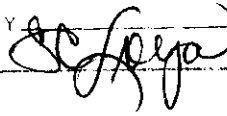


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CLERK OF DISTRICT COURT
COUNTY OF STANISLAUS

BY



DEPUT

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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF STANISLAUS
13

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 SCOTT LEE PETERSON, et al.,

19 Defendant.
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Case No. 1056770

NOTICE OF MOTION AND MOTION
TO SET ASIDE INFORMATION;
MEMORANDUM OF POINTS AND
AUTHORITIES

(Penal Code Section 995)

DATE: January 14, 2004

TIME: 8:30 a.m.

PLACE: Dept. 13

1 TO: THE STANISLAUS COUNTY DISTRICT ATTORNEY; and

2 TO: THE CLERK OF THE ABOVE-ENTITLED COURT:

3 PLEASE TAKE NOTICE that on January 14, 2004 at 8:30 a.m., or as soon
4 thereafter as counsel can be heard, Defendant Scott Lee Peterson ("Mr. Peterson"),
5 through counsel Mark J. Geragos, will move this Court for an order setting aside
6 the information and dismissing the case pursuant to Section 995(a)(2) of the
7 California Penal Code, on the grounds that Mr. Peterson was not legally
8 committed by the magistrate, and that Mr. Peterson was committed without
9 reasonable or probable cause.

10 The Motion will be based on this Notice, the attached memorandum of
11 points and authorities, the reporter's transcript of the preliminary hearing held
12 between October 29, 2003 and November 18, 2003 ("RT"), the pleadings and
13 records on file herein, and upon such other and further argument as may be
14 presented to the Court

15
16 **MOTION**


17 Defendant Scott Lee Peterson, by and through counsel, hereby moves the
18 Court for an order setting aside the information and dismissing the case pursuant
19 to section 995(a)(2) of the California Penal Code, on the grounds that Mr. Peterson
20 was not legally committed by the magistrate, and the Mr. Peterson was committed
21 without reasonable or probable cause.

22
23 Dated: December 22, 2003

Respectfully submitted,

GERAGOS & GERAGOS

24
25
26 By:


27 MARK J. GERAGOS
28 Attorney for Defendant
SCOTT LEE PETERSON

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The circumstances underlying this motion would be comical if they were not so dreadful. After a much publicized search followed by the press and public across California, the United States, and even overseas, after almost one year of preparation by police and prosecutors, and after a three-week preliminary hearing, the People have not only failed to present any evidence sufficient to substantiate even a prima facie case against Scott Lee Peterson, but it is apparent that all real and substantial leads focusing on Laci Peterson's disappearance were dismissed or ignored.

What the preliminary hearing did prove, however, was that the Modesto Police Department did not pursue a genuine investigation of Laci Peterson's disappearance. Instead, the police - from the very beginning - decided that their job was to put Scott Peterson on death row. To that end they focused their substantial resources solely on Scott, did all they could to "trip him up", and, most disgracefully, ignored extremely credible leads regarding other suspects and scenarios that they believed would not help convict Scott, leads that they believed instead were not "going in the right direction." This single-minded investigation pursued that "right direction" through the investigation, through Scott's arrest, through the preliminary hearing, and show a biased prosecution team intent on engineering this railroad straight to death row.

Shamefully, the prosecution in this case has done nothing to question the direction the case was heading. Instead, the People stubbornly continue to assert that the evidence developed in the fundamentally flawed investigation creates probable cause that Scott is guilty of the murder of his wife Laci and his son Conner. It does nothing of the sort. The sum of all of the evidence presented: Scott's actions, his behavior, his statements, Laci's routine, and the complete lack of any physical evidence suggesting wrongdoing not only establish that there is no

1 probable cause that Scott committed murder but in actuality prove that he could
2 not have committed this heinous act.

3 Instead, the evidence establishes circumstances, the truth of which the
4 defense readily concedes: That Scott Peterson was an unfaithful husband, that he
5 took advantage of a day off work to go fishing, and that on the same day his wife
6 tragically disappeared. The People's case fails even at a more basic level.
7 Although the testimony regarding the identification of Laci's and Conner's bodies
8 would satisfy the prosecution's obligation to make a prima facie showing of their
9 deaths, the prosecution has failed utterly to introduce evidence that their deaths
10 occurred through criminal means. The People have thus failed even to establish a
11 corpus delicti, the most basic requisite necessary for a defendant to be held to
12 answer.

