

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA VS. SCOTT LEE PETERSON

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NATURE OF HEARING: RULING ON MOTION TO SEAL DOCUMENTS NO: 1056770

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JUDGE: A. GIROLAMI  
Clerk: J. Carvalho

Bailiff: Larry Sweatman  
Reporter: D. Aiello

Date: 5/30/03  
Modesto, California

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Appearances: None

This matter came on for hearing on May 27, 2003, at 8:30 a.m. for the purpose of addressing the People's motions to seal the following documents:

1. Search Warrant and Return of Search Warrant dated April 24, 2003;
2. Affidavit in Support of the Ramey Warrant;
3. Search Warrant, Addendum and Return of Search Warrant dated April 21, 2003;
4. Search Warrant, Addendum and Return of Search Warrant (30-Day Extension) dated February 27, 2003;
5. Autopsy Reports of Laci and Conner Peterson.

Pursuant to the Court's order dated May 9, 2003, the Court has accepted the above documents under conditional seal. Prior to the hearing the Court unsealed the documents in order to review them and prepare for the hearing. The documents were then placed back under conditional seal pending the hearing.

The Prosecution and the Media have previously filed multiple briefs in support of their respective positions, which the Court has reviewed. After an In Camera hearing with only Prosecution and Defense representatives present, the Court heard and considered the final arguments of counsel for the Prosecution, the Defense and the Media and now finds:

- I. Effect of the Fifth District Court of Appeals Ruling on May 5, 2003, in Case No. 1045098.

The Court has read and considered the May 5, 2003, ruling of the Fifth District Court of Appeals in the matter of The People, Petitioner v. The Superior Court of Stanislaus County, Respondent, and The Modesto Bee, Real Party in Interest, Court of Appeal Case No. F042848. Although the opinion is not yet final, there has been neither a request for a rehearing nor an appeal filed. In that decision, the Fifth District addressed a ruling of this trial court issued on April 10, 2003, by Judge Roger M. Beauchesne, dealing with eight (8) search warrants and affidavits issued in this same criminal investigation, and sealing the same.

As the Media herein acknowledge, the Fifth District upheld 99% of Judge Beauchesne's order, only disagreeing with his decision to unseal the search warrants and affidavits therein on a date certain.

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To the extent that the Fifth District Court of Appeals ruling could be argued to be the "law of the case," this Court has definitely considered it. This Court has independently reached a conclusion in accordance with the Fifth District Court of Appeals' May 5, 2003, ruling; however, because this case involves different documents, the Court will provide independent findings and conclusions.

## II. Proceedings at the Hearing on May 27, 2003.

The arguments made at the hearing held on May 27, 2003, illustrate to this Court that while the criminal case herein involved may be closer to resolution than it was when the Court last considered an argument that similar documents be sealed, the fact that a criminal complaint has now been filed and a suspect arrested does not vitiate the legitimate, overriding concern previously identified as threatened by the release of the information contained in these documents.

It is not the mere fact of a large amount of pretrial publicity that concerns the Court, but rather the content of such pretrial publicity. The People have pointed out generally in Court, and specifically in the In Camera proceeding, that the information contained in these documents, if released to the public, might irreparably harm the continued investigation into this criminal matter. The Court believes that, despite the fact that the complaint has been issued and a suspect has been arrested, the investigation and search for both incriminating and exonerating evidence in this matter continues. That investigation must be thorough and unhampered especially due to the fact that this matter is charged as a capital case.

The arguments presented at the hearing and the declarations submitted in support of the People's motion show that release of the information contained in the documents might result in evidence being destroyed and witnesses being reluctant to step forward. In addition, as the investigation is ongoing, the authorities continue to receive information from the public at large. It will be difficult, if not impossible, for the authorities to discern accurate, reliable leads from inaccurate, unreliable leads if the information regarding the specifics of the case detailed in these documents is made available to members of the general public.

The release of this information may, therefore, be prejudicial in two ways - first, by hampering the continued investigation of this crime, and second, by potentially prejudicing the public opinion of this case by prematurely releasing conclusions or findings before they can be fairly weighed through the judicial process. These two related interests are identified as overriding interests.

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Regarding the search warrants the Court has considered the requirements of Penal Code Section 1534; regarding the autopsy report, the Court has considered the requirements of Government Code Section 27491; regarding the Ramey arrest warrant, the Court has considered Penal Code Section 817. It is noted that the Ramey warrant affidavit is substantially similar to the affidavits in support of the search warrants.

The Court specifically concludes that the official privilege exception of Evidence Code Section 1040(b)(2) is applicable to the facts of this case because disclosure of any of the information sought to be unsealed is against the public interest and because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.

The Court has considered all of the above and also reviewed the requirements of California Rules of Court Sections 243.1 and 243.2 regarding the sealing of documents. One of the requirements the Court must meet is to consider alternate means of avoiding the injury to the overriding interests herein identified. However, it is this Court's opinion that the less restrictive means proposed - change of venue, sequestration of the jury, and extensive voir dire of the jury - cannot sufficiently protect the overriding interests of both the public and the defendant in securing a fair trial and a reliable, informative investigation into the crime in question. Therefore, the Court finds that a less restrictive means of sealing would not sufficiently protect the overriding interests expressed in this case from harm.

### III. Documents Shall Remain Sealed.

The Court hereby orders the following documents sealed in their entirety:

1. Search Warrant and Return of Search Warrant dated April April 24, 2003;
2. Affidavit in Support of the Ramey Warrant;
3. Search Warrant, Addendum and Return of Search Warrant dated April 21, 2003;
4. Search Warrant, Addendum and Return of Search Warrant (30-Day Extension) dated February 27, 2003;
5. Autopsy reports of Laci and Conner Peterson.


There exists an overriding interest, identified above, that overcomes the right of the public to access the information contained therein. The overriding interest supports sealing. A substantial probability exists that the overriding interest will

be prejudiced if the records in issue are not sealed in their entirety until their use at preliminary examination or trial at a minimum. The Court cannot conceive of a more narrowly tailored sealing which would sufficiently protect the overriding interests and the Court specifically finds that there is no less restrictive means to achieve protection of the overriding interest.

IV. Protective Order

It is further ordered that the prior orders remain in effect. Specifically, that all of these documents now in the possession of the Prosecution and Defense shall not be released, conveyed, or disclosed to anyone outside of their respective trial teams without further order of the Court.

Dated: 5/30/03

  
A. Girolami  
Judge of Stanislaus Superior Court

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