

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

FILED  
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CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS  
*P. Murray*  
DEPUTY

IN RE EIGHT SEALED SEARCH WARRANTS, AFFIDAVITS AND RETURNS -  
LACI PETERSON INVESTIGATION

NATURE OF HEARING RULING ON PETITION TO UNSEAL CASE NO. 1045188  
EIGHT SEARCH WARRANTS, AFFIDAVITS  
AND RETURNS

JUDGE: ROGER M. BEAUCHESNE Bailiff: None Date: June 12, 2003  
Clerk: P. Murray Reporter: None Modesto, California

APPEARANCES: None

I

This matter came on calendar on June 6, 2003, at 1:30 p.m. for an in-camera hearing to determine whether all, some, or no portions of eight search warrants, affidavits in support thereof and the eight search warrant returns should be unsealed.

Appearances:  
For the People, Deputy District Attorneys David Harris and Rick Distaso. Defendant Scott Peterson was not present; however, Mr. Mark Geragos and Mr. Kirk McAllister, attorneys-at-law, appeared on behalf of Mr. Scott Peterson.

Arguments were presented on the issue of the finality of the Fifth District Court of Appeal's decision of May 5, 2003, in related Stanislaus County Superior Court case #1045098 in which The Modesto Bee sought to unseal the same documents as those subject to the case at bar.

It has been determined that the remittitur in case #1045098 will not be issued until July 7, 2003.

On June 6, 2003, the People requested this Court take judicial notice of the testimony presented at the in-camera hearing held on April 9, 2003 in case #1045098. Defense counsel also requested this Court take judicial notice of the in-camera testimony heard by Judge Girolami on May 27, 2003, in Stanislaus County Superior Court case #1056770, People v. Scott Peterson. This Court has reviewed the transcript of the in-camera proceedings of May 27 and takes judicial notice of the testimony in both in-camera hearings held on April 9, 2003 and May 27, 2003.

No evidence was presented at the in-camera hearing held on June 6, 2003. Thereafter, the Court took the matter under submission.

## II

After due consideration of the evidence presented at the in-camera hearing held on April 9, 2003, in Stanislaus County Superior Court case #1045098 and the transcript of the proceedings held on May 27, 2003, in Stanislaus County Superior Court case #1056770 the Court renders the following decision:

Mr. Scott Peterson has been arrested for the alleged murders of Laci P. and Conner P. On April 21, 2003, a criminal complaint was filed. The victims' bodies have been recovered.

The burden to justify sealing falls upon the proponent of sealing. The Court is mindful of the Court of Appeal's decision of May 5, 2003, in which it was noted that Scott Peterson has not yet been identified as the responsible in the deaths of Laci P. and Conner P.

Nevertheless, the entire thrust of the People's evidence presented on April 9, 2003 in case # 1045098 was directed toward preserving the integrity of the investigation before an arrest was made in order to avoid alerting any suspect.

The People have not produced any evidence since Mr. Peterson's arrest to indicate they are investigating other suspects.

A review of the May 27, 2003, in-camera proceedings in Case #1056770 fails to produce additional evidence to justify sealing.

Although news media accounts have quoted defense sources as indicating other suspects are being investigated, the Court must decide the issue before it based upon testimony under oath, not on news media reports. No evidence on the investigation of "other suspects" was presented at the in-camera hearing held on June 6, 2003.

## III

There is no question that the Laci P. investigation has garnered a high-level of publicity. That fact alone does not justify continued sealing. The accused is presently represented by multiple and able defense counsel who can muster all available, legitimate means to assist the trial judge in ensuring their client receives a fair trial. Such means include, but are not limited to, extensive and vigorous voir dire of prospective jurors and a possible motion for a change of venue.

As petitioners argued in their Supplemental Memorandum of Points and Authorities in Support of Motion to Unseal Search Warrants filed on June 2, 2003:

"The news media do not dispute that the defendant's right to fair trial must be protected - in the interest not only of

the defendant but also of the public. However, all of these tests - balancing rights of the public to openness and of the defendant to a fair trial - recognize that closed courts and records are the exception not the rule"

## IV

The Court has considered the requirements of California Rules of Court, Rule 243.1(d), and finds that continued sealing of the eight pre-arrest search warrants, affidavits and returns in issue is unjustified. There has been a showing of a change in circumstances which justifies unsealing.

The change in circumstances is discussed in Sections II and III above.

Furthermore, defense counsel representing Mr. Peterson have already received copies of the eight search warrants, affidavits and returns.

At the hearing held on June 3, 2003, all counsel stipulated that the affidavit in support of the arrest warrant of Mr. Scott Peterson was no longer subject to this petition because it is within the jurisdiction of the criminal court. Therefore, this Court's ruling today does not include the affidavit in support of the arrest warrant of Mr. Peterson.

## V

The petition to unseal is **GRANTED** as to all eight pre-arrest search warrants, affidavits in support thereof and their returns.

The Court stays its ruling until one court day after this Court receives the remittitur from the Fifth District Court of Appeal in Stanislaus County Superior case #1045098 or until further order of any court of competent jurisdiction.

CC: Deputy District Attorney David Harris  
Deputy District Attorney Rick Distaso  
Ms. Charity Kenyon  
Mr. Mark Geragos  
Mr. Kirk McAllister