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(ENDORSED)
FILED
SAN MATEO COUNTY

NOV 22 2004

Clerk of the Superior Court
By MARYLIN MORTON
DEPUTY CLERK

8 SAN MATEO COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA
10 -----o0o-----

11 D.A. No.1056770

12 THE PEOPLE OF THE STATE OF CALIFORNIA

13 Plaintiff,

14 vs.

15 SCOTT LEE PETERSON,

17 Defendant.
18 -----o0o-----

) No. SC55500
) (Stan. Co.#1056770)
)
) OPPOSITION TO MOTION
) TO DISCHARGE JURY AND
) DISMISS PENALTY PHASE
) AND/OR NEW JURY AND
) CHANGE OF VENUE
)
) Hrg: 11-22-04
) Time: 9:00a.m.
) Dept: 2M

19 Come now the People of the State of California to submit the
20 following OPPOSITION TO DEFENDANT'S MOTION TO DISCHARGE JURY AND
21 DISMISS PENALTY PHASE AND/OR NEW JURY AND CHANGE OF VENUE:
22

23 **FACTS**

24 The People dispute the facts alleged by the defendant in
25 support of his motion. Defendant has attached seven (7) newspaper
26 headlines/articles and his attorney's argument to the court (Motion,
27 page 3, lines 11-18)as the basis for this motion. However, even the
28 articles do not support his claims: Exhibits A and F are duplicates;

1 Exhibits B and C are duplicates; Exhibit A states that there was an
2 estimated 400 people outside the courthouse while the defendant's
3 pleadings state "some 1,000 people had assembled." (Motion, page 2,
4 line 21.) There is also no evidence that car horns were honked as
5 the "jury was still in the box;" the People would state that it did
6 not happen (and the People's representatives were present in the
7 courtroom when the verdicts were read).

8 The defendant continues to allege a claim of a "lynch mob
9 mood," but, again, there is no evidence of this and his contention
10 is destroyed by the fact that he accepted this jury and failed to
11 use all of his peremptory challenges. The defense also bases his
12 argument on the statement of former juror number 5 (referred to as
13 Doctor so as not to confuse him with Juror Falconer) about a popular
14 verdict- a comment about the Doctor's own abilities and concerns,
15 not a concern attributed to any other juror.

16 What the defense neglects to state is that this court gave the
17 Doctor an opportunity to explain his comments and the Doctor
18 completely retracted his claim (pages 20798 to 20801.) What is of
19 more significance is that at the time the Doctor made his statements
20 in a repeated attempt to get off of the case, the jury had not yet
21 taken a vote (page 20798, line 22-23). The defense further argues
22 that former juror Falconer was also threatened after he was
23 discharged (Motion, page 12, footnote 9), but, again, neglects to
24 point out that Falconer is a staple on television talk shows who
25 clearly is attempting to stretch out every second of his fifteen
26 minutes of fame.

1 The court did not err by failing to keep the jury sequestered
2 between the guilt and penalty phases.

3 The defendant has once again asked for something to which he is
4 not entitled. The defendant **does not have the right** to have a jury
5 sequestered, so the failure to sequester a jury or to keep them
6 sequestered cannot be error. (See People v. Bunyard (1988) 45 Cal.3d
7 1189, 1219-1220, citing Powell v. Spalding (9th Cir. 1982) 679 F.2d
8 163, 166, fn. 3; Young v. State of Alabama (5th Cir. 1971) 443 F.2d
9 854, 856, cert. den. 405 U.S. 976 (1972).)) **The People also hereby**
10 **incorporate all of the previous pleadings filed and arguments made**
11 **relating to sequestering the jury.**

12 In the case of People v. Craig, (1978) 86 Cal.App.3d 905, the
13 trial court was faced with the issue of picketers inside the
14 courthouse which were seen by the jury. Craig also had a direct act
15 of spectator misconduct inside the courtroom. On review, the appeals
16 court found:

17 The jury was promptly admonished to disregard outside
18 influences. The trial court took proper, immediate action in
19 each instance to insure against prejudice. (People v. Slocum,
20 supra., at p. 883.) We hold the denial of motions for mistrial
21 based on incidents of spectator misconduct was proper. We
22 likewise hold the cumulative effect of claimed juror and
23 spectator misconduct insufficient to constitute a denial of a
24 fair trial. There simply was no showing of prejudice, other
25 than by speculation of defense counsel, which speculation was
26 easily overcome by the actions of the trial court. Even were we
27 to concede error in any or all of these alleged misconduct
28 instances, we would hold such error harmless since we are
satisfied beyond a reasonable doubt they did not contribute to
the verdict.

