

1 Kirk W. McAllister, State Bar No. 47324
2 McALLISTER & McALLISTER, INC.
3 A Professional Law Corporation
4 1012 - 11th Street, Suite 100
5 Modesto, CA 95354
6 Tel: (209) 575-4844

7 Attorney for Defendant

FILED

CP AUG 14 2003

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY Anthony C. Pope
DEPUTY

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

9 THE PEOPLE OF THE STATE OF
10 CALIFORNIA,

11 Plaintiff,

12 vs.

13 SCOTT LEE PETERSON,

14 Defendant.

: Case No.: 1056770

:
: **NOTICE OF MOTION AND MOTION**
: **FOR DISCOVERY; POINTS AND**
: **AUTHORITIES; DECLARATION**

: Date: September **2**
: Time: 8:30 a.m.
: Dept: 2

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17 TO THE DISTRICT ATTORNEY OF STANISLAUS COUNTY:

18 PLEASE TAKE NOTICE that on September 3, 2003, at 8:30 a.m., or as soon thereafter
19 as the matter may be heard, in Department 2 of the above-entitled court, the Defendant will
20 move the Court for the discovery of the items requested in defense counsel's letters hand-
21 delivered to the District Attorney on May 27, 2003, May 30, 2003, June 12, 2003, June 26,
22 2003, August 13, 2003, and both mailed and faxed on July 29, 2003. The motion will be made
23 on the grounds that the defense is entitled to discovery under Penal Code section 1054.1; Brady
24 v. Maryland (1963) 373 U.S. 83, 83 S.Ct. 1194; Giglio v. United States (1972) 405 U.S. 150,
25 31 L.Ed. 2d 104, 92 S.Ct. 763; People v. Eubanks (1996) 14th Cal.4th 580; and Murgia v.
26 Municipal Court (1975) 15 Cal.3d 286.
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MEMORANDUM OF POINTS AND AUTHORITIES

Defendant hereby submits his points and authorities in support of motion for discovery.

I.

THE LAW

The defense is entitled to discovery under the Penal Code as follows:

The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

- (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.
- (b) Statements of all defendants.
- (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
- (d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.
- (e) Any exculpatory evidence.
- (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

Penal Code section 1054.1.

A defendant is not required to show that the information he seeks would be admissible at trial. So long as disclosure "might lead to admissible evidence," the discovery request must be granted. (People v. Memro (1985) 38 Cal.3d 658, 682; City of Santa Cruz v. Municipal Court (1989) 49 Cal.3d 74, 85; People v. Superior Court [Bonner] (1980) 104 Cal.App.3d 685, 691; Lemelle v. Superior Court (1978) 77 Cal.App.3d 148, 162-164.) As Justice Fortas explained in Giles v. Maryland (1967) 386 U.S. 66, 98:

“ [T]he State may [not] be excused from its duty to disclose material facts known to it. . . solely because of a conclusion that they would not be admissible at trial [footnote omitted]. The State’s obligation is not to convict, but to see that, so far as possible, truth emerges. This is also the ultimate statement of its responsibility to provide a fair

1 trial under the Due Process Clause. . . . No respectable interest of the State is served by
2 its concealment of information which is material, generously conceived, to the
3 case. . . .”

4 The defense is entitled to the names and addresses of witnesses known to prosecution.

5 Norton v. Superior Court (1959) 173 Cal.App.2d 133. See also Evans v. Superior Court (1974)
6 11 Cal.3d 617, 622 n4.

7 Denial of the right to adequately cross examine at preliminary examination is a
8 substantial right, the denial of which entitles the defendant to a dismissal of the information.

