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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 4/22/2024
By /s/ Carl Saffold
Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN MATEO**

12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff,

15 vs.

18 SCOTT LEE PETERSON,
19 Defendant.

San Mateo County Case No.
SC055500A

Stanislaus County Related Case No.
1056770

First District Court of Appeal Case No.
A167615

17 **PEOPLE'S OPPOSITION TO
MOTION FOR DNA TESTING
(PEN. CODE §1405)**

Date; May 29, 2024
Time: 9:00 a.m.
Dept. 12
The Honorable Elizabeth M. Hill

21 Comes now the People of the State of California, by and through their attorney, JEFF
22 LAUGERO, Stanislaus County District Attorney, BIRGIT FLADAGER, Special Prosecutor, and
23 DAVID P. HARRIS, Special Prosecutor, and submits their Opposition to Defendant Peterson's
24 Motion for DNA Testing (Pen. Code §1405).

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1 **INTRODUCTION**

2 In 2004, a jury convicted defendant Scott Lee Peterson of the murders of Laci¹ and her
3 unborn son, Conner. Following his appeal and petition for writ of habeas corpus, the California
4 Supreme Court affirmed defendant’s conviction, but remanded the matter to the Trial Court for
5 retrial of the penalty phase and for resolution of Claim One in the Petition for Writ of Habeas
6 Corpus. In 2021, defendant Peterson was resentenced to Life Without the Possibility of Parole
7 and, following an evidentiary hearing on Claim One in the Petition for Writ of Habeas Corpus,
8 the Trial Court denied the Petition in 2022.

9 " “For purposes of collateral attack, all presumptions favor the truth, accuracy,
10 and fairness of the conviction and sentence; defendant thus must undertake the
11 burden of overturning them. Society's interest in the finality of criminal
12 proceedings so demands, and due process is not thereby offended.” ” (*People v.*
Duvall (1995) 9 Cal.4th 464, 474, quoting *People v. Gonzalez*, supra, 51 Cal.3d at
p. 1260.) "

13 (*In re Lawley* (2008) 42 Cal.4th 1231, 1240.)

14 Defendant has filed a Second (successive) Petition for Writ of Habeas Corpus in the First
15 District Court of Appeal. Informal briefing in that matter was suspended six months pending
16 defendant Peterson’s adjudication of the instant motion for DNA testing as well as another motion
17 requesting post-conviction discovery in the Trial Court.

18 As noted by the California Supreme Court, “[B]ecause this case was the subject of such
19 widespread media attention, it is unclear what purpose a second change of venue would have
20 served.” (JNE Exhibit, Opinion, p. 39.) That attention encompassed the initial investigation, the
21 resulting trial and even post-trial matters. During the investigation into Laci’s disappearance,
22 over 10,000 tips were called in to law enforcement and volunteers assisting in the search.²
23 Sightings of Laci Peterson were reported across the world, but none proved to be correct, as she

24 _____
25 ¹ These pleadings and any future pleadings going forward will refer to the victims as Laci and Conner. We
follow the practice used by the California Supreme Court and there is no disrespect meant in use of only
their first names.

26 ² In addition to the volunteer search center established by the family of Laci and Conner, defendant
27 Peterson established his own “tip line,” but most of those tips were not all shared with law enforcement or
the family of Laci and Conner. The People are unable to say exactly how many tips were received on
28 defendant Peterson’s “tip line.”

1 and her son were found almost four months later where defendant Peterson reported he had been
2 fishing in a recently purchased boat, the existence of which he had hidden from everyone.

3 Defendant Peterson’s lies in this case were extensive, presented to the jury through
4 statements and captured recordings, previously reviewed by multiple courts and clearly preclude
5 any support for additional DNA testing. Defendant Peterson told some witnesses he was golfing³
6 when Laci went missing, then he told law enforcement he went fishing, but could not recall what
7 fish he was trying to catch.⁴ Weeks prior to Laci’s disappearance, defendant Peterson told Amber
8 Frey and her friend that he had “lost his wife.” Immediately after he told them that, defendant
9 Peterson bought the boat and searched the conditions of the San Francisco Bay online. During a
10 candlelight vigil for his missing wife on December 31, defendant Peterson smiled and joked with
11 others at the vigil. He also called Ms. Frey and told her he was watching fireworks at the Eiffel
12 Tower in Paris. When subsequently confronted by Ms. Frey about saying he “lost his wife” before
13 she went missing, defendant Peterson would not explain how he could have lost his wife before
14 she went missing. Peterson also lied about making the boat anchors, of which several are still
15 missing⁵.

16 _____
17 ³ (RT 9362:2-6, 17784:2-5.)

18 ⁴ (RT 9796:23-9797:1, 9868:6-12, 9888:18-23, 9948:8-11.)

19 ⁵ In the defendant’s warehouse during the first search warrant a flat trailer was found with grey powder
20 residue (believed to be and tested to confirm it was cement) in circular patterns with voided areas
21 (RT12592:5-26, Exhs. 122B, 122D, 122E, 122F, 122G) The pattern on the trailer was consistent with
22 making multiple anchors. There were five areas of voids (RT13061: 1-13062:12). Peterson admitted to
23 Det. Grogan during an interview that he made an anchor at the shop (RT18204:22-18205:17). He said he
24 bought a bag of cement (and gestured the size to Grogan). Grogan accepted the gesture as meaning a 60-
25 pound bag, and not either an 80- or 90-pound bag (RT17724:6-17725:25). The defendant told the detective
26 that he threw the leftover bag of cement away at his home. However, on January 16, 2003, at 1346 hours
27 a recorded phone conversation between Brent Rocha and Scott Peterson was captured, where Peterson
28 stated:

“Yeah, I made a boat anchor with some cement and then I put some in the driveway here, [at the house]
yeah.” (RT 15411:16-15418:10; Trial Exh. 207B-2).

The concrete anchor found in the boat (Trial Exh. 72) was examined by a Robert C. O’Neill, an expert
geologist/petrographer (RT 17264:23-17268:12). O’Neill testified that the anchor was cast in a mold and
weighed 8.6 pounds (RT 17288:22- 17290:8; 17292:1-17296:16; 17314:14-17333:18; 17331:21-
17332:11). The concrete was mixed in the same container that the anchor(s) were made (RT17295:15-

1 Defendant's current motion for DNA testing overlooks the fact there was DNA testing
2 previously done in 2013 following defendant's first Pen. Code section 1405 motion. After that
3 test that did not develop anything new to support his first Habeas Corpus petition, there was yet a
4 second DNA testing in 2019 that was equally fruitless. Furthermore, defendant's claims in
5 support of a third DNA testing post conviction have almost all been presented to one court if not
6 multiple courts. In light of the overwhelming evidence that supports the defendant's conviction,
7 his failure to establish a chain of custody for several of these items -- let alone actual evidence
8 that the items even exist -- and the prior fruitless DNA testing that has already been done, the
9 People ask this Court to deny defendant's motion forthwith.

10 **STATEMENT OF FACTS**

11 **I. BACKGROUND**

12 **a. Laci and the Defendant**

13 Laci Denise Rocha was born on May 4, 1975. (RT 8966.) She was one of two children
14 born to Sharon and Dennis Rocha during their marriage. (RT 9160.) Laci had a brother named
15 Brent who was four years older than she. (RT 9160.) In 1976, Sharon and Dennis divorced
16 when Laci was one year old. (RT 8964; 9160.) Subsequently, Sharon met Ron Grantski and
17 began dating him when Laci was two years old. (RT 8964.) Sharon and Ron remained a couple
18 and together they raised Laci in Modesto, California. (RT 8964; 8965.) Dennis Rocha had a
19 second daughter named Amy. (RT 8817.) Amy is Laci's half-sister and although Amy was six
20 years younger than Laci, they talked often and became very close after Laci moved back from
21 college. (RT 8817; 8818; 8828.)

22 _____
23 17296:16.) O'Neill described the process as someone adding powder from the sack material to the
24 container and then adding water. (RT17296:17-17297:6.)

25 O'Neill compared the concrete mix of the anchor with the concrete found by the driveway (as mentioned
26 in the Rocha call) at the Peterson house. (RT 10794:3-10795:10.) He opined that the samples were not
27 consistent. (the anchor being having been made from a commercially available pre-mixed bag like you
28 find at Home Depot) (RT 17330:10, 17331:5.) All that has been accounted for out of that sixty-pound
bag of cement is one 8.6-pound anchor, five voids where something had been made and a lot of grey
dust. Logic suggests those voids represent additional anchors that were made and used to weigh Laci
down.

1 In the fall of 1993, Laci started college at the California Polytechnic State University,
2 frequently referred to as “Cal Poly,” in San Luis Obispo. (RT 8819; 8966; 9161.) Laci was
3 described as a person who would brighten up the room, vivacious, intelligent and the life of a
4 party. (RT 9300.) While attending classes, Laci met the defendant, who lived in San Luis Obispo
5 and was working at a local restaurant. (RT 8819; 8966-8967; 9162.) The first time Laci
6 introduced the defendant to her mom at the restaurant where he worked, the defendant greeted
7 Laci with a dozen red roses and he presented Sharon with a dozen white roses. (RT 8967-8968.)
8 The defendant and Laci continued to date and their relationship grew stronger through her
9 college years. (RT 8968: 9162-9163.)

9 While she was dating the defendant, Laci got McKenzie, a golden lab retriever puppy.
10 (RT 9170; People’s Exhs. 68 and 68A.) McKenzie was a hyper and playful dog but was
11 protective of Laci and would take an aggressive stance if a stranger approached her. (RT 9170-
12 9172; People’s Exh. 68 and 68A.) McKenzie would also get excited and bark if people came
13 over. (RT 10558-10559.)

13 In August of 1997, surrounded by family and close friends, Laci and the defendant
14 married at Avila Beach. (RT 8968-8969.) Laci graduated in December of 1997 with a degree in
15 ornamental horticulture. (RT 8968; 9177.) In the beginning of 1998, Laci and the defendant
16 lived apart after they got married while the defendant finished his degree in agriculture business
17 at Cal Poly and Laci worked for a company out of Richmond. (RT 8969; 9166.) The defendant’s
18 parents, Jackie and Lee Peterson, gave the defendant a crate packaging business which the
19 defendant ran while he finished his degree. (RT 8970; 9164–9165.)

19 Once the defendant graduated, Laci moved back to San Luis Obispo. (RT 8969; 9164.)
20 The defendant sold the packaging business and used the proceeds to open a restaurant called
21 “The Shack” with Laci. (RT 8970; 9164; 9165.) The business was a beer and burger place for
22 college students. (RT 9165.) The couple operated the restaurant for about a year and a half
23 before they sold it and moved to Modesto. (RT 8970; 9166.) The defendant told Brent, Laci’s
24 brother, that he did not want to flip burgers for the rest of his life, so the couple sold the business.
25 (RT 9166-9167.)

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1 **b. A New Home, Comfortable Lifestyle and Their Finances**

2 In June 2000, Laci and the defendant initially lived with Laci's mother and stepfather⁶,
3 Sharon and Ron, for a couple of weeks before they moved into a rental house. (RT 8971; 9168-
4 9169.) The defendant's parents, Lee and Jackie Peterson, gave the defendant \$30,000 for a down
5 payment towards the couple's first home. (RT 16424; 9169-9170.) In October 2000, Laci and
6 the defendant purchased a home, located at 523 Covena Avenue, in the La Loma neighborhood
7 of Modesto.⁷ (RT 8971-8972; 16414-16415.) People's Trial Exhibit Number 1E, depicted
8 below, shows Laci and the defendant's house in Modesto, along with Laci's Land Rover and the
9 defendant's Ford pickup truck. (People's Trial. Exh. 1E.)



23 ⁶ Although Sharon and Ron were never officially married, Ron was considered to be Laci's stepfather.
24 (RT 9091.)

25 ⁷ As described in the People's original Change of Venue Motion, "...California is the most
26 populous of our fifty United States and Stanislaus County is now ranked as the 16th largest out of
27 58 California counties. The City of Modesto where the crime occurred is ranked as the 15th largest
28 city in the state. According to data collected by the United States 2000 census and available from
the State of California, Department of Finance website (at
<http://www.dof.ca.gov/html/Demograp/druhpar.htm>), Stanislaus County had a population of
481,600." (People's Opp. Exh. 3, page12, paragraph 3 [omitting the original attachments]:

1 In November of 2000, Laci began working daily as a part-time substitute teacher. (RT
2 8972-8973.) The defendant started working as a manager of a newly incorporated domestic sales
3 fertilizer products company, named TradeCorp U.S.A.⁸ (RT 11627; 13984; 13987–13988.) The
4 defendant operated the business out of a leased warehouse in Modesto, located at 1027 North
5 Emerald Avenue.⁹ (RT 11627; 13387.) In the beginning of July 2002, the defendant hired his
6 first TradeCorp employee, Eric Olsen, as a territory sales rep for Southern California, Arizona
7 and Nevada. (RT 11626-11627.) The defendant traveled for work frequently. (RT 10560.)

8 The defendant and Laci lived a comfortable lifestyle. (RT 8831; 9177– 9178.) In
9 December 2002, the defendant’s parents bought him a \$20,000 membership in the Del Rio
10 Country Club in Modesto where defendant could golf and work out. (RT 11827; 14062.)

11 Regarding the defendant’s personal finances, Laci and the defendant’s expenses were
12 high in relation to the defendant’s cash flow.¹⁰ (RT 13974:1-18.) In 2002, nearly 70 percent of
13 the defendant’s take-home pay was consumed by fixed expenses and credit card debts versus
14 58.7 percent in 2001. (RT 13974-13978.) Although the Petersons’ mortgage debt was being paid
15 down, there were medical bills that were past due, including for health insurance. (RT 13981;
16 14067.)

17 Since its incorporation in 2000, TradeCorp had not turned a profit.¹¹ (RT 13984.) The
18 company had a net operating loss of \$136,000 (RT 13986.) During the first year of incorporation,
19 the company posted a loss of \$40,000. (RT 14089.) The loss increased to \$200,000 in the second
20 year. (RT 14089.) TradeCorp was not meeting the sales goals set by the parent organization and
21 owed the parent company \$190,000. (RT 13994; 14053.) The defendant, who was responsible
22 for TradeCorp’s finances, made minimum payments and carried balances forwarded on the

23 ⁸ TradeCorp U.S.A. was formed in October 2000. (RT 14079.) The parent company was based in Spain
24 and called TradeCorp Espana. (RT 13987.) TradeCorp International owned TradeCorp Espana. (RT
25 14114.)

26 ⁹ Defendant would store the liquid fertilizer which came in five-gallon containers, on pallets in the
27 warehouse. (RT 11629.)

28 ¹⁰ As part of the subsequent police investigation, Gary Nienhuis, the internal auditor for the city of
Modesto evaluated and testified at trial to the defendant’s personal and business finances during 2001
versus 2002. (RT 13960-13963.) Nienhaus’s analysis did not consider any potential secondary sources
of income, such as Laci’s future inheritance or pawning of personal items. (RT 14014-14017.)

¹¹ In addition to Gary Nienhuis’s evaluation, TradeCorp hired Jeffrey Coleman, a Certified Public
Accountant, who also determined that TradeCorp had never turned a profit. (RT 14078; 14089.)

1 company credit card accounts. (RT 13990-13991.) He also completed two new credit card
2 applications, one in his name and the other in employee Eric Olsen’s name.¹² (RT 13992.) In
3 the two applications which were both signed by the defendant, he indicated the company had a
4 net profit of \$150,000 and \$500,000, respectively, both contrary to the company’s financial
5 records. (RT 13933.) Furthermore, the company failed to pay its payroll taxes in 2002 to the
6 Internal Revenue Service,¹³ (RT 14082-14083; 14085) and the mill taxes owed to the city of
7 Modesto. (RT 14113-14114.) However, the records showed that the defendant used company
8 money to pay the fine on a speeding ticket. (RT 14049.)

8 **c. Laci and Conner**

9 i. Thrilled She Is Going to Be a New Mom

10 Due to a prior medical issue, Laci was unsure if she could even get pregnant. (RT 9291;
11 10374; People’s Exh. 64.) After several attempts to conceive a child, Laci was thrilled she
12 became pregnant in the fourth year of their marriage. (RT 9285; 9290; 10580.) She was very
13 happy about being pregnant and excited about becoming a mother. (RT 8830; 9228; 9285.)

14 When Rose, Brent Rocha’s wife, asked the defendant if he was ready to have a child, the
15 defendant replied, “I was kind of hoping for infertility.” (RT 9282; 9285.) Rose did not know if
16 the defendant was joking but noticed that he was not laughing or smiling when he made the
17 comment. (RT 9295.) According to Brent, Laci’s brother, the defendant had appeared excited
18 about having a child and went to most of Laci’s prenatal appointments (RT 8932-8933; 9229.)
19 However, in Brent’s view, Laci was the one who wanted a family and the defendant acquiesced
20 to Laci’s wishes. (RT 9269.)

21 Sometime during the summer of 2002, Brent and his wife Rose were in the pool at Laci’s
22 and the defendant’s house when Brent and the defendant were talking about life. (RT 9175-
23 9176.) The defendant seemed “down” and “kind of quiet” at the time and the defendant

24 ¹² Eric Olsen sent an email to resign from TradeCorp to the defendant on December 26, 2002, after the
25 defendant had made several promises to him that never happened, such as training, health insurance and
26 benefits. (RT 11636-11637; 11638; 11655.) Olsen was also frustrated because around Thanksgiving and
27 the beginning of December, the defendant was not ordering the materials like he was supposed to, so
28 their product was not coming in. (RT 11637; 11652-11653.)

¹³ On December 20, 2002, Jeffrey Coleman called and left a message for the defendant advising him that
his payroll taxes were overdue. (RT 14083 -14084.)

1 mentioned that fatherhood was approaching and that he was turning 30 years old.¹⁴ (RT 9176.)
2 During the same conversation, he confided in Brent that his job was not going well. (RT 9176.)
3 The defendant explained that he was interviewing new sales associates for his business and was
4 hoping he would find someone who had better sales skills than he did.¹⁵ (RT 9176.)

5 ii. A Low-Risk Healthy Pregnancy

6 During Laci's pregnancy, she had her routine two ultrasounds at 10 and 20 weeks
7 which predicted her due date to be February 10, 2003.¹⁶ (RT 10372-10373; 10385-10387;
8 17228; 17235-17236.) She had a healthy pregnancy and was considered low risk. (RT 17230.)

9 On August 20, 2002, Laci saw OB-GYN Dr. Tina Endraki for a routine appointment.
10 (RT 10372.) The defendant attended the appointment. (RT 10381.) Laci was 15 weeks and one
11 day pregnant. (RT 10374.) She was very cheerful and desired the pregnancy but had some
12 concerns because she was feeling pressure in her lower abdomen, near her pelvic region. (RT
13 10374; 10381.) Dr. Endraki conducted another ultrasound and found that Laci's cervix was
14 strong and that she and the baby were just fine. (RT 10375.)

15 iii. Having A Boy Named Conner and Time for New Clothes

16 Laci and the defendant learned they were having a baby boy and began planning on
17 names whereby they decided to name him Conner. (RT 8936; 9459.) As Conner grew inside
18 Laci's womb, she bought new clothes. (RT 9963.) On August 30, 2002, Laci purchased six items
19 at the Motherhood Maternity store located in Modesto. (RT 9963-9964.) As depicted below,
20 People's Trial Exhibit Numbers 39 [a cropped cuffed rayon-nylon stone pant]¹⁷, 42 [a black and
21 tan blouse with a three-quarter bell sleeve], 44 [an embellished silk shantung red cropped pant
22 with an embroidered dark red short-sleeve shell], 46 [a V-neck ruffle Georgette tan and pink

23 _____
24 ¹⁴ This discussion presumably took place sometime before October 24, 2002, given that the defendant
25 was born on October 24, 1972. (RT 19081; People's Trial Exh. 149.)

26 ¹⁵ In mid-November, the defendant hired Rob Weaver as a new sales associate to work for TradeCorp.
27 (RT 11639.)

28 ¹⁶ On July 16, 2002, Laci had her first ultrasound which corroborated her due date to be February 10,
2003 and which was calculated from the last day of Laci's menstrual period, being May 6th. (RT 10373;
10384; 17235 -17236.) As routine practice on September 24, 2002, Laci had her second ultrasound, at
19 weeks 2 days into her pregnancy which listed her due date to be February 16, 2003. (RT 10373-
10374; 17236.) Since the dates were within six days, it is standard practice amongst the medical industry
to take the first date which is often seen as the most accurate ultrasound. (RT 10384; 17238-17239.)

¹⁷ Khaki, stone or tan have been interchangeable colors used to describe these capri-style pant. (RT
9971-9972.)

1 blouse], and 48 [a Georgette red and cream blouse with flutter sleeve], show the six garments
2 that Laci purchased from Motherhood Maternity. (RT 9965; People’s Exhs. 39, 42, 44, 46 and
3 48.) A month later, Laci purchased a new maternity bra from the same Modesto Motherhood
4 Maternity store. (RT 9973.)



10 iv. Dizzy Spells and Doctor’s Recommendation to Quit Walking

11 As her pregnancy progressed, Laci became increasingly more uncomfortable and was not
12 feeling well. (RT 8973.) At the end of October, Laci told her mother Sharon and sister Amy
13 that she had a dizzy spell and Laci said she was afraid that she was going to pass out while she
14 was walking the dog, McKenzie, in the park. (RT 8832; 8982; 9307.) Laci was really
15 embarrassed because she had started vomiting and the maintenance people in the park had to
16 clean up after her. (RT 8982.)

17 On November 6, Laci had another dizziness episode while walking the dog in the park
18 and had to sit down right away so she did not get sick. (RT 8983.) This time Laci called her
19 doctor when she got home. (RT 8983.) She spoke to Dr. Endraki and she complained about
20 symptoms of dizziness and lightheadedness when she walked. (RT 10376.) At the time, Laci
21 explained that she had been taking twenty-minute walks and was experiencing these symptoms
22 on two separate occasions - once today and once a week prior. (RT 10376.) Dr. Endraki
23 instructed her to stop exercising and if she felt like she had to exercise, then to do it in the
24 afternoon when she would be more hydrated and had eaten. (RT 8983; 17736; 17738.)

25 Two days later, on November 8, 2002, Laci called the doctor’s office again with the same
26 complaint and spoke to Nurse Practitioner Cheryl Smith. (RT 10378.) Laci complained of
27 shortness of breath while walking but denied passing out. (RT 10378.) Smith noted Laci’s
28 symptoms in her chart and discussed self-care measures with her. (RT 10378.) Laci followed up
with a doctor’s appointment scheduled for November 25th (10387-10379.)