25 People v. Craig, supra, 86 Cal.App.3d 905, 920.

26 The People do not concede that anyone cheered any of the jurors
27 as they left the courthouse, or that, if they did, that any juror
28

1 heard or understood any such display. However, as the Craig court
2 said, even if we were to concede such points, they would be cured
3 with the simple admonition to disregard any outside influence.

4 "A trial court is afforded broad discretion in determining
5 whether the conduct of a spectator is prejudicial." (People v.
6 Lucero, (1988) 44 Cal.3d 1006, 1022.)

7
8 **The court does not need to empanel a new jury.**

9 The defendant cites Penal Code §190.4(c) and states "for
10 good cause" a second jury may be empaneled. He then cites People v.
11 Malone (1988) 47 Cal.3d 1, 27-28 and People v. Hart (1999) 20 Cal.
12 4th 546, 640-641 for the notion that "good cause" under subdivision
13 (c) is elusive. However, the California Supreme Court has said:

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

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

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

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

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

1 The defendant implies that he has a right to a new and separate
2 jury in this case, however that is not the law:

3 "Defendant has no right to be tried by separate juries (ibid.)
4 or to voir dire one way for the guilt phase and another way for
5 the penalty phase (People v. Rowland (1992) 4 Cal.4th 238, 267-
6 268)."

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

8 Again, the defendant has no right to what he requests, cites no
9 controlling authority and attempts to inject certain "facts" into
10 the record where none exists. As set forth in Bradford above, before
11 the court can discharge the jury it must be shown by the defense
12 that a juror has disregarded the law to the point where there is "an
13 inability to perform the functions of a juror, and that inability
14 must appear in the record as a demonstrable reality." (At page
15 1354.)

16 The defense claim here is nothing more than rank speculation
17 based upon dissatisfaction with the jury's verdict. The jury is
18 presumed to follow the law and has been, and will be, instructed to
19 avoid public "feelings" about this case. (See People v. Adcox,
20 (1988) 47 Cal.3d 207, 253 - "As a general matter it must be presumed
21 that the jurors observed and applied the instructions given them.")

22 **The court cannot change venue at this time.**

23 There is no basis to dismiss the penalty phase, discharge the
24 jury or empanel a second jury; therefore, there is no basis to
25 change venue. **The People also hereby incorporate by reference all of**
26 **our previous filings and arguments made on this issue due to the**
27 **lack of time to respond to this motion.**
28

1 The court has previously ruled that there is no basis to change
2 venue a second time and this ruling is further supported by the
3 extensive publicity this case has received nationwide. The defense
4 cannot show that anything would be different in any other
5 jurisdiction:

6 "Where pretrial publicity has been geographically widespread
7 and pervasive, however, a court may deny change of venue on the
8 sensible ground that it would do no good." (See, e.g., People v.
9 Manson (1976) 61 Cal.App.3d 102, 174-177; cf. People v. Edwards,
supra, 54 Cal.3d at p. 808 [prospective jurors in any county would
feel sympathy for victims under facts of case].)"

10 People v. Venegas (1994) 25 Cal.App.4th 1731, 1738.

11 **Conclusion**

12 The People therefore request that this court deny the
13 defendant's requests.

14 Dated: 11-19-04

15 Respectfully submitted,

16
17 David P. Harris
18 Sr. Deputy District Attorney
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3 **PROOF OF SERVICE BY FAX**

4 Re: People v. Scott Lee Peterson

No. SC55500

5 Stan. Co. 1056770

6 I, the undersigned, am over the age of eighteen years and
7 not a party to the within above-entitled action. On May 7,
8 2004, I served the within OPPOSITION TO DEFENDANT'S MOTION TO
9 DISCHARGE JURY AND DISMISS PENALTY PHASE AND/OR NEW JURY AND CHANGE
10 OF VENUE by faxing a true copy thereof to the fax number:

11 Mark Geragos
12 350 S. Grand Avenue, #3900
13 Los Angeles, CA 90071
14 (213) 625-1600

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

17 Dated: _____
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