13 None of the pieces of evidence presented by the People, considered
14 individually or collectively, comes close to showing that Scott committed this
15 crime. To force Scott Peterson to stand trial on these charges, on this record,
16 would be shameful. This Court should set aside the information.

17 **II. ARGUMENT**

18 **A. The Court Must Dismiss The Information When The Prosecution Fails** 19 **To Demonstrate Reasonable Or Probable Cause.**

20 The State's shabby showing at the preliminary hearing fails to satisfy even
21 the liberal standard of probable cause. Accordingly, it is this Court's obligation to
22 right the wrong that was committed, and set aside the information. This Court not
23 only has the authority to set aside the information, but the law mandates that it set
24 aside the information when, as here, the prosecution presents such a flimsy case.
25 Court's California Penal Code Section 995 provides that "the indictment or
26 information shall be set aside by the court in which the defendant is arraigned,
27 upon his or her motion... If it is an information: ... That the defendant had been
28 committed without reasonable or probable cause." Cal. Pen. Code § 995(a)

1 (emphasis added).

2 The probable cause standard under section 995 is straightforward. The
3 prosecution's case fails to satisfy the probable cause standard when the evidence
4 presented at a preliminary hearing is insufficient to cause a person of ordinary
5 caution or prudence to conscientiously entertain a strong suspicion that an offense
6 has been committed, and that the defendant is the one who committed the offense.
7 See *People v. Pierce* (1967) 66 Cal.2d 53, 56. Accordingly, under section 995, a
8 defendant is committed without reasonable or probable cause when the
9 prosecution has presented insufficient proof that an offense occurred and that the
10 defendant is guilty of it. *Caughlin v. Superior Court of San Diego County* (1971)
11 4 Cal. 3d 461; *People v. Lopez* (1975, 2nd Dist.) 52 Cal. App. 3d 263; *People v.*
12 *Hernandez* (1978, 2nd Dist.) 90 Cal. App. 3d 309. It is the prosecution's burden
13 to produce evidence that there is a reasonable probability, enough to induce a
14 strong suspicion in the mind of a man of ordinary caution or prudence, that a crime
15 has been committed and that the defendant is guilty. *Garabedian v. Superior*
16 *Court* (1963) 59 Cal.2d 124, 126-127.

17 **B. The People Have Failed To Produce Sufficient Evidence To Establish**
18 **Probable Cause That Laci And Conner Died As A Result Of Criminal**
19 **Means.**

20 The People, however, have failed in the most basic obligation of any
21 prosecution, to establish that an offense has been committed. The Information
22 contains two counts of murder under California Penal Code 187, alleging that
23 Scott murdered Laci and Conner. The elements of the crime of murder are
24 relatively straightforward:

- 25 [1] that a human being or a fetus was killed;
26 [2] the killing was unlawful; and
27 [3] the killing was done with malice aforethought.

28 CALJIC 8.10; Penal Code § 187. The prosecution, however, failed to introduce

1 any evidence at the preliminary hearing that Laci and Conner died by criminal
2 means. The record, therefore, fails to support a finding of probable cause, and the
3 Court must set aside the Information.

4 It is a basic rule of law that the prosecution must produce evidence,
5 independent of a defendant's own statements, to establish that a crime actually
6 occurred. As the California Supreme Court explains, "[t]he corpus delicti of a
7 crime consists of two elements: the fact of the injury or loss or harm, and the
8 existence of a criminal agency as to its cause. In any criminal prosecution, the
9 corpus delicti must be established by the prosecution independently from the
10 extrajudicial statements, confessions or admissions of the defendant." *People v.*
11 *Jones* (1998) 17 Cal. 4th 279, 301.

12 The prosecution failed in this case to satisfy the second element, introducing
13 no evidence that would show that Laci's and Conner's deaths were brought about
14 by criminal means. The preliminary hearing transcript contains testimony that
15 Laci and Conner's bodies were found at the shore of San Francisco Bay. It
16 appears to be the prosecution's speculative theory that Conner's death occurred
17 inside rather than outside the womb, and that thus both Laci and Conner would
18 share the same corpus delicti. This wild speculation is unsupported by any
19 evidence. Laci's body was in an extremely advanced state of decomposition.
20 Conner's body was found nearby, and was in much better condition. (RT 1464).
21 At the preliminary hearing, however, there was no testimony that any evidence
22 was found at the location where the bodies were discovered showing how the
23 deaths were caused.