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1 v. Laci is Feeling Tired and Heavy but Prepares for Conner's Arrival

2 Beginning in November, Laci and the defendant hired Margarita Nava to help clean their
3 house twice a month. (RT 8661- 8662.) By mid-November 2002, Laci complained to Sharon
4 that her feet were swollen and she was having a hard time standing up for any length of time and
5 walking. (RT 8984.) Laci said her back ached and she seemed to be tired all the time. (RT
6 8984.) She described herself as being tired and heavy. (RT 9307.) Laci resigned her job as a
7 substitute teacher in November 2002 due to these symptoms and wanted to focus on her desire
8 to prepare for the baby to come. (RT 8973.)

9 Laci set up the nursery and decorated it in a nautical sea theme, as depicted below in
10 People's Exhibit Number 115A, as she prepared for Conner's arrival. (RT 9068-9069; People's
11 Exh. 115A.) A sonogram was on top of the white dresser. (RT 12482.)



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25 Laci attended her friend Kim McNeely's birthday party at Chili's on November 14, 2002.
26 (RT 10524.) She told her long-time childhood friends, Stacey Boyers and Lori Ellsworth, that
27 she was going to quit walking because she had gotten sick while walking and both her doctor
28

1 and mother told her to stop walking. (RT 10524-10525; 10552.) Laci said she was later in her
2 pregnancy, feeling nauseous and was always feeling tired. (RT 10509.)

3 On November 25, 2002, Laci went to her follow-up appointment with OB-GYN Dr. Ester
4 Tow-Der and she complained of swelling in her hands and ankles. (RT 10378 –10379.) Laci
5 reported that she had completed her Lamaze class and that Conner continued to be actively
6 moving. (RT 17237.) At that time, Dr. Tow-Der could not determine whether the baby was in
7 the fetal vertex position, meaning if he was facing head-down in her pelvis in preparation for
8 proper position for birth. (RT 17231-17232.)

8 **II. DEFENDANT PREDICTED LACI’S DISAPPEARANCE**

9 **a. Defendant Meets Shawn Sibley and a Business Dinner Becomes Personal**

10 In October, 2002, the defendant and his sales associate Eric Olsen went to the Disneyland
11 Hotel in Anaheim to attend the California Association of Pest Control Advisors three-day pest
12 control trade show. (RT 11630; 11362; 11660; 11669.) On the first night of the conference, the
13 defendant and Olsen went out to dinner with David Fernandez, who had previously worked with
14 Olsen and a female named Shawn Sibley who the defendant and Olsen had met at the conference.
(RT 11361-11362; 11671; 11658; 11704.)

15 As they walked to the restaurant, the defendant asked Sibley what he should write on the
16 backside of his name tag that would attract women to him that night. (RT 11708-11709.) In
17 response, Sibley wrote the words, “I’m rich,” on the defendant’s name tag because the defendant
18 had been talking about owning two homes, having a lot of money, launching this company and
19 being successful. (RT 11709.) Defendant had told Sibley that he lived in Sacramento. (RT
20 11742.)

21 During dinner, the defendant moved the conversation away from business and began
22 asking personal questions of Sibley. (RT 11673; 11709.) Defendant told Sibley, who is a
23 vegetarian, that during college he became a vegetarian for a short time for a girl just for the great
24 sex. (RT 11710.) The defendant constantly redirected the conversation about sex, even though
25 Sibley had repeatedly told the defendant that she was engaged. (RT 11633-11634; 11710;
26 11714.) Defendant pressed Sibley to determine how committed she was in her relationship with
27 her fiancée and what her favorite sexual positions were. (RT 11674; 11710.) Defendant never

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1 told Sibley that he was married. (RT 11709.) The conversation made both Fernandez and Olsen¹⁸
2 uncomfortable and they left after finishing their dinner. (RT 11635; 11674.)

3 After dinner, the defendant and Sibley went back to the Disneyland Hotel bar and
4 continued to drink and talk. The defendant indicated that he had a lot of one-night stands and it
5 seemed like all the women he met were just these bimbos with no brains. (RT 11712.) The
6 defendant was interested in finding someone who had intelligence because he wanted to have a
7 long-term relationship and he asked Sibley to hook him up with her single friends. (RT 11712.)
8 As the night went on and the defendant pressed her, Sibley agreed that if the defendant was
9 serious about having a long-term meaningful relationship, then Sibley would introduce him to
10 her friend named Amber. (RT 11713; 11714.) Amber Frey and Shawn Sibley were best friends.
11 (RT 14554.) Defendant wanted to know what Amber looked like and indicated that he likes thin
12 women. (RT 11713.) The defendant was interested in meeting Amber. (RT 11714; 11716.)

13 After the conference, Sibley and the defendant continued to communicate by phone calls
14 and email. (RT 11718.) In one of the emails, the defendant said he had gone to Mammoth to ski
15 and he was looking for snow bunnies up there. Sibley ended the email by saying, “See you later
16 H.B.” which stood for Horny Bastard because the defendant had previously indicated that he was
17 going to have the words “Horny Bastard” put on his business cards. (RT 11718.)

18 **b. Defendant is Looking for a Serious Relationship**

19 i. Laci Watches “The Bachelor” While Defendant Claims To Be One

20 During November, Shawn Sibley gave the defendant Amber Frey’s phone number so
21 they could set up a date. (RT 14554.) The defendant called Amber and they agreed to meet
22 during the middle of the week when he was coming through town for work.¹⁹ (RT 14556.) As
23 they talked the defendant asked Amber if she was intelligent. (RT 14568.)

24 On Wednesday, November 20, 2002, while the defendant was out of town for business,
25 Laci attended a get-together with several of her girlfriends at Lori Ellsworth’s house. (RT
26 10553.) They watched the final series of The Bachelor together. (RT 10570; 10528; 10553.)

27 Meanwhile, that same night, the defendant had his first date with Amber Frey. (RT
28 14561.) Sibley agreed to watch Amber’s 21-month-old daughter during their date. (RT 11720;
14558; 14560.) The plan was to meet at the Elephant Bar in Fresno and then go to a Japanese

¹⁸ Eric Olsen was aware that the defendant was married and that his wife Laci was currently pregnant.
(RT 11634; 11660.)

¹⁹ At that time, Amber lived in Madera, California. (RT 10798.)

1 restaurant for dinner (RT 14559.) Amber was waiting in the waiting area of the Elephant Bar
2 when the defendant walked in and greeted her with a big grin. (RT 14561.) He said he had
3 worked all day. (RT 14562.) The defendant was wearing a suit. (RT 14561.) After meeting,
4 the defendant indicated that he had not had a chance to check into his hotel yet and asked Amber
5 to go with him so he could change his clothes before they went to dinner. (RT 14562.) They
6 left together in the defendant's truck and went to the Radisson Hotel in Fresno. (RT 14562.)
7 The defendant checked in and Amber accompanied him to his hotel room. (14562.) Once in the
8 room, the defendant behaved like a gentleman and opened his brown leather duffle bag, pulled
9 out a bottle of champagne and a box of strawberries and poured two drinks. (RT 14563-14565.)
10 He showered and changed his clothes. (RT 14563.) They went to the restaurant where the
11 defendant arranged for a private room for just the two of them to have dinner. (RT 14565-
12 14567.) They stayed there for three hours, enjoying each other's company until the restaurant
13 closed and the employees asked them to leave. (RT 14574.) Afterwards, they walked next door
14 to Bebe's bar where they had drinks, sang karaoke together and slow danced. (RT 14574-14576.)
15 There, the defendant kissed Amber for the first time. (RT 14576.) They stayed at Bebe's until
16 the bar closed, then stopped at Food Maxx, before going back to the defendant's hotel. (RT
17 14575; 14577.)

18 Amber found the defendant to be charming, easy to talk to and he made her feel
19 comfortable. (RT 14571; 14575.) The defendant told Amber that he was not married and Amber
20 never saw him wear a wedding ring. (RT 14572.) He said he wanted a serious relationship which
21 was what Amber was looking for, too. (RT 14578.) The defendant told her that he worked at
22 TradeCorp selling fertilizer. He had a warehouse in Modesto, but lived in Sacramento and had a
23 condo in San Diego. (RT 12569-13570.) The defendant never told Amber that he lived in
24 Modesto. (RT 14573.)

25 The defendant said he was going to be taking a trip to Alaska with his father, brother and
26 uncle next week for Thanksgiving. (RT 14570.) He said that he would try to talk with Amber
27 over the phone, but that he wasn't great with the phone. (RT 14581.)

28 The defendant never told Amber that he had a child on the way. (RT 14573.) However,
during their date, the defendant told Amber that he wanted to meet her daughter. (RT 14588.)
Amber spent the night with the defendant in his hotel room. They had sex for the first time and
he wore protection. (RT 14579.) In the morning, the defendant took Amber back to her vehicle
at the Elephant Bar. (RT 14578; 14580.) Before leaving, Amber made a comment about it being

1 awkward that they had sex on the first date and the defendant reassured her that it was appropriate.
2 (RT 14580.)

3 After the date, the defendant called Amber later that day on the 21st of November and said
4 he wanted to stop back by on his way through before he left to see her one more time before he
5 left for Alaska, however, he was unable to stop. (RT 14584.)

6 ii. Fishing in Alaska Versus Pushing Laci in a Wheelchair at Disneyland.

7 The following week, the defendant called Amber and said he was on his way to Alaska
8 to go fishing. (RT 14582.) In one call, the defendant left Amber a voicemail message and said
9 that he was looking through the California hiking tour guide booklet and asked her to think of
10 somewhere she wanted to go. (RT 14585.) Amber had originally told him that she enjoyed
11 hiking during their first date. (RT 14588.) After discussions, they planned their second date to
12 go hiking at Squaw's Leap in Auberry, on December 2, 2002. (RT 14586-14588.)

13 On Sunday November 24, 2002, Sharon and Ron were at Laci and the defendant's house
14 for a family dinner. Laci told Sharon that the defendant had joined the Del Rio Country Club.
15 (RT 8977.) For Thanksgiving, Laci was supposed to go with the defendant to a baby shower and
16 a trip to Disneyland in southern California. (RT 8985.) However, Laci told her mom that she did
17 not want to go because she wasn't feeling well, her feet were swollen and she could not walk
18 around the park. (RT 8986.) Due to her condition, the defendant subsequently pushed Laci around
19 in a wheelchair when they went to California Adventure Park, Disneyland. (RT 8987; 18027.)

20 iii. A Hike and Picnic at Squaw Leap for Three

21 On Monday, December 2, 2002, the defendant came to Amber's house and gave her an
22 Amaryllis plant. (RT 14589.) Although she did not ask him to, the defendant bought groceries
23 because he planned to make dinner for her that night. (RT 14589-14590.) After that, they moved
24 the car seat to the defendant's pickup truck and picked up Amber's daughter from school. (RT
25 14591-14592.) Defendant drove Amber and her daughter to Squaw's Leap in Auberry for a hike.
26 (RT 14592.) Defendant brought items with him for a picnic which they had until it got chilly.
27 (RT 14593.)

28 On the way back, Amber's daughter got tired and she became winded. The defendant
carried Amber's daughter for nearly thirty minutes while walking uphill. (RT 14594-14595.)
Afterwards, they put Amber's daughter in the car seat while Amber and the defendant sat in the
back of the pickup truck looking at the stars together. (RT 14595.) They went back to Amber's
house where the defendant made her seafood lasagna and they shared wine. (RT 14596; 14598.)

1 He talked to her daughter and even brought her a book as a gift. (RT 14597; 14599.) Together,
2 Amber and the defendant looked at her daughter's baby pictures. (RT 14600.) At one point in
3 the date, Amber made a comment about saving the cork as a kind of memorabilia. She told the
4 defendant that she should have saved the cork from their champagne bottle from their first date.
5 The defendant replied that there would be many more corks to come. (RT 15498.)

6 As the night wore on, the defendant mentioned he had not checked into a hotel yet. In
7 response, Amber told him not to be silly and that he could stay the night. (RT 14600.) On their
8 second date, the defendant slept with Amber and used protection while they had sex. (RT
9 14600.)

10 iv. Never Been Married and Never Close to Having Any Children

11 The defendant left the following morning on Tuesday, December 3, 2002, to go to work;
12 however, he called Amber later that day and asked if he could see her that evening. (RT 14601.)
13 Amber, who was a massage therapist, had a late appointment and agreed if the defendant would
14 be willing to pick up her daughter and take her home. (RT 14602.) He agreed and Amber
15 arranged to drop off the key to her house and her daughter's car seat for the defendant. (RT
16 14603.) When Amber arrived home, she found her daughter sitting in the highchair eating and
17 the defendant had poured them a glass of wine as he cooked dinner for them. (RT 14604-14605.)
18 After dinner, the defendant drove Amber and her daughter to Cobb's Ranch to pick out a
19 Christmas tree. (RT 14607.) When they got back to the house, the defendant carried in the
20 Christmas tree, set it up and they began to decorate it with Amber's decorations. (RT 14609-
21 14610.)

22 While decorating the tree, Amber asked the defendant if he had ever been married or
23 close to being married. He said no. Amber asked the defendant if he had any children or ever
24 been close to having any children. The defendant again said no. (RT 14611.) The defendant
25 spent the night again with Amber on December 3, 2002. (RT 14612.) While they were in bed,
26 Amber and the defendant had a conversation about trust in the relationship and the defendant
27 agreed that it was easier to handle the truth than to have to deal with a lie. (RT 14612-14613.)

28 v. Fishing on the Delta

The next morning, on Wednesday, December 4, 2002, the defendant left and told Amber
he was going to be going on a boat trip over the weekend of the 6th through the 8th with his
buddies on the Delta. (RT 14613.) In actuality, the defendant and Laci attended a Christmas

1 party at Laci’s friend Rene Tomlinson’s neighbor’s house on Saturday December 7th. (RT
2 10575; 10583.)

3 **c. Defendant Lost His Wife**

4 On December 6, 2002, Shawn Sibley was speaking with Mike Almasri²⁰ for business
5 reasons and the defendant’s name came up. Almasri indicated that he knew Scott Peterson who
6 worked with TradeCorp and that he was married and lived in Modesto. (RT 11721.)

7 Sibley called and confronted the defendant about being married. The defendant
8 repeatedly denied it. (RT 11721-11722.) Sibley then called the defendant’s employee, Eric
9 Olsen and asked him if the defendant was married. (RT 11635; 11722.) Olsen told her to ask
10 the defendant because he was not going to get involved in the defendant’s personal life. (RT
11 11636.)

12 An hour later, on December 6, 2002, the defendant called Sibley back and left a
13 voicemail. (RT 11722.) In the voicemail, the defendant was sobbing and said, “I’m sorry I lied
14 to you earlier. **I had been married. It’s just too painful for me to talk about.** Call me back.”
15 (RT 11723, emphasis added.) Sibley returned the call and left him a message. (RT 11723.)

16 The defendant called Sibley back and was sobbing hysterically. (RT 11723; 11725.) The
17 defendant told Sibley, "I'm so sorry I lied to you earlier. I had been married. **I lost my wife.** It's
18 too painful for me to talk about.” (RT 11724.)

19 **III. FRIDAY, DECEMBER 6, 2002 - THE ULTIMATIUM**

20 **A. Friday - Sibley Gives the Defendant an Ultimatum by Monday**

21 During the December 6th phone call – when the defendant told Sibley that he had lost
22 his wife – he begged Sibley not to tell Amber. (RT 11724.) The defendant pleaded, “Please just
23 give me the opportunity to tell Amber in person. I'm going to be in town on Monday. Please
24 don't tell her. This wasn't -- just please let me have the chance to tell her myself.” (RT 11724.)
25 Sibley told the defendant that she did not care if he was widowed or divorced, but instead, all
26 she cared about was whether he was currently married right now. Defendant responded, “No,
27 absolutely not.” (RT 11724.)

28

²⁰ Feras “Mike” Almasri had previously interviewed for a TradeCorp sales rep position with the
defendant and at that time learned that the defendant was married and living in Modesto. (RT 11696-
11701.)

1 Sibley gave the defendant an ultimatum that, if he did not tell Amber by Monday,
2 December 9, 2002, that Sibley was going to tell her. (RT 11724.) Sibley told the defendant that
3 he needed to let her know as soon as he told Amber and he agreed to do so. (RT 11724.)

4 **B. Saturday - Defendant Searches for a Boat**

5 On Saturday, December 7, 2002 – one day after Shawn Sibley confronted the defendant
6 about being married and giving him an ultimatum to tell Amber by Monday – the defendant used
7 the couple’s home computer to search the classified advertisements for a boat.²¹ (RT 11721;
8 14352; 14356-14357.) Beginning at about 9:44 a.m., the defendant reviewed the Modesto Bee
9 from his home computer. (RT 14346; 14355; Peoples Exh. 178A.) At about 4:41p.m., the
10 defendant looks further at the Modesto Bee classified ads for boat listings which includes an ad
11 for a 14-foot aluminum boat and trailer. (RT 14355-14357; Exhs. 178B-178E.)

12 After the laptop was used to search the classified ads for a boat, the defendant called Bruce
13 Peterson²² who had placed an ad in the Modesto Bee regarding a 14-foot aluminum boat he
14 wanted to sell. (RT 12146-12147.) The defendant told Bruce Peterson that he was interested in
15 purchasing the boat and asked if he could look at it the following day; he agreed and they planned
16 for the defendant to look at it on Sunday morning. (RT 12148.)

17 **C. Sunday - Defendant Studies the Tides and Currents in the Bay**

18 On Sunday morning, at about 7:52 a.m., the defendant continued to look at want ads for
19 boats with the Fresno Bee on the home laptop. (RT 14362; People’s Exh. 179A.) Before even
20 owning a boat, the defendant began conducting several Yahoo! internet searches using the search
21 terms: “boat + ramps + pacific”, “boat + ramps + Watsonville + Pacific” and “San Francisco Bay
22 + boat + ramp.” (RT 14364; 14367-14368; 14371; People’s Exhs. 179B- 179G.) He also looked
23 at navigating a boat and trailer around San Francisco. (RT 14371; People’s Exhs. 179M-179P.)

24 The defendant reviewed websites relating to nautical charts and maps for the Berkeley
25 Marina, Central San Francisco Bay and Suisun Bay, including maps of parking at the Berkeley
26 Marina. (RT 14371-14375; 14378; People’s Exhs. 179O-179U; 180A-180B.) The defendant

27 ²¹ As discussed in detail below, a forensic computer examination had been conducted on the defendant’s
28 home and work computers after subsequent search warrants were executed at his residence and
warehouse.

²² Bruce Peterson is not related to the defendant. (RT 12167.)

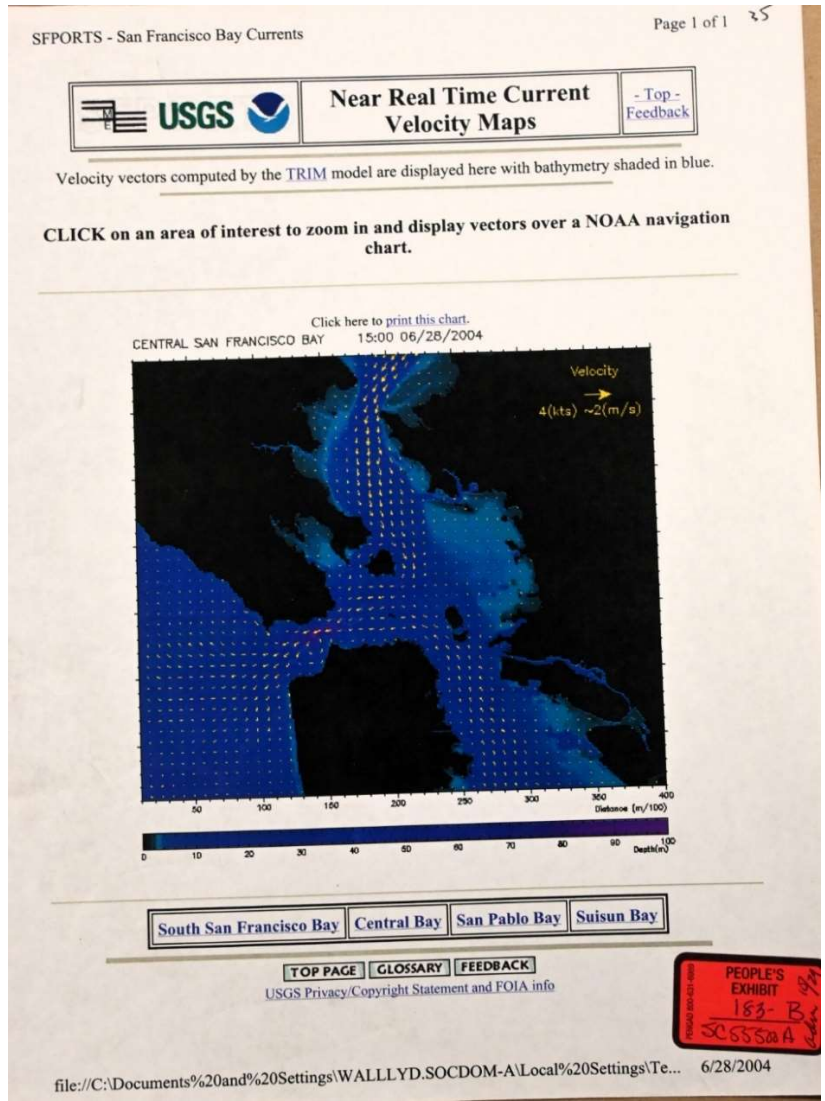
1 began researching water currents of the San Francisco Bay on the home computer. (RT 14358-
2 14359; 14366; 14407-14408.)

3 As arranged, the defendant met with Bruce Peterson that morning to look at his 14'
4 aluminum fishing boat. (RT 12148.) Bruce was selling the boat for \$1,500 with accessories²³
5 and the trailer. (RT 12148; 12152.) Bruce indicated that he would keep the two mushroom
6 anchors. (RT 12155.) The defendant asked where Bruce had used the boat. Bruce told the
7 defendant he had only used the boat in freshwater lakes in the Sierras and foothills – listing the
8 different lakes and reservoirs – he went to for trout fishing. (RT12148-12149.) Bruce had never
9 taken the boat in salt water. (RT 12149.) The defendant offered Bruce \$1,400 for the boat which
10 Bruce accepted. (RT 12156.) The defendant planned to return on Monday morning to purchase
11 the boat after he retrieved the cash from the bank. (RT 12156.)

12 That evening, starting at about 9:40 p.m., the defendant resumed his research on the home
13 computer. (RT 14389.) He accessed the United States Geological Survey’s (U.S.G.S.) velocity
14 maps for currents in the Central San Francisco Bay web site. (RT 14397; 14404-14406.) The
15 defendant accessed web sites for the San Francisco Port and other navigation and nautical charts
16 web sites. (RT 14395-14396.)

17 Pictured below is People’s Exhibit Number 183B which shows a screenshot of the
18 interactive U.S.G.S. site showing “Near Real Time Current Velocity Maps” was just one of the
19 websites the defendant reviewed. (People’s Exh. 183B.) This exhibit was just one of several
20 exhibits the People produced at trial showing the different search history and sites the defendant
21 visited as he conducted research.

