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FILED
SAN MATEO COUNTY

FEB 11 2004

Clerk of the Superior Court
By Marybeth Smith
DEPUTY CLERK

8 SAN MATEO COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA
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11 D.A. No.1056770)
12 THE PEOPLE OF THE STATE OF CALIFORNIA) No. SC55500
13) (Stan. Co.#1056770)
14 Plaintiff,)
15) OPPOSITION TO MOTION
16) FOR SEPARATE JURIES
17 vs.)
18)
19)
20 SCOTT LEE PETERSON,) Trial: 2-9-04.
21) Time: 9:00a.m.
22 Defendant.) Dept: 42 (2M)
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24 Come now the People of the State of California to submit the
25 following OPPOSITION TO DEFENDANT'S FOR SEPARATE GUILT AND PENALTY
26 JURIES:

27 Law

28 The defendant cites the case of People v. Carpenter, (1997) 15
29 Cal.4th 312, 315 as authority for a second separate jury in a
30 capital case. However, the Carpenter case never discussed this
31 issue, but merely recited the fact; "At defense request, the court
32 selected separate guilt and penalty juries." (Id., at page 351.)

33 There are many cases that uphold the denial of a second jury;
34 one such case has said:

1 "In People v. Nicolaus (1991) 54 Cal.3d 551, we recognized that
2 Penal Code section 190.4, subdivision (c), "expresses a clear
3 legislative intent that both the guilt and penalty phases of a
4 capital trial be tried by the same jury."

People v. Rowland (1992) 4 Cal.4th 238, 268.

5 The defendant cites Penal Code §190.4(c) and states "for good
6 cause" a second jury may be empaneled. He then cites People v.
7 Malone (1988) 47 Cal.3d 1, 27-28 and People v. Hart (1999) 20 Cal.
8 4th 546, 640-641 for the notion that "good cause" under subdivision
9 (c) is elusive. However, the California Supreme Court has said:

10 "As we observed in Gates, "[t]here is no direct authority on
11 the meaning of 'good cause' in this context. There are,
12 however, cases involving the question of good cause for
13 discharge of a juror under sections 1123 and 1089. As to the
14 latter statutes, the facts must 'show an inability to perform
15 the functions of a juror, and that inability must appear in the
16 record as a demonstrable reality.' [Citation.]" (People v.
17 Gates, supra, 43 Cal.3d 1168, 1199.) Moreover, a showing of
18 good cause is a prerequisite to granting the motion to
19 discharge the jury or to reopen voir dire. The trial court is
20 not obliged to reopen voir dire based upon mere speculation
21 that good cause to discharge the jury thereby may be
22 discovered.

People v. Bradford (1997) 15 Cal.4th 1229, 1354.

18 The issue raised by the defendant has been raised and rejected
19 before. As stated by the Supreme Court:

20 The appropriate standard of review when considering a trial
21 court's denial of a separate jury under section 190.4 is the
22 abuse of discretion standard. (People v. Rowland (1992) 4
23 Cal.4th 238, 268.)

People v. Weaver (Cal. 2001) 26 Cal.4th 876, 947.

24 The defendant implies that he has a right to a separate jury in
25 this case, however that is not the law:

26 "Defendant has no right to be tried by separate juries (ibid.)
27 or to voir dire one way for the guilt phase and another way for
28

1 the penalty phase (People v. Rowland (1992) 4 Cal.4th 238, 267-
2 268)."

3 People v. Mendoza (2000) 24 Cal.4th 130, 168-169.

4 The defendant argues that some researchers claim that "death
5 qualified jurors are guilt prone, but this argument has also been
6 rejected in California:

7 "The Legislature has clearly articulated its preference for a
8 single jury to decide both guilt and penalty (People v. Fauber
9 (1992) 2 Cal.4th 792, 845), and, provided the chosen procedure
10 satisfies basic principles of fairness, we are aware of no rule
designed to render jurors most favorably disposed toward a
defendant."

11 People v. Kraft (2000) 23 Cal.4th 978, 1070.

12 Lastly, the defendant asks this court to follow the logic of
13 the Federal District Court in Grigsby v. Mabry (1985) 569 F.Supp.
14 1273, 1322-1323, as creating some future constitutional right to a
15 separate non-death qualified jury. However, as the defendant points
16 out, and rightly so, that case was reversed by the U.S. Supreme
17 Court in Lockhart v. McCree (1986) 476 U.S. 162. The court in
18 Lockhart rejected the same kind of claimed constitutional right made
19 here and held:

20 "Death qualification," unlike the wholesale exclusion of
21 blacks, women, or Mexican-Americans from jury service, is
22 carefully designed to serve the State's concededly legitimate
interest in obtaining a single jury that can properly and
impartially apply the law to the facts of the case at both the
guilt and sentencing phases of a capital trial.

23 Lockhart v. McCree (1986) 476 U.S. 162, 175-176.

24 Conclusion

25 The People submit that this court should deny the defendant's
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27
28

1 request for a separate jury.

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3 Dated: 2-10-04

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Respectfully submitted,

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JAMES C. BRAZELTON

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Stanislaus County District Attorney

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By:

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David P. Harris

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Sr. Deputy District Attorney

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PROOF OF SERVICE BY FAX

Re: People v. Scott Lee Peterson No. SC55500 (Stan.Co.#1056770)

I, the undersigned, am over the age of eighteen years and not a party to the within above-entitled action. On February 10, 2004, I served the within OPPOSITION TO DEFENDANT'S MOTION FOR SEPARATE GUILT AND PENALTY JURIES by faxing a true copy thereof to the fax numbers:

Mark Geragos
350 S. Grand Avenue, #3900
Los Angeles, CA 90071
(213) 625-1600

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

Dated:

