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FILED
03 OCT -7 PM 12:01
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY: *[Signature]* DEPUTY

FILED BY FAX

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

Handwritten: 10-7-03 pm

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON,

Defendant.

Case No. 1056770

NOTICE OF MOTION AND
MOTION TO EXCLUDE DOG
TRAILING EVIDENCE AT THE
PRELIMINARY HEARING

[Evidence Code §§ 402-3]

DATE: October 20, 2003
TIME: 8:30 a.m.
PLACE: Dept 2

TO: STANISLAUS COUNTY DISTRICT ATTORNEY; and

TO: CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on October 20, 2003 at the hour of 8:30 a.m., or as soon thereafter as counsel can be heard, Scott Lee Peterson ("Mr. Peterson"), through counsel, Mark J. Geragos and Kirk McAllister, will move this Court for an order excluding any and all evidence of human scent tracking, trailing, or identification by dogs.

The Motion will be based on this Notice, the attached memorandum of points and

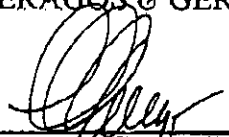
1 authorities, evidence adduced at the time of the hearing of the motion, the pleadings and
2 records on file herein, and upon such other and further argument as may be presented to
3 the Court at the hearing of this motion.

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5 Dated: October 6, 2003

Respectfully submitted,

GERAGOS & GERAGOS

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8 By:


MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

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12 MOTION

13 Scott Lee Peterson, by and through counsel, hereby moves the Court for an order:


- 14 1. Excluding dog trailing evidence at the preliminary hearing in this matter.
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16 Dated: October 6, 2003

Respectfully submitted,

GERAGOS & GERAGOS

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18
19 By:


MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I.**

4 **THE PROPONENT OF DOG TRAILING EVIDENCE HAS THE BURDEN**
5 **OF ESTABLISHING THE FOUNDATION FOR THE EVIDENCE.**

6 The prosecution seeks to introduce dog tracking evidence, and they ought to be the
7 party requesting a hearing on the admissibility of the dog tracking evidence at issue. For
8 the sake of convenience, however, defendant Scott Peterson brings this motion to alert the
9 court to the detritus the People wish to strew around at the preliminary hearing. Because
10 the People cannot lay the foundation for the admissibility of their "evidence," this court
11 should not permit it.

12 The proponent of dog trailing evidence must show the following before such
13 evidence is admissible: (1) the dog's handler was qualified by training and experience to
14 use the dog; (2) the dog was adequately trained in tracking humans; (3) the dog has been
15 found to be reliable in tracking humans; (4) the dog was placed on the track where
16 circumstances indicated the guilty party to have been; and (5) the trail had not become
17 stale or contaminated. Furthermore, the foundation for dog scent evidence must include
18 evidence that the circumstances of the tracking itself make it probable that the person
19 tracked was the guilty party. *People v. Malgren* (1983) 139 Cal.App.3d 234, 238.

20 That last statement from the *Malgren* case demonstrates just one of the problems
21 inherent in the proposed evidence. Every California case, and indeed every out-of-state
22 case disclosed by our research, deals with dogs tracking the scent of suspects. In the case
23 at bar, however, the prosecution proposes evidence of dogs tracking the scent not of a
24 suspect but of Laci Peterson. As shown below, this is only one of many reasons why the
25 proposed evidence is not admissible.

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II.

THE PROSECUTION CANNOT ESTABLISH THE FOUNDATION
FOR THE DOG SCENT EVIDENCE IN THE CASE AT BAR.

At the time of writing, there are only three California appellate decisions concerning dogs tracking or trailing human scent: *People v. Craig* (1978) 86 Cal.App.3d 905, *People v. Malgren* (1983) 139 Cal.App.3d 234, and *People v. Gonzales* (1990) 218 Cal.App.3d 403. All of these cases involve situations where dogs were placed on the track of criminal suspects within one hour of the criminal activity. In other words, in all three cases, the scent was fresh.

Furthermore, in two out of the three cases the scent the dogs followed a scent to its presumptive source, i.e., a human being. In the first, *People v. Craig* (1978) 86 Cal.App.3d 905, three men in a white Nova robbed a gas station. Station employees pursued the men to an apartment complex, where the men stopped and ran inside. When police officers arrived at the complex, they saw three men who matched the descriptions of the suspects and ultimately detained them in or around the apartment complex. (*Id.* at pp. 909-910.) The robbery victim was brought to the scene, where he identified the defendant. When the Nova was searched, incriminating evidence from a separate robbery which had occurred earlier that evening was found inside. (*Id.* at pp. 910-911.) An officer and his trained police dog were ordered to track from the interior of the Nova. After being allowed to smell inside the Nova, the dog followed the path of the suspects from that point to the point where the detention of the suspects occurred, which was a relatively short distance as both the Nova and the place of the detention were in or around the complex. (*Id.* at p. 911.) The *Craig* court held this evidence of canine tracking was admissible and not subject to the foundational requirements for scientific evidence as stated in *People v. Kelly* (1976) 17 Cal.3d 24.