22 _____
23 ²³ The boat came with a fish finder, two rod holders, two life jackets, two square cushion seats, a trolling
24 motor, one oar, the battery, fuel in the tank, an outboard 15 horsepower motor, a tan canvas boat cover
25 and a spare trailer tire. (RT 12149-12152.)
26
27
28



The defendant also viewed image files which were linked to web pages on Bay currents. The image files showed an enhanced map view on the tip of Brooks Island and the surrounding area. (RT 14454-14456; People’s Exhs. 189A-189B.) He looked at nautical charts related to California and Mexico waterways. (RT 14401-14402.) The defendant also visited multiple fishing-related websites and conducted Yahoo! searches pertaining to fishing reports and terms, such as “striped bass” and “sturgeon + fishing + tackle + San Francisco”. (RT 14399-14400, 14402-14404; People’s Exhs. 182R-182DD.)

As discussed in further detail below, Laci had inherited jewelry from her grandmother and one of the items she inherited was a Croton watch. (RT 8869; 9180-9182.) At 9:46 p.m., the defendant reposted Laci’s Croton diamond bezel ladies watch on eBay, along with a picture of

1 the round-faced ladies diamond watch,²⁴ and then he returned to his searches for maps and
2 nautical charts in the San Francisco Bay. (RT 14391-14401; People’s Exhs. 183C-183Q.) The
3 defendant continued his extensive research until about 10:20 p.m. (RT 14404.)

4 **D. Monday - Defendant Buys a Boat, But Tells No One**

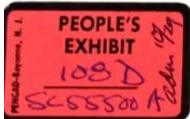
5 On Monday morning, the defendant returned to Bruce Peterson’s house and paid him
6 \$1,400 cash; Bruce and his wife signed off on the pink slip, exchanging the title and release of
7 liability into Scott Peterson’s name. (RT 12156.) Following the sale, Bruce mailed the
8 registration to the DMV showing the title had been transferred to the defendant. (RT 12157.)²⁵

9 Over the next fifteen days, the defendant told no one that he purchased an aluminum
10 fishing boat. Numerous witnesses testified that they knew nothing about the defendant’s
11 new boat. Laci usually told her mother Sharon about major purchases the couple made, such
12 as when they put in a pool at their home, installed an air conditioning system and when
13 defendant joined the Del Rio Country Club. However, Laci made no mention of the
14 defendant acquiring a new boat. (RT 8976-8977; 8979-8980; 8990-8991.) Ron Grantski,
15 who was an avid fisherman, did not know about defendant's new boat. (RT 9097-9098.)
16 Laci's siblings did not know about the defendant’s boat. (RT 8889-8890; 9273.) The
17 defendant's father, who spoke to the defendant on a regular basis, did not know about the
18 boat purchase. (RT 16862; 16865-16866.) Laci's close friend Stacey Boyers did not know
19 about the boat. (RT 10521-10522.) Defendant's good friend Gregory Reed, who routinely
20 discussed hunting and fishing with defendant, did not know about the boat. (RT 14425-
21 14426.) On December 20, 2002 at about 7 a.m., Olsen and Weaver drove to Modesto to pick
22 the defendant up at the TradeCorp warehouse to go to a meeting in Stockton. The defendant did
23 not offer to show either of them his new fishing boat. (RT 11640-11641.)

24 People’s Exhibit Number 108D, shown below, is a picture of the 1991 14’ Gamefisher
25 aluminum fishing boat with its boat cover that the defendant purchased on December 9, 2002.

26 ²⁴ For the eBay sale of the Croton ladies diamond bezel watch, the defendant listed his name and address
27 as “Scott Lee Peterson, 523 Covena Avenue, Modesto California, 95354, USA.” (RT 14394.)

28 ²⁵ Following the subsequent police investigation, Bruce Peterson went to the Modesto Police Department
to look at the scratches and red paint marks on the boat, however, he could not recall if those markings
were old and previously there when he owned the boat. (RT 12158.)



IV. MONDAY, DECEMBER 9, 2002 – DEFENDANT INDICATES THIS WILL BE THE FIRST HOLIDAY THAT HE WOULD BE SPENDING WITHOUT HIS WIFE

A. Monday – Defendant Tells Amber He Lost His Wife

After going to the bank and purchasing the fishing boat, the defendant saw Amber in the afternoon on Monday, December 9, 2002. The defendant had called and said he was passing through and was about twenty minutes from her and asked to come see her. (RT 14614-14615.) When he arrived, Amber observed that his demeanor seemed quite different. (RT 14616.)

As he walked Amber into her house, the defendant says that he is afraid that he may have done something terrible to a possibly beautiful relationship. (RT 14616.) The defendant reached into his pocket and pulled out the ladybug chocolates that Amber had previously gifted him. (RT 14625.) The defendant said he had been carrying her gift around, close to him, but did not deserve them anymore and he set the chocolates on the table. (RT 16425.) He pulled out the

1 chair for her to sit down with him at the kitchen table and began to cry. He appeared to be having
2 a hard time with his emotions, his words coming out and Amber could hear his stomach churning
3 a little bit. (RT 14618-14619.)

4 Now crying, the defendant told Amber that he lied about ever being married and he said
5 that sometimes for himself, when people would ask, that it was easier for him to say that he was
6 not or never married because it was too painful for him. (RT 14619.) The defendant repeated
7 what he told Shawn Sibley three days earlier. He told Amber that **he had lost his wife.** (RT
8 14620, emphasis added.) He explained that she was not with him and it was entirely too painful
9 for him to talk about. (RT 14620.) The defendant **said this was the first holiday that he would**
10 **be spending without his wife.** (RT 14621, emphasis added.) Defendant never told Amber that
11 he spoke to Shawn Sibley about this or that Shawn had given him an ultimatum to tell her. (RT
12 14637.)

13 Amber thanked the defendant for sharing something that seemed so painful and since it
14 was the first holiday without his wife, she asked if he was ready for a relationship with her. (RT
15 14622-14623.) The defendant replied, “absolutely.” (RT 14623.) Amber handed the defendant
16 back the ladybug chocolates and told him to keep them. (RT 14625.) The defendant told Amber
17 she was “amazing.” (RT14622.)

18 **B. Defendant Gives Amber a Separate Cell Phone Number to Call**

19 While at Amber’s house on Monday December 9, 2002, they discussed the defendant’s
20 upcoming trip to Europe over New Year’s. The defendant told Amber that he was going to go
21 to Paris to spend time with his friend over New Year’s before he took his big trip to Europe for
22 business. (RT 14723.) The defendant explained that he had to go to Europe in order to make
23 some changes to his business so that he was not traveling so much and could spend more time
24 with Amber. (RT 14723-14724.) The defendant took a piece of paper and wrote down a separate
25 cell phone number, 209-499-8427, for Amber to call over Christmas and New Year’s Eve when
26 he was in Europe. (RT 14708; 14755.) He commented that this had an international plan or
27
28

1 something to that effect. (RT 14708.) This number belonged to a second cell phone. (RT
2 14755.)²⁶

3 Prior to leaving, the defendant made plans with Amber to see each other again and attend
4 a birthday party for Shawn Sibley's fiancé two days later, on December 11, 2002 and go with
5 her to a formal Christmas party on December 14, 2002. (RT 14626;14632.)

6 As he agreed to do, at about 2:30 p.m. to 3:00 p.m., the defendant called Shawn Sibley
7 and informed Shawn that he had told Amber as he left her house that day. (RT11726.) The
8 defendant indicated that Amber was just a great person and decided to forgive him. (RT 11726.)
9 He again asked Sibley not to tell Amber that she knew. (RT 11726-11727.) That same day, on
10 December 9, 2002, the defendant called Eric Olsen and told him that he should not have met
11 Shawn Sibley because he did something stupid. (RT 11667-11668.)

12 C. Appraising and Pawning Laci's Jewelry

13 Laci and Amy had inherited jewelry from their grandmother on their father's side in
14 October or November 2002.²⁷ (RT 8869; 9180-9182.) Together, the two sisters went through
15 the jewelry and kept what they wanted and gave the other items to their brother Brent. (RT 9181-
16 9182.) Laci kept a gold and diamond watch, a pendant, diamond screw-back earrings and a
17 couple of rings – one diamond and one sapphire. (RT 10408-10409; 10423-10424.) Laci liked
18 to wear some of the jewelry, including the watch and diamond pendant. (RT 8920; 10408; 10416;
19 10527-10528.)

20 On November 30, 2002, Laci visited Edwards Jewelers in Modesto to have certain items
21 of jewelry appraised. (RT 10399-10400; 10419-10420.) Laci told one of the store employees that

22 ²⁶ Prior to providing Amber with his second cell phone number to call during his trip, Amber used her
23 phone to call his primary cell phone number #209-505-0337. (RT 14755.)

24 ²⁷ Laci, who was 27 years old at the time, was set to inherit a portion of the proceeds of the sale of her
25 grandfather's house, when she turned 30 years old in 2005. (RT 8937-8938; 8966; 9220; 10461.) The
26 house was held in a separate trust and sold for \$485,000 with the proceeds to be split among the three
27 grandchildren – Brent, Laci and Amy. (RT 9182.) Defendant had no survivorship interest in Laci's
28 portion of the trust. (RT 9216; 9218-9219.) However, there was no evidence adduced as to whether the
defendant knew that he had no stake in the proceeds or whether he knew of the '30-year-old' provision.
(RT 9183; 9275.)

1 the defendant was interested in knowing the value of the inherited items. (RT 10420.) When
2 Laci learned that the inherited jewelry was worth more than \$100,000, she said that the defendant
3 would be pleased. (RT 10420.)

4 On Tuesday, December 10, 2002, Laci brought in some gold chains to a Modesto pawn
5 shop which she sold for \$140. (RT 10455, 10459.) Laci returned four days later, on Saturday
6 December 14, with the defendant and sold some rings, chains and a charm for \$110. (RT 10458-
7 10459.) Laci explained that she was cleaning out her jewelry box and that some of the items
8 came from her grandmother. (RT 10465.) Laci seemed agitated and hesitant when the defendant
9 was rubbing her stomach in the store. (RT 10471.) She pushed his hand away. (RT 10471-
10 10472.) Tory Brooks, who owned the store with her husband, sensed there was a problem
11 between the defendant and Laci. (RT 10471.)

12 As discussed in further detail below, a later forensic examination of the Peterson's
13 computers revealed several email exchanges involving the email account "slpetel@msn.com"
14 and the sale of additional jewelry in December 2002 on eBay, including her inherited Croton
15 watch, among other things. (RT14449-14450.)

16 **D. Defendant Takes Amber and Her Daughter to a Birthday Party**

17 On December 11, 2002, the defendant went with Amber and her daughter to Shawn
18 Sibley's fiancé's birthday party in Fresno. (RT 11726-11727; People's Exh. 95.) Prior to leaving
19 for the party, the defendant changed Amber's daughter's bandages.²⁸ (RT 14628.) Together, the
20 three of them attended the party. (RT 14628.) While at the party, the defendant was outgoing
21 and very personable with Amber and Sibley's friends. (RT 14629.) Amber explained that the
22 positive manner the defendant interacted with her daughter and friends enhanced her trust in the
23 defendant. (RT 14631.)

24 Before they went to the party together, Amber and the defendant rented a tuxedo for a
25 Christmas formal that they planned to go to on Saturday, December 14, 2002. (RT 24632-
26

27 ²⁸ Amber's daughter had an accident at home which required stitches on December 10, 2002. (RT
28 14626.)

1 14633.) Initially the defendant told Amber that he was not sure if he would be able to make it
2 because he had business with his boss. (RT 14633.) If that was the case, Amber planned to
3 attend by herself. (RT 14634.)

4 **V. DECEMBER 14, 2002 – LACI’S LAST CHRISTMAS PARTY**

5 On Saturday, December 14, 2002, the defendant was supposed to go with Laci to their
6 friend’s Christmas party, but the defendant had cancelled. (RT 9025.) The defendant told Laci
7 that he had to go to San Francisco to meet with his boss who was flying in last minute and he
8 had to meet him for business. (RT 9025; 16422.) The defendant claimed that the trip could not
9 wait because this was the only time when his boss was going to be in San Francisco. (RT 9025.)

10 That evening, Laci dressed up in one of the outfits she purchased from Motherhood
11 Maternity and went to Stacey Boyers’ Christmas party by herself. (RT 9969-9970;10553.)
12 Depicted below is People’s Exhibit Number 14 which shows a photo of Laci wearing her red silk
13 short-sleeve shell and cropped pants on December 14, 2002. (People’s Exh. 14.)



1 Although Stacey only lived just down the street, Laci was exhausted by the time she
2 made it to Stacey’s front door. Laci was carrying a plant in one hand and food that she brought
3 in the other. Laci had walked three to 4 houses and around a big water puddle in the front yard,
4 that pooled from the earlier rain. (RT 10511.) Laci told her friends that she was really excited
5 waiting for the baby to come but she was getting very tired and it was hard for her to walk. (RT
6 10554; 16423.) They laughed about Laci wearing heels with her swollen ankles. Laci joked
7 back that she had to wear them some time and wanted to look very nice and proper. (RT 10511;
8 16423.) That night, Laci wore the diamond watch²⁹ she had inherited from her grandmother.
9 (RT 10529.) Laci sat in the chair for most of the time she was there and left after a couple
10 hours. (RT 10554; 16423.)

11 Meanwhile, on Saturday December 14, 2002, the defendant returned to Amber’s house.
12 (RT 14632.) The defendant had called Amber earlier and said he had been in San Francisco and
13 that he was able to get away to attend the formal Christmas party with her, however, he had to
14 return to work the next day. (RT 14640.) When he arrived, the defendant greeted Amber at the
15 door and handed her a dozen red roses. (RT 14639.) He gave her a hug and said hello. (RT
16 14639.) Then the defendant pulled out two dozen more pink roses and gave them to her, for a
17 total of three dozen roses. (RT 14639.) As they made their way inside the house, the defendant
18 lit a candle and kissed her softly while rubbing the petals of a rose on her face and chest. (RT
19 14641.) The defendant went into the kitchen, warmed up some caramels and made her favorite
20 – a homemade Pink Lady caramel apple as Amber got dressed for the formal. (RT 14642.)

21 Amber asked the defendant how she should introduce their relationship. (RT 14668.)
22 Defendant said he was not seeing anybody else and that he was monogamous. He suggested
23 introducing him as her lover. (RT 14668.) Amber said that did not seem appropriate. (RT
24 14668.) Defendant then suggested, “my love.” (RT 14668.) Amber asked if he was seeing

25
26 ²⁹ This diamond watch, pictured in People’s Trial Exhibit Number 14, was not the Croton watch that Laci
and the defendant were trying to sell on eBay.

1 anyone else and he again said he was not. Amber asked if she should introduce him as her
2 boyfriend and the defendant said that would be appropriate. (RT 14668-14669.)

3 They left for the party and picked up Amber's friend, Saki and attended the formal in
4 Fresno. (RT 14671.) During the party, the defendant introduced Amber as his girlfriend. (RT
5 14670.) They memorialized the evening with photos. (People's Trial Exhs. 192A-192C; 193A-
6 193K.)

7 People's Trial Exhibit Numbers 191A and 191G, seen below were taken the night of Amber's
8 formal Christmas Party on December 14, 2002.



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18 After the party, they stopped at Saki's house for a bit and then returned to her house
19 where they were intimate. (RT 14672-14673.) That night they had unprotected sex. (RT 14673.)
20 Afterwards, the defendant apologized for not taking precautions during sex and they started
21 talking about birth control methods. (RT 14673.) Amber told the defendant that she wanted to
22 have more children. (RT 14674.) The defendant responded that for himself, being with her, that
23 he did not feel that he needed to have a biological child. If they were together, then he would
24 consider her daughter as his own and that that would be enough for him, as they raise her
25 together. (RT 14674.) The defendant indicated that he wanted to have a vasectomy versus
26 Amber having to take birth control pills. (RT 14674.) This upset Amber because she considered
27 a vasectomy a permanent birth control and he that he was young to be making such a permanent
28

1 decision. (RT 14674-14675.) The defendant never mentioned that he was expecting his first
2 son, Conner. (RT 14675.)

3 The defendant spent the entire night and left the following morning on Sunday, December
4 15, 2002. (RT 14676.) Prior to leaving, Amber gave the defendant a Christmas card with a
5 picture of her and her daughter. (RT 14676.) The defendant told her that he had some business
6 that he had to take care of before he was going to leave on his long trip for the holidays. (RT
7 14675.) He said he would be back at the end of January and in the interim they would stay in
8 contact by phone. (RT14676.)

9 The evening of December 15, 2002, Laci's mom and stepfather, Sharon and Ron
10 Grantski, came over for a family dinner. (RT 8991.) The defendant was supposed to make
11 lasagna, disappointed that he was not going to get home in time, Laci bought a frozen lasagna.
12 (RT 8991.) During dinner, Sharon and Ron told the defendant and Laci that Sharon had gone
13 fishing with Ron that morning. Laci was really surprised that Sharon went fishing with Ron
14 since she is not that passionate about it. (RT 8993.) Ron is an avid fisherman, who goes fishing
15 every chance he gets; however, it was extremely rare that Sharon would accompany him. (RT
16 8991-8992; 9069-9070.) The defendant never told Ron or Sharon that he had purchased a fishing
17 boat six days earlier or that he wanted to take Ron fishing. (RT 8990-8993.) Laci never
18 mentioned to her mom and stepdad that the defendant now owned a fishing boat. (RT 8993.)

19 This was the last time Sharon saw her daughter Laci. (RT 8996.)

20 **VI. DEFENDANT IS "AWAY ON BUSINESS" AND LACI CONTINUES TO**
21 **PREPARE FOR CONNER'S ARRIVAL**

22 On December 17, 2002, Laci and the defendant went to Carmel with Jackie and Lee
23 Peterson for a couple days. (RT 8993-8994.) They returned home on Thursday, December 19,
24 2002 at around 1:00 p.m. (RT 8994-8995.) Twenty-one minutes later, the defendant spoke to
25 Amber on the phone and told her that he was in New Mexico or Arizona for business at that
26 time. (RT 14686-14687; People's Trial Exh. 207 F-2A.) That night, Laci told her mom Sharon
27
28

1 that she went shopping while she was in Carmel, but that Laci was really tired and her feet were
2 swollen. (RT 8995; 9048.)

3 That Friday, Laci spoke to her mom Sharon over the phone and discussed the baby
4 shower. During the call Laci also told Sharon that she had a doctor's appointment on Monday,
5 the 23rd and that after the appointment the plan was to go to the hospital and pre-register. (RT
6 8995.) Later that day, Laci called her friend, Rene Tomlinson and she told Rene that she had
7 been shopping and bought some fabric for the baby's cradle. (RT 10574; 10575.) Laci told
8 Rene that she was feeling tired and ready to have the baby and that she no longer was working.
9 (RT 10576.)

10 On Saturday, December 21, 2002, believing the defendant had left for his out-of-state
11 travels, Amber tried to reach him on the other cell phone number that he provided to her on
12 December 9. (RT 14709.) The first time Amber called his second cell phone was on Saturday
13 December 21, 2002, at 11:21am. Amber was unable to reach the defendant and tried his original
14 cell phone number again at 1:11pm. (People's Trial Exh. 207F-2.)

15 The following day, on Sunday December 22, Amber called both cell phone numbers at
16 8:46am. (People's Trial Exh. 207F-2.) Later that day, the defendant called Amber from a (916)
17 area code and left a brief message that he was getting ready to go meet his mother and father in
18 Maine for the holidays. (RT 14687-14688.) In the message, the defendant said that he planned
19 to be with his parents over Christmas until December 28th and then he would fly to Paris for New
20 Year's. (RT 14688.) Amber re-dialed the number and learned that the defendant called from a
21 payphone at the Sacramento airport, so she called the airport and had the defendant paged,
22 however, he never responded to her page. (RT 14687-14688; 15106-15107.)

23 The evidence showed that the defendant did not fly to Maine. Karen Servas is Laci and
24 the defendant's next-door neighbor to the south. (RT 9413.) She lived there prior to the
25 defendant and Laci moving in in 2000 and has been over to the Peterson house on multiple
26 occasions. (RT 9413-9415.) On Sunday, December 22, 2002, between 2:00 p.m. – 3:00 p.m.,
27 Karen saw the defendant mowing the front lawn while Laci was standing out front. (RT 9415;
28

1 9444; 9446.) Once he finished, Karen walked into their backyard to talk to them and ask the
2 defendant for some help straightening her Christmas tree. (RT 9415.) The couple was
3 transplanting plants at the time. (RT 9415.) Laci told Karen that she had felt tired and mentioned
4 that she had an episode which occurred two weeks earlier where Laci was off balance and almost
5 fell into the pool. (RT 9416.)

6 **VII. DECEMBER 23, 2002 – LAST DAY ANYONE OTHER THAN THE**
7 **DEFENDANT HAS CONTACT WITH LACI**

8 **A. Maid Cleaned the House and Mopped All the Floors**

9 Monday, December 23, 2002 was the fourth time Margarita Nava went to Laci and the
10 defendant's house to clean. (RT 8661-8662.) She arrived at 8:30 a.m. (RT 8663.) Nava indicated
11 that Laci kept a clean house and there was nothing in disarray when she was there. (RT 8681.)
12 Nava cleaned the bathrooms, two bedrooms, the hallway, the dining room with the large table,
13 living room that faces the street and, last, the kitchen. (RT 8663-8664.)

14 She mopped the entire house with Pine-Sol before leaving at 2:30 p.m. (RT 8664; 8666.)
15 After Nava mopped, she placed the wet mop outside the door next to the washing machine so it
16 would dry as Laci requested. (RT 8664; 8677.) Nava dumped the water out and placed the rags
17 inside the mop bucket and put them on top of the washing machine because Laci said she would
18 wash them later. (RT 8665-8666.) She had used the towels to clean the windows, the baseboards
19 and the walls. (RT 8665.) Nava also cleaned the outside of two doors with the white rags. (RT
20 8665-8666.)

21 While she was cleaning the defendant came home at about 10:00 a.m. for a minute or
22 two and then left. (RT 8667.) Nava told him that Federal Express left an envelope. (RT 8672.)

23 Nava testified that Laci was happy about the baby and being pregnant. (RT 8676.) On
24 December 23, 2002, Laci seemed tired and was walking slowly. (RT 8668.) Laci talked about
25 feeling tired and uncomfortable and said that she was heavy. (RT 8669.) Around 11:30 a.m. or
26 12:00 p.m., Laci fixed something for herself to eat and sat on the sofa, with her feet up, reading
27 and watching TV. (RT 8669.)

1 **B. Laci Gets Groceries and Goes to her Spa Appointment**

2 While Margarita Nava was cleaning, Laci had gone grocery shopping and returned with
3 four paper bags of groceries. (RT 8667.) Laci carried the grocery bags in and set them by the
4 door. (RT 8674.)³⁰ Nava helped Laci and picked up the grocery bags up and set them on the
5 dining table. (RT 8670.) At trial, the People introduced Laci’s receipt from Trader Joe’s dated
6 December 23, 2002 identified the nearly \$100.00 in groceries she purchased that morning.
7 (People’s Trial Exh. 2.)

