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FILED
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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY Emily Clark DEPUTY

8 STANISLAUS COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA

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10 D.A. No.1056770
11 THE PEOPLE OF THE STATE OF CALIFORNIA) No.1056770
12)
12 Plaintiff,)
13)
13 vs.) MOTION TO
14) SEAL, AND MAINTAIN
14 SCOTT LEE PETERSON,) SEAL OF DOCUMENTS;
15) and ORDER
15 Defendant.)
16) Hrg: 12-3-03
16) Time: 8:30 a.m.
17) Dept: 2

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18
19 Comes now the People of the State of California to submit
20 the following Points and Authorities in support of a MOTION TO
21 SEAL and MAINTAIN SEAL ON DOCUMENTS:

22 **FACTS**

23 During the defendant's preliminary hearing, the People
24 "conditionally offered" two coroner/autopsy photographs into
25 evidence with the expressed understanding that either, a) the two
26 photographs (Exhibits 130, and 131) would not be made public, or
27 b) that if the court was inclined to make the photos public then
28 the People would withdraw the photos as exhibits. This procedure

1 was stipulated to by the defense, and thereafter the defense used
2 the same procedure for exhibits DD, EE, FF, and GG, which are
3 also coroner/autopsy photographs. The court then indicated that
4 this issue would be taken up at the arraignment set for December
5 3, 2003, to allow the media to be present.

6 **ARGUMENT**

7 **1. Autopsy Photographs**

8 The media has now raised an objection to the sealing of the
9 photographs in question with the same arguments that they have
10 previously (and repeatedly) made to this court and the Court of
11 Appeals. The boilerplate argument used in their motion states
12 there is a presumption of openness for records and thus the court
13 should make these photographs available.

14 In making their claim, the media neglects to cite Code of
15 Civil Procedure §129, which states:

16 "Notwithstanding any other provision of law, no copy,
17 reproduction, or facsimile of any kind shall be made of any
18 photograph, negative, or print, including instant
19 photographs and video tapes, of the body, or any portion of
20 the body, of a deceased person, taken by or for the coroner
21 at the scene of death or in the course of a post mortem
22 examination or autopsy made by or caused to be made by the
23 coroner, except for use in a criminal action or proceeding
24 in this state which relates to the death of that person, or
25 except as a court of this state permits, by order after good
26 cause has been shown and after written notification of the
27 request for the court order has been served, at least five
28 days before the order is made, upon the district attorney of
the county in which the post mortem examination or autopsy
has been made or caused to be made.

24 This section shall not apply to the making of such a
25 copy, reproduction, or facsimile for use in the field of
26 forensic pathology, for use in medical, or scientific
27 education or research, or for use by any law enforcement
28 agency in this or any other state of the United States.

1 This section shall apply to any such copy, reproduction,
2 or facsimile, and to any such photograph, negative, or
print, heretofore or hereafter made."

3 By the very definition of CCP §129, autopsy photographs are
4 exempt from disclosure under the California Public Records Act
5 (CPRA) and this is further evidenced by Government Code §6276,
6 which states:

7 "Records or information not required to be disclosed
8 pursuant to subdivision (k) of Section 6254 may include, but
9 shall not be limited to, records or information identified
in statutes listed in this article."

10 Included within §6276 is §6276.34, which specifically
11 exempts "Postmortem or autopsy photos." Under the law the media
12 is not entitled to examine or inspect or receive copies of these
13 photographs and it would be an "abuse of discretion" for the
14 court to make these photos available to the public or the press.

15 The People ask the court to keep these photographs sealed,
16 for the above reasons as well as the reasons this court has
17 previously stated to keep other documents sealed. If the court
18 believes the photographs should be unsealed, then the People
19 hereby move to withdraw them as evidence.

20 2. Other Documents

21 The media has also asked the court to reconsider the prior
22 orders sealing "search warrant documents," "arrest warrant
23 documents" and the "autopsy report." This court has previously
24 made specific findings sealing the above-mentioned documents,
25 which have been affirmed by the Court of Appeal. (See Court of
26 Appeal, opinion F043260 filed 6-3-03.) In the Court of Appeal's
27 original opinion (under case number F042848, filed 5-5-03), the

1 court said the media could renew the motion if there was a
2 "change in circumstances." There has been no change of
3 circumstances as to the warrant documents (search or arrest). In
4 its second opinion, the Court of Appeal stated, at page 8, the
5 parties control what evidence will be produced at the preliminary
6 hearing. The warrant documents were not used or produced into
7 evidence. Therefore, the "warrant" documents should remain sealed
8 for all of the previous reasons given by this court, and
9 countenanced by the Court of Appeal.

10 At the preliminary hearing, the autopsy report was used and
11 extensively testified to by the pathologist. The contents of the
12 autopsy report, but NOT THE PHOTOGRAPHS, have been made public by
13 the parties. The People have previously requested that the
14 autopsy report be released (but not including the photographs)
15 and this request was denied by the court, so therefore the People
16 submit on this document. If the court were to release this
17 report, the People would ask the court to consider the previous
18 requests of the Contra Costa Coroner's Office to redact personal
19 and confidential information in regard to the victims and any
20 witnesses involved.

21 3. Protective Order

22 The media has cited no case or fact that warrants this issue
23 being reconsidered. Nor can the media claim that the protective
24 order has hampered their ability to "gather" the news, given the
25 extensive publicity during the preliminary hearing. The court
26 should not revisit this issue.

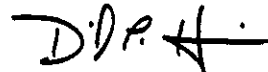
Conclusion

The People submit that the court should deny the media's request for the autopsy photographs, and should not revisit the "warrant" document issue or the protective order.

Dated: December 1, 2003

Respectfully submitted,
JAMES C. BRAZELTON
District Attorney

By:



David P. Harris
Deputy District Attorney

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24 It is hereby ORDERED by the court pursuant to California
25 Rule of Court rule 243.2 that the within document(s),
26 "photographs - Exhibit 130, 131, DD, EE, FF, and GG" are sealed
27 pending further order of this court.
28

Dated: _____

A. Girolami
Judge of the Superior Court