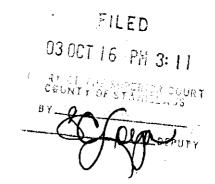
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

VS.

SCOTT LEE PETERSON,

Defendant.

Case No.: 1056770

DEFENDANT'S REPLY TO PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION TO TRAVERSE SEARCH WARRANTS

Date: October 20, 2003

Time: 8:30 a.m.

Dept: 2

The prosecution in its response to the motion for a hearing pursuant to <u>Franks v.</u>

<u>Delaware</u>, (1978) 438 U.S. 154 argues that the defense has not articulated the facts which were omitted by Detective Jacobson when he prepared the search warrants in this case. The following discussion is intended to meet that objection.

I.

SUBSTANTIAL PRELIMINARY SHOWING

For the purpose of the initial <u>Franks</u> presentation, the defense relies on the report of Eloise Anderson, Contra Costa County Sheriff's Search and Rescue Team, dated December 29, 2002 (District Attorney bates number 2930).

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Defendant's Reply to People's Opposition to Defendant's Motion to Traverse Search Warrants

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Franks v. Delaware is satisfied when the motion is supported by "affidavits or sworn or otherwise reliable statements of witnesses". Police reports qualify as reliable statements of witnesses. Such reports are exempted from the hearsay rule under the official records exemption (Evidence Code §1280). Also, official duty is presumed to have been regularly performed (Evidence Code §664). An unsworn officer's report is a document which people rely on to conduct their affairs. Lake v. Reed, (1997) 16 Cal.4th 448, 461.

II.

THE OMITTED FACTS

In 27,000 pages of police reports, the prosecution presents far more theory than substantial facts to support the claim that Scott Peterson is responsible for the deaths of his wife and child. It is expected that the preliminary examination will likewise be top-heavy with theory and lacking in facts of substance.

What is certain is that the cornerstone of the prosecution's theory is that Laci Peterson was transported to the waters of the San Francisco Bay in the boat which Scott Peterson had purchased a couple of weeks before. The police reports explore ad nauseum the details of the purchase of the boat, where it was kept and Scott Peterson's activities on December 24, 2002.

What Detective Jacobson willfully omitted from his report (or was willfully omitted by the other detectives charged with providing him with the information) was that on December 27, 2002, cadaver dog handler Eloise Anderson of the Contra Costa County Sheriff's Search and Rescue Team placed her cadaver dog, Twist, into Scott Peterson's boat for the purpose of detecting cadaver scent. The cadaver dog did not alert in the boat. This information was purposely omitted from the search warrant affidavits because it destroys the theory on which the prosecution has based its case.

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Omitting from an affidavit the fact that a trained search dog failed to alert has been held to be a willful, misleading omission which fatally undermines a finding of probable cause.

> In the present case, "Turbo's" failure to alert was omitted from the affidavit. Because of the highly relevant nature of the omitted information, we hold the omission occurred at least with reckless disregard of its effect upon the affidavit. Brotherton knew that the dog had failed to alert to the box before he submitted the affidavit to the magistrate judge, yet he did not include this information. Any reasonable person would have known that this was the kind of thing the judge would wish to know.

United States v. Jacobs, 986 F.2d 1231, 1234-1235 (8th Cir.1993).

It is also respectfully submitted that the evidence will show that omission of the fact that Twist did not alert was consistent with a practice in the search warrants of omitting relevant, exculpatory information. Additional circumstances of recklessness and of flagrant police conduct are relevant in proving recklesness. U.S. v. Reivich, 793 F.2nd 957, 961 (8th Cir.1986)

If information critical to the probable cause determination is omitted, that very omission gives rise to an inference that it was intended to make the affidavit misleading. U.S. v. Reivich, Ibid.

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Dated: 10/16/07

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III.

CONCLUSION

No amount of prosecutorial legerdemain can overcome the fact that the prosecution's own investigation <u>proved</u> that Laci Peterson's body was never in Scott Peterson's boat.

The omitted information vitiates probable cause and these search warrants must be voided.

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By:

irk W. McAllister

Attorney for Defendant

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PROOF OF SERVICE

I am a citizen of the United States and am employed in Stanislaus County; I am over the age of eighteen (18) years and not a party to the within action; my business address is 1012 – 11th Street, Suite 100, Modesto, California, 95354.

On October 16, 2003, I served the following document(s):

DEFENDANT'S REPLY TO PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION TO TRAVERSE SEARCH WARRANTS

by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as follows:

Stanislaus County District Attorney 1100 I Street, Room 200 Modesto, CA 95354

[XX] **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the address(es) designated.

- [] **EXPRESS SERVICE CARRIER:** I caused such envelope(s) to be delivered by an authorized courier or driver authorized by **XXX**, an express service carrier to receive documents, with delivery fees paid or provided for, to the addressee(s) designated.
- OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered by overnight courier service, with delivery fees paid or provided for, to the addressee(s) designated.
- BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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

Executed at Modesto, California on October 16, 2003.

Kelly Farina