8 In the early afternoon of December 23, 2002, Laci went to Sweet Serenity Spa in Modesto
9 for a regularly scheduled appointment. (RT 8692-8693.) There, Laci told owner Michelle Bauer
10 that she was uncomfortable and having trouble sleeping. (RT 8710.) Spa employee Tina
11 Reiswig also saw Laci and noticed that Laci did not seem herself that day. (RT 8695.)

12 **C. Defendant Does Not Want Children, But Attends His Wife’s Doctor’s**
13 **Appointment for His Unborn Son**

14 The defendant spoke to Amber before going with Laci to a routine prenatal care checkup
15 for Conner. (RT 18138.) On December 23, 2002, at 1:08 p.m., the defendant had called Amber
16 and claimed that he was with his father in Maine and they were on their way to a guided duck
17 hunting tour. (RT 14689-14690; People’s Trial Exh. 207F-2.)

18 During this phone call, the defendant and Amber discussed a doctor’s appointment she
19 scheduled for birth control pills and that it would be a good time to start the pills while he was
20 gone, if they both agreed to that. (RT 14693.) The defendant again brought up the vasectomy
21 and that he wanted to see the doctor. (RT 14693.) Amber was upset since she still wanted more
22 children and felt that a vasectomy was so permanent. The defendant tried to comfort her and
23 told her not to cry. He then directed the conversation to a different topic. (RT 14693.)

24 In a previous conversation, Amber had asked the defendant where she could mail him
25 something while he was overseas. On December 23, 2002, the defendant completed an

26 _____
27 ³⁰ During trial, Nava indicated Laci carried the four grocery bags in one-by-one. (RT 8670.) On cross
28 examination, defense counsel reminded Nava that she indicated Laci carried the grocery bags in two-by-
two and she agreed. (RT 8674.)

1 application and provided Amber with a Post Office Box address in Modesto. The defendant told
2 her that she could send mail to his new P.O. Box in Modesto and that the US Postal Service
3 would send the mail to him via email. This seemed suspicious to Amber since he was supposed
4 to be overseas. (RT 14690; 14707.) That day the defendant also sent a fax at 1:26 p.m. to his
5 employer indicating that he had changed the TradeCorp mailing address to the new P.O. Box.
6 (RT 14412-14415.)

7 **D. Laci's Doctor's Appointment Went Well and Conner Is Viable, But She is**
8 **Feeling Tired**

9 Although it was not by her own volition, on December 23, 2002, at 2:45pm, Laci had her
10 last prenatal checkup.³¹ (RT 17229.) The defendant attended the appointment and heard what
11 the doctor had to say. (RT 18138.) Dr. Tow-Der noted that Laci had some swelling, but her
12 blood pressure was normal and her weight gain was adequate. (RT 17230.) Laci said that Conner
13 was very active and moving around a lot. (RT 17230.) Dr. Tow-Der found that the baby had
14 moved to the vertex fetal position, meaning that his head was in a downward position towards
15 the vaginal canal which was ideal for birth. (RT 17230; 17232-17233; 17238.) While Laci
16 reported being extremely tired from the pregnancy, Conner was healthy. (RT 17230.) Conner's
17 heartbeat was strong and normal. (RT 17230.) Conner's gestational age was 32 weeks and 6
18 days which corresponded with Laci's fundal height and size. (RT 10384.) Dr. Tow-Der indicated
19 that Laci was a low-risk pregnancy and that if Conner had been born that day on December 23,
20 2002, he would be viable. (RT 17230.)

21 At about 4:45 p.m. on December 23, 2002, Laci called Stacey Boyers to wish her a Merry
22 Christmas. Laci told Stacey that her doctor's appointment went well. They spoke about how it
23 did not seem like the holidays without having Laci's usual Christmas party. Laci said it was kind
24 of depressing that she was unable to throw a Christmas party this year, but she was so tired all

25 _____
26 ³¹ On December 23, 2002, Dr. Tow-Der told Laci to follow up with her in three weeks for another
27 prenatal checkup. (RT 17230.)
28

1 the time. Laci told Stacey that every time she started something, Laci had to stop and rest. This
2 was the last time Stacey spoke to Laci. (RT 10512.)

3 **E. Amy Shows Laci How to Style Her Hair with Her Curling Iron**

4 Amy Rocha, Laci's sister, is a hair stylist and at that time had worked at Salon Salon for
5 three and a half years. (RT 8829.) She would cut the defendant and Laci's on a regular basis
6 since they moved back to Modesto. (RT 8839.) Throughout the two years, the defendant never
7 asked Amy to color his hair, eyebrows, or goatee. (RT 8839-8840.)

8 Early that day, Laci had called Amy and asked if she could cut the defendant's hair. (RT
9 8836.) Amy had cut Laci's hair the week before and Laci indicated that she was having trouble
10 styling it, so Amy told Laci to bring her curling iron along. (RT 8852.) They arranged to meet
11 at about 6:00 p.m. (RT 8836.) During the phone call, Amy and Laci discussed what to get their
12 grandfather for Christmas and decided on a gift basket. At about 4:00 p.m., Amy went to Vella
13 Farms to pick up the gift basket. While there she called Laci and they discussed ideas on what
14 to put in it. (RT 8836.) Amy selected the items, however, the employees needed time to put it
15 together and indicated that it would be ready for pickup on Christmas Eve Day and gave her the
16 time to come. They told Amy that she needed to come after 12:00 p.m. and before 3:00 p.m.,
17 because they were closing at 3:00 p.m. (RT 8859.) Amy paid for the items at 5:55 p.m. and then
18 left to go back to Salon Salon. (RT 8835; People's Trila Exh. 13.)

19 When Amy got back to the salon, Laci and the defendant were waiting for her on the
20 couches in the waiting area. (RT 8837.) They went to Amy's station, where the defendant sat in
21 Amy's chair and Laci sat in the empty chair at the station next to hers. (RT 8842; People's Trial
22 Exh. 3K.) First, Amy used the curling iron that Laci had brought with her and showed Laci how
23 to style her hair. (RT 8852.) Then she gave the defendant a haircut. (RT 8852.)

24 Laci was her usual talkative self, except Laci said that she was really tired. (RT 8832;
25 8845-8846.) They talked about the gift basket and that it was not going to be ready to be picked
26 up until December 24, between noon and 3:00 p.m. (RT 8858.) The defendant offered to pick
27
28

1 up the gift basket because he was going to be on that side of town golfing.³² Amy confirmed he
2 could get it during that time, since the business was going to close early and the defendant agreed.
3 (RT 8859-8861.) At no time during the hour that they spent together did the defendant or Laci
4 tell Amy that he had purchased a 14-foot aluminum boat two weeks earlier. (RT 8889-8890.)

5 Amy recalled that Laci was wearing a black blouse with either cream polka dots or cream
6 little flowers, cream-colored capri length pants³³ that were just above Laci's ankles, black Mary
7 Jane flat style shoes with the black strap and buckle, a black jacket and a soft cream-colored
8 scarf. (RT 8846-8852.) The defendant invited Amy to come over to their house to eat pizza.
9 Amy declined because she had a friend in town. (RT 8917-8918; 8921; 8960; 19724.) Amy gave
10 her sister, Laci, a hug goodbye before they left between 6:45 p.m. and 7:00 p.m. (RT 8838; 8852.)
11 That was the last time Amy saw her sister Laci. (RT 8925.)

12 **F. Laci's Last Phone Call**

13 Throughout the day, Laci and Sharon played phone tag where they would call each other.
14 They finally spoke at 8:30 p.m. (RT 8996.) Sharon was talking to another friend and clicked
15 over on her three-way calling when Laci called. (RT 8996.) Laci confirmed that she and the
16 defendant would be coming for Christmas Eve dinner at Sharon and Ron's house at 6:00 p.m.
17 the following night. (RT 8996 - 8997.) Laci was worried that she had not bought gifts for
18 everyone, but Sharon reassured her that was fine. (RT 8997.) Laci told Sharon that she had gone
19 to her doctor's appointment and everything was fine. The doctor said her pregnancy was normal
20 and there were no problems. (RT 8997.) This was the last time Sharon ever spoke to Laci. (RT
21 8997.)

22 **VIII. DECEMBER 24, 2002 – A NORMAL DAY IN THE NEIGHBORHOOD**

23 **A. Bike Riders and a Pregnant Woman Walking a Dog in the Park**

24 Christopher Van Sandt was in the Modesto area visiting family over the Christmas
25

26 ³² The Del Rio Country Club is located on the same side of town as Vella Farms. (RT 8860.)

27 ³³ As discussed further below, Amy later identified a pair of maternity capri-style pants that Laci had
28 ordered from Motherhood Maternity as the same type of pants, color and stretchy cotton spandex
material that Laci was wearing on December 23, 2002. (RT 8892; People's Exh. 11.)

1 holiday. Between 8:45 a.m. and 9:30 a.m., on December 24, 2002, Mr. Van Sandt went to Dry
2 Creek Regional Park to ride his mountain bike on the paved bike path. (RT 16705; 16714.) He
3 entered the park next to the tennis courts, rode the entire length of the park trail and circled back
4 which took him between 30 to 45 minutes. (RT 16706; 16714-16715.) While he was riding, Mr.
5 Van Sandt saw a pregnant woman walking a dog at the footbridge at Coffee and the maintenance
6 or water pumping shed. (RT 16707.) Mr. Van Sandt saw the pregnant woman's face and later
7 when he saw a photo of Laci Peterson, he was one hundred percent positive it was not Laci. (RT
8 16707-16708; 16710; 16714.)³⁴

9 On Christmas Eve morning, between 9:15 a.m. and 9:30 a.m., Kristin Demplewolf, who
10 was almost nine months pregnant, took her chocolate lab dog named Jake for a walk in Dry Creek
11 Regional Park. (RT 16732-16734; 16741; People's Trial Exh. 223 and 223A.)³⁵ She entered the
12 park on the East La Loma side, walked down through the park, continued to the transfer station
13 and along the paved path and then back to Edgebrook towards their home. It took Mrs.
14 Dempewolf about 45 minutes to an hour to complete her walk. (RT 16735.)

15 **B. McKenzie Is Out**

16 On December 24, 2002, Karen Servas, who was Laci's and the defendant's next-door
17 neighbor, left her house to run some errands. (RT 9416; 9418-9419.) As she backed out of the
18 driveway, at 10:18 a.m.³⁶, she saw McKenzie standing alone in the street looking towards her
19 car. (RT 9418; 9420.) Karen pulled over and McKenzie walked over to her driver's side bumper
20 area. (RT 9422.) McKenzie was dry but his leash was moist³⁷ and dirty with grass clippings

21 _____
22 ³⁴ Mr. Van Sandt left a message for Detective Brocchini informing the detective that he saw Laci
23 Peterson's photo on the news and the pregnant woman he saw walking the dog in the park was not Laci
24 Peterson. (RT 16708-16709.)

25 ³⁵ Mr. Martin Demplewolf testified that their chocolate lab dog looks like a golden retriever especially in
26 the summertime when the dog's hair lightens from the sunlight. (RT 16740.)

27 ³⁶ As discussed in more detail later, Karen Servas later retraced and timed her actions that she took that
28 morning to determine the time was 10:18 a.m. based on a receipt and phone records. (RT 9438.)

³⁷ On December 24, 2002, it had not rained for a couple days, however, that morning the lawns were wet
with dew and fog. (RT 9423.)

1 and leaves. (RT 9422-9423.) Karen checked McKenzie's tags to confirm it was the Peterson's
2 dog. (RT 9422; 9456.) She grabbed his leash and walked him across the lawn to the front gate,
3 however, it was locked. (RT 9423.)

4 At that time, Laci's Land Rover was in the driveway, but the defendant's pickup was
5 gone. (RT 9423; 9425.) Karen believed she heard the sound of raking coming from the backyard,
6 so she walked McKenzie to the side gate, next to the driveway and found it was ajar. (RT 9423.)
7 She opened the gate and walked through the backyard all the way towards the fence next to her
8 house looking for Laci. (RT 9426; People's Trial Exh. 27-F.) This is when she realized the
9 raking noises were coming from a neighbor behind them. (RT 9427-9428.) Karen left
10 McKenzie, with his leash attached, in the backyard and told him goodbye before closing the gate
11 behind her. (RT 9428-9429.) People's Trial Exhibit Number 27A, shown below, is a
12 photograph of McKenzie, the Peterson's dog. (People's Trial Exh. 27A.)



27 Karen returned to her house and washed the grass clippings and dirt off her hands before
28 she got back into her car and left for her errands. (RT 9429.) As she was leaving, the

1 neighborhood appeared normal. (9430.) There was an older man walking towards the park, like
2 many people did in their neighborhood and nothing seemed unusual. (RT 9430.) At that time,
3 Karen did not see the other neighbors, Susan and Rudolfo Medina or Amie Krigbaum, when she
4 left. (RT 9430.)

5 When Karen returned at 11:45 a.m., she saw a package sticking out of the Petersons’
6 mailbox and Laci’s car still in the driveway. (RT 9465; 9468.) Karen remained at home until
7 4:05 p.m. when she left for a Christmas party out of town and saw the package was still in the
8 Petersons’ mailbox. (RT 9432; 9468.)

9 **C. Everybody Got Their Mail Early That Day**

10 Mr. Russell Graybill III was a mail carrier for the US Postal Service for ten years and, in
11 December 2002, the Covena Avenue neighborhood was one of his regularly assigned routes.
12 (RT 9555-9558.) People’s Trial Exhibit 33, shown below, depicted Laci’s neighborhood and
13 Mr. Graybill’s mail routes.



27 When Graybill delivered the mail on Christmas Eve day, he was ahead of schedule. (RT
28 9563.) There were places on the route where Mr. Graybill would scan a barcode located on

1 designated mailboxes which would document the time he was at certain locations on his routes.
2 (RT 9558–9559.)³⁸ He was supposed to be at 1424 Encina Avenue at 10:45 a.m. (RT 9563)
3 However, he was twenty-six minutes ahead of schedule and actually delivered to 1424 Encina
4 Avenue at 10:19 a.m. on December 24, 2002. (RT 9563.)

5 Graybill testified at trial that, “everybody got their mail early that day.” (RT 9563.) From
6 his experience, it would take Graybill no more than fifteen minutes from when he scanned at
7 1424 Encina to start his route on Covena Avenue. (RT 9563.) Thus, based on the records,
8 Graybill estimated that he would have been delivering and picking up mail on Covena Avenue
9 between 10:35 a.m. and 10:50 a.m. that morning. (RT 9564.) When he arrived on Covena,
10 Graybill would start the route at 508 Covena, then he went to Susan Medina’s house located at
11 516, next he delivered to Krigbaum and Venable’s house at 520 Covena and then to 526 Covena
12 where there was a Siberian husky dog named Sage.³⁹ (RT 9564; 9566.) Mr. Graybill continued
13 up the street before making a loop and delivering the mail on the other side of the street where
14 the Petersons’ house is located at 523 Covena. (RT 9564; 9566; 9568.)⁴⁰ That Christmas Eve
15 morning was a normal ordinary day and Graybill did not notice anything unusual on his route.
16 (RT 9568-9569.)

17 **D. The Medinas Leave Town and See Nothing Unusual**

18 Susan Medina and her husband Rudolfo Medina have lived at 516 Covena Avenue for
19 almost twenty-five years and were there when the Petersons moved across the street in the winter
20 of 2000. (RT 9532; 9585; 9610.) On December 24, 2002, at 4:59 a.m., Susan spoke to her
21 cousin in Chicago over the phone for an hour. (RT 9616; People’s Trial Exh. 35 [Medinas’s

22 _____
23 ³⁸ After Laci had been reported missing, Mr. Graybill had pulled this report to verify where he was on his
24 route on December 24, 2002. (RT 9562-9563; People’s Exh. 34.)

25 ³⁹ As part of his job, Graybill became familiar with all the dogs that lived on Covena Avenue and when
26 he would deliver the mail it would sound like a chorus as one dog started to bark at one house and the
27 next one would catch on, thus, as he kept going the whole neighborhood would have a bunch of dogs
28 barking. (RT 9564-9566; 9595-9596.)

⁴⁰ Graybill explained that the Medina house was the second house on his route. (RT 9566.)

1 Phone Records].) During that time, Susan glanced out her front window and observed that there
2 were two vehicles parked in the Petersons' driveway. (RT 9617; 9621.)

3 Between 8:20 a.m. and 8:35 a.m., the City of Modesto Building Inspector, Mr. Nickerson,
4 stopped at the Medina residence to inspect the new patio they added in their backyard. (RT 9583;
5 9584; 9587.)⁴¹ Mr. Nickerson finished his inspection and left their house at about 9:32 a.m. (RT
6 9589; 9618-9619.) Susan and Rudolfo showered, finished packing and loaded the car which was
7 parked on the cement pad located on the southside near the back of their house. (RT 9590-9591.)
8 The Medinas have a small outdoor dog named Diana. (RT 9601.) During this time, Susan set
9 out a large amount of food and water for Diana who would stay in their backyard. (RT 9594;
10 9601.) Rudolfo locked the house and padlocked the backyard gate in preparation to leave for
11 two days. (RT 9599.)

12 Before they backed completely out of the driveway, Susan handed Rudolfo a stack of out-
13 going mail to put in the mailbox located on their front porch. (RT 9614.) Rudolfo put the outgoing
14 mail in and checked the mailbox which indicated they had not received any new mail at that time.
15 (RT 9592; 9596.) They left for their trip. As the Medinas turned the corner down the street, Susan
16 called her son to tell them they were on their way at 10:33 a.m. (RT 9590; 9593; People's Trial
17 Exh. 35.) Susan Medina did not notice anything out of the ordinary or unusual that morning. (RT
18 9594; 9621.)

19 **E. Neighbors' Work Van Is Parked, As Usual, Across the Street**

20 Amie Krigbaum and her significant other, Terra Venable, lived across the street from
21 Laci and the defendant at 520 Covena Avenue. (RT 9495; 9537; People's Trial Exh. 33.)
22 Krigbaum's 2002 midsize white Astro work van was parked, as usual, outside her house between
23 her and the Medina property line. (RT 9497-9499; 9515; 9577.)

24 Between 10:30 a.m. and 10:38 a.m., Krigbaum and Venable were awoken to the sound
25 of Sage, the dog who lives at 526 Covena and another unknown dog barking. (RT 9499; 9517;

26 _____
27 ⁴¹ Susan Medina had received a phone call at 8:34 a.m., while the inspector was there. (9588; 9590;
28 People's Exh. 35.) She went inside the house to clean, wash the dishes, vacuum and pack for their trip to
L.A. Mr. Nickerson stayed outside with Rudolfo. (RT 9588.)

1 9528.) Krigbaum got out of bed and took their dog outside to go to the bathroom in the front
2 yard. (RT 9501.) As Krigbaum stood on the porch, she saw nothing going on in the
3 neighborhood and thought that it seemed abnormally quiet. (RT 9501.) Venable also got up and
4 opened her kitchen blinds which faced the Petersons' house. (RT 9528.) The defendant's truck
5 was gone when they woke up. (RT 9506; 9532.) The Petersons' house looked unoccupied. (RT
6 9532.) The shades on the front of the Petersons' house remained down and Laci's Land Rover
7 was parked in the driveway the entire day. (RT 9531; 9533; 9539-9540; People's Trial Exh. 21.)
8 Neither Krigbaum nor Venable had seen Laci all day. (RT 9533.)

9 During trial, Krigbaum demonstrated for the jury where her house was located, across the
10 street from the Peterson home, by writing the word "Krigbaum" at the bottom of the picture and
11 she showed them where she always parked her work van by writing the word "VAN" to the north
12 of the garbage cans on her side of the street which is seen on the right side of People's Trial
13 Exhibit Number 21, depicted below. (People's Trial Exh. 21.)⁴²

14
15 ⁴² As discussed further below, Diane Jackson had given a statement to the police on December 27, 2002,
16 wherein she claimed to have seen a white van and three dark-skinned individuals on Covena at 11:40 a.m.
17 on December 24, 2002. The information about a mystery van was heavily reported in the media including
18 on reward flyers seeking information relating to the subsequent Medina burglary. (RT 18682; 20060-
19 20061.)
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PEOPLE'S
EXHIBIT

Kribbaum

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F. Laci Did Not Answer the Phone

17 Sharon was expecting Laci and the defendant for Christmas Eve dinner at 6:00 p.m. (RT
18 8997.) Between 3:00 p.m. and 3:30 p.m., Sharon realized she did not have whipping cream, so
19 Ron called Laci to ask her to bring some over when they came. (RT 8998.) When Laci did not
20 answer, Ron left her a message. (RT 8998.)

21 Around 3:45 p.m., Amy Rocha received a phone call from Vella Farms asking whether
22 someone was going to pick up the gift basket they ordered for her grandfather. She was surprised
23 that the defendant had not been there to pick it up as he promised. (RT 8873-8874.) The
24 defendant had never called Amy to say that he was unable to get the gift basket. (RT 8877.)
25 Amy told the business that she was on her way. After she hung up, Amy called the defendant's
26 cell phone but did not get an answer. Amy called Laci and the defendant's home phone, but no
27 one answered. She did not leave any messages. (RT 8874-8875.)
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1 No one had heard from Laci on December 24, 2002. (RT 8997; 9533; 9535.)

2 **G. Defendant Returned Home Between 4:30 P.M. – 4:45 P.M.**

3 That afternoon, Amie Krigbaum and Terra Venable left to go shopping and run errands.
4 (RT 9529.) When they returned between 4:10 p.m. – 4:30 p.m., Laci’s Land Rover was still
5 parked in the driveway, but the defendant’s truck was not there. (RT 9506-9507; 9521-9522;
6 9530; 9532.) They saw a package sticking out of the Petersons’ mailbox. (RT 9531.) Amie had
7 to run back to the store for an item and when she returned by 4:45 p.m., the defendant’s truck
8 was now backed into the driveway. (RT 9508; 9524.)

9 **IX. LACI IS MISSING**

10 **A. After 30-45 Minutes, Defendant Begins to Look for Laci**

11 The defendant was home alone for at least a half hour or longer before he made his first
12 phone call. At about 5:17 p.m., the defendant called Sharon and asked if Laci was with her. She
13 told him no. The defendant said that Laci’s car was in the driveway and the dog was in the
14 backyard with the leash on and “Laci was missing.” (RT 8999.) Sharon told the defendant to
15 call Laci’s friends to see if anybody had seen or talked to her that day. (RT 8999.) After she
16 hung up the phone, Sharon realized that the defendant used the word “missing.” (RT 8999.)

17 Between 5:15 p.m. and 5:30 p.m., the defendant called Laci’s sister, Amy and in a
18 panicked voice, he asked if Laci was with her. Amy said no and asked whether Laci was with
19 Sharon. The defendant said no and indicated that he was going to call a few people and then call
20 her back. (RT 8878-8880.)

