlier submissions the defense argued that federal law had no applicability to California wiretap litigation, and that *People v. Zepeda*, supra, was not binding authority. The defense now cites both sources in their latest brief to the court. This leads one to seriously question whether the defense can even rely on their own earlier motions, let alone the court.

People v. Zepeda, supra at 1195-1207, discusses the necessity requirement as it relates to a state wiretap authorized in a murder investigation. Federal law is also instructive in this regard.

The "[n]ecessity requirement can be satisfied by a showing in the application that ordinary investigative procedures, employed in good faith, would likely be ineffective in the particular case." *U.S. v. McGuire* (9th Cir. 2002) 307 F.3d 1192, 1196, citing *U.S. v. Brone* (9th Cir. 1986) 792 F.2d 1504, 1506.

Further, "[w]hile a wiretap should not ordinarily be the initial step in the investigation" [however, courts have expressly left open this possibility, *see, McGuire* supra, 1197, fn. 2], "...[l]aw enforcement officials need not exhaust every conceivable alternative before obtaining a wiretap." *McGuire*, supra, at 1197. See also, *U.S. v. Hoang Ai Le* (2003 U.S.Dist.Ct. ED. Ca.) 255 F.Supp. 2d 1132, 1134.

When evaluating the necessity of a wiretap application "[A]

judge must determine that ordinary investigative techniques employing a normal amount of resources have failed to make the case within a reasonable period of time." *U.S. v. Bennett* (9th Cir. 2000) 219 F.3d 1117, 1122, citing *U.S. v. Spagnuolo*, 549 F.2d 705, 711 (9th Cir. 1977). However, "[T]he government need not exhaust every conceivable investigative technique in order to show necessity." *Bennett*, supra, 1122, citing *United States v. Torres* (1990 9th cir.) 908 F.2d 1417, 1422.

The court further explained that "[t]he mere attainment of some degree of success during law enforcement's use of traditional investigative methods does not alone serve to extinguish the need for a wiretap. *Bennett*, supra, at 1122, also cited in *Zepeda*, supra, at 1206. Finally, the court said that,

> "We have consistently held that the wiretap statute does not mandate the indiscriminate pursuit to the bitter end of every non-electronic device as to every telephone and principal in question to a point where the investigation becomes redundant or impractical or the subjects may be alerted and the entire investigation aborted by unreasonable insistence upon forlorn hope." *Bennett*, supra, 1122, citing *U.S. v. Baker*, 589 F.2d 1008, 1013 (9th Cir. 1979).

The fact that an indictment has been issued also does not automatically make a wiretap unnecessary. In *U.S. v. Brone*, infra, the 9th Circuit held that a wiretap can be necessary if it gives the government the ability to "develop an effective case." *U.S. v. Brone* (9th Cir. 1986) 792 F.2d 1504, 1506. By an "effective case" the court meant evidence of guilt beyond a reasonable doubt, not merely evidence sufficient to secure an indictment. *McGuire*, supra, at 1198.

The necessity requirement is to be interpreted by a reviewing court in a "practical and commonsense fashion."

Bennett, supra, 1122, citing *U.S. v. Bailey*, 607 F.2d 237, 241 (9th Cir. 1979). See also, *U.S. v. Blackmon* (9th Cir. 2000) 273 F.3d 1204, 1207.

The court authorizing a wiretap has considerable discretion, *McGuire*, supra, 1197, citing *United States v. Martin*, 599 F.2d 880, 886-887 (9th Cir.), cert. denied, 441 U.S. 962, so the standard of review is deferential.

The trial court's determination that the "necessity" requirement was met is reviewed only for abuse of discretion. *Zepeda*, supra at 1204. See also, *U.S. v. Bennett* (9th Cir. 2000) 219 F.3d 1117, 1121; *U.S. v. Carneiro*, 861 F.2d 1171, 1176; *U.S. v. Blackmon* (9th Cir. 2000) 273 F.3d 1204; *U.S. v. Brone* (9th Cir. 1986) 792 F.2d 1504, 1506; *U.S. v. McGuire* (9th Cir. 2002) 307 F.3d 1192, 1197.

