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FILED
SAN MATEO COUNTY

FEB 11 2004

Clerk of the Superior Court
By Marymont
DEPUTY CLERK

9 SAN MATEO COUNTY SUPERIOR COURT
10 STATE OF CALIFORNIA

11 D.A. No.1056770

12 THE PEOPLE OF THE STATE OF CALIFORNIA

13 Plaintiff,

14 vs.

15 SCOTT LEE PETERSON,

16 Defendant.

) No. SC55500

) (Stan. Co.#1056770)

) OPPOSITION TO MOTION

) TO SEQUESTER THE JURY

) Trial: 2-9-04

) Time: 9:00a.m.

) Dept: 42 (2M)

17
18 Come now the People of the State of California to submit the
19 following OPPOSITION TO DEFENDANT'S MOTION TO SEQUESTER THE JURY:

20 Law

21 The defense has requested that this court sequester the jury in
22 this case. Penal Code §1121 allows the court, at its discretion, to
23 decide if jurors should be sequestered. This was affirmed in People
24 v. Gallego, (1991) 52 Cal.3d 115. Another court has rejected the
25 same argument being made by the defendant here:

26 "Additionally, it is clearly the Legislature's prerogative to
27 enact trial procedures such as are embodied in sections 1121
28 and 1128, and, once it has done so, neither this nor any court
may substitute its judgment for that of the Legislature, in the
absence of a constitutional violation. (People v. Dillon (1983)
34 Cal.3d 441, 463; Estate of Horman (1971) 5 Cal.3d 62, 77.)

1 Although defendant contends that sequestration of the jury in
2 capital cases is a constitutional right, i.e., required by the
due process clause of the Fourteenth Amendment, he cites no
express authority for that proposition. [FN21]

3
4 FN21. The federal courts which have addressed this issue
have refused to recognize any federal constitutional right
to have the jury sequestered. (See, e.g., Powell v.
5 Spalding (9th Cir. 1982) 679 F.2d 163, 166, fn. 3; Young
6 v. State of Alabama (5th Cir. 1971) 443 F.2d 854, 856,
cert. den. 405 U.S. 976 (1972).)"

7 People v. Bunyard (1988) 45 Cal.3d 1189, 1219-1220.

8 It is clear from the state of the law that sequestering of the
9 jury is not required. It is within this court's discretion to
10 decide to do so or not. The People are opposed to doing so, because
11 of the great toll it would take on the jurors. To keep jurors away
12 from their lives for months on end is not a wise choice.

13 The law is also clear that all of the defendant's concerns can
14 be laid to rest by continuous and strong admonitions to the jury.
15 This way, the jurors are allowed to separate, the defendant suffers
16 no harm and both sides are able to have a jury that concentrates on
17 the evidence and not on when they will get to return home.

18
19 Conclusion

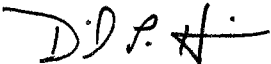
20 The People submit that this court should exercise its
21 discretion and deny the defendant's request to sequester the jury.

22 Dated: 2-10-04

23 Respectfully submitted,

24 JAMES C. BRAZELTON
Stanislaus County District Attorney

25
26 By:

27 
David P. Harris
Sr. Deputy District Attorney

1 **PROOF OF SERVICE BY FAX**

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

3
4 I, the undersigned, am over the age of eighteen years and not a party to the within
5 above-entitled action. On February 10, 2004, I served the within OPPOSITION TO
6 DEFENDANT'S MOTION TO SEQUESTER THE JURY by faxing a true copy thereof to the
7 fax numbers:

8 Mark Geragos
9 350 S. Grand Avenue, #3900
10 Los Angeles, CA 90071
11 (213) 625-1600

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

13 Dated:

14 *Janet L. Smith* 2/10/04
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