21 At 5:26 p.m., the defendant called Stacey Boyers and asked if she had seen or spoken to
22 Laci today. (10513; 10529.) After Stacey replied “no,” the defendant asked Stacey to call the
23 other friends. He said, “Laci is missing” and abruptly hung up the phone. (RT 10513.) Stacey
24 called a couple friends (Lori Ellsworth and Kim McNeeley) and called the defendant back. (RT
25 10514.) He said something was wrong and Laci was missing. He said he had to go and hung
26 up. (RT 10514.)

1 The defendant called Sharon back within a few minutes and said that none of her friends
2 had seen her. (RT 8999.) Sharon told the defendant to check with the neighbors to see if maybe
3 Laci had made them cookies. (RT 9000.) After she hung up the phone, Sharon told Ron to call
4 the hospitals and the police because she knew something was wrong. (RT 9000; 9112-9113.)

5 Ron called 911 and told the dispatcher, “We’ve been told that Laci’s missing, our
6 daughter’s missing.” (RT 19934.) The dispatcher told Ron to stay at the house because an officer
7 would come to his location. (RT 9001; 9114.)

8 At about 5:30 p.m., the defendant called Greg Reed and left a message stating, “Have
9 you or Kristen seen or talked to Laci today *or yesterday*? I can’t find her.” (RT 14427.)

10 Defendant called Lori Ellsworth and told her “Laci was missing.” Lori asked the
11 defendant what he meant that Laci was missing. He replied, “I can’t find her.” (RT 10555;
12 10565.)

13 **B. Golfing All Day**

14 Between 5:30 p.m. and 6:00 p.m., the defendant knocked on the door of his neighbors,
15 Amie Krigbaum and Terra Venable, as they were cooking their Christmas Eve dinner. (RT 9509;
16 9523; 9534.) He asked Amie if they had seen Laci and she told them that they had not seen any
17 movement from the house at all, besides the Christmas lights had come on. (RT 9509.) With
18 Terra nearby, the defendant told Amie that he had been golfing all day and he had tried to call
19 Laci all day but was unable to get a hold of her. (RT 9510; 9534.) Amie told the defendant that
20 they had not seen any movement from the house all day and figured that they were out of town.
21 (RT 9510.) At the time, the defendant appeared distraught which upset Amie and disrupted their
22 Christmas Eve dinner plans. (RT 9510; 9523; 9535.)

23 The third time the defendant called Sharon back, he said that nobody had seen Laci. (RT
24 9000.) Sharon told the defendant that she was going to go to the park. (RT 9000.) Sharon knew
25 something was wrong. (RT 9000.) She was upset and was not going to wait for the police to
26 arrive. (RT 9001.) At 5:32 p.m., she called her best friend Sandy Rickard to give her a ride to
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1 the park. (RT 9001; 9299-9300.) After Sandy picked her up, Sharon called the defendant back
2 and told him to meet them at the tennis courts in the park. (RT 9001; 9004.)

3 **C. The Park**

4 The park is approximately one block north of Laci's house. (RT 8883.) The park is
5 referred to as the Dry Creek Park area and is divided into different parks which include La Loma,
6 Kewin, Thousand Oaks and Moose parks. (RT 9652; 9740-9742; 9749; People's Trial Exh. 22.)
7 The park is a short distance from Covena Avenue, however, to get there one must navigate a very
8 steep, slippery and difficult dirt footpath. (RT 8883; 9003; 9051;9357-9358.)

9 Once Sharon and Sandy arrived at the park, Sharon began running all around through the
10 area screaming and yelling Laci's name; Sharon even looked in trashcans. (RT 9005; 9301-
11 9302.) It was very cold that night. (RT 9006.) Ron Grantski had called Gwen and Harvey
12 Kemple, who were related to Sharon, for assistance. (RT 9354.) The Kemples' had over 30
13 family members and friends over for the holiday and all the adults went to the park to help. (RT
14 9354.) Although Laci's neighbors and family began arriving at the park to help look for Laci,
15 the defendant still had not shown up. (RT 9005; 9007; 9303-9304; 9536.) At this time, there
16 were approximately nine or 10 people in the park looking for Laci. (RT 9059.)

17 The defendant arrived and he was walking along the path close to the creek with the dog.
18 (RT 9007; 9057.) Sharon was about 20 to 30 feet away and was yelling Scott's name to tell him
19 that they were over here, however, the defendant would not acknowledge them until her nephew,
20 Zach, approached him. (RT 9007; 9056-9058.)

21 Sharon was hysterical; however, the defendant was very calm. (RT 9302-9303.) Sharon
22 asked the defendant if Laci's purse was at the house and he said he did not know. (RT 9008;
23 9058.) Sharon asked if the house was unlocked and the defendant replied that it was. (RT 9008.)
24 He told Sharon where Laci kept her purse. (RT 9008.) Sharon asked the defendant where he
25 thought Laci was and the defendant did not give her an answer. (RT 9010.)

26 **D. Police Respond and Start a Systematic Search**

27 On December 24, 2002, Modesto Police officers were dispatched to assist with a search
28

1 for a missing person at East La Loma Park, also called to Dry Creek Park. (RT 1984; 9857;
2 9999; People’s Trial Exh. 36.) At about 6:11 p.m., Officer Jon Evers, who was designated as
3 the primary unit to investigate the missing person call, arrived at the park. (RT 9996; 10019.)
4 Officer Matthew Spurlock, Officer Derrick Letsinger and Sgt. Byron Duerfeldt also responded.
5 (RT 9650-9652; 9855-9856; 10019.)

6 It was dark and Laci’s family and friends had been searching for her for about fifteen
7 minutes when the officers arrived at the park. (RT 9802; 9858; 9786; 9303.) Officer Evers
8 observed that Sharon Rocha was hysterical and crying and Sandy Rickard was trying to console
9 her. A large group of people were standing next to them. (RT 9857-9858; 9998.) Sharon said
10 Laci was missing and that she wanted to go to the house to see if Laci’s purse was there. (RT
11 9008; 9057-9059; 9998.)

12 Then the defendant walked up from behind the group with a dog on the leash and
13 indicated that Laci was his wife and that she was missing. (RT 9999.) Officer Evers spoke to
14 the defendant to try to gather some information. The defendant told Officer Evers that he had
15 been fishing all day in the Bay Area. (RT 10000.) He last saw Laci before he left that morning
16 and that Laci was getting ready to walk the dog in the park, that was where Laci was going,
17 however, she was not home when the defendant got there. (RT 10000.) Officer Evers told the
18 group to go back to 523 Covena Avenue because that was the last place Laci was seen and he
19 wanted to start a systematic search beginning at her home, then work outward. (RT 9786; 9303;
20 10000.)

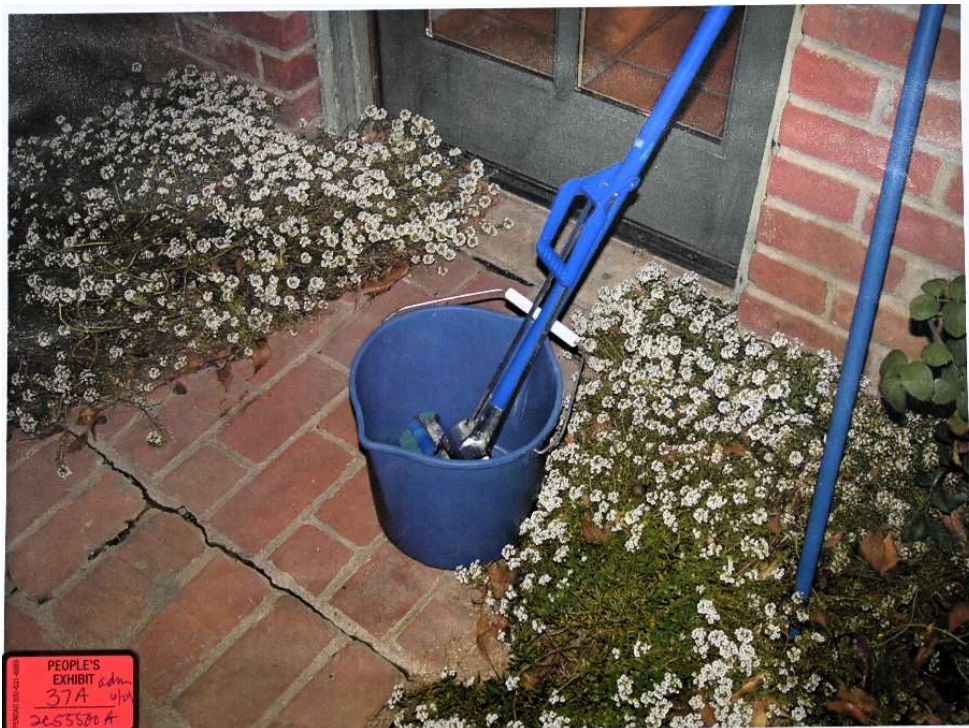
21 **E. Some Suspicious Things**

22 The officers arrived at 523 Covena Avenue at 6:25 p.m. (RT 9858;10002.) Sandy and
23 Sharon arrived back at the house before the defendant returned. (RT 9008; 9060.) Sharon wanted
24 to go inside, however, the officers would not let her until they cleared it first, so she remained
25 outside. (RT 9008; 9060; 9304.) The officers decided to conduct a quick security check of the
26 house to confirm that Laci was not inside and look for any signs of suspicious circumstances,
27 such as a home invasion. (RT 9787; 9859; 10002.)

1 Officers Evers, Spurlock and Letsinger completed the quick walkthrough of the house,
2 checking room by room for Laci. (RT 9732; 10002-10003.) They entered the house and noticed
3 most of the lights were on. (RT 9859.) When they walked inside, the officers saw that this was
4 a model home, with everything in place and put away which made it easier for the officers to
5 identify things that seemed odd. (RT 9789.) Although they found no indications of a burglary
6 or anything missing, the officers noted some suspicious things. (RT 9793; 10004.)

7 The first thing that caught the officers' attention was the wet pavement in the courtyard,
8 as if someone had poured liquid on it. Next to the wet pavement was a mop bucket and two
9 mops that were leaning against the house outside the door. (RT 9787; 9859; 10019-10020;
10 People's Trial Exh. 37A.) These items were later seized and a Department of Justice criminalist
11 examined the mops and bucket. They smelled of cleaning agent, but there was no blood on the
12 mops or bucket. (RT 17009-17015.)

13 People's 37A, pictured below, shows the two mops and mop bucket outside the door at
14 532 Coven Avenue on the evening of December 24, 2002. (People's Trial Exh. 37A.)



1 The officers saw an open pizza box on the counter with a few pieces of pizza missing and
2 a bottle of Ranch nearby. (RT 9788; 9869.) There was a mug and glasses on the counter. (RT
3 9828.) There was a phone book open on the counter next to the pizza. (RT 9860.)

4 Officer Letsinger and Spurlock observed a crumpled rug located near the living room
5 door that lead to the covered patio in the backyard. The rug had been scrunched up accordion
6 style, slid together all the way to the door jam, even though the door was closed. (RT 9789;
7 9805; 9814; 9860; 9910.)

8 Officers observed several dirty, wet white rags laid on top of the washing machine that
9 were balled up and appeared to have sand and dirt on them. (RT 9789; 9860; 10020.)

10 In the spare bedroom which held the defendant's clothing, officers observed the closet
11 doors were open and a duffle bag was pulled down, hanging upside down from the top shelf and
12 stuck on the hangers and another duffle bag was lying upside down on the floor. (RT 9790;
13 10020.)

14 The officers also went in the backyard and cleared it, confirming that Laci was not in the
15 shed, pool or hot tub. (RT 9861-9863.) There was a pair of dark colored tennis shoes and sandals
16 outside next to the French doors. (RT 9863-9864; People's Trial Exh. 91.)

17 Throughout the trial, witnesses utilized the diagram in People's Trial Exhibit Number 12,
18 depicted below, to identify the layout of 532 Covena Avenue and where people and items were
19 located. (People's Trial Exh. 12.)

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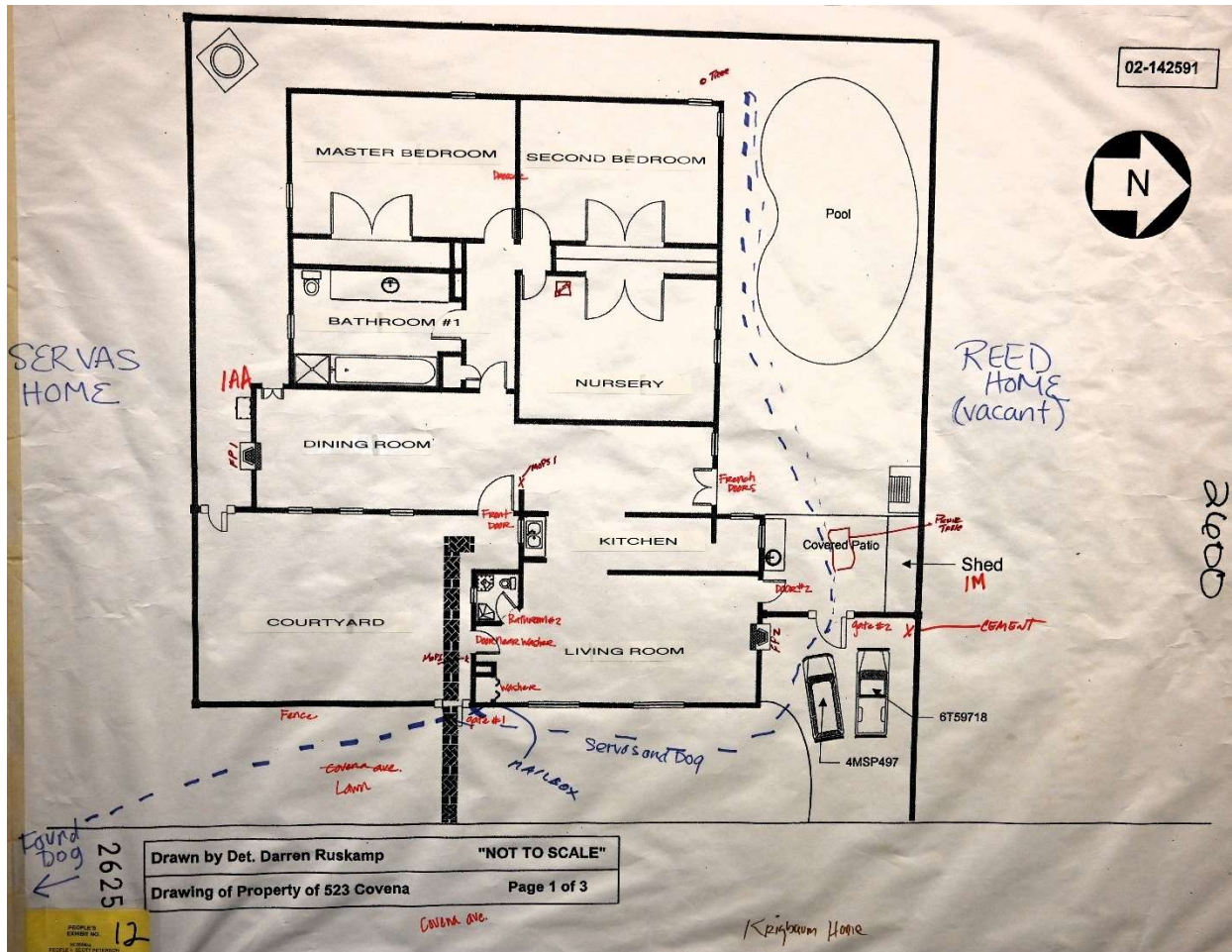
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F. A Walk-Through with the Defendant

1. Defendant's First Statement

Since the officers did not see any obvious signs of a struggle, they asked the defendant to walk through room to room with them and identify if anything was out of place, while they took a more detailed statement from the defendant. (RT 9864; 9869; 9897; 10004; 10008.)

The defendant told Officer Evers that that morning he and Laci watched the Martha Stewart show on TV and he decided that he was going to go fishing. (RT 10004.) He left at about 9:30 a.m. and went to the shop to get his boat. (RT 10004-10005.) The defendant picked up his boat and headed to the Bay Area. (RT 10005.) The defendant said he got to the Berkeley Marina just about noontime. (RT 10005-10006.) He fished by himself for about two hours until it started getting rainy and cold, so he decided to come back home. (RT 10006.) The defendant loaded up his boat and tried calling Laci a couple times, once on her cell phone and at the house.

1 (RT 10006.) The first call he made to her was while he was at the Berkeley Marina and he tried
2 calling Laci again as he drove through Livermore. (RT 10006.) He was not able to get a hold of
3 her. (RT 10006.) The defendant dropped his boat off at the warehouse. (RT 10007.)

4 The defendant said he arrived back home at 4:30 p.m. (RT 10007.) He saw that his dog
5 was in the backyard with the leash still attached. (RT 10007.) The defendant also noticed that
6 the French doors that lead to the patio or backyard area were unlocked. (RT 10007.) The
7 defendant walked into the house and Laci was not there. (RT 10007.) The defendant assumed
8 that she was just out maybe doing some errands or something. (RT 10007.) So, he ate a couple
9 slices of pizza and drank some milk. (RT 10008.) He changed his clothes, put some clothes in
10 the washer and showered. (RT 10007-10008.) After he got out of the shower and dressed, the
11 defendant started making phone calls. (RT 10008.)

12 The defendant said that Laci had planned to walk the dog down at the park and then shop
13 for groceries because they had a family dinner planned that evening. (RT 10005.) Officer Evers
14 opened the refrigerator and asked the defendant if it looked like Laci had gone grocery shopping.
15 He said no. (RT 10010.) As they walked from room-to-room, the defendant said that nothing
16 was out of place. (RT 98710008-10009.)

17 2. Laci's Purse

18 The officers asked the defendant where Laci kept her purse and he indicated that she
19 either hung it up by the front door or in her bedroom closet. (RT 9865;10011.) Officer Spurlock
20 saw Laci's purse hanging on the hook in the bedroom closet and with the defendant present they
21 looked through it, accounting for Laci's wallet containing her driver's license, credit cards and
22 money, along with her car keys and personal effects. (RT 9795; 9865-9866; 10012.) After this,
23 Officer Spurlock hung the purse back up in the closet where he located it. (RT 9866; 10012;
24 People's Trial Exh. 262A [Laci's purse].)

25 3. A Full Clothes Hamper

26 While in the bedroom, Officer Spurlock noticed that the defendant was wearing light
27 clothes for a cold day and asked the defendant if he was wearing the clothes that he went finishing
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1 in. (RT 9869.) The defendant replied that he had changed. (RT 9869.) Officer Spurlock observed
2 a clothes hamper that was full of clothing and asked the defendant if he put his clothes in the
3 hamper. (RT 9867; 9869.) The defendant said no and that he washed them. (RT 9869.)

4 4. Defendant Does Not Know What He Fished For or What Bait He Used

5 Officer Spurlock asked the defendant if he had been working all day. (RT 9867.) The
6 defendant responded no that he went fishing in the Bay. (RT 9867.) Officer Spurlock asked the
7 defendant roughly what time he went fishing and he did not provide a time but instead said earlier
8 this morning. (RT 9867-9868; 9912.) Officer Spurlock asked the defendant what kind of fishing
9 he was doing, what kind of fish he was fishing for today. (RT 9868.) At that point, the defendant
10 paused and had a blank look on his face for a second or so, his eyes shifted a little bit and hesitated
11 in answering him, before he mumbled something, but did not give the officer an answer. (RT
12 9797; 9868.) Officer Spurlock asked the defendant what he was using for bait. Again, the
13 defendant gave the same response, with a blank stare and shifted his eyes and couldn't give a
14 response. (RT 9868.) After some hesitation, the defendant said he was using a silver lure and
15 gave a hand gesture of about seven to eight inches. (RT 9797; 9869.) The defendant told Officer
16 Spurlock that he kept all his fishing gear at this storage facility for the company he worked for.
17 (RT 9869.) Compared to the defendant's calm demeanor earlier, Officer Spurlock described the
18 defendant's demeanor during this line of questioning as "nervous," "a little fidgety," and "more
19 standoffish." (RT 9946-9947.)

20 The officers walked with the defendant towards the front door. (RT 9869.) The
21 defendant proceeded to walk out the front door and Officer Spurlock followed him at a distance.
22 (RT 9869; 9871.) As he stepped out the front door and onto the sidewalk the defendant said,
23 "fuck" and threw his flashlight on the ground in the courtyard area. (RT 9797-9798; 9871; 9882.)
24 The defendant quickly picked the flashlight back up and walked out the front gate. (RT 9882.)

25 **G. Laci's Family and Friends Respond**

26 Police had parked their cars in front of the house and along Covena Avenue. (RT 9654;
27 9670.) Sgt. Duerfeldt stood outside the house to make sure no one entered. (RT 9654-9655.)

1 The family was never allowed to go into the house and remained outside the entire evening. (RT
2 9008; 9906.) People were standing near the driveway or sitting or standing around cars because
3 it was really cold. (RT 9006; 9011.) Sharon Rocha remained outside Laci's house the entire time
4 until officers told them to go home. (RT 9062.)

5 Amy cancelled her Christmas Eve plans with her and Laci's dad and she drove over to
6 Laci's house around 6:00 p.m. (RT 8878-8880.) When Amy pulled up, Sharon was standing
7 outside and was very upset. (RT 8880.) The police were at the house. (RT 8883.) Then a
8 carload of Laci's friends showed up and more family. (RT 8881-8882.) Most everybody was
9 frantic. (RT 8882.) More of Laci's family members came to house. (RT 8883.) There were
10 quite a few people but no media trucks. (RT 8884.) Some of them went to the park to search
11 while others stood outside Laci's house. (RT 8883.) Susan Aquino, Laci's aunt, stood out front
12 of the defendant's house at 532 Covenia from 7 p.m. until midnight trying to calm Sharon down.

13 At 7:00 p.m., Brent Rocha and his wife Rose returned home after church and saw they
14 had multiple messages on their answering machine from Ron, who sounded frantic. (RT 9185.)
15 He said Laci was missing. (RT 9182.) Brent immediately changed his clothes, grabbed some
16 heavy jackets and flashlights and drove straight to Laci's house. (RT 9185.)

17 A little before 7:00 p.m., Stacey Boyers and Lori Ellsworth arrived at 523 Covenia
18 Avenue. (RT 10515; 10555.) It was chaotic with everyone everywhere. Stacey and Lori walked
19 up to the defendant who was standing in the grass and gave him a hug. (RT 10555.) Sharon was
20 standing in the middle of the street. (RT 10530.)

