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COUNTY OF STANISLAUS

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

8 STANISLAUS COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA

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10 D.A. No.1056770
11 THE PEOPLE OF THE STATE OF CALIFORNIA) No.1056770
12)
13 Plaintiff,)
14) PEOPLE'S RESPONSE
15) TO DEFENSE MOTION
16) TO "TRAVERSE" WIRETAP
17) AFFIDAVITS
18 vs.)
19) Hrg: 10-28-03
20) Time: 9:30 am
21 SCOTT LEE PETERSON,) Dept: 2
22)
23 Defendant.)

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24 Comes now the People of the State of California to
25 submit the following POINTS AND AUTHORITIES IN FURTHER OPPOSITION
26 TO THE DEFENSE MOTION FOR A HEARING PURSUANT TO FRANKS V.
27 DELAWARE.

28 LAW AND ARGUMENT

Even with his latest submission, the defendant has not made any showing that Inv. Steve Jacobson intentionally or recklessly misrepresented or omitted material facts in either of his affidavits for Wiretap Nos. 2 and 3. In his latest motion the defendant states that Inv. Jacobson willfully omitted from his affidavits that "[T]he cadaver dog did not alert in the boat."

1 (Defendant's motion, in bold type, page 2.) The defendant cites
2 Reserve Deputy Eloise Anderson's report dated December 29, 2002,
3 as support for his allegation of the cadaver dog's actions.

4 While Inv. Jacobson was not aware of Deputy Anderson's report at
5 the time he wrote the affidavits, even if he had been, it was
6 proper for him to omit the results of the cadaver dog's search.

7 The defendant grossly misstates what Deputy Anderson
8 actually wrote in her report. Due to the sealed nature of the
9 documents in this case, the People will not attach Deputy
10 Anderson's entire report to this reply, however, the People must
11 correct the inaccuracies contained in the defense response. What
12 Deputy Anderson actually said regarding her cadaver dog, Twist's,
13 search of the defendant's warehouse and boat is as follows:

14 "Twist-Warehouse: We then moved to the location of the
15 storage area where Scott Peterson has his office/warehouse.
16 After the Modesto PD had completed an initial check of the
17 area, I worked the dog. The office was small and the dog
18 showed no interest in this area. The warehouse area was
19 used to store chemicals and Mr. Peterson's fishing boat.
20 Much of this area was inaccessible to the dog and the
21 chemical smell made searching very difficult. The dog
22 worked to the back of the warehouse and into the bathroom
23 twice with no alerts or interest. I put her into the boat
24 where she showed mild interest but no alerts. When I worked
25 her in the front of the warehouse area she showed interest
26 in some containers under a small workbench. She checked
27 several times in each container, along the edge of the
28 workbench where she could reach and along the edge of the
boat closest to the workbench. She demonstrated frustration
by barking, but did not go to her full alert or pinpoint a
particular spot. At that point we exited the warehouse."

As is readily apparent from Deputy Anderson's report, the
dog's behavior at the warehouse and boat was considerably more
complicated than the dog simply not alerting. [Cf., the dog not
alerting in the office area of the shop, where the dog "showed no
interest."] Further, as noted in Deputy Anderson's report, the

1 chemical smell in the warehouse made the dog's search very
2 difficult. However, the dog did show mild interest in the boat,
3 and even more interest in an area under the workbench, and along
4 the edge of the boat.

5 As stated above, Inv. Jacobson did not have possession of
6 Deputy Anderson's report at the time he wrote either affidavit.
7 [Inv. Jacobson's affidavit for Wiretap No. 2 was dated January
8 10, 2003. Deputy Anderson's report regarding Twist's actions
9 wasn't reviewed by her lieutenant until January 21, 2003, after
10 Inv. Jacobson's first affidavit was written.]

11 Also, the results of Twist's search were not provided to
12 Inv. Jacobson by any other law enforcement officer. Thus, he
13 couldn't have willfully omitted such information because he
14 wasn't privy to it. [Further, the Stanislaus County District
15 Attorney's Office did not receive Deputy Anderson's report until
16 late April, or early May. Said report was sent in discovery to
17 the defense on May 2, 2003, which was within days of it being
18 received by the District Attorney's Office.]

19 However, even if we assume for the sake of argument that
20 Inv. Jacobson should have been aware of the information, was he
21 required to include it in his affidavits? Absolutely not. Due
22 to the inconclusive nature of Twist's behavior it was proper for
23 that information to have been omitted.

24 Deputy Anderson's report actually makes the case for
25 probable cause and issuance of the wiretaps stronger. From
26 Deputy Anderson's description it is clear that Twist showed some
27 interest in the boat, and other areas of the warehouse, but did
28

1 not fully alert. This was probably due to the heavy chemical
2 smell in the warehouse. That leads one to the obvious conclusion
3 that Laci Peterson's body was in the warehouse and the boat.

4 As stated in the People's prior filing, the defense must
5 meet five requirements in order for the court to compel a Franks
6 hearing. The defendant fails to meet that burden.