24 Indeed, there was no evidence introduced at all in the preliminary hearing
25 suggesting Laci's cause of death or Conner's cause of death. There was no
26 eyewitness testimony that would suggest death by criminal means, there was no
27 documentary evidence that would suggest death by criminal means, and there was
28 no physical evidence that would suggest death by criminal means. The medical

1 examiner, Brian Lee Peterson testified that he could not determine the cause of
2 death of either Laci or Conner. (RT 1474). Regarding whether there were marks
3 showing the cutting of Laci's extremities, Dr. Peterson testified that "[t]here were
4 no such marks." (RT 1465). Further, Dr. Peterson's examination of Laci's
5 remains could not show whether the fractures to Laci's ribs occurred before or
6 after her death.

7 In short, the prosecution has failed in its obligation to prove that Laci's and
8 Conner's deaths were caused by a criminal act. There is no corpus delicti, the
9 prosecution has failed to establish probable cause, and this Court must set aside
10 the Information.

11 **C. The People Have Failed To Produce Sufficient Evidence To Establish**
12 **Probable Cause That Scott Peterson Committed The Charged Offenses.**

13 After dedicating extraordinary resources to their investigation, after months
14 of preparation by police and prosecutors, and after a three-week preliminary
15 hearing, the People have managed to prove the following: That Scott Peterson was
16 having an affair, and that he went boating in the morning of December 24, 2002.
17 Even if the prosecution's failure to establish a corpus delicti is ignored, the People
18 fail to establish the second element of probable cause, a showing that the accused
19 is guilty of the charged crime. The evidence introduced by the prosecution most
20 certainly cannot induce in the mind of a person of ordinary "caution and prudence"
21 any "strong suspicion" that Scott Peterson killed his wife and son. The
22 preliminary hearing failed to establish probable cause, and the Court must set
23 aside the information.

24 The reason Scott Peterson is in custody today, and has been held to answer
25 charges that carry with them a possible penalty of death, is that the Modesto
26 Police, at the very inception of the investigation of this case, in the absence of any
27 physical evidence, or any other evidence of any kind, decided that Scott was
28 responsible for Laci's disappearance. They deliberately ignored any exculpatory

1 evidence, and from day one worked only toward the goal of putting Scott in the
2 gas chamber.

3 Modesto Police Detective Phil Owen admits that was the purpose of the
4 investigation in an admission that is no less eloquent for all of its simplicity and
5 coldness. On December 27, a woman in Scott and Laci's neighborhood, Diane
6 Campos, informed Owen that on December 24th she had seen a pregnant woman,
7 resembling Laci, with a barking golden retriever, resembling Laci's dog, being
8 confronted by two suspicious looking men. Those men told the woman who
9 resembled Laci to "Shut the f—in' dog up."

10 Detective Owen testified, however, that he chose not to follow-up on Ms.
11 Campos's report of a confrontation between a woman who was very probably Laci
12 and two hostile men on the day she disappeared. He testified: "I felt that she was
13 giving me information that wasn't going in the right direction." (RT 1312). For
14 the Modesto Police, only two days into their "investigation", evidence leading to
15 suspects other than Scott was evidence "not going in the right direction." Only
16 efforts leading to Scott's arrest headed in the "right direction."

17 **1. No Physical Evidence From Which To Infer Guilt.**

18 That evidence, however, despite every effort by the police and prosecutors,
19 does not go anywhere, and does not support a finding of probable cause against
20 Scott Peterson. There is absolutely no physical evidence from which any
21 reasonable person could infer that Scott murdered his wife and child. There is no
22 murder weapon. There was no testimony of blood or other bodily fluid found in
23 the house, Scott's office or warehouse, the fishing boat, or any other vehicle that
24 conceivably could have been involved in the alleged crime. According to the
25 theory that the prosecution appears to be pursuing, the only possible transport of
26 any body would have had to have been in an open truck bed, and an open boat,
27 traveling across public streets and highways, and launched from a public marina.
28 The idea that a murderer would use transport his victims in such an open and

1 notorious manner is extraordinarily farfetched, and - in the absence of physical
2 evidence connecting it to a homicide - cannot support an inference that Scott is
3 guilty of murder.

4 The prosecution's sole claim to any "physical evidence" is a hair that may or
5 may not be Laci's found stuck to a pair of pliers supposedly found in Scott's boat.
6 The criminalist's examination of the pliers showed that they were severely rusted,
7 and had not been used for a substantial period of time. (RT 1372). Therefore, the
8 tool could not have been used in any act surrounding Laci's disappearance.

