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FILED
SAN MATEO COUNTY

FEB 23 2004

Clerk of the Superior Court
By Mary Ann Mott
DEPUTY CLERK

10 SAN MATEO COUNTY SUPERIOR COURT
11 STATE OF CALIFORNIA
12 -----oOo-----

13 D.A. No. 1056770

14 THE PEOPLE OF THE STATE OF CALIFORNIA)

15 Plaintiff,)

16 vs.)

17 SCOTT LEE PETERSON,)

18 Defendant.)
19 -----oOo-----

No. SC55500A

(Stan. Co. #1056770)

) OPPOSITION TO THE
) DEFENDANT'S MOTION

) RE: STATEMENTS TO THE
) MEDIA

) Hrg: TBA

) Time: 9:30a.m.

) Dept: 2M

20 Comes now the People of the State of California to submit the
21 following in opposition to the defendant's motion to suppress his
22 statements to the media pursuant to Evidence Code Section 352.

23 Law and Argument

24 Evid. Code Sec. 352 reads as follows:

25 The court in its discretion may exclude evidence if its
26 probative value is substantially outweighed by the probability
27 that its admission will (a) necessitate undue consumption of
28 time or (b) create substantial danger or undue prejudice, of
confusing the issues, or of misleading the jury.

1 A trial court's determination to admit evidence pursuant to
2 Evid. Code Sec. 352 is reviewed for an abuse of discretion [People
3 v. Brown (2003) 31 Cal.4th 518, 547; People v. Gurule (2002) 28
4 Cal.4th 557, 654-655].

5 Here, the defendant moves to exclude the statements he made in
6 late January 2003 to various media representatives regarding his
7 actions on December 24, 2002, and his relationship with Laci
8 Peterson, and Amber Frey. Specifically, the defendant made
9 statements to Diane Sawyer, Gloria Gomez, Ted Rowlands, and Jodi
10 Hernandez. The People intend to introduce only the defendant's
11 actual statements made to those media personnel. The People do not
12 intend to introduce portions of the aired broadcast that simply
13 involve the newsperson commenting on the interviews.

14 At the outset it should be noted that the defendant has not
15 made a sufficient showing pursuant to Evid. Code Sec. 352 as to why
16 any of his statements should be suppressed. At best, the
17 defendant's motion simply provides excuses as to why he made the
18 statements. Such reasoning goes only to the weight of the evidence,
19 not to its admissibility. It is solely a jury question as to what
20 the statements mean, and why they were made.

21 Further, in order to suppress evidence pursuant to Evid. Code
22 Sec. 352, the probative value of the evidence must be substantially
23 outweighed by its undue prejudice. All relevant evidence admitted
24 by the prosecution is, by definition, prejudicial to the defendant's
25 case. Such is the nature of criminal trials. Probative evidence is
26 not what Evid. Code Sec. 352 is designed to prevent; "...prejudice
27 for the purposes of 352 means evidence that tends to evoke an
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1 emotional bias against the defendant with very little effect on the
2 issues, not evidence that is probative of the defendant's guilt;"
3 People v. Crews (2003) 31 Cal.4th 822, 842; People v. Karis (1988)
4 46 Cal.3d 612, 638]. Challenges to a defendant's statements made
5 under Evid. Code Sec. 352 are rarely, if ever, granted. [See, People
6 v. Crews, supra; People v. Brown (2003) 31 Cal.4th 518, 547; People
7 v. Sapp (2003) 31 Cal.4th 240, 276, People v. Maury (2003) 30
8 Cal.4th 342, 409-410; People v. Kipp (2001) 26 Cal.4th 1100, 1125;
9 People v. Hayes (1999) 21 Cal.4th 1211, 1262-1263; People v. Hines
10 (1997) 15 Cal.4th 997, 1044-1045; People v. Gionis (1995) 9 Cal.4th
11 1196, 1213-1214; People v. Halsey (1993) 12 Cal.App.4th 885, 891-
12 892.]

13 Here, some parts of the People's case is circumstantial.
14 Therefore, each piece of evidence is important in order for the
15 People to present their case. In his various statements to media
16 personnel, the defendant gives statements that conflict with those
17 he told the police, initially lies about his relationship with Amber
18 Frey, lies about his relationship with his wife, lies about the
19 information he told Amber Frey, and makes numerous admissions that
20 evidence his guilt.