Finally, a court should uphold a wiretap, if "[l]ooking only to the four corners of the wiretap application...there is a substantial basis for these [statutorily - required] findings of probable cause." *U.S. v. Hoang Ai Le*, supra, at 1134, citing *U.S. v. Meling*, 47 F.3d 1546, 1552 (9th Cir. 1995).

B. Investigator Jacobson's Affidavit for Wiretap No. 2 Met The Necessity Requirement

The government may establish the need for a wiretap in one of three distinct ways. (1) That normal investigative procedures have been tried and failed, or (2) that normal investigative procedures, through not yet tried, 'reasonably appear' to be either unlikely to succeed if tried' or (3) are too dangerous.

Inv. Jacobson's affidavit succeeds under both prongs one and two.

Investigator Jacobson's affidavit for Wiretap No. 2 details numerous traditional investigative techniques that were employed prior to the application for Wiretap No. 2 on Jan. 10, 2003. However, his affidavit specifically states that traditional investigative techniques, by themselves, did not reveal evidence sufficient to prove the defendant's guilt beyond a reasonable doubt (Jacobson affidavit, Wiretap No. 2, page 40, paragraph 29).

The defense states that the affidavit for Wiretap No. 2 was insufficient in that it "[m]erely sets out boilerplate allegations that can hardly be characterized as complete" (defense brief, pg. 10). The defense then quotes the concluding paragraphs from a number of different sections in the affidavit. The defense completely ignores the remainder of the information contained in the affidavit.

The defense also states that Inv. Jacobson neglected two "key facts" from his claim that the wiretap was necessary. First, that the prosecution possessed "DNA" samples [from other investigative techniques] and second, that there was a "possible recovery of Laci Peterson's body...," (see Jacobson affidavit, Wiretap No. 2, page 42). Thus, "there was no necessity at the time of the wiretap application" (defense brief, pg. 12). These contentions are without merit.

As the court stated in *Zepeda*, supra, at 1205, when upholding that court's finding of necessity, "[A] 9mm handgun was found in defendant's car, but even ballistics tests, which were in progress, would not have determined whether or not defendant

himself had fired the gun..." Thus, in *Zepeda*, the mere fact that physical evidence linked the defendant to the crime did not extinguish the need for the wiretap.

Similarly, on January 10, 2003, the fact that law enforcement was in possession of material yet to be scientifically tested did not extinguish the need for the wiretap. Said test results were pending, and the results would not have been conclusive evidence of the defendant's guilt regardless of the outcome.

Also, on Jan. 10, 2003, the fact that law enforcement was actively searching for the bodies of Laci and Conner Peterson was well known. Hundreds of individuals, law enforcement officers, other public agencies, and private persons were actively searching for Laci Peterson, or her remains. As of that date, no one had positively located either Laci's, or Conner's remains. The fact that an object possibly identified as a body had been located did not lessen the need for the wiretap. It was not known whether the object was Laci Peterson, or whether it was even a body [in fact, the object later turned out to be an anchor].

Finally, see Attachment A for a detailed analysis of the remaining information contained in Inv. Jacobson's affidavit demonstrating the necessity for the wiretap.

IV. THERE WERE NO MATERIAL OMISSIONS IN INV. JACOBSON'S AFFIDAVIT FOR WIRETAP NO. 2

The People note that this portion of the defendant's brief

was filed in a redacted format, thus, deleting any reference to what the defense claims are "material omissions" in Inv. Jacobson's affidavit. However, the People did receive a complete copy of the defense brief and will address the claim in full.

The information presented on page thirteen of the defense brief is not correct. However, since the defense filed this information in a redacted format the People will also respond in a sealed submission. See Attachment A.

V. INV. JACOBSON'S AFFIDAVIT FOR WIRETAP NO. 3 WAS PROPER

Similar to the discussion above, Agent Jacobson's affidavit for Wiretap No. 3 more than met the necessity requirement. The defense claims to the contrary are without merit.

The defense says that on or before Jan. 10, 2003, Inv. Jacobson believed that the prosecution had evidence proving the defendant's guilt beyond a reasonable doubt. While the affidavits do not say that, it is also not relevant what Inv. Jacobson's subjective belief was regarding the defendant's guilt. Throughout both affidavits, Inv. Jacobson detailed the limitations of traditional investigative techniques and how wiretap authorization was needed. That is all that is required.