21 **X. A CHAOTIC AND SURREAL CHRISTMAS EVE IN THE LA LOMA**
22 **NEIGHBORHOOD**

23 **A. A Suspicious Missing Person Investigation Is Opened**

24 After the walk-through, the officers conferred with Sgt. Duerfeldt. (RT 9656.) Based on
25 the information, Sgt. Duerfeldt called Detective Allen Brocchini at about 7:30 p.m. to assist with
26 a suspicious missing person investigation. (RT 9656-9657; 9674 10707-10710.)

1 Meanwhile, the police deployed various resources to search for Laci until Detective
2 Brocchini arrived. Between 6:30 p.m. to 7:00 p.m., officers searched the unoccupied house
3 belonging to Greg Reed’s deceased mother located next door to 523 Coven. (RT 9658; 9882-
4 9883; 9935; 14427; 14429.) Officers went to East La Loma Park and continued to search for
5 hours for any signs of Laci. (RT 9659; 9801; 9857; 9883-9884; 9889; 9935-9940.) Police
6 searched three homeless encampments along the creekbank of the park area. There were about
7 seven to eight people living there. (RT 9733-9734.) The local fire department dispatched a water
8 team that searched deeper areas of the creek adjacent to the park. (RT 9753-9754, 9769.)

9 That evening, Sgt. Duerfeldt coordinated for a Stanislaus County Sheriff’s helicopter to
10 respond and fly over the park using their infrared device called a FLIR. (RT 9653.) Dispatch
11 contacted local hospitals to check to see if any pregnant women were admitted. (RT 9653.) The
12 officers had to clear the park of all the family and friends who had responded, including the seven
13 or eight homeless people, so the helicopter could search using the infrared radar. (RT 9660;
14 9672; 9804.) The helicopter was airborne from about 8:30 p.m. until 10:00 p.m., making
15 repeated flights over the park at low altitude. (RT 9009; 9660-9661.) The device did not pick
16 up any readings. (RT 9707.)

17 Brent, Laci’s brother, arrived at Laci’s house at 8:30 p.m. on Christmas Eve. (RT 9185.)
18 He described the scene as surreal. (RT 9185.) There was a helicopter flying over with the light
19 shining down. (RT 9186.) There were over 40 people out in front of Laci’s house, standing on
20 the front lawn and in the street, taking over the neighborhood. (RT 9186; 9304; 10566.) Sharon
21 was screaming and crying. (RT 9186.) Police officers were there and the house was taped off.
22 (RT 9186.) It was very chaotic. (RT 9186; 9659-9660; 9894.)

23 Throughout the evening, 70 to 80 people showed up to help search for Laci. (RT 9009.)
24 Stacey and Lori asked for pictures of Laci and they began walking the neighborhood, going door
25 to door, including across the street, showing the photos and asking if anyone had seen Laci. (RT
26 10555; 10566.) No one had seen her. (RT 10515.) People were going to the park looking for
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1 Laci, while others were going door to door showing pictures of Laci and asking if anyone had
2 seen her. (RT 8884-8885; 9009.)

3 Amie Krigbaum and Terra Venable opened their house to allow for the family and friends
4 to use their bathroom and warm up. It was cold that night. (RT 9802.) They provided them with
5 coffee and water. (RT 9514-9515.)

6 Rene Tomlinson arrived at Laci's house at 10:30 p.m. and saw there were still 20 to 30
7 people standing outside including the police. (RT 10577.) The defendant had been inside the
8 house with the police and just came out when she got there. (RT 10577.)

9 **B. Where Were You?**

10 While they waited for Detective Brocchini to arrive, the defendant remained at the house
11 and did not attempt to search for Laci in the park. (RT 9659-9660.) At one point, the defendant
12 walked up to Officer Evers and Officer Spurlock asking for an update on the search for Laci.
13 (RT 9885.) At the same time, Ron Grantski walked up to the defendant and asked if he went
14 golfing as planned. (RT 9885; 9887.) The defendant hesitated and then said no, that he decided
15 to go fishing and that it was too cold to go golfing. (RT 9846, 9888.) Mr. Grantski asked the
16 defendant when he went fishing and the defendant replied, between 10:00 a.m. and 10:30 a.m.
17 (RT 9846, 9888.) Mr. Grantski retorted that was pretty late to go fishing. (RT 9846, 9888.) The
18 defendant did not answer him and walked away. (RT 9888.) Despite this, when Harvey Kemple
19 approached the defendant that night and asked where he had been, the defendant told Kemple
20 that he had been golfing that day. (RT 9362.)

21 At one point the defendant was standing by himself outside, staring straight ahead and
22 seemed reluctant to make eye contact with anyone. (RT 9011; 9186.) Defendant and Brent never
23 spoke that night even though they had a great relationship. (RT 9186-9187.) Sharon walked up
24 to give the defendant a hug because everyone was upset and since she was close with the
25 defendant, she was trying to console him because his family was not there. (RT 9011.) However,
26 when she tried to give him a hug the defendant kept angling away from her and would not make
27 eye contact. (RT 9011.) Sharon asked the defendant what Laci's was doing that day. (RT 9012.)
28

1 The defendant said that Laci planned to go to the store, then come home and make gingerbread
2 and walk the dog. (RT 9012; 9039-9040.) Sharon questioned where the defendant was and he
3 replied with one word, "fishing." Sharon asked the defendant where he was fishing and he
4 responded, "Berkeley." (RT 9012.) Sharon asked him what time he got home. The defendant
5 answered a quarter to five. (RT 9012-9013.)

6 C. "Blood On My Truck"

7 Sandy Rickard was standing by herself on the front lawn when the defendant walked up
8 to her and put his hands up. He said, "I wouldn't be surprised if they *find blood on my truck*
9 because I cut my hands all the time. I'm a hunter, I'm a fisherman, sportsman, outdoorsman."
10 Sandy was adamant the defendant used the words "on my truck," but she could not recall the
11 specific term that the defendant used but knew it was something to the effect of being a sportsman
12 or outdoorsman. (RT 9304-9305; 9317; 9321.) Sandy was perplexed by this comment or what
13 prompted the defendant to say it to her especially since he had not spoken to her at all that night.
14 (RT 9306.)

15 Later that evening, Detective Brocchini observed a small cut on the middle knuckle of the
16 defendant's right index finger. (RT 18134.) In a following interview with Detective Grogan, who
17 had taken over as the lead investigator, the defendant indicated that he cut his knuckle when he
18 had reached into the door panel storage area on the driver's door. (RT 18197; 12990.)

19 Detective Grogan spoke to the defendant several times on December 30 and recorded
20 the conversations. (RT 17686-17687.) During one of those conversations, the defendant again
21 mentioned that there might be blood in his truck because he cut his hands "every day." (RT
22 17692; People's Trial Exh. 264C.) Defendant then revised his statement to say that he cut his
23 hand "that day," referring to Christmas Eve. (People's Trial Exh. 264C.) He said that it
24 happened when he reached inside the side pocket of the door. (People's Trial Exh. 264C.)
25 Referring to Detective Brocchini, the defendant said: "I mean, I know Allen looked at my
26 hands and I know he noticed cuts on my hands- so he knows. (People's Trial Exh. 264C.)
27 Defendant elaborated: "I don't know what it was probably just ah door or the pocket or somethin'-
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1 knuckle. Still my hand I-you know-I keep cuttin' it handin' out flyers so-that's the reason
2 I-keep rememberin' it. (People's Trial Exh. 264C.)

3 During the execution of a subsequent search warrant, authorities located four areas of
4 suspected blood in the defendant's truck. (RT 12492; 12954-12956.) Later analysis confirmed
5 that three of the four stains were, in fact, the defendant's blood. (RT 17039; 17197.) People's
6 Trial Exhibit 116B, pictured below, shows one of the defendant's blood stains on the driver's side
7 door panel, located during the forensic examination of the defendant's truck. (People's Trial Exh.
8 116B.) The defendant's blood was also found, in two small spots, on the master bedroom white
9 duvet cover during a subsequent search warrant for bedding in February 2003. (RT 12338; 17033;
10 17196.)



21 **D. Defendant Learns a Neighbor Found McKenzie**

22 At 8:48 p.m., the defendant called Karen Servas and asked if she knew where Laci was
23 and she told him no. (RT 9434; 9449.) The defendant said Laci was missing and that there
24 were people in the park and a helicopter searching for her. (RT 9434.) Karen told the defendant
25 she was out of town at a Christmas party, however, she indicated that she found McKenzie that
26 morning. (RT 9434; 9449.) The defendant asked her to repeat that and handed the phone to a
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1 detective. (RT 9451-9452.) Karen explained how she located McKenzie standing in the street
2 in front of the defendant's house and estimated that the time was 10:30 a.m. (RT 9434; 19049.)

3 **XI. CHRISTMAS EVE PHOTOS CAPTURE PHYSICAL EVIDENCE**

4 **A. Detective Brocchini's Walk-Through**

5 Detective Brocchini arrived at 523 Covena Avenue between 9:30 p.m. and 10:00 p.m.
6 (RT 10018; 10713.) Detective Brocchini's initial role was to find Laci and eliminate Scott
7 Peterson as a suspect since he was the last person to see Laci. (RT 10781-10782.) Officer Evers
8 briefed him on the unusual things the officers had noted thus far, including the defendant's
9 conversation with Officer Spurlock. (RT 10013; 10728; 10713.) Detective Brocchini introduced
10 himself to the defendant and asked if he would walk through the house with him again. (RT
11 10021; 10715; 10728-10731.)

12 They walked to the bedroom where Detective Brocchini looked at Laci's purse and hung
13 it back on the hook. (RT 10729; 10734; People's Trial Exh. 37L.) In the second bedroom of the
14 closet, there was a Nike bag on the floor right in front of the open closet door, unzipped, with a
15 partial raincoat or something sticking out of it. There was another duffle bag in the closet that
16 had fallen off the shelf and was hanging upside down on the hangers. There were two empty
17 spaces on the top shelf that appeared to be where the duffle bags had been stored. (RT 10735;
18 People's Trial Exh. 37O.) Defendant explained that he was a "slob" and that was why the duffle
19 bags were displaced. (RT 10023.) Detective Brocchini asked the defendant if he had removed
20 something from the bag and the defendant explained that he took his white tennis shoes out
21 earlier that day and put them on his wet bar. (RT 10736.) Detective Brocchini did not see any
22 white tennis shoes on the defendant's wet bar. (RT 10736.)

23 **B. Defendant Already Washed the Clothes He Wore Fishing**

24 They walked into the converted family/TV room where the washing machine was located
25 with the wet rags piled on top. (RT 10737.) Despite just telling the detective that he was a slob,
26 the defendant explained that he had taken the rags out of the washing machine when he took his
27 clothes off to wash them. (RT 10737; People's Trial Exh. 37CC.) He told Detective Brocchini
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1 that he had to wash his clothes because it had rained while he was fishing and they were wet. (RT
2 10747.) Inside the washing machine was a damp pair of men's jeans, a blue T-shirt and a green
3 pullover. The items had been washed and gone through the spin cycle. (RT 10738.) The
4 defendant confirmed these were the clothes that he wore fishing that day. (RT 10738.)



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18 People's Trial Exhibit Number 37CC, shown above, is the dirty wet rags that were placed
19 on top of the washing machine which contained the defendant's clothes that he wore fishing on
20 December 24, 2002. (People's Trial Exh. 37CC.)

21 **C. Defendant Straightens the Rug at the Door Leading to the Driveway**

22 Detective Brocchini asked the defendant for permission to look in his and Laci's vehicles.
23 (RT 10027.) As they walked into the converted family room and towards the door that leads to
24 the driveway, Officer Evers noticed for the very first time that the rug, located in front of the door,
25 had been scrunched up all the way to the door jamb. (RT 10025.) The door was closed. (RT
26 10025.) Evers found this odd and asked the defendant if the rug was always like that. (RT 10025.)
27 The defendant replied that the cat or dog must have been playing in there. (RT 10025.) The
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1 defendant then walked towards the rug and used his foot to try to straighten it out. (RT 10026.)
2 Below is a photo of what the rug looked like after the defendant attempted to straighten it on
3 December 24, 2002 depicted in People’s Trial Exhibit 37DD. (People’s Trial Exh. 37DD.)



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D. Laci’s Cell Phone

16 The defendant gave the officers permission to look at Laci’s green Land Rover and the
17 defendant’s truck. Laci’s Land Rover was parked facing into the driveway while the defendant’s
18 pickup truck had been backed into the driveway and the bed of the truck was facing the fence.
19 (RT 10026-10027.)

20 Laci’s vehicle was unlocked and Detective Brocchini found her cellphone plugged into a
21 battery charger.⁴³ (RT 10739.) Detective Brocchini retrieved Laci’s cellphone, however, when he
22 tried to power it on the battery was too weak to turn on. (RT 10739.)

23 The defendant later contradicted himself in an interview which is discussed in further
24 detail below, with Capt. Chris Boyers regarding Laci’s keys. Capt. Boyer asked the whereabouts
25 of Laci’s keys and whether Laci had them while she walked the dog. The defendant claimed that
26

27 ⁴³ Sharon Rocha had told Laci, after her first dizzy episode, Laci needed to make sure and carry her cell
28 phone with her if she was going to walk. (RT 9052-9053.)

1 he had taken Laci's keys out of her purse to look in her car. (RT 15930.) This was a discrepancy
2 with the defendant's earlier statement to Sharon Rocha in the park indicating that the defendant
3 did not know if Laci's purse was at the house or not. (RT 9008; 9058.) Furthermore, this was
4 inconsistent with the evidence where Officer Spurlock retrieved Laci's purse from the closet and,
5 with the defendant standing next to him, they accounted for the keys and other contents inside the
6 purse. (RT 9795; 9865-9866; 10012.)

7 **E. Marina Receipt**

8 Just before Detective Brocchini began searching the defendant's truck, Officer Evers
9 asked if the defendant had any proof that he was in the Berkeley Marina. (RT 10028.) The
10 defendant responded by offering the parking receipt from the Berkeley Marina which he retrieved
11 from his ashtray. (RT 10028.) Contrary to what the defendant told Officer Evers earlier about
12 arriving at the marina at noontime, the receipt showed the defendant arrived at 12:54 p.m. that
13 day. (RT 10029; 10772; People's Trial Exh. 53.)

14 **F. Three Large Patio Umbrellas, Two Tarps and Unopened Fishing Lures**

15 Detective Brocchini asked the defendant to unlock his truck which he did using his remote-
16 control fob. (RT 10740.) The detective stood on the top of the rear driver's side tire and inspected
17 the contents of the bed of the pickup truck. (RT 10740.) The defendant had three large patio
18 umbrellas wrapped up in a blue tarp lying inside the bed of the truck. (RT 10740-10741.) There
19 was also a tan canvas tarp which had been balled-up or bunched up and pushed all the way next
20 to the defendant's green toolbox. (RT 10740-10741.) At the time, Detective Brocchini did not
21 realize that this was the cover to the defendant's boat.

22 When Detective Brocchini opened the passenger door of the defendant's truck to look
23 inside, the door bumped Laci's Land Rover. Concerned about his vehicle, the defendant offered
24 to hold his leather glove between the door and Laci's Land Rover or move the truck. Detective
25 Brocchini apologized and indicated he would be more careful. (RT 10746.)

1 Inside the defendant's truck was a Big 5 Sporting Goods bag containing two new fishing
2 lures which were still inside their packaging.⁴⁴ (RT 10746; 10774-10776; People's Trial Exh.
3 74.) There was a receipt in the bag indicating that the lures, a fishing pole and a two-day fishing
4 license had been purchased four days earlier on December 20th. (RT 10746; 10774; People's Trial
5 Exh. 73 [Big 5 receipt].)

6 In the backseat was the camouflage jacket that the defendant indicated he wore while he
7 was fishing. (RT 10747.) The coat was dry when Detective Brocchini touched it even though
8 later that night the defendant told the detective that he had been wearing the jacket when it started
9 raining while he was in the boat. (RT 10747; People's Trial Exh. 68 and 68A.)

10 The defendant had a loaded handgun in his glove compartment. He told Detective
11 Brocchini that he forgot it was in there and that he had it when he went pheasant hunting a month
12 ago in Lone Pine with his father. (RT 10748.) Detective Brocchini took the gun for possible
13 evidence.⁴⁵ (RT 10748.) He did not tell the defendant that he was taking his gun. (RT 10749.)

14 Later that morning, at about 2:15 a.m., the defendant called Detective Brocchini and
15 questioned if the detective took the defendant's handgun. Detective Brocchini confirmed that he
16 had taken it. The defendant said that he wished he would have told him that he was taking the
17 gun. (RT 10749.)

18 **G. No Electricity at the Warehouse**

19 The defendant was cooperative and agreed to show Detective Brocchini and Officer Evers
20 his boat located at his warehouse at 1027 North Emerald in Modesto. (RT 10036-10038; 10749-
21 10750.) When they arrived at 11:05 p.m. the defendant unlocked the single man door that led into

22 ⁴⁴ At trial, the jury was shown the contents of People's Trial Exhibit Number 74 which included a silver
23 fishing lure still inside its packaging. (RT 12573.)

24 ⁴⁵ Additionally, in California, it was illegal to carry a loaded firearm in a vehicle while in a public place
25 or public street which was a violation of the California statute formerly known as Penal Code section
26 12031. (RT 11511-15112.)

1 the office portion of the warehouse. (RT 10038; 10750; 11752.) They walked inside and it was
2 dark. (RT 10751.) The defendant said there was no electricity.⁴⁶ (RT 10751; 10753.)

3 Therefore, that Christmas Eve night, Detective Brocchini used his flashlight to search. He
4 saw a fax sitting on a table in the office with the date and time of December 24, 2002, at 11:15
5 a.m. or 11:30 a.m. (RT 10753.) The defendant said he had received the fax before he went
6 fishing. (RT 10753.) Detective Brocchini asked the defendant how the fax could be sitting on
7 the table if he was driving to the Bay to go fishing at that time. (RT 10043; 10753.) He responded
8 that the time on the fax was New Jersey time, three hours ahead. (RT 10753.) The defendant
9 then changed his answer and said that he thought he received and read the fax before he went
10 fishing but it could have been when he got back when he set it on the table, but continued to claim
11 that it had New Jersey time on it. (RT 10753-10754.)

12 Next, Detective Brocchini asked the defendant if he could roll up the large bay door since
13 there was no electricity to the shop and he would move his car to shine his headlights inside, in
14 order to illuminate the inside of the dark warehouse. (RT 10043;10754.) Using the headlights
15 and his flashlight to illuminate the interior, the officers observed a 14-foot aluminum boat, a
16 flatbed trailer, a forklift and bunch of pallets with some type of product. (RT 10044; 10754.)
17 There was some water in the bottom of the inside of the boat which indicated it had been
18 somewhere near water. (RT 10755.) Detective Brocchini observed a couple of fishing poles, a
19 tackle box, a spare tire, small 6-foot red rope and a homemade cement anchor inside the boat.
20 (RT 10755.) He looked inside the tacklebox and saw a bunch of old jigs, lures and things. (RT
21 10756.)

22 Detective Brocchini took out his camera and took a few pictures of the boat and the police
23 car which were test photos to make sure the flash was working. These photos, depicted below,
24 were taken on December 24, 2002 and marked as People's Trial Exhibit Numbers 70N through
25 70X. (RT 10761-10770; People's Trial Exhs. 70N-70X.) While Brocchini was taking photos of

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27 ⁴⁶ Detective Brocchini had seen the computer and fax machine sitting on the desk in the small office and
28 did not press the defendant further about not having electricity. He assumed the defendant meant there
was no electricity to the warehouse. (RT 10753.)

1 the boat, the defendant told him to not let the defendant's boss see him taking pictures. (RT
2 10768.)



15 Among the items in the boat mentioned above, there was also a yellow-handled pair of
16 needle-nose pliers and a life preserver. (RT 10755; 10767.) People's Trial Exhibit Number 70Q,
17 shown below, is a photo inside defendant's boat on December 24, 2002. (People's Trial Exh.
18 70Q.)



25 **XII. A MASSIVE CHRISTMAS SEARCH FOR LACI BEGINS**

26 **A. Officers Continued to Search Throughout Christmas Eve Night**

27 By 11:00 p.m., there was a shift change and additional officers had arrived and the officers
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1 who were due to get off work were deployed back to the park. (RT 9661.) Sgt. Duerfeldt's patrol
2 vehicle that was outside 523 Covena Avenue served as a make-shift command post and he directed
3 the officers on where to go and what to do. (RT 9662.) He directed officers to canvass the
4 neighborhood. (RT 9662-9663.) Officers searched other nearby parks. (RT 9944.) Sgt. Heller
5 took over the direction of the search of the park. (RT 9662.) That night, a K-9 officer searched
6 the park. (RT 9888; 9662.) They searched along the creek. (RT 9943-9944.)

7 Sgt. Duerfeldt left the house at 12:30 a.m. (RT 9663.) The identification technician, Doug
8 Lovell, who was taking photos was still there. (RT 9663; 9688.)

9 Between 11:00 p.m. and midnight, the police told the family to go home for the night as
10 there was nothing more they could do at that time. (RT 9013; 9188; 9306; 9663; 9802.) Sharon
11 told the defendant to come over to her house when he was finished with the police because she
12 did not want him to be alone. (RT 9013.) Sharon had told Detective Brocchini to drop the
13 defendant off at her house when he was finished because she did not want him to be alone. (RT
14 9013.) The defendant never came over that night. (RT 9013.) Brent asked the defendant if he
15 wanted to come over to his mom's house to stay the night and the defendant said no. (RT 9188.)
16 The defendant was surprised that Brent was going to spend the night at his mom's house and not
17 drive back to Sacramento. (RT 9189.) Laci's friends left at midnight and went to the copy store
18 and made numerous missing person flyers. (RT 9663; 10516; 10556.)

19 **B. Can't Sleep – Family Still Out Looking for Laci**

20 After midnight, Brent dropped Amy back off at her car which was parked in front of Laci's
21 house and they spoke with their stepbrother and his girlfriend who were still there. (RT 9189-
22 9190.) The Modesto Police Department crime scene van and officers were still at the house. They
23 advised that the defendant had not returned home yet from the police department. (RT 9190.)
24 Amy called the defendant and he answered during his interview with Detective Brocchini. She
25 indicated she was outside his and Laci's house with Nate and Brent. (People's Trial Exhs. 68 and
26 68A.)

27 After dropping Amy off, Brent could not sleep and at about 3:00 a.m. he went back to
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1 Laci's house and drove around. (RT 9191.) By this time, the police and the patrol cars were gone
2 and the house was all dark. (RT 9191.) Brent did not try to make contact and wake the defendant.
3 (RT 9191.)

4 As soon as the sun came up on Christmas Day, the family wanted to start searching for
5 Laci immediately. (RT 9014; 9192.) At 7:00 a.m., Brent called the defendant and told him that
6 they were coming over to search Dry Creek Park. (RT 9014-9015; 9191-9192.) Sharon, Ron and
7 Brent arrived back at the house at 7:30 a.m. (RT 9192.) Brent had parked his truck in the street,
8 however, he blocked the vehicles parked in Laci's driveway. (RT 9193.) The defendant had just
9 gotten out of the shower and answered the door in a towel. (RT 9192.) Once the defendant got
10 dressed and put McKenzie on a leash they started walking towards the park, but separated. (RT
11 9193.) The defendant walked Sharon over to a neighbor's house and left her with the friend, while
12 Ron and Brent went to the park to search for Laci. (RT 9193.)