In *People v. Malgren, supra*, 139 Cal.App.3d 234, 237, victims returned to their home one evening, noticed that items had been moved, heard a loud noise in a bedroom, and saw someone run down the hall and out the rear door into the backyard. An officer

1 and his tracking dog responded to the victims' call, arriving at the house less than a half-
2 hour later. From inside the house, the dog was commanded to "track." The dog ran down
3 the hallway, into the bedroom, and out the same door as the suspect, continuing across the
4 backyard into an adjacent game reserve. The dog tracked through the damp grassy game
5 reserve for approximately 35 minutes and over about seven-tenths of a mile, and then ran
6 into some high bushes and began to growl and bite. The defendant was found in the
7 bushes. Although the night was cold, appellant was panting and perspiring, as if he had
8 been running. His pants legs were wet, and his tennis shoes were muddy and wet and
9 grass-stained, which the appellate court found supported "the reasonable inference that he
10 had just run from the home through the game reserve." (*Id.* at 237-40.) Other evidence
11 included burglar's tools found on the trail.

12 The *Malgren* case is also significant because the dog-training officer, Gyselbrecht,
13 testified that during his training of the dog, "[s]ometimes the trail was interrupted by
14 obstacles such as deep creeks or rooftops, or by the suspect's flight in an auto; on other
15 occasions the officer called the dog back because he didn't want it to track across a
16 freeway." (*Id.* at 238, emphasis added.) As will be shown during the evidentiary hearing
17 on the foundation for the People's evidence in the case at bar, the People's evidence
18 consists almost exclusively of dogs purporting to track the scent of Laci Peterson as she
19 traveled in a car.

20 Finally, in *People v. Gonzales* (1990) 218 Cal.App.3d 403, as in *Malgren*, a
21 qualified handler and tracking dog were put on the trail of a burglary suspect within a
22 half-hour after he had fled. There, an alarm went off at a rural home. A responding
23 deputy entered the house and saw a man piling goods in the center of the living room.
24 The man fled; the deputy then heard, in another section of the house, the sound of
25 breaking glass. He went to the bedroom in the front of the house, looked out the broken
26 window and saw a man running away from the house. Some time after this, a man drove
27 by in a white truck and reported seeing a Mexican male running east.

28 Approximately 25 minutes after the call for a backup unit was sent, Deputy Blagg

1 and his dog "Rookie" arrived at the scene. A pillowcase from the house was found
 2 outside the home containing some household articles. It was located near where the
 3 running man had last been seen. Rookie smelled the pillowcase and ran off, unleashed,
 4 ahead of Deputy Blagg in an easterly direction. Footprints were observed leading away
 5 from the pillowcase in the direction taken by the dog; the shoe impressions reappeared
 6 intermittently along the path taken by Rookie where the person leaving them had gone off
 7 the hardpan into the plowed dirt. Along the route, a clean dime was found.

8 After traveling approximately nine-tenths of a mile, Rookie crossed over into an
 9 unplowed vineyard with three to four feet of weeds growing between the rows. The
 10 officer spotted appellant lying prone in the tall grass across the area between the rows
 11 with his arms extended in front of him up on the berm of the vineyard. (*People v.*
 12 *Gonzales, supra*, 218 Cal.App.3d at 405-407.)

13 This review of the published California cases dealing with dog tracking evidence
 14 demonstrates that in those cases where such evidence has been admitted, the dog has been
 15 put on a fresh track and has led directly either to human suspects or to a spot where such
 16 suspects were known to have been within the last half-hour. Out-of-state cases admitting
 17 such evidence have similar factual circumstances: *see, e.g., State v. Loucks* (1983) 98
 18 Wash.2d 563, 656 P.2d 480, 482; *People v. McPherson* (1978) 85 Mich.App. 341, 271
 19 N.W.2d 228, 229-230; *People v. Centolella* (1969) 61 Misc.2d 723, 305 N.Y.S.2d 279,
 20 283; and see generally cases cited in Annot., Evidence of Trailing by Dogs in Criminal
 21 Cases (1968).

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III.
CONCLUSION

WHEREFORE, in light of the foregoing, Mr. Peterson respectfully moves this Court for an order excluding any dog trailing evidence.

Dated: October 6, 2003

Respectfully submitted,
GERAGOS & GERAGOS

By:



MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

DOCUMENT FOUR

MOTION TO EXCLUDE DOG TRAILING EVIDENCE