7 Requirement No. 1. State which portions of the affidavit
8 are allegedly false or misleading due to omissions - Here, the
9 defendant states that "The cadaver dog did not alert in the
10 boat." Based on the discussion above, it is clear that the
11 defendant's allegation is highly misleading, not any omission by
12 Inv. Jacobson.

13 Requirement No. 2. Defendant must contend that the omission
14 was deliberately or recklessly made. Inv. Jacobson didn't know
15 about the information. Thus, there was no way he could have
16 deliberately omitted it. Further, since the information would
17 not have negated a finding of probable cause, even if Inv.
18 Jacobson had been aware of it, it could not have been reckless to
19 omit it.

20 Requirement No. 3. Defendant must present a detailed offer
21 of proof, including affidavits to support his allegations. Here,
22 the defendant only refers to the report of Deputy Anderson.
23 Again, her report actually supports the finding of probable
24 cause, thus the defendant's offer of proof is not correct.

25 Requirement No. 4. Defendant must challenge only the
26 veracity of the affiant. Here, defendant does only challenge
27 Inv. Jacobson's affidavit.

1 Requirement No. 5. The challenged statements must be
2 necessary to find probable cause. As stated above, if the
3 results of Twist's search had been included in the affidavit, it
4 would have made the case for probable cause stronger because the
5 dog's actions significantly support the fact that Laci Peterson's
6 body was in the warehouse and the boat.

7 CONCLUSION

8 Here, the defendant has made no showing of any facts that
9 were improperly omitted by Inv. Jacobson. The defendant's
10 allegation regarding Deputy Anderson's report is not sufficient
11 to require the court to order a Franks hearing. The defendant's
12 motion should be denied.

13 Dated: October 17, 2003

14 Respectfully submitted,

15 JAMES C. BRAZELTON
16 District Attorney


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18 RICK DISTASO
19 Deputy District Attorney
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EXHIBIT A

2909

X Continuation

Incident

CONTRA COSTA COUNTY SHERIFF'S SEARCH AND RESCUE TEAM

50 GLACIER DRIVE, MARTINEZ, CA. 94553

DR-02-36590

1. SAR # 1R155	2. Start Date 12/27/02	3. End Date 12/27/02	4. OES #	4. Agency #	5. Host Agency Modesto PD
7. Initial or Primary COCOSAR IC		8. Duty Officer		9. Duty Supervisor	10. Host Agency IC
11. Name and Location of Incident Laci Peterson					12. Thos. Bros. Cords.
34. Narrative/Description					
Deleted due to sealed nature of document.					
Twist - Warehouse: We then moved to the location of the storage area where Scott Peterson had his office/warehouse. After the Modesto PD had completed an initial check of the area, I worked the dog. The office was small and the dog showed no interest in this area. The warehouse area was used to store chemicals and Mr. Peterson's fishing boat. Much of this area was inaccessible to the dog and the chemical smell made searching very difficult. The dog worked to the back of the warehouse and into the bathroom twice with no alerts or interest. I put her into the boat where she showed mild interest but no alerts. When I worked her in the front of the warehouse area she showed interest in some containers under a small workbench. She checked several times in each container, along the edge of the workbench where she could reach and along the edge of the boat closest to the workbench. She demonstrated frustration by barking, but did not go to her full alert or pinpoint a particular spot. At that point we exited the warehouse.					
39. Report Prepared By Eloise Anderson			40. Signature <i>Eloise Anderson</i>		41. IR Number 1R155
43. SAR Command Staff			44. Signature <i>L.T. Sanchez</i>		42. Date 12/29/02
					45. IR Number 32093
					46. Date 1/31/03 930

Exhibit 1

AFFIDAVIT OF SERVICE BY FAX (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 PEOPLE'S RESPONSE TO DEFENSE MOTION TO "TRAVERSE" WIRETAP AFFIDAVITS by faxing said copy addressed to (209) 575-0240 Kirk W. McAllister, McAllister & McAllister, 1012 11th Street, Suite 100, Modesto, California, and thereafter was on October 17, 2003, delivered by FAX at Modesto, California. That there is delivery service by FAX at the place so addressed, or regular communication by FAX between the place of mailing and the place addressed.

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

Executed this 17th day of October, 2003, at Modesto, California.

Kristy Barra

People v. PETERSON

D.A. No. 1056770

Court No. 1056770

dmh

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That affiant served a copy of the attached PEOPLE'S RESPONSE TO DEFENSE MOTION TO "TRAVERSE" WIRETAP AFFIDAVITS by faxing said copy addressed to (213) 625-1600 MARK GERAGOS, GERAGOS & GERAGOS, 350 SOUTH GRAND AVENUE, 39TH FLOOR, LOS ANGELES, CA, 90071-3480, and thereafter was on October 17, 2003, delivered by FAX at Modesto, California. That there is delivery service by FAX at the place so addressed, or regular communication by FAX between the place of mailing and the place addressed.

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Kristy Barra

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