13 At about 7:30 a.m. to 8:00 a.m., Stacey Boyers and Lori Ellsworth returned to the
14 defendant's house where there were about ten people. (RT 10556-10567.) They had initially set
15 up a volunteer center at the house and volunteers were gathering to collect the flyers they had
16 made and then left to pass them out. (RT 10516; 10531.)

17 **C. The Police Search Intensifies**

18 At about 8:00 a.m., the police officers began to coordinate a massive search. (RT 9194.)
19 The streets were lined with patrol cars and volunteers. (RT 9194.) There were people in the park
20 and people were looking for Laci in the creek. (RT 9015.) About 10 to 15 police officers
21 canvassed the Covena neighborhood, including searching in yards and alleyways. (RT 9758-
22 9760;10154, 10159.) There were officers on bicycles, horses, K-9 units and also tactical patrols.
23 (RT 17662-17663.) A K-9 team searched the footpath leading into the La Loma Park and the
24 surrounding brush. (RT 9762-9764.)

25 There were no media trucks on Covena Avenue at that time. (RT 9015.)

26 **D. "It Wasn't Laci"**

27 Susan Aquino, Laci's aunt and her husband returned to the defendant's house on
28

1 Christmas morning. A police officer knocked on the defendant’s door and told the defendant that
2 there two witnesses who saw Laci walk over the walking bridge in the park. Susan was excited
3 about the news and asked the defendant what he thought. Defendant replied, “It wasn’t Laci, she
4 doesn’t go that way.” (RT 9548.)

5 **E. Defendant Makes a Trip to His Warehouse and Returns with Duct Tape**

6 At 8:00 a.m., the defendant wanted the keys to Brent’s truck so that he could move it and
7 get his truck out of the driveway. (RT 9194.) The defendant wanted to go to his warehouse. (RT
8 9194.) He told Brent that he wanted to get tape to hang up the missing posters and fliers. (RT
9 9194.) The defendant did not return for a couple hours. (RT 9195.)

10 Amber tried calling the defendant on his cell phone that Christmas morning, however, the
11 defendant did not answer. At about 9:08 a.m., the defendant called her back using the defendant’s
12 second cell phone and he indicated that he would call her later that evening. (RT 14694; People’s
13 Trial Exh. 207 F-2.)

14 At about 10:00 a.m., the defendant returned from his warehouse with a roll of silver-gray
15 duct tape. (RT 9194-9195.) At that point, Brent and the defendant walked the neighborhood
16 together and hung up the fliers using the duct tape.⁴⁷ (RT 9194.)

17 **F. A Press Conference**

18 The defendant and Brent headed back to the house between 11:30 a.m. and 12:00 p.m.
19 because a media truck was going to be coming to Laci’s and the defendant’s house for a ‘noon
20 shoot’. (RT 9195-9196.) The defendant said he did not want to talk to the media and the only
21 people he wanted to talk to were Sharon and Brent.⁴⁸ (RT 9196.) The defendant went into the

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23 ⁴⁷ At that time, no one knew that when Laci’s body would wash up almost four months later that she had
duct tape on her. (RT 13501; 19475; 19579.)

24 ⁴⁸ However, when Brent and other family members would ask the defendant questions about what Laci
25 was wearing and if those clothes were still at the house, the defendant was not interested in checking into
it. (RT 9198.)

1 house and never came out while the press was there.⁴⁹ (RT 9196-9197.) Instead, Brent and two
2 of Laci's friends spoke to the media to get the word out that Laci was missing. (RT 9197.) They
3 took McKenzie out there so the media would know what the dog looked like. (RT 9197.)

4 Before 1:00 p.m., the police also held a brief press conference at the Modesto Police
5 Department on Christmas Day with Detective Brocchini and some members of the family. (RT
6 9016-9017; 10567; 10580; 18571.) After the press conference, the defendant agreed to meet with
7 Detective Grogan while friends and family returned to the house to continue posting flyers. (RT
8 10580.)

9 **XIII. CHRISTMAS DAY 2002**

10 **A. Christmas Interviews and Attempts to Eliminate the Defendant as a Suspect**

11 At about midnight on Christmas Day, Detective Brocchini began an hour-long recorded
12 interview with the defendant at the Modesto Police Department. (RT 10715-10716; People's
13 Trial Exhs. 68 and 68A.) Initially, Detective Brocchini's role in the investigation was to
14 determine whether the defendant could be eliminated as a suspect and locate Laci. (RT 10781.)
15 The defendant's demeanor was "calm, cool, relaxed" and he was not emotional during the
16 interview. (RT 10716.) After the interview ended around 1:30 a.m., Detective Brocchini dropped
17 the defendant off at home; he called the detective 45 minutes later asking about his firearm. (RT
18 10749; 10782.)

19 Later Christmas Day, around 1:30 p.m., the defendant agreed to meet with Detective Craig
20 Grogan, who had taken over as lead investigator in the case. (RT 11818, 11829-11830.)
21 California Department of Justice Investigator Douglas Mansfield joined in the interview of the
22 defendant on December 25, 2002. (RT 11818-11819.) They wanted to re-interview the defendant
23 because the defendant was likely to have the most information as Laci's husband, the person
24 closest to Laci, the one who discovered that she was missing and he was the last person to see

25
26 ⁴⁹ The defendant did not appear to be upset. (RT 9197.) Nor was he shy or incapable of speaking in front
27 of a crowd, as he took the microphone at Rose and Brent's wedding and gave a 10-minute impromptu
28 speech to a group of more than 100 people which was video recorded without a problem. (RT 9197; 9283-
9284; 9289.)

1 Laci alive. (RT 17647.) The purpose of the interview was to obtain information about the days
2 leading up to Laci's disappearance, along with background information on Laci's family; find out
3 if anything occurred shortly before Christmas Eve that would have caused Laci to voluntarily
4 leave on her own; and secure any information that would serve to eliminate the defendant as a
5 suspect. (RT 17646-17647.)⁵⁰

6 In discussing his activities on Christmas Eve, the defendant said he had no prior experience
7 fishing in San Francisco Bay. (RT 11820.) He researched the internet and decided on the Berkeley
8 area. (RT 11824.) Defendant said it was too cold to golf. He opted to drive about 180 miles round
9 trip to fish on the Bay, although he was only on the water for an hour. (RT 18629-18630.)
10 Defendant said he really wanted to get the boat in the water to see if it worked. (RT 11845; 11865;
11 18629.) He went trolling for fish as he made his way to Brooks Island and back. (RT 17656.)

12 As for Laci's activities, the defendant told Grogan and Mansfield that she walked almost
13 every day. He detailed the path she usually took from Covena down into East La Loma Park. (RT
14 17651.) Defendant said that Laci had been wearing some of the jewelry she inherited when he
15 last saw her on Christmas morning. He thought that it was possible that Laci wore it when she
16 went walking in the park and a transient robbed her of the jewelry and kidnapped her. (RT 17652.)

17 Investigator Mansfield specifically asked the defendant if there were any problems in his
18 marriage or if there were any third parties involved. Defendant said that neither he nor Laci were
19 involved with anyone else outside the marriage. (RT 11825; 17653.)

20 Defendant told Detective Grogan that Laci woke up before he did that morning. They
21 both ate breakfast. They watched part of the Today Show and Martha Stewart. Martha was
22 making a marinade or something to that effect for French toast. Laci was mopping the floor when
23 he left after the defendant had decided to go fishing that morning. (RT 17656.)

24 Defendant told Detective Grogan that he left the house and went to his warehouse located
25 on North Emerald Avenue. When he arrived at his office, he checked the e-mail on his computer
26 and he received an e-mail about a golf bag that he was selling on E-Bay on his work computer.

27 _____
28 ⁵⁰ This interview was not recorded.

1 He then sent an email to his employer and then put together a mortiser, a woodworking tool. (RT
2 17656.) After putting the mortiser together, the defendant told Detective Grogan that he cleaned
3 up his office, unloaded some tools from his toolbox and then attached his boat and trailer to his
4 truck and left about 11:00 a.m. for the Berkeley Marina. (RT 17657.)

5 Once he arrived at the marina the defendant described going to an island a short distance
6 north of the Berkeley Marina which had trash around the island. He trolled, fishing, trolling on
7 his way out there and back. (RT 17657.)

8 After this interview, Detective Grogan determined that he needed to eliminate the
9 defendant as a suspect and completed a search warrant for the defendant's house, vehicles and
10 warehouse. (RT 17658.)

11 **B. Inconsistencies with the Defendant's Statements**

12 Through the investigation, the officers determined there were multiple inconsistencies in
13 the defendant's statements. There were also statements the defendant made during the interviews
14 which, while they could not be directly disproven, seemed illogical.

15 1. A Morning Decision to Golf

16 In the first interview with Detective Brocchini, the defendant said that he decided to go
17 fishing that morning. He chuckled as he told Detective Brocchini that it seemed too cold to go
18 play golf at the club so he decided to go fishing. (People's Trial Exhs. 68 and 68A.) As discussed
19 in greater detail below, this was inconsistent with the evidence which indicated that the defendant
20 had filled out the fishing license he purchased four days earlier from Big 5 with the date of issue
21 being 12/23 and the two days he would fish were 23 and 24. (People's Trial Exh. 79.)

22 2. No Map, "Just Winging It"

23 During the interview with Detective Brocchini, the defendant claimed he did not have a
24 map for the area and he was "going to just wing it." (People's Trial Exhs. 68 and 68A.) This was
25 inconsistent with what he told Detective Grogan and Mansfield. In that interview, the defendant
26 indicated that although he had no prior experience fishing in San Francisco Bay, he researched
27 the internet and decided on the Berkeley area. (RT 11820; 11824.)

1 Furthermore, the physical evidence indicated that the defendant was not just “winging it.”
2 In fact, a forensic examination of the defendant’s computers showed that the defendant on
3 December 8th researched and reviewed maps of the Berkeley Marina including information on
4 trailering and boat parking before he even purchased a boat on December 9, 2002. (RT 14371-
5 14375; 14378; People’s Trial Exhs. 179O-179U; 180A-180B.) Defendant had also pre-purchased
6 a fishing license with an ocean endorsement on December 20, 2002 which expired on December
7 31, 2002. (RT 12183-12184.) During a search warrant at the defendant’s warehouse, police
8 located a printout related to the defendant’s internet research on fishing. (RT 18627.)

9 3. Martha Stewart and Meringue

10 The defendant said he and Laci watched Laci’s favorite show, Martha Stewart and told
11 Detective Brocchini that Martha was talking about what to do with meringue. (People’s Trial
12 Exhs. 68 and 68A.) The defendant told Detective Grogan that they watched part of the Today
13 Show and Martha Stewart and Martha was making a marinade or something for French toast. (RT
14 17656.)

15 The police obtained copies of the Martha Stewart shows that aired on December 23th the
16 24th. The December 24, 2002 show aired at 9:00 a.m. in the Modesto area and there was a
17 comment about making meringue, however, this occurred 48 minutes into the show which was at
18 9:49 a.m. (RT 10809-10810; People’s Trial Exhs. 82 and 82A, page 25-29.) Thus, if the defendant
19 left at 9:30 a.m. as he claimed, there was no way that he would have heard this portion of the
20 show.

21 4. Defendant Left At 9:30 A.M.

22 The defendant said, both in this interview and to multiple officers, that he left the house
23 at 9:30 a.m. Again, his statement was inconsistent with the evidence. Upon further investigation,
24 the defendant’s cell phone records showed that the defendant actually left the house 38 minutes
25 later, at 10:08 a.m.⁵¹ The defendant called his voicemail to retrieve his messages on December

26 _____
27 ⁵¹ Mary Anderson, the Custodian of Records for AT&T, brought in AT&T fraud records for the defendant’s
28 cell phone number 209-505-0337, along with cell site conversion chart and a physical cell site location
chart. (RT 14984; People’s Trial Exhs. 203A-203G; 204; and 205.)

1 24, 2002, at 10:08 a.m. (RT 14992; 15383.) The AT&T switch connected the call to the cell
2 tower, located at 1250 Brighton Avenue which services the defendant's house and the Covena
3 Avenue neighborhood. (RT 15049; 15298; 15383.) As the defendant continued to drive, he
4 continued to listen to his voicemail messages and the call switched to the cell tower located at 10th
5 and D, a water tower in Modesto which was consistent with the defendant driving away from his
6 house and towards his warehouse at 10:08 a.m. (RT 14994-14996; 15383.)

7
8 5. Laci Was Mopping

9 The defendant said Laci was mopping the kitchen floor when he left and she was going to
10 finish cleaning up. Laci was mopping the tile in the entryway area. When Detective Brocchini
11 inquired further, the defendant indicated that Laci was "pretty fastidious" and "she always had
12 the vacuum or mop out." (People's Trial Exh. 68 and 68A.)

13 During the investigation, the detectives learned that the Petersons hired Margarita Nava
14 to start cleaning their house near the same time Laci began to experience the dizzy episodes and
15 feel uncomfortable. (RT 8663.) The detectives spoke with Margarita Nava and she said she had
16 just finished cleaning the entire house on December 23rd. (RT 8861-8666.) The very last thing
17 Nava did before she left at 2:30 p.m. was to mop all the floors. (RT 8864.) They also learned that
18 Laci complained of being extremely tired lately and needed to rest often. (RT 8668-8669.)

19 6. Laci Can't Lift the Mop Bucket

20 The defendant claimed, during the interview, that he filled up the bucket and Laci had him
21 set the bucket by the front door because Laci is 8 months pregnant and "she can't pick it up for
22 anything." The defendant gave one of the two reasons why he moved the mop bucket outside was
23 because Laci wasn't about to lift anything heavy. (People's Trial Exhs. 68 and 68A.) However,
24 this is inconsistent with the evidence. Margarita Nava spoke about Laci carrying in grocery bags
25 one to two at a time from the car the day before and setting them on the door stoop where
26 Margarita assisted Laci in carrying them the rest of the way into the house. (RT 8674-8676.) Laci
27 also carried a plant in one hand and container of food in the other hand, while walking a short
28 distance in heels to Stacey Boyers's Christmas Party ten days earlier. (RT 10511.)

1 7. Laci Walked Almost Every Day and Planned to Walk the Dog

2 Defendant claimed during the interview with Detective Brocchini that Laci planned to
3 walk the dog on Christmas Eve morning. (People’s Trial Exhs. 68 and 68A.) The defendant told
4 Grogan and Mansfield that Laci walked almost every day and detailed how Laci walked down the
5 path at the end of their street into East La Loma Park. (RT 17651.) However, at trial, the jury
6 heard overwhelming evidence that contradicted the defendant’s claims that Laci planned to take
7 McKenzie for a walk and that she was walking every day.

8 As mentioned above, Laci stopped teaching in November 2002 because she had
9 become very uncomfortable later in her pregnancy. (RT 8973.) During the same month, the
10 Petersons hired housekeeper Margarita Nava to begin cleaning their house twice a month.
11 (RT 8663.) Indeed, Nava noticed that while she was cleaning their house the day before Laci
12 seemed tired and sat on the couch with her feet up. (RT 8669.)

13 Although Laci enjoyed taking McKenzie for walks early in her pregnancy, in late
14 October or early November of 2002, Laci told her mother and sister that she had become
15 dizzy and vomited during the walk. (RT 8832; 8946-8949, 8982, 8985.) During a prenatal
16 check-up on November 6, Laci reported to her obstetrician, Dr. Endraki, that she was
17 experiencing symptoms of dizziness and lightheadedness when she walked. (RT 10376.) It
18 happened twice that very day and once during the prior week. (RT 10376.) Endraki
19 recommended that Laci stay hydrated and refrain from exercise. However, if she did exercise,
20 she should do it later in the day. (RT 10376.) On November 8, Laci called the doctor’s office
21 to report that she was experiencing shortness of breath while walking. (RT 10378.) Her
22 mother Sharon sensed that after this incident, Laci took her doctor’s advice more seriously.
23 (RT 9053.) During this same time, Laci complained to Sharon about her feet swelling, having
24 back pain and feeling tired frequently. (RT 8985.) After this, at a party on November 14,
25 Laci told friends that she had to stop walking because she was getting nauseous and tired.
26 (RT 10508-10509, 10552.)

27 On November 25, during another prenatal check-up, Laci complained of swelling in
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1 her extremities. (RT 10379.) Over Thanksgiving, Laci accompanied the defendant to
2 Southern California for a baby shower for one of defendant's family members. (RT 8985,
3 8990.) While they were there, the couple went to Disneyland even though Laci was not
4 feeling well and did not want to go. Aware of her physical condition, the defendant pushed
5 Laci in a wheelchair to get around in the park. (RT 8985-8986;18026.)

6 A few weeks before she disappeared, Laci went to the movies with her mother and
7 Sharon's good friend Sandy Rickard. (RT 9307.) Rickard recalled that Laci mentioned
8 getting light-headed when she took her dog for a walk. (RT 9307.) Laci also complained
9 about feeling tired and heavy. (RT 9307.) On December 14, when Laci arrived at Stacey
10 Boyers's house for a Christmas party, Stacey observed that Laci was exhausted. (RT 10511.)
11 At the party, Laci told her childhood friend Lori Ellsworth that she was very tired. (RT
12 10554.) Laci also told Terri Western, Boyers's mother, that she was tired a lot and that it was
13 hard for her to walk. (RT 16423.)

14 On December 20, Laci had a phone conversation with her good friend Rene Tomlinson
15 and told her that she was feeling tired and ready for the baby to arrive. (RT 10576.)

16 Laci and her neighbor, Karen Servas, last spoke on December 22. (RT 9416.) Laci
17 told Servas that she felt tired and had almost fallen into the pool a couple of weeks prior
18 because she was off- balance. (RT 9416.) The housekeeper, spa employees and Amy, Laci's
19 sister, each observed that Laci seemed tired or complained of being tired on December 23,
20 2002. (RT 8668; 8694-8695, 8708; RT 8832.) Margarita Nava observed that on that day Laci
21 was moving slowly. (RT 8668.) Laci told Michelle Bauer, the spa owner, that she was
22 uncomfortable and having trouble sleeping. (RT 8710.) Stacey Boyers talked to Laci for the
23 last time around 4:45 p.m. on December 23. (RT 10512.) Laci told Boyers that she was tired
24 all the time and every time she tried to do something, she had to stop and rest. (RT 10512.)

25 Although the defendant specifically suggested Laci went walking in La Loma Park,
26 the dirt trail leading from Covena to the park was steep and "[v]ery, very rough" (RT 9115-
27 9116; 9357-9358). One woman who walked in the neighborhood and that park explained that
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1 she could not negotiate the trail when she was pregnant because it was so steep and uneven.
2 (RT 16751-16752.)

3 8. Grocery Shopping for Christmas Brunch

4 During the interview, the defendant claimed that Laci was going to the store to buy
5 supplies for Christmas morning breakfast which required a lot of preparation. (People’s Trial
6 Exhs. 68 and 68A.) Officer Evers also opened the refrigerator door and had asked the defendant
7 during the initial walk-through if it appeared Laci had gone to the store and the defendant said no.
8 (RT 10010.)

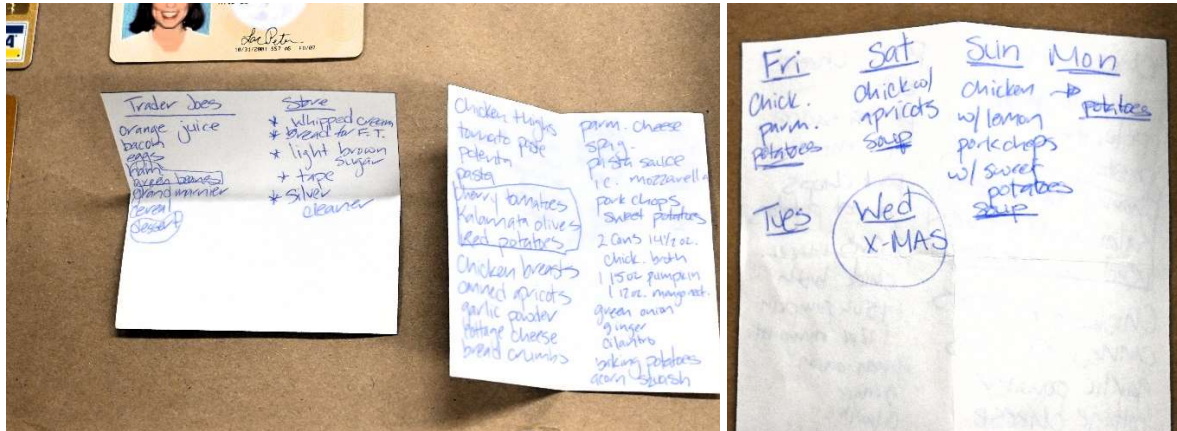
9 Both statements were inconsistent with the evidence. During the investigation, the officers
10 learned that Laci had gone grocery shopping at Trader Joe’s on December 23, 2002. Laci signed
11 the receipt which showed she checked out at 10:06 a.m. and bought \$98.19 of groceries. Laci
12 purchased breakfast items including three dozen large Grade AA cage free eggs; quite a bit of
13 applewood bacon; maple syrup, orange cognac liqueur, heavy cream, toasted oatmeal flakes,
14 freshwater shrimp, cinnamon puffins and desserts. (People’s Trial Exh. 2.)

15 Moreover, Laci had a grocery list located insider her purse for items at Trader Joes which
16 matched what she had purchased on December 23rd. At trial, Laci’s purse and its contents, marked
17 as People’s Trial Exhibit Number 262A (purse) and 262B (contents) were passed around for the
18 jurors to inspect. (People’s Trial Exhs. 262A and 262B.) Among the items inside Laci’s wallet
19 were her driver’s license, credit cards and grocery lists. Laci also had a list of her meal plans that
20 week which indicated she did not have any meals planned for Tuesday and Wednesday was
21 Christmas. Pictured below are two photographs taken of People’s Trial Exhibit Number 262B,
22 which show the lists the jury saw from reviewing the contents of Laci’s purse during trial.
23 (People’s Trial Exh. 262B, lists from inside Laci’s purse taken during an evidence view April 17,
24 2024.)

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9. Gingerbread versus Gingerbread Cookies

During the interview, the defendant told Detective Brocchini that Laci was going to make gingerbread cookies. (People's Trial Exhs. 68 and 68A.) However, on December 24, 2002, when Sharon Rocha asked the defendant what Laci had planned to do that day, the defendant said she was going to make gingerbread, not gingerbread cookies. (RT 9012; 9039-9040.)