Further, Inv. Jacobson's subjective belief regarding the state of the evidence is not the issue. It is the issuing judge's determination whether the necessity requirement is met, not the investigating officer's [See, *U.S. v. Bennett* (9th Cir. 2000) 219 F.3d 1117, 1122, citing *U.S. v. Spagnuolo*, (9th Cir.) 549 F.2d 705, 711. When evaluating the necessity of a wiretap

application "[A] judge must determine that ordinary investigative techniques employing a normal amount of resources have failed to make the case within a reasonable period of time."]

The defense also states that Inv. Jacobson's affidavit for Wiretap No. 3 contradicted his earlier affidavit (Jacobson affidavit, Wiretap No. 3, paragraph 34, lines 20-24). Again, that is simply not true. The affidavit for Wiretap No. 3 contained a large amount of information gained from Wiretap No. 2. It was also written months later, after significant developments had taken place in the investigation. The most notable development was the discovery of Laci's and Conner's remains in the exact location where the defendant said he went fishing on Dec. 24, 2003. That the affidavits contain different information is certainly to be expected, and for the defense to claim that this is somehow evidence of Inv. Jacobson not being candid with Judge Ladine is simply without merit.

The next defense contention is that Inv. Jacobson's affidavit for Wiretap No. 3 "[o]ffers nothing...to indicate that a new wiretap will yield evidence that Wiretap No. 2 failed to produce" (defense brief, pg. 14). The defense does not state why such a claim merits any relief. There is no requirement that a subsequent wiretap produce evidence of a different type than that gained from an earlier wiretap. However, it is obvious that a subsequent wiretap must produce evidence different from an earlier wiretap by the simple fact that a later wiretap will contain different conversations than the earlier wiretap.

Finally, the defense claims that because the defendant was

aware that certain traditional investigative techniques were taking place (thereby limiting their effectiveness) no necessity was shown for Wiretap No. 3 (defense brief, pg. 14). That is the exact opposite conclusion that the court should draw from these facts. Such facts actually show the limitations of traditional law enforcement techniques, and further demonstrated the need for Wiretap No. 3.

VI. JUDGE WRAY LADINE WAS PROPERLY DESIGNATED AS THE STANISLAUS COUNTY WIRETAP JUDGE

The defense argues that the wiretap applications should have been made to Judge Girolami, instead of Judge Ladine. The defense even accuses the prosecution of misconduct for presenting the applications to Judge Ladine (defense brief, pg. 15). The defense is wrong in their analysis, and quite obviously, did not even attempt to obtain the true facts in this matter.

The defense states that on Jan. 10, 2003, the presiding (criminal) judge of the Stanislaus County Superior Court was the Hon. Aldo Girolami. Based on this assignment, the defense argues that the People should have presented the wiretap application to him. That is clearly not correct. It is the presiding judge of the superior court who may make a designation order to another judge for wiretap authorization (See Penal Code Section 629.50, *People v. Munoz* (2001) 87 Cal.App.4th 239).

As a simple call to the Stanislaus County Court Clerk's Office would have confirmed, on Jan 10, 2003, the Presiding Judge of the Stanislaus County Superior Court was the Hon. David

Vanderwall. Judge Vanderwall did not change the designation order signed by the previous presiding judge, the Hon. William Mayhew, on March 6, 2001. Said order designated Judge Ladine as the first designated Stanislaus County wiretap judge. Judge Roger Beauchesne was the second designated judge (See Attachment B).

Further, on Jan. 7, 2003, Judge Vanderwall again designated Judge Ladine as the first designated wiretap judge. Judge Beauchesne was again second designated, Judge Vanderwall was third designated, and Judge Girolami was fourth designated (See Attachment C). Finally, those same judicial designations were again confirmed by the superior court on May 22, 2003. Thus, it is clear that the People correctly presented the applications for both wiretaps to Judge Ladine.

VII. THERE WAS NO *DUSTIN* ERROR

As this court is aware, the 5th Appellate District in *Dustin v. Superior Court* (2002) 99 Cal.App.4th 1311, held that "[I]n a grand jury proceeding where the death penalty may be imposed, [Penal Code] section 190.9 supplements the requirements of [Penal Code] sections 938 and 938.1. As a result, a defendant is entitled to a complete transcript of the entire grand jury proceeding - not just a transcript of testimony" *Dustin*, supra, at 1323; See also, Calif. Juris.3d (2003) annotated, Sec. 617).