9 The inference from that piece of evidence that a cautious and reasonable
10 person would draw is simply that at one time or another, Laci had used the tool, or
11 that one of Laci's hairs had been transferred to the tool at some time by a person or
12 object that had come into contact with Laci at some time in the past. It should not
13 be the least bit surprising that an object that may have been in the presence of a
14 husband would carry a hair of the man's wife, and vice-versa.^{1/} Indeed, there is no
15 evidence showing that Laci had not been to the boat or the warehouse in the days
16 preceding her disappearance, and no evidence that Laci's innocent presence in the
17 warehouse could not have caused her to deposit the hair herself. Only a reckless
18 and unreasonable person would infer that the presence of his wife's hair on an
19 item in his boat provides proof that he used the boat to dispose of her body - and
20 that is not the standard by which the law judges whether to uphold or set aside an
21 information.

22 2. No Circumstantial Evidence From Which To Infer Guilt.

23 The other supposed evidence introduced by the prosecution is likewise
24 extraordinarily feeble. Among the circumstantial evidence introduced is that the
25 floor in the kitchen may have been mopped the morning of December 24, after a
26 visit by the housekeeper. Detectives Jon Evers and Allen Brocchini, however,
27

28 ^{1/}Indeed, immediately after searching Laci's house, the same officers and dogs searched the
boat, and could easily have transferred the hair.

1 testified that they did not see any sign of moisture or wetness on any floor inside
2 the house. (RT 699, 838). In fact, Scott and Laci had a dog and cat that lived, at
3 least part of the time, inside the house. (RT 378). The prosecution tried mightily
4 to try to paint the picture that the animals did not come in the house but were
5 thwarted by the testimony of the housekeeper. Even the idea that Laci was too
6 pregnant and too tired to have mopped was amply refuted by the fact that the
7 housekeeper testified that on the 23rd Laci not only went grocery shopping but
8 carried the bags into the kitchen herself.

9 That a murder had been committed is not an inference that a cautious and
10 prudent person would draw from the fact that pet owners mopped their kitchen
11 floor in the morning before the family was coming over for Christmas. Nor should
12 it surprise anyone that a person would wash his wet clothes from a fishing trip on
13 his return home. (RT 766-67). Again, it is not a reasonable inference that the
14 fisherman was somehow covering up a crime - particularly in the absence of any
15 scintilla of physical evidence connecting him to a crime.

16 Scott's supposed statements to Amber Frey do not raise an inference of
17 guilt. Even the prosecution would not take such a ridiculous position that a
18 spouse's adultery shows that the unfaithful spouse is guilty of murder. Scott's
19 supposed statements to her are not proof of murder; rather, they are proof of
20 adultery. Reasonably viewed, the evasions and ambiguous statements to Amber
21 Frey are nothing more than what they appear to be, the statements that an
22 unfaithful husband might make when in an affair. They do not support an
23 inference of murder.

24 Nor does evidence that Scott changed his mind about playing a round of
25 golf on December 24 and instead decided to go fishing suggest guilt. (See RT
26 794). Both were highly public activities. If Scott had intended to camouflage his
27 activities on December 24, he certainly would not have planned to use a round of
28 golf as his supposed "cover". A round of golf would necessarily involve scores of

1 witnesses, and it would have been extremely easy for anyone to confirm or debunk
2 Scott's presence at a golf course. To infer that statements the day before that he
3 planned to play golf were somehow part of a plan to cover-up nefarious deeds
4 intended for the next day would be ridiculous. The only reasonable inference
5 would be that Scott simply changed his mind and took the opportunity of a day off
6 to go fishing.

7 Finally, the prosecution's supposed evidence that Scott was "fleeing" to
8 Mexico at the time of his arrest would be laughable if the circumstances here were
9 not so grim. Scott, who was raised in San Diego, and whose family still lives
10 there, was on his way to Torrey Pines golf course to meet his father and brothers
11 for a round of golf. (RT 1667). That bears repeating: A GOLF COURSE. The
12 police even confirmed that residents receive a discount at the course thus
13 explaining his brother's identification in the car. That the theory that Scott was
14 "fleeing" could be believed by anyone is mind-boggling. It also stretches
15 credulity that an alleged "murderer on a run for the border" stopped on the way to
16 Mexico to play nine or eighteen holes while heading north. Only those the
17 geographically challenged would miss the fact that Scott was headed north, which,
18 then and now, is the direction of the Canadian border. Such an inference is not
19 merely unreasonable, it is utterly absurd.