10. Laci's Clothing - Black Pants and Long Sleeve White Shirt

During the interview, the defendant indicated that he last saw Laci wearing black pants and a long sleeve white t-shirt top. He did not know if she was wearing a jacket and if she was wearing a jacket, whether it was his or hers. The defendant did not check to see if anything was missing. He claimed Laci was barefoot when he left and that she would typically wear white tennis shoes when she walks. The defendant indicated that Laci normally keeps them by the wet bar but they were not there and he did not look further. (People's Trial Exhs. 68 and 68A.)

As discussed in detail below, when Laci's body was eventually recovered nearly four months later, Laci was not wearing a white shirt and black pants. (RT 9974; 12725-12727; 13498; 18306-18307.)

11. Gun

With respect to the pistol⁵² found in the glove compartment of his truck, the defendant indicated that it had been there for a month. He took it to Lone Mountain on a trip with his father

⁵² Detective Brocchini asked the defendant if he would submit to a gunshot residue test. The defendant asked if exhaust from an outboard motor might show up as gunshot residue. The detective said that since he had already showered that it would not. (People's Trial Exhs. 68 & 68A.)

1 to shoot pheasants, but claimed that it did not fire, although he tried twice. When the detective
2 noted that it was not the type of gun used for pheasant hunting, defendant agreed, “no, no.”
3 (People’s Trial Exhs. 68 and 68A.)

4 The evidence contradicted the defendant’s statement. Defendant’s father, Lee Peterson,
5 testified that he did not see defendant with a handgun when they went pheasant hunting in October
6 or November 2002; instead, they used 20-gauge shotguns. (RT 16871-16873.) The firearm was
7 later examined by California Department of Justice criminalist Ronald Welsh who test-fired the
8 weapon five times with ammunition like that found in the gun. The weapon functioned normally.
9 (RT 11597-11599.) Welsh, then, fired the weapon four more times using the ammunition found
10 inside the gun. Again, it fired normally. (RT 11599-11600.) Welsh also determined that the
11 firearm had not been fired recently. (RT 11603.)

12 12. Mortiser

13 The defendant claimed that he went to his shop and assembled the mortiser, the wood-
14 working tool that was setting on his trailer in his warehouse. He claimed he had ordered the
15 mortiser on eBay auction and just got it, so he assembled it.

16 The evidence indicated the defendant had received the mortiser four days earlier.
17 Defendant previously ordered the mortiser from an eBay auction and it was shipped by
18 Woodworkingsupply.com via UPS. He picked up the package from the Ceres UPS on December
19 20, 2002 at 4:35 p.m. (RT 11027-11029)⁵³ Furthermore, there was also evidence that the
20 defendant had been at his office on December 23, 2002 using his work computer from 9:27 a.m.
21 until 9:42 a.m. and from 11:46 a.m. to 1:28 p.m. (RT 155779.)

22 13. Checked His Emails

23 Defendant’s timeline of events changed between his two interviews.

24
25 ⁵³ Defense entered the UPS delivery receipt for the mortiser which indicated that the mortiser was shipped
26 on December 9, 2002, at 6:46 p.m. UPS attempted delivery at the defendant’s business on December 16,
27 2002, at 10:08 a.m., however, the business was closed. The receiver contacted UPS and indicated he was
28 on holiday and requested the package be held at UPS Ceres beginning December 17, 2002. The defendant
picked up the mortiser on December 20, 2002 at 4:35 p.m., just after he finished purchasing a fishing
license at the Big 5 store 40 minutes earlier. (RT 11028-11029; Defense Trial Exh. S.)

1 During his initial interview with Detective Brocchini, the defendant indicated that he first
2 assembled his mortiser, then checked his email and sent one email to his employer, Eric Van
3 Innis, then he hooked up the boat and left. (People’s Trial Exhs. 68 and 68A.) The defendant’s
4 first version of putting the mortiser together then getting on the computer was contradicted by the
5 forensic examination of the defendant’s work computer which established that the defendant was
6 on his Dell work laptop beginning at 10:30 a.m. until 10:56 a.m. which created internal temporary
7 computer files. The defendant conducted various Yahoo! searches and visited websites
8 throughout that time, including a search at 10:44 a.m. for directions on how to assemble a
9 mortiser. (RT 15761-15766; 15781.)

10 The timeline of the defendant’s version of events changed in his interview with Detective
11 Grogan. Defendant told Detective Grogan that when he arrived at his warehouse, he checked the
12 e-mail on his work computer and he had received an e-mail about a golf bag that he was selling
13 on E-Bay. (RT 17656.) Here, the physical evidence showed that at 8:45 a.m., the defendant used
14 the home computer and sent the email response from his email account to “jschockley” regarding
15 a golf bag the defendant sold on eBay. (RT 14419-14421; People’s Trial Exh. 186.)

16 14. Driving Around with Three Large Patio Umbrellas

17 Detective Brocchini asked the defendant why he had the patio umbrellas in the bed of his
18 pickup. Defendant said he put them in the bed of the truck that morning with the intention of
19 storing them at the warehouse, but he forgot to unload them. The umbrellas were in the bed of
20 his truck while the defendant was at the Marina. The defendant got back to the warehouse, he
21 unhooked his boat and forgot to unload the umbrellas again. (People’s Trial Exhs. 68 and 68A.)

22 Defendant told Detective Grogan that, after he put the mortiser together, the defendant
23 cleaned up his office, he unloaded some tools from his toolbox and then attached his boat and
24 trailer to his truck and left about 11:00 a.m. for the Berkeley Marina. (RT 17657.) For the
25 defendant to unload tools in his toolbox, the defendant would have to have been in or next to the
26 bed of his pickup where the patio umbrellas were located. Additionally, the defendant had to
27 hook the trailer ball up to his hitch and would have been at the bed of his pickup and seen the
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1 three large patio umbrellas. Yet, the defendant maintained during the investigation that he forgot
2 about them.

3 In a subsequent interview with Detective Grogan on January 3, 2003, the defendant
4 reiterated that he put the patio umbrellas in his truck on December 24, 2002 with the intent to drop
5 them off at his warehouse but forgot to do so. (RT 17714.) Instead, the defendant took the
6 umbrellas to the marina where they remained in the bed of his pickup truck while he was out at
7 the Bay. He also forgot to drop them off at the warehouse when he unhooked the boat trailer from
8 his truck prior to returning home. (RT 17714.)

9 15. Two versus Three Phone Messages

10 Defendant told Detective Brocchini during his interview that he called Laci at home as he
11 was leaving the marina and left a message and then called and left a message for Laci on her cell
12 phone. He indicated that he called Laci on her cell phone and left another message when he was
13 in Livermore. (People's Trial Exhs. 68 and 68A.)

14 During the interview, the defendant pulled out Laci's cell phone. (RT 18631.) He entered
15 the password that was required to get into the locked screen. (RT 18631.) The defendant told
16 Detective Brocchini what Laci's password was when he retrieved his voicemail message.
17 (People's Trial Exhs. 68 and 68A.) The defendant played the message for Detective Brocchini
18 which indicated it was left at 2:17 p.m. (People's 68 and 68A.) Detective Brocchini pointed out
19 to the defendant that there was only one message on Laci's phone during the interview. (People's
20 Trial Exhs. 68 and 68A.)

21 Later, the defendant's cell phone records were obtained and indicated that at 2:12 p.m. the
22 defendant checked his voicemail using the cell tower located at 2600 10th Street in Berkeley which
23 services the Berkeley Marina. (RT 15385-15386.) At 2:14 p.m., the defendant called his home
24 telephone while at the same location. (RT 15386.) At 2:17 p.m., the defendant called Laci's cell
25 phone which indicated he was still in Berkeley and used the same cell tower. (RT 15386-15387.)
26 As discussed in further detail below, the defendant also made phone calls to his good friend Greg
27 Reed and two calls to his father, Lee Peterson, as he drove from Berkeley back to Modesto. (RT
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1 15387.) At 5:44 p.m., the defendant’s cell phone was used and indicated that he was at home
2 based on the cell tower which services the Covena area. (RT 15387.)

3 16. 180-Mile Trip Just “To See If It Worked”

4 During his two police interviews the defendant claimed he “*really just wanted to get the*
5 *boat in the water to see if it worked.*” (RT 11845; 11865; 18629; People’s Trial Exhs. 68 and
6 68A; emphasis added.) The defendant told detectives that the boat had never been in water and
7 he had only dry started it. (RT 18630.) He decided to drive 90 miles from home on Christmas
8 Eve to put the boat in water. (RT 18630.)

9 Stanislaus County District Attorney’s Office Investigator Kevin Bertalotto researched and
10 identified at least 11 different freshwater fishing locales with boat ramps within a range of 9 to 60
11 miles from the defendant’s residence as options for where he could put his boat in the water to
12 see if it worked. (RT 16561-16564; 16796; People’s Trial Exh. 217.)

13 17. Fished with a Silver Lure versus Saltwater Lures

14 The defendant told Detective Brocchini that he was out on the water for an hour and a half
15 trolling for fish. (People’s Trial Exhs. 68 and 68A.) The defendant told Detective Grogan and
16 Investigator Mansfield that he was on the water for an hour. (RT 18629-18630.) He went trolling
17 for fish as he made his way to Brooks Island and back. (RT 17656.) The defendant told Detective
18 Grogan that he was fishing for sturgeon or striper and he was using freshwater lures because he
19 inadvertently left the saltwater lures that he had purchased for the trip in his truck. (RT 18588.)
20 This contradicted the defendant’s statement he gave to Officer Spurlock less than twenty-four
21 hours earlier when he was unable to tell Officer Spurlock what exactly he was fishing for and,
22 after hesitation, the defendant said he used a silver lure. (RT 9797; 9869.) People’s 74, pictured
23 below, shows the silver lure and striper bucktail lure still in their packaging as Detective Brocchini
24 observed them on December 24th and later seized on December 26, 2002 during the execution of
25 a search warrant. (People’s Trial Exh. 74.)

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12 The evidence did not support the defendant's fishing claim. There were a total of three
13 fishing rods located in the warehouse during a subsequent search warrant, however, only one was
14 functional. With respect to the other two fishing rods, one was new with the tag still on it and it had
15 no fishing line. The other had no handle and was not functional. (RT 13758.)

16 Angelo Cuanang, an expert angler⁵⁴, had examined the defendant's equipment and testified
17 at trial about fishing in the San Francisco Bay. (RT 13739.) Because the defendant's laptop
18 indicated he searched fishing-related websites both about sturgeon and striped bass on December 8,
19 2002, the prosecution asked Cuanang about this. Cuanang was very familiar with sturgeon fishing
20 on the Bay having caught thousands of them. (RT 13740.) In Cuanang's opinion, the area around
21 the Berkeley Marina was not good for sturgeon fishing. (RT 13753.) He explained that in
22 December most of the sturgeon were running in the northern part of San Francisco Bay known as
23 San Pablo Bay. (RT 13745-13746; People's Trial Exhs. 171A-C.)

24
25 ⁵⁴ Cuanang had been fishing for about 40 of his 48 years. (RT 13738.) He and his brother co-authored several
26 books on fishing in the Bay: one on fishing for striped bass and two on sturgeon fishing. (RT 13738-13739.)
27 Cuanang also had numerous articles published in fishing magazines and was a presenter at the International
28 Sportsmen's Exposition. (RT 13739-13740.)

1 Furthermore, Cuanang Pointd out numerous problems with the defendant's fishing
2 equipment as it relates to fishing for sturgeon: 1) the only functional fishing rod had a line weight
3 of 18 to 20 pounds which was too light for fishing for sturgeon (RT 13757); 2) the lure was
4 appropriate for fresh water black bass, but not for sturgeon because it was not heavy enough to
5 be used in the Bay where currents moved swiftly (RT 13756-13757); 3) live bait was
6 preferred to fishing lures (RT 13746-13747); 4) typically, sturgeon fishing required a landing
7 net or some type of snare system which the defendant did not have (RT 13750- 13751); and
8 5) the homemade cement weight was insufficient to anchor defendant's boat because there
9 was nothing on the weight – like a mushroom – that could grab onto the bottom of the Bay
10 to keep the boat from drifting (RT 13754, 13757; People's Trial Exh. 72). Additionally,
11 although defendant told both detectives that he had been trolling for fish on the Bay, Cuanang
12 explained that it was illegal to troll for sturgeon. (RT 13747.)

13 As for striped bass, Cuanang stated that the best time to fish was spring through early
14 fall in San Pablo Bay. (RT 13755.) The same fishing equipment that was used for catching
15 sturgeon could be used to fish for striped bass since both types of fish fed on the bottom of the
16 Bay during winter months. (RT 13755.) Therefore, according to Cuanang, the defendant's
17 equipment was also not suitable for catching striped bass. Although one of defendant's lures
18 could be used for striped bass, live bait was used in winter months since striped bass fed at the
19 bottom of the Bay in the winter. (RT 13762; People's Trial Exh. 74.) The other problem with
20 defendant's lure was that it could only sink five to eight feet into the water-not deep enough to
21 reach striped bass feeding at much lower depths at the bottom of the Bay. (RT 13763-13764).
22 Defendant's other lures were used for rock fishing or fishing near deep reefs in the ocean, not on
23 the Bay. (RT 13762.)

24 18. Faithful Marriage

25 During his first interview, the defendant assured Detective Brocchini that there were no
26 problems in his marriage and that everything was good. (People's Trial Exhs. 68 and 68A.) In
27 the second interview, Investigator Mansfield specifically asked the defendant if there were any
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1 problems in his marriage or if there were any third parties involved. Defendant said that neither
2 he nor Laci were involved with anyone else outside the marriage. (RT 11825; 17653.)

3 It was on December 30, 2002, that Amber Frey contacted the Modesto Police Department
4 and divulged she had been having a sexual relationship with the defendant over the past month.
5 (RT 11729-11730; 14712-14715.) In addition to the defendant's lies about the affair with Amber
6 Frey to Detective Brocchini and Detective Grogan, the defendant lied to Ron Grantski when Ron
7 questioned him. (RT 9121.) Defendant lied to Brent Rocha about having an affair. (RT 9270-
8 9271.) As discussed below, the defendant went so far as to suggest that a photo which depicted
9 him with Amber Frey at a Christmas party was doctored in some fashion to include him. (RT
10 8955, 9021.) The defendant would further lie on national television during an interview with
11 Diane Sawyer when he claimed that he told the police about his affair with Amber right away.
12 (RT 17799; 17805-17806; People's Trial Exhs. 131A and 270.)

13 C. A Fishy Story

14 Although Grantski went fishing on Christmas Eve, he was an avid fisherman and fished
15 often. (RT 9100; 18789.) Grantski fished 16.5 miles away from his home while Sharon was at
16 an afternoon matinee. (RT 9110.) Even though Ron had asked the defendant to go fishing on
17 numerous occasions, the defendant only accepted the offer one time. (RT 9103-9104.) After the
18 trip, the defendant told Grantski to keep his expensive fishing pole at Ron's house and he never
19 asked for it again. (RT 9106-9107.)

20 Either Christmas afternoon or the day after, Ron Grantski confronted the defendant about
21 his fishing trip. Grantski said, "You know, I think your Berkeley fishing trip is a fishy story."
22 (RT 9120-9121.) Grantski inquired about whether he did something else and whether he had a
23 girlfriend and went to see his girlfriend. Grantski told the defendant if he did that he should admit
24 it now because if he doesn't, it's going to come out and the defendant is going to look a lot worse.
25 (RT 9121.) The defendant replied, "no" and turned and walked away. (RT 9121.)

26 D. Police Watch the Warehouse on Christmas Night but Not His Home

27 Detective Grogan called in another detective to secure the warehouse at 1027 North
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1 Emerald Avenue through the night and not let anyone go inside in order to protect any potential
2 evidence before they executed a search warrant. (RT 17660-17661.) Detective Grogan did not
3 secure the house because there had been a large number of people over at the house, friends and
4 family members and it seemed that destruction of the evidence was less of an issue since the
5 officers had previously walked through the house and there were a lot of people present. (RT
6 17661.) Detective Grogan did not want to displace them overnight on Christmas. (RT 17661.)

7 **E. Defendant Vacuums in Front of the Washer and Dryer**

8 At about 5:00 p.m. on Christmas, Stacey Boyers returned to the defendant's house because
9 Rene Tomlinson said a media truck was coming to do an interview and asked Stacey to bring over
10 a picture of Laci. (RT 10517.) Stacey walked into the house and the defendant's parents had just
11 gotten there. (RT 10517.) She said hi to Jackie who indicated she was there for her son. (RT
12 10517.) The defendant was vacuuming in the little alcove area where the washer and dryer are
13 located. (RT 10517.) Stacey asked him what he was doing. (RT 10518.) The defendant did not
14 stop vacuuming and replied that he just can't keep the house clean enough. (RT 10518.)
15 However, he only vacuumed the little alcove area right in front of the washing machine and dryer.
16 (RT 10518.)

17 **F. "Are You Guys Using Cadaver Dogs?"**

18 At 6:30 p.m., the defendant called Detective Brocchini and asked how the search was
19 going in Dry Creek Park. (RT 10784.) Detective Brocchini told the defendant that they had a
20 team of officers in the park who did a grid search all night. In the morning, they brought in fresh
21 officers and redid the whole park search, conducting another grid search, in the daytime. They
22 had three K-9 dog teams in there. They used a helicopter with a FLIR which is like a heat sensor
23 and they also had horseback officers coming in. (RT 10784.) Defendant wanted to know if the
24 police were using cadaver⁵⁵ dogs. (RT 10785.) Detective Brocchini replied that he had not
25 considered Laci dead yet so, no, the police were not using cadaver dogs. (RT 10785.)

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27 _____
28 ⁵⁵ Cadaver dogs track the scent of dead or decaying flesh. (RT 10785.)

1 **G. Defendant Upset Police Took His Gun and Rags**

2 At about the same time, Karen Servas came to the defendant’s house because she wanted
3 to watch the local news and see if they were going to report that Laci was missing. (RT 9439.)
4 By that time, Jackie and Lee Peterson and Rene Tomlinson and her husband were the only ones
5 at the house. (RT 9439.) When Karen finished watching the news the defendant invited Karen to
6 stay for turkey dinner, however, she declined because she was a vegetarian. (RT 9440-9441.)
7 The defendant called Karen approximately ten minutes later after she returned home and said he
8 found some cheese tortellini and asked her to come back for dinner. (RT 9441.) When she
9 returned for dinner, it was just the defendant and his parents there. (RT 9441.) The defendant’s
10 father, Lee Peterson, was really upset and crying. The defendant’s mother, Jackie, was also upset.
11 (RT 9442.) In contrast, the defendant was very calm. He complained that he was a little upset
12 because when he got back home, he noticed the police took his gun and some rags out of his house
13 without telling him. (RT 9443.)

14 **H. A Christmas Call to Amber from Maine Before Bed**

15 Later that Christmas evening, Amber went with Shawn Sibley to Sibley’s uncle’s house
16 for Christmas. Amber was upset because she had tried to call the defendant on Christmas, but he
17 did not answer. Doug Sibley, Shawn’s uncle, then took Amber’s phone and left the defendant a
18 voicemail message about not calling a young lady on Christmas when the defendant said he
19 would. (RT14694-14695.) Shortly after leaving the message, the defendant called Amber
20 between 8:00 p.m. and 9:00 p.m. (RT 14695; People’s Trial Exh. 207F-2.) The defendant told
21 Amber that he was in Maine and that he was getting ready to go to bed because of the time
22 difference. Amber could hear a woman’s voice in the background and the defendant said it was
23 his mother coming to sit down beside him. She could hear the woman say something and the
24 defendant talking to her. Then the defendant began talking to Amber again and indicated that he
25 told his mother that she could not sit down next to him. The defendant shifted the conversation
26 to nursery rhymes about five little ducks that go out to play and asked Amber to sing that for him
27 when they saw each other the next time. (RT 14696.)

1 **XIV. THE COMMUNITY AND MEDIA RESPOND**

2 **A. Amber Received Her Christmas Gift**

3 On Thursday, December 26, 2002, Amber repeatedly called and tried to get ahold of the
4 defendant, however, she was unsuccessful. She wanted to tell him that she had received his
5 Christmas present. (RT 14698.) The defendant sent her a star theater planetarium that projects
6 the stars on the ceiling as a gift. Although the defendant was supposed to be out of state, the
7 package had a return mailing address of the defendant’s warehouse located at 1027 North
8 Emerald, B1, Modesto. (RT 14699-14701; People’s Trial Exh. 197.)

9 **B. Police Continue Their Systematic Search Outward**

10 Meanwhile, on December 26, 2002, the police continued to search for Laci. Police
11 focused their search in Dry Creek Park and the Modesto area in the days immediately following
12 Laci and Conner’s disappearance. (RT 10270.) A police command center was set up in East La
13 Loma Park. (RT 9206; 10146.) Searchers continued to scour neighborhoods and parks. (RT
14 10154, 10159.) They checked rivers, canals and other waterways, inspected local orchards, dug
15 through bushes and piles of leaves and examined vacant houses. (RT 10153-10154, 1158-10159,
16 10161, 10149, 10166.)

17 **C. The Media Reacts and a Reward is Offered**

18 The police department had alerted the press. (RT 10160.) Beginning the morning of
19 December 26, 2002, the media began to show up in the Covena neighborhood. At 8:00 a.m., the
20 defendant called Detective Grogan and said that news crews had arrived at his home and they
21 were requesting a statement from members of the family. (RT 18161; 18597.) The defendant
22 advised that he was going to work with the press but that the news crews were requesting a
23 member of the police department to respond to the interview as well. (RT 18161-18162.)
24 Detective Grogan arranged for Modesto Police Department’s Public Information Officer (PIO) to
25 coordinate with the media while he continued to investigate and follow up on various leads. (RT
26 18162.) By noon, there were a lot of media trucks near the defendant’s house. (RT 9016.) People
27 were standing in the front yard with microphones and attempting to talk. (RT 9018.)

1 With the media interest, a reward for information leading to Laci and Conner's return grew
2 to \$500,000. (RT 9205, 10160-10161; 17813.) In March 2003, an additional reward of \$50,000
3 was offered for any information leading to the recovery of Laci's body. (RT 10827; 17814.) As
4 discussed in further detail below, no one ever came forward to provide credible information and
5 claim either reward. (RT 17814-17815.)

6 **D. The Volunteer Center is Set Up**

7 Laci's friends' makeshift volunteer center at 523 Covena Avenue was getting too big due
8 to too many people so Stacey Boyers's mother, Kim Western and Kim McNeeley got a room at
9 the Red Lion Hotel on December 26, 2002. (RT 10518; 10556; 10577-10578; 16416.)
10 Additionally, since the police were serving a search warrant at the defendant's house, no one was
11 allowed in. (RT 9018.)

12 After that, the Red Lion Hotel agreed to provide them with a conference room to use as a
13 volunteer center. (RT 10519; 16416.) The hotel had computers and phone lines set up for them
14 to use when people called in tips and to make a website. (RT 9018; 16416-16417.) Laci's friend,
15 Rene Tomlinson, ran