This court can be assured that the Stanislaus County District Attorney's Office and this prosecutor are well aware of the requirements of *Dustin v. Superior Court*. The Stanislaus

County District Attorney's Office changed its procedure regarding grand jury hearings so that every part of a grand jury hearing is fully reported and transcribed. This procedure applies to any grand jury hearing conducted by the Stanislaus County District Attorney's Office and is not limited to grand jury hearings for homicide cases where the death penalty may be imposed. Further, in any case where the death penalty may be imposed the Stanislaus County District Attorney's Office will scrupulously adhere to the requirements of Penal Code Section 190.9.

The defense, however, desires to turn the *Dustin* decision into a vehicle for inflammatory and personal attacks (see defense brief, pg. 16-17). Presumably the defense does so in an attempt to improperly influence this court. That the defense endeavors to engage in unprofessional conduct is readily apparent from their written motions. The People will not respond in kind to such provocation, preferring instead to let the record itself reflect the absurdity of the defense remarks.

The defense also claims that the wiretaps should be suppressed because "[T]he prosecution failed to have any of the proceedings related to the wiretaps stenographically recorded despite the fact the prosecution knew this would be a death penalty case" (defense brief, pg. 16). The defense concedes (as they must) that there was no case against the defendant at the time of either wiretap.

On Jan. 10, 2003, and April 15, 2003, the Modesto Police Department was still actively investigating Laci and Conner Peterson's murder. During the pendency of both wiretaps, the

defendant remained at large, traveling, working, and living as he wanted. No arrest warrant had been issued for the defendant's arrest; no "information and belief" had been posted through law enforcement for the defendant's arrest; the defendant had not yet been arrested; no complaint had been filed charging the defendant with any crime; no grand jury was investigating Laci and Conner's murder, and no grand jury had returned an indictment against the defendant. In short, there was no case against the defendant during the pendency of either wiretap.

The *Dustin* analysis does not apply to this situation. Here, the defendant was not arrested until April 18, 2003. A complaint was not filed in the Stanislaus County Superior Court until April 21, 2003. The defendant was arraigned on the complaint on April 21, 2003. That is when the "case" began against the defendant. The *Dustin* court emphasized that point when it stated that prior to the grand jury that indicted Dustin, Dustin's case had already begun with the filing of a criminal complaint (*Dustin*, supra, at 1314).

To further illustrate the error of the defense's analysis, the defense does not state which "proceedings" should have been recorded. Since all proceedings regarding both wiretaps took place during the *investigation* of Laci's and Conner's murder, and none after the criminal case was filed, the People are unsure as to how far back in the investigation the defense alleges that a court reporter should have been present.

Does the defense imply that a court reporter should have been present when law enforcement officials discussed the

feasability of obtaining a wiretap? Does the defense imply that a court reporter should have been present when law enforcement officials asked Inv. Jacobson to prepare the affidavits for Wiretaps No. 2 and 3? Does the defense imply that a court reporter should have been present when the District Attorney signed the application for the wiretaps? Does the defense imply that a court reporter should have been present when the court authorized the application for the wiretaps? Nothing in *Dustin*, supra, or Penal Code Section 190.9 supports any of those positions.

In fact, if that were the case, every time a search warrant was authorized in a capital murder investigation, a court reporter would have to be present. Certainly there is no authority for that proposition.

Does the defense imply that a court reporter should have been present when the court reviewed the periodic reports during the pendency of Wiretap No. 2? Nothing in *Dustin*, supra, or Penal Code Section 190.9 supports that position either. Further, nothing in the statute itself supports that position.

Penal Code Sec. 629.60 mandates that periodic reports be presented to the court regarding the conduct of the authorized wiretap. This is to ensure that the court's oversight function is not compromised. Sec. 629.60, in pertinent part, states that:

> The reports shall be filed with the court at the intervals that the judge may require, but not less than one for each period of six days, and shall be made by any reasonable and reliable means, as determined by the judge."

For Stanislaus County Wiretap No. 2, the court required that Inv. Jacobson, and a District Attorney representative, personally

meet with the court every *three* days to file the required reports. Inv. Jacobson affirmed the content of each report to Judge Ladine. Judge Ladine reviewed each report, initialed each page, and signed the report. This imposed a much tighter level of control than that required by the statute. The statute only requires reports every six days and it does not require personal meetings with the judge. Nor does the statute require the affiant to swear to the contents of the report to the judge.

Here, the defense argues that because the court imposed a much tighter level of control for periodic reports than that required by statute, somehow, the reporting requirements of *Dustin*, supra, and Sec. 190.9 were violated. In effect, what the defense argues is that because Judge Ladine took *additional* steps to protect the defendant's rights, the People should be penalized. Surely that is not the case.

VIII. PENAL CODE SEC. 629.80 IS CONSTITUTIONAL

In two separate submissions, the defense claims that Penal Code Section 629.80 is unconstitutional because "it allows the interception of messages of communications between lawyer and client," and, it "empowers the police officer to decide what is privileged and what is not" (defense brief pg. 18, see also defense brief of Mr. McAllister). The defense contention is that 629.80 violates the Separation of Powers doctrine of the California Constitution.

It again must be noted that defense has come full circle in their submissions to the court. The defense initially claimed

that Penal Code Sec. 629.80 did not permit the monitors to listen to privileged communications at all (see all previous defense briefs). The defense now agrees with the People that Penal Code Sec. 629.90 *does* permit the monitors to intermittently monitor privileged communications, however, the defense argues that the statute is unconstitutional. The People assume that by taking this position the defense has dropped it's false allegation of "grave prosecutorial misconduct" based on the wiretap instructions. The defense must drop this claim as the instructions were given in strict compliance with Penal Code Sec. 629.80.

The defense first states that Penal Code Section 629.80 is unconstitutional on its face because it allows the interception of communications between lawyer and client. The defense position is that *every* communication between a lawyer and client is privileged. That is not correct.

At the heart of the matter regarding the attorney-client privilege is the fact that legal advice must be sought, or the communication must involve the attorney-client relationship (See *Admiralty Ins. v, U.S. Dist, Court for Dist. of Ariz.*, 881 F.2d 1486, 1492 (9th Cir. 1989); and *State Farm Fire and Casualty Company v. Superior Court* (1997) 54 Cal.App.4th 625, 638-639; Evid. Code Sec. 954).

If an attorney and client are together and speak about a subject unrelated to the attorney-client relationship (for example, the score of the latest Giants baseball game), that communication is not privileged. It might not be pertinent to a

1 wiretap investigation, thus, minimization rules would apply, but
2 it would not be privileged. Further, a communication is not
3 privileged if an attorney and client speak and the services of
4 the lawyer are sought to enable or aid anyone to commit or plan
5 to commit a crime or a fraud (See Evid. Code Sec. 956).
6 This must be the case, or any person in a privileged class
7 would be immune from wiretap surveillance simply by virtue of
8 their status. If the court were to adopt the defense position,
9 no lawyer, clergyman, physician, psychotherapist, etc. would ever
10 be subject to wiretap surveillance because every communication
11 they made would automatically be privileged. The law does not
12 impose such a standard. "[I]nterception of calls is permissible
13 to allow for determination of whether the call should be
14 minimized-even calls to or from an attorney"; See *United States*
15 *v. Hyde*, 574 F.2d 856, 870 (5th Cir. 1978).
16 The defense also states that Penal Code Section 629.80 is
17 unconstitutional because "[i]t allows law enforcement authorities
18 to listen in on a privileged conversation" (Mr. Mcallister's
19 brief, pg. 7). Again that is not correct.
20 Penal Code Section 629.80 specifically states that
21 privileged communications retain their privileged character even
22 during wiretap surveillance. Officers must cease monitoring when
23 they determine that a communication is privileged. Contrary to
24 the defense assertion, the officers are not performing a judicial
25 function when they make that determination.
26 The Separation of Powers doctrine applies when a statute
27 permits prosecuting authorities to direct judicial functions
28

after charges have been filed (See, *Mandulay v. Superior Court*, (2002) 27 Cal.4th 537, 553; *People v. Chacon* (2003) 109 Cal.App.4th 1537, 1544). Nothing in Penal Code Sec. 629.80 directs judicial action after charges are filed. In fact, nothing in Penal Code Sec. 629.80 directs judicial action before charges are filed. Once charges are filed it is the court's duty to determine the admissibility of proffered evidence. The defense's citing of *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, supports that rationale "[E]xamining seized documents, ruling upon claims of privilege, and precluding disclosure of privileged materials in the constructive custody of the superior courts are well within the scope of the court's statutory and inherent authority." *Laff*, supra, 714.

The only way the Separation of Powers doctrine would be implicated was if Penal Code Sec. 629.80 required the court to obtain the prosecutor's consent when ruling on claims of privilege for evidence gained from a wiretap. Clearly, that is not the case. Penal Code Sec. 629.80 does not impinge on the court's authority in any way. The court is free to rule on claims of privilege without the consent of prosecuting authorities.

The only cases cited by the defense are ones which state the importance of the attorney/client relationship, and ones which involve statutes that required the court to obtain the prosecutor's consent to certain judicial actions, *after* charges had been filed. The People do not dispute the importance and sanctity of the attorney/client relationship. Nor do the People

dispute that statutes that require the court to obtain prosecutorial consent for judicial action after charges have been filed violate the Separation of Powers. However, neither of those concepts is infringed by Penal Code Section 629.80; thus, the statute is constitutional.

VII. CONCLUSION

For the foregoing reasons the People request that the defense motion be denied.

Dated: August 12, 2003

Respectfully submitted,

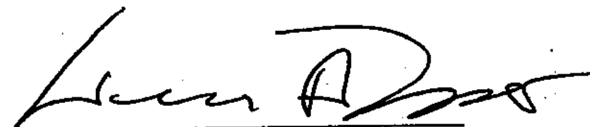
JAMES C. BRAZELTON
District Attorney

By:

RICK DISTASO
Deputy District Attorney

Designation of Superior Court Judge to Review Applications for Interception of Wire, Electronic Digital Pager, or Electronic Cellular Telephone Communication Pursuant to California Penal Code § 629.50

I, William A. Mayhew, Presiding Judge of the Stanislaus County Superior Court, pursuant to the authority of California Penal Code § 629.50, hereby designate WRAY LADINE, Judge of the Stanislaus County Superior Court, to review, consider, authorize, and supervise all applications made for an order to intercept wire, electronic digital pager, or electronic cellular telephone communication in accordance with the authority provided in California Penal Code §§ 629.50-629.98. In the event Judge Ladine is unavailable, Roger M. Beauchesne, Judg of the Stanislaus County Superior Court is designated to do the same.



Date: March 6, 2001

William A. Mayhew
Presiding Judge
Stanislaus County Superior Court

cc: Bill Lockyer, Attorney General, State of California
James Brazelton, District Attorney, County of Stanislaus

ATTACHMENT B

JUDICIAL COMMITTEES/TEAMS, ETC.	MEMBERS (Chair in bold) (staff in *lc*)
EXECUTIVE COMMITTEE (Policy including: Security, Local Rules, Facilities, Tech)	**DGV**; AG; RMB; DES; MSS; WL; NA; *mat; dhl; lrs*
APPELLATE DEPARTMENT	**LMB**; JGW; SDS; WAM; *lrs; mm*
CIVIL BENCH BAR	HJ; WL; DGV; *mat; dhl; lrs*
FAMILY LAW /BENCH BAR	**MSS**; SDS ; *mat; af; sa*
DOMESTIC VIOLENCE COORDINATING COUNCIL	**LMB**; MSS; LAM; *af*
COURTS AND COMMUNITY/ FAIRNESS AND PUBLIC ACCESS	**LAM**; SDS; RMB; *dhl; lrs; jb*
CRIMINAL JUSTICE FORUM (CRC 227.8)	**AG**; RMB; JEG; LMB; MC; NA; LAM; TJH *mat; dhl; dp*
LAW LIBRARY	**SDS**; HJ; JEG; JGW;
CIVIL TEAM	**WAM**; HJ; WL; *lrs; af; sk*
CRIMINAL TEAM (DUI/Diversion)	**AG**; RMB; JEG; LMB; MC; NA; LAM; TJH *dhl; lrs; ra; dp*
COURT CALENDAR COMMITTEE Ad Hoc	**WL**; MC; LMB; HJ; DGV; *mat; dhl; dp*
UTILIZATION OF COMMISSIONERS Ad Hoc	NA; MSS; AG; *dhl*

Judge Designations: **EIR (Public Resource Code 21167.1(b)): DGV, AG, HJ, DES**

ADA (CRC 989.3): LAM

Wiretap (PC 629.50 (AB 74, Chapt. 605)): WL (1); RMB (2); DGV (3); AG (4)

JUDICIAL COMMITTEES/TEAMS, ETC.	MEMBERS (Chair in bold) (staff in *lc*)
EXECUTIVE COMMITTEE (Policy including: Security, Local Rules, Facilities, Tech)	**DGV**; AG; RMB; MSS; WL; NA; LAM *mat; dhl; lrs*
APPELLATE DEPARTMENT	**LMB**; JGW; SDS; WAM; *lrs; mm*
CIVIL BENCH BAR	**HJ**; WL; DGV; *mat; dhl; lrs*
FAMILY LAW /BENCH BAR	**MSS**; SDS ; *mat; af; sa*
DOMESTIC VIOLENCE COORDINATING COUNCIL	**LMB**; MSS; LAM; *af*
COURTS AND COMMUNITY/ FAIRNESS AND PUBLIC ACCESS	**LAM**; SDS; RMB; *dhl; lrs; jb*
CRIMINAL JUSTICE FORUM (CRC 227.8)	**AG**; RMB; JEG; LMB; MC; NA; LAM; TJH *mat; dhl; dp*
LAW LIBRARY	**SDS**; HJ; JEG; JGW;
CIVIL TEAM	**WAM**; HJ; WL; *lrs; af; sk*
CRIMINAL TEAM (DUI/Diversion)	**AG**; RMB; JEG; LMB; MC; NA; LAM; TJH *dhl; lrs; ra; dp*
COURT CALENDAR COMMITTEE Ad Hoc	**WL**; MC; LMB; HJ; DGV; *mat; dhl; dp*
UTILIZATION OF COMMISSIONERS Ad Hoc	**NA**; MSS; AG; *dhl*

Judge Designations: **EIR (Public Resource Code 21167.1(b)): DGV, AG, HJ, DES**

ADA (CRC 989.3): LAM

Wiretap (PC 629.50 (AB 74, Chapt. 605)): WL (1); RMB (2); DGV (3); AG (4)

JAMES C. BRAZELTON
District Attorney
Stanislaus County
Courthouse
Modesto, California
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, Plaintiff, vs. SCOTT LEE PETERSON, Defendant.	No.1056770 **ATTACHMENT A** **FILED UNDER SEAL** OPPOSITION TO MOTION TO SUPPRESS WIRETAP AUDIO RECORDINGS Hrg: 9-09-03 Time: 8:30 a.m. Dept: 2

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I. PEOPLE'S REQUEST TO FILE ATTACHMENT A UNDER SEAL

The People request to file Attachment A under seal because it contains significant references to Inv. Jacobson's sealed affidavits. In order to properly rebut the defense allegations, the People discussed substantive portions of Inv. Jacobson's sealed affidavits. The People were not able to adequately address the defense allegations by redacting portions of Inv. Jacobson's affidavits.

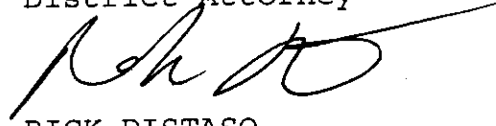
II. CONCLUSION

For the foregoing reasons the People request that court permit Attachment A to filed under seal.

Dated: August 12, 2003

Respectfully submitted,

JAMES C. BRAZELTON
District Attorney



RICK DISTASO
Deputy District Attorney

ORDER

Conditionally sealed. Permanent sealing will be heard on 8-14-03 at 8:30 AM.

A. GIROLAMI

AFFIDAVIT OF SERVICE BY MAIL (C.C.P 1013a)

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 **OPPOSITION TO MOTION TO SUPPRESS WIRETAP AUDIO RECORDINGS** by placing said copy in an envelope addressed to **Mark Geragos, 350 S. Grand Ave, 39th Floor, Los Angeles, CA 90071** which envelope was then sealed and postage fully prepaid thereon, and thereafter was on August 13, 2003 deposited in the United States mail at Modesto, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place or mailing and the place addressed.

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

Executed this 13th day of August, 2003, at Modesto, California.

Karen M. Vella

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

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