20 Indeed, the prosecution did not introduce a shred of evidence that Scott had
21 any hostility whatsoever toward Laci and Conner. The evidence, in fact, shows
22 the opposite. The testimony of Laci's family undermines any suggestion that Scott
23 could have killed Laci and Conner. According to Laci's sister Amy, Scott wanted
24 the baby, attended childbirth classes, and discussed baby names. (RT 411-12).
25 Laci's mother testified that the last time she saw Scott and Laci there did not
26 appear to be any problems between them, that Laci had never suggested to her any
27 problems in the marriage, and that she thought the world of Scott. (RT 435-37).
28 This is not testimony that supports an inference of murder.

III. CONCLUSION

1
2 No cautious and prudent person looking at the evidence introduced at the
3 preliminary hearing can conscientiously entertain a strong suspicion either that
4 Laci and Conner Peterson's deaths came about by criminal means, or that Scott
5 Peterson committed such a crime. The only reasonable conclusion that can be
6 drawn from the record is that, from the day of Laci's disappearance, the Modesto
7 Police decided that they would investigate only Scott Peterson, that they would
8 concentrate their efforts on building a case only against Scott Peterson, that they
9 would arrest Scott Peterson, and that their testimony would convict Scott Peterson
10 and send him to death row.

11 So intent were they on that project that they refused to follow up on citizen
12 reports made on the second day of the investigation that a pregnant woman
13 matching Laci's description, with a dog matching her dog's description, had been
14 seen in a confrontation on the day of her disappearance with two hostile and
15 suspicious men telling her to "Shut the f---in' dog up." The reason given: "I felt
16 that she was giving me information that wasn't going in the right direction." The
17 "right direction" being toward Scott's guilt, the "wrong direction" being away
18 from it. Coupled with the sighting of two other witnesses that same morning of
19 suspicious people in the park one would have to be totally inept, at best, and
20 wrongfully focused on an innocent man, at worst, not to have followed up on these
21 legitimate leads.

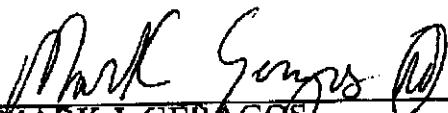
22 The record shows, however, that there is no way that a reasonable person,
23 looking at the evidence produced, could maintain a strong suspicion that Scott is
24 guilty of Laci's and Conner's murder. The prosecution failed in its most basic
25 obligation, to establish a corpus delicti. Further, the prosecution failed to produce
26 one shred of physical evidence that would connect Scott to the crime. Nor does
27 the circumstantial evidence introduced support an inference that Scott committed a
28 crime. The People have failed to establish probable cause.

1 For all the foregoing reasons, Mr. Peterson respectfully asks this Court to
2 set aside the information and dismiss the case pursuant to Penal Code section
3 995(a)(2).

4
5 Dated: December 22, 2003

Respectfully submitted,
GERAGOS & GERAGOS

6
7
8 By:


MARK J. GERAGOS
Attorney for Defendant
SCOTT LEE PETERSON

PROOF OF SERVICE BY FAX
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 350 S. Grand Avenue, 39th Floor, Los Angeles, California 90071.

On execution date set forth below, I served the following

DOCUMENTS OR DOCUMENTS DESCRIBED AS:

**NOTICE OF MOTION AND MOTION TO SET ASIDE INFORMATION;
MEMORANDUM OF POINTS AND AUTHORITIES**

_____ placing a true copy thereof enclosed in sealed envelopes with postage thereon fully prepaid, to the attorneys and their perspective addresses listed below, in the United States Mail at Los Angeles, California.

 X transmitting by facsimile transmission the above document to the attorneys listed below at their receiving facsimile telephone numbers. The sending facsimile machine I used, with telephone number (213) 625-1600, complied with C.R.C. Rule 2003(3). The transmission was reported as complete and without error.

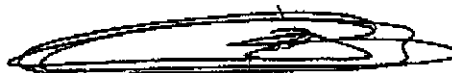
_____ personally delivering the document(s) listed above to the party or parties listed below, or to their respective agents or employees.

PARTIES SERVED BY FAX:

**Rick Disatso, DDA
David P. Harris, DDA
Fax No.: 209-525-5545**

Executed on December 22, 2003, at Los Angeles, California.

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



RAFFI NALJIAN