21 Statements to Diane Sawyer aired on January 28, 2003;
22 January 29, 2003, and April 24, 2003.

23 The defendant was interviewed by Diane Sawyer of ABC News on
24 January 24, 2003. In the broadcast portions of these interviews the
25 defendant makes admissions regarding his activities on December 24,
26 2003, and regarding his relationship with Amber Frey and Laci
27 Peterson. He also tells Ms. Sawyer (with the obvious knowledge that
28 his statements will be broadcast nationwide) lies about what he told

1 the police, lies about when he told Amber Frey that he was married,
2 and lies about his relationship with his wife. The defendant's
3 demeanor is also very telling in the interviews. He presents
4 himself, quite strongly, as someone who is lying about his
5 involvement in Laci's disappearance.

6 The defendant told Ms. Sawyer that since Laci had been missing
7 he had been taking the dog to the park where Laci "walked all those
8 mornings." This was clearly intended to present the impression that
9 Laci was taking a walk in the park on the morning that she
10 disappeared. The People will present evidence that Laci had stopped
11 walking the dog around the first week in November.

12 The defendant admits that suspicion had turned to him and that
13 it was natural for it to turn to him.

14 The defendant admits having a relationship with Amber Frey, but
15 states that he "doesn't know" why he was having the relationship.

16 The defendant states that Amber Frey was the only woman with
17 whom he had affairs. This was not true. The defendant had had at
18 least one other affair with a woman early in his and Laci's
19 marriage.

20 The defendant states that he had been cooperating fully with
21 the police and that he told the police on December 24, 2002, of his
22 relationship with Amber Frey. This was a lie. In fact, the
23 defendant never told the police of his relationship with Amber Frey
24 and denied that relationship to them on December 30, 2002. The
25 defendant repeated this lie to all local media personnel when he was
26 interviewed by them on January 29, 2003.

27 The defendant states that he told Laci about the affair with
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1 Amber in "early December [2002]." Numerous witnesses will testify
2 that Laci made no mention of the affair to them, and they did not
3 perceive any evidence of the affair in her and the defendant's
4 relationship. Further, the defendant told Amber Frey that he told
5 Laci about the affair "after their first date together" in November
6 2002.

7 The defendant also states that the affair did not cause a
8 rupture in his marriage, and that there wasn't any anger (by Laci)
9 regarding the affair. He further stated that Laci was "at peace"
10 with the affair. As incredible as this statement is, the defendant
11 obviously made it to throw suspicion off himself. By trying to
12 portray Laci as peaceful about the affair (a statement that no one
13 could possibly believe) he was hoping that investigators would no
14 longer focus their attention on him.

15 The defendant calls his marriage "glorious." Again, this was
16 done to throw suspicion off himself. This statement is obviously a
17 lie. If the marriage truly was glorious why would the defendant
18 seek an adulterous relationship with Amber Frey?

19 During the interview the defendant refers to Laci and Conner in
20 the past tense, then corrects himself. "She was, is amazing." and
21 in reference to Conner "That was, its so hard."

22 The defendant states that he hasn't been able to go into the
23 room where Conner's nursery was set up. "The door is closed until
24 there is someone to go in there." This statement was obviously
25 designed to convey the impression that he so loved his unborn child
26 that he couldn't even enter the baby's room. This was not true.
27 When the police served a search warrant at his home on February 18,

1 2003, the defendant had turned the nursery into a storage room.

2 The defendant admits that he initially stated he was going to
3 play golf on December 24, 2002, but decided to go fishing instead.

4 The defendant states that he left the home around 9:30 in the
5 morning while Laci was watching Martha Stewart Living. Cell phone
6 records show that the defendant left home at 10:08 in the morning on
7 December 24, 2002.

8 The defendant states that he hasn't taken any medication
9 regarding Laci's disappearance because he "needs to experience it"
10 (the disappearance).

11 The defendant admits that the curtains were down in the house
12 on December 24, 2002. He states that this was done to "keep the
13 house warm." He also admits that the temperature that day was
14 approximately 40 degrees. Thus, the defendant himself admits that
15 it is extremely unlikely that Laci went walking in the park wearing
16 only a white long sleeve tee shirt as other witnesses have stated.

17 The defendant also admits that he loaded large market umbrellas
18 into his truck "that morning." He stated that he was going to put
19 the umbrellas into his shop for the winter, however, when the police
20 got to the house on the evening of the 24th, they were still in the
21 back of his truck.

22 The defendant further admits that his blood would be found in
23 his truck.

24 The defendant states that he told Amber Frey that he was
25 married and Laci was missing "a couple of days after Laci's
26 disappearance." He says that after he told Amber, she went to the
27 police. All of these statements were lies. The defendant spoke to
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1 Amber Frey numerous times in the week after Laci was missing and
2 pretended that he was in Europe and that when he returned he and
3 Amber would still be together.