9 People v. Pompa-Ortiz (1980) 27 Cal.3d 519, 523. See also Penal Code section 865.

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11 **II.**

12 Defendant requests that the Court order the following items of discovery be produced:

- 13 1. The names and addresses of persons the prosecutor intends to call as witnesses at
14 trial;
- 15 2. Statements of all defendants;
- 16 3. All relevant real evidence seized or obtained as part of the investigation of the
17 offenses charged, including, but not limited to photographic copies of all photographs and
18 copies of all tape recordings, audio or video;
- 19 4. The existence of a felony conviction and/or any misdemeanor acts involving moral
20 turpitude of any material witness whose credibility is likely to be critical to the outcome of the
21 trial;
- 22 5. Relevant written or recorded statements of witnesses or reports of the statements of
23 witnesses whom the prosecutor intends to call at the trial, including any reports or statements of
24 experts made on conjunction with the case, including the results of physical or mental
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1 examinations, scientific tests, experiments or comparisons which the prosecutor intends to offer
2 in evidence at the trial;

3 6. All exculpatory evidence pursuant to Brady v. Maryland (1963) 373 U.S. 83 and
4 Giglio v. United States (1972) 405 U.S. 750;

5 7. Any personal or emotional involvement with the alleged victim on the part of the
6 District attorney and any institutional arrangement with the alleged victim (including, but not
7 limited to, a financial relationship) on the part of the District Attorney. People v. Eubanks
8 (1996) 14 Cal.4th 580;

9 8. A copy of all preliminary drafts, worksheets and supporting documentation,
10 including diagrams relating to all forensic reports;

11 9. Police officers' notes extant on May 27, 2003;

12 10. All "Attorney Communication Sheets";

13 11. All "Summary Call Logs";

14 12. All log entries;

15 13. All applications for search warrants which were refused by a magistrate (Penal
16 Code section 1539(c).

17 14. All wiretaps, state or federal, including all applications for wiretaps, orders
18 authorizing wiretaps, periodic reports, wiretap instructions, Attorney communication sheets,
19 summary call logs and log entries;

20 15. All subpoenas, state or federal, with accompanying declarations;

21 16. Identification of all witnesses who were hypnotized; and,

22 17. Exhibits A through F that are referred to on the Affidavit of Steven P. Jacobson that
23 is attached to the document entitled "Release of Audio Recordings From Stanislaus County
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1 Wiretap No. 2 and 3 Records” that was prepared by the District Attorney’s office and served on
2 this office on May 23, 2003.

3 18. The names, ages, breeds, and current whereabouts of all dogs who participated in
4 any scent-tracking related to this case, including but not limited to “Merlin” as mentioned on
5 page 134 of the discovery. Also, please provide all veterinary records for any such dogs from
6 the period of March 1, 2002 through March 1, 2003.

7
8 19. All information possessed by the prosecution or its agents on the training, testing,
9 certification, and reliability of all dogs used to track scent in this case. This request includes
10 but is not limited to all information on the training regimen followed by the dogs and records of
11 their success rate during the training period; any certification of the dogs as reliable scent-
12 trackers, including but not limited to certification by the California Rescue Dog Association
13 (“CARDA”); all information on periodic recertification of all dogs used to track scent in this
14 case; and all records and results of each instance when the dogs were used to track human scent
15 for any purpose. Also, please provide any existing videotapes of these dogs being trained or
16 used to track scent for any purpose.
17

18 20. All information possessed by the prosecution, its agents, or the dog handlers or
19 trainers on the background, training, and experience of the persons who handled the dogs used
20 to track scent in this case.

21 21. All information possessed by the prosecution, its agents, or the dog handlers or
22 trainers on the background, training, and experience of the persons who handled the dogs used
23 to track scent in this case, including but not limited to Contra Costa Emergency Services Search
24 and Rescue Unit Reserve Captain Christopher Boyer, handler Cindee (or Lindee) Valentin, and
25 two other unidentified reserve officers as mentioned on page 134 of the discovery.
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EXHIBIT 1

MCALLISTER & MCALLISTER, INC.

A PROFESSIONAL LAW CORPORATION

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The State Bar of California Board
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May 27, 2003

Via Hand-Delivery

Stanislaus County District Attorney
1100 "I" Street
Modesto, CA 95354

Re: People v. Scott Lee Peterson
Stanislaus County Superior Court, Case No. 1056770

Dear Counsel:

Please provide the following discovery pursuant to Penal Code section 1054.1:

1. The names and addresses of persons the prosecutor intends to call as witnesses at trial;
2. Statements of all defendants;
3. All relevant real evidence seized or obtained as part of the investigation of the offenses charged, including, but not limited to photographic copies of all photographs and copies of all tape recordings, audio or video;
4. The existence of a felony conviction and/or any misdemeanor acts involving moral turpitude of any material witness whose credibility is likely to be critical to the outcome of the trial;
5. Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments or comparisons which the prosecutor intends to offer in evidence at the trial;
6. All exculpatory evidence pursuant to Brady v. Maryland (1963) 373 U.S. 83 and Giglio v. United States (1972) 405 U.S. 150;

May 27, 2003

Page 2 of 2

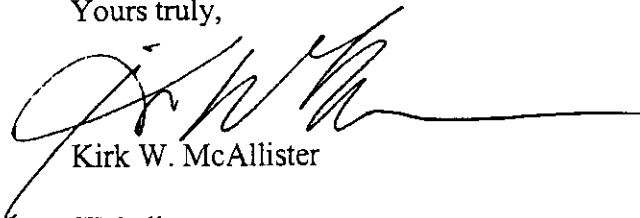
7. Any personal or emotional involvement with the alleged victim or witness on the part of the District Attorney and/or any investigating agency (including, but not limited to, a financial relationship) on the part of the District Attorney. People v. Eubanks (1996) 14 Cal.4th 580;
8. A photographic copy of all photographs;
9. All x-rays of both Laci Peterson and Conner Peterson;
10. A copy of all tape recordings, audio and video;
11. A copy of all forensic reports regarding this case;
12. A copy of all preliminary drafts, worksheets and supporting documentation, including diagrams relating to all forensic reports;
13. Autopsy/coroners reports relating to Evelyn Hernandez; and,
14. All sketches and diagrams relating to this case.

I also request that I be allowed to personally view the physical and documentary evidence relating to this case.

This request should be construed as a continuing demand, so that any statements, reports or evidence that are obtained by you or your investigators or agents after compliance with the initial request should also be made available immediately to the defendant.

Thank you for your cooperation.

Yours truly,



Kirk W. McAllister

KMc:lj

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May 30, 2003

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Via Hand-Delivery

Dave Harris
Rick Distasso
Stanislaus County District Attorney
1100 "I" Street
Modesto, CA 95354

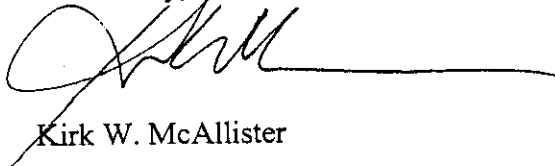
Re: People v. Scott Lee Peterson
Stanislaus County Superior Court, Case No. 1056770

Dear Mr. Harris and Mr. Distasso:

At our discovery meeting on May 27, 2003, it was agreed that any physical evidence would be maintained, and that police officers' notes extant on May 27, 2003, will be preserved as well any recording tapes used by the officers to dictate their reports in this case. Ample tapes will be provided by the defense for the purpose of copying.

With the revelation of the wire tapping, it has also become apparent that the defense is lacking many of the necessary documents to allow that procedure to happen. Specifically, we are requesting any and all applications for orders authorizing such interceptions pursuant to Penal Code section 629.50, and all orders authorizing these procedures.

Yours truly,



Kirk W. McAllister

KMc:lj

MCALLISTER & MCALLISTER, INC.

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KIRK W. MCALLISTER
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JANE E. MCALLISTER

June 12, 2003

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Via Hand-Delivery

Dave Harris
Rick Distaso
Stanislaus County District Attorney's Office
1100 "I" Street
Modesto, CA 95354

Re: People v. Scott Lee Peterson
Stanislaus County Superior Court, Case No. 1056770

Dear Mr. Harris and Mr. Distaso:

Please provide the following items of discovery regarding the above-referenced matter pursuant to Penal Code section 1054.1.

15. All applications for wiretaps;
16. All Orders authorizing wiretaps;
17. All periodic reports pursuant to Penal Code section 629.60;
18. All court reporters' transcripts of conferences with Judge Ladine regarding wiretaps;
19. All wiretap instructions;
20. All "Attorney Communication Sheets";
21. All "Summary Call Logs";
22. All log entries; and,
23. All applications for search warrants which were refused by a magistrate (Penal Code section 1539(c)).

Dave Harris
Rick Distaso
Stanislaus County District Attorney's Office
June 12, 2003
Page 2 of 2

This request should be construed as a continuing demand, so that any statements, reports or evidence that are obtained by you or your investigators or agents after compliance with the initial request should also be made available immediately to the defendant.

Thank you for your cooperation.

Yours truly,



Kirk W. McAllister

KMc:lj

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A PROFESSIONAL LAW CORPORATION

KIRK W. MCALLISTER

Certified Specialist, Criminal Law,
The State Bar of California Board
of Legal Specialization

JANE E. MCALLISTER

June 26, 2003

Via Hand-Delivery

Dave Harris
Rick Distaso
Stanislaus County District Attorney's Office
1100 "I" Street
Modesto, CA 95354

Re: People v. Scott Lee Peterson
Stanislaus County Superior Court, Case No. 1056770

Dear Mr. Harris and Mr. Distaso

By this letter I am requesting that the following items of discovery be produced. This request is in addition to any and all previous requests.

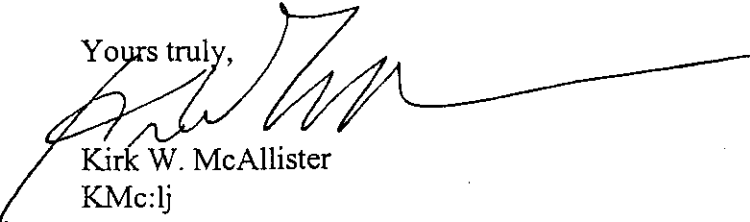
The following items are requested:

24. All wiretaps, federal or state, including all applications for wiretaps, orders authorizing wiretaps, periodic reports, wiretap instructions, Attorney communication sheets, summary call logs and log entries;
25. All subpoenas, state or federal, with accompanying declarations; and,
26. Identification of all witnesses who were hypnotized.

This request should be construed as a continuing demand, so that any statements, reports or evidence that are obtained by you or your investigators or agents after compliance with the initial request should also be made available immediately to the defendant.

Thank you for your cooperation.

Yours truly,



Kirk W. McAllister
KMc:lj

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FACSIMILE (213) 625-1600

July 29, 2003

Via U.S. Mail and Facsimile: (209) 525-5545

Rick Distaso
Office of the District Attorney
800 11th Street
Room 200, 2nd Floor
Modesto, CA 95354

Re: People v. Peterson, case no. 1056770

Dear Mr. Distaso:

You have previously indicated to me that the prosecution intends to call witnesses at the preliminary hearing who will testify as to human scent-tracking dogs. Please accept this letter as an informal request for discovery of the following:

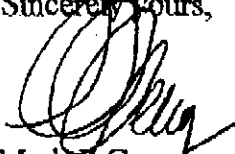
- 1) The names, ages, breeds, and current whereabouts of all dogs who participated in any scent-tracking related to this case, including but not limited to "Merlin" as mentioned on page 134 of the discovery. Also, please provide all veterinary records for any such dogs from the period of March 1, 2002 through March 1, 2003.
- 2) All information possessed by the prosecution or its agents on the training, testing, certification, and reliability of all dogs used to track scent in this case. This request includes but is not limited to all information on the training regimen followed by the dogs and records of their success rate during the training period; any certification of the dogs as reliable scent-trackers, including but not limited to certification by the California Rescue Dog Association ("CARDA"); all information on periodic recertification of all dogs used to track scent in this case; and all records and results of each instance when the dogs were used to track human scent for any purpose. Also, please provide any existing videotapes of these dogs being trained or used to track scent for any purpose.

- 3) All information possessed by the prosecution, its agents, or the dog handlers or trainers, on the background, training, and experience of the persons who have trained the dogs used to track scent in this case.
- 4) All information possessed by the prosecution, its agents, or the dog handlers or trainers on the background, training, and experience of the persons who handled the dogs used to track scent in this case, including but not limited to Contra Costa Emergency Services Search and Rescue Unit Reserve Captain Christopher Boyer, handler Cindee (or Lindee) Valentin, and two other unidentified reserve officers as mentioned on page 134 of the discovery.
- 5) All notes made by Boyer, Valentin, or any other dog handler or trainer concerning any tracking exercise performed in connection with this case. Also, please provide all reports prepared by Boyer, Valentin, or any other dog handler or trainer concerning any tracking exercise performed in connection with this case
- 6) All information possessed by the prosecution or its agents on any mechanical device, such as a "scent transfer unit" used to collect and store human scent for the aforementioned dogs to use in tracking scent in this case.

Furthermore, please accept this letter as notice that pursuant to sections 350 and 400-403 of the Evidence Code, we will request a hearing at or before the preliminary hearing on the foundation for and admissibility of any proffered evidence concerning scent-tracking dogs.

Thank you for your cooperation in this matter. Please feel free to either call or page me at (213) 302-1067.

Sincerely yours,



Mark J. Geragos
GERAGOS & GERAGOS

MCALLISTER & MCALLISTER, INC.

A PROFESSIONAL LAW CORPORATION

KIRK W. MCALLISTER
Certified Specialist, Criminal Law,
The State Bar of California Board
of Legal Specialization

JANE E. MCALLISTER

August 13, 2003

Via Hand-Delivery

Dave Harris
Rick Distaso
Stanislaus County District Attorney's Office
1100 "I" Street
Modesto, CA 95354

Re: People v. Scott Lee Peterson
Stanislaus County Superior Court, Case No. 1056770

Dear Mr. Harris and Mr. Distaso:

By this letter I am requesting that the following items of discovery be produced. This request is in addition to any and all previous requests.

The following items are requested:

27. Color-accurate reproductions of all writings (as defined in Evidence Code section 250) generated by any and all trackers showing or attempting to show the whereabouts of Scott Peterson and/or a vehicle operated by him.
28. All notes, memoranda and logs relating to law enforcement surveillance of Scott Peterson.
29. All reports, preliminary drafts, bench notes, field notes, case notes, photographs, graphs and printouts relating to all tests, analyses and comparisons of any and all physical evidence in the Scott Peterson case performed by any Department of Justice laboratory, Federal Bureau Investigation laboratory, and any other laboratory, whether governmental or private.

This request should be construed as a continuing demand, so that any statements, reports or evidence that are obtained by you or your investigators or agents after compliance with the initial request should also be made available immediately to the defendant.

Thank you for your cooperation.

Yours truly,



Kirk W. McAllister
KMc:lj

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PROOF OF SERVICE

I am a citizen of the United States and am employed in Stanislaus County; I am over the age of eighteen (18) years and not a party to the within action; my business address is 1012 - 11th Street, Suite 100, Modesto, California, 95354.

On August 14, 2003, I served the following document(s):

NOTICE OF MOTION AND MOTION FOR DISCOVERY; POINTS AND AUTHORITIES; DECLARATION

by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as follows:

Stanislaus County District Attorney
1100 I Street, Room 200
Modesto, CA 95354

BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with McAllister & McAllister's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the address(es) designated.


EXPRESS SERVICE CARRIER: I caused such envelope(s) to be delivered by an authorized courier or driver authorized by **XXX**, an express service carrier to receive documents, with delivery fees paid or provided for, to the addressee(s) designated.

OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered by overnight courier service, with delivery fees paid or provided for, to the addressee(s) designated.

BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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

Executed at Modesto, California on August 14, 2003.


Kirk W. McAllister