4 Amber Frey went on her own initiative to the police on December
5 30, 2002. During that time the defendant continued to lie to her
6 about his connection to Laci. The defendant did not admit his
7 connection to Laci until January 6, 2003, when Amber Frey called the
8 defendant and confronted him with her knowledge that he was lying to
9 her.

10 **Statements to Gloria Gomez aired on January 29, 2003**

11 The defendant was interviewed by Gloria Gomez, of local KOVR
12 news on January 29, 2003. During that interview the defendant
13 repeated some of the lies told to Diane Sawyer. He also made
14 additional admissions, and lies, regarding his relationship with
15 Amber Frey.

16 The defendant again stated that he told Amber Frey "a few days
17 after Laci's disappearance" that he was married and Laci had
18 disappeared. This was not true.

19 The defendant also denied continuing to romance Amber after
20 Laci went missing. That was also a lie. As the audio taped phone
21 conversations amply prove, while the defendant did not physically
22 see Amber after Laci's disappearance, he did continue to pursue a
23 relationship with her by phone. Even after Amber went to the police
24 the defendant continued to contact her, at one point comparing his
25 relationship with her to the movie Love Affair, calling it "a long
26 term caring relationship."

27 The defendant also is evasive, and refuses to answer questions
28

1 that he continued to contact Amber after Laci went missing.

2 The defendant admits cutting his hand on December 24th,
3 "reaching into the toolbox of my truck."

4 The defendant also admits washing his clothes immediately upon
5 coming home from fishing on December 24th.

6 **Statements to Jodi Hernandez aired on January 29, 2003**

7 The defendant was interviewed by Jodi Hernandez, of local NBC
8 11 news on January 29, 2003. During that interview he made
9 additional admissions, and gave evasive responses to questions
10 regarding his involvement in Laci's murder.

11 The defendant again states that he left home at 9:30 on
12 December 24th. As shown above that information was not true.

13 The defendant said that he understood people's suspicion of
14 him.

15 The defendant was also extremely guarded in his responses and
16 wouldn't answer specific questions about the investigation.

17 The defendant stated that he kept a public silence about the
18 case as a "strategy" to keep the media's interest.

19 The defendant stated that the police asked him not to comment
20 about when he informed them about his affair with Amber. That was a
21 lie. The police never told him to keep that information secret.

22 The defendant acknowledges that the police haven't ruled him
23 out as a suspect.

24 **Statements to Ted Rowlands aired on January 29, 2003**

25 The defendant was interviewed by Ted Rowlands of KTVU news on
26 January 29, 2003. During that interview he made additional
27 admissions and, again, gave evasive responses to questions about the
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1 investigation.

2 The defendant repeats his story that he told Laci about the
3 affair in early December.

4 The defendant repeated his story that he put market umbrellas
5 into his truck wrapped in a blue tarp to take to his warehouse for
6 the winter.

7 The defendant repeated his story that he told Laci about the
8 affair and that it didn't put the marriage in jeopardy.

9 The defendant repeated his story that he told Amber about
10 Laci's disappearance "a few days after." He states that after he
11 called Amber she met with the police. Both statements were lies.

12 The defendant stated that the cement found in his warehouse was
13 because of the work he did at his house. The People will present
14 evidence from a petrographer that the cement rings found in his
15 warehouse did not match cement samples taken from this house.

16 The defendant was also very "media savvy" in the interview in
17 that whenever he wanted to proclaim his innocence he would speak
18 directly to the camera. This was in contrast to when he was
19 speaking about other subjects when he would either look away, or
20 look directly at the reporter. This happened enough so that the
21 reporter stated that it was "kind of bizarre" the way he would
22 direct his conversation to the people watching. The defendant
23 obviously did this to try and focus public attention away from
24 himself.

25 Conclusion

26 As is easily seen by the above discussion, the defendant's
27 statements to the various media personnel are highly relevant and
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1 extremely probative of the defendant's guilt. The defendant's
2 statements concerning Amber Frey support motive for the murder. The
3 defendant's statements regarding carrying out a large item covered
4 in a blue tarp support how the defendant covered up the murder. The
5 defendant's false statements concerning his level of cooperation
6 with the police, and his actions on December 24th show how he tried
7 to turn suspicion away from himself. Further, the evidence is not
8 cumulative in that the defendant told different pieces of
9 information to each reporter. The information is not cumulative to
10 the testimony of Amber Frey because the defendant told the reporters
11 lies regarding his relationship with Ms. Frey, as well as lies about
12 what, and when, he told Ms. Frey. As such, the defendant's motion
13 pursuant to Evid. Code Sec. 352 should be denied.

14 Dated: 2-22-04

15 Respectfully submitted,

16 JAMES C. BRAZELTON
17 Stanislaus County District Attorney

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19 Rick Distaso
20 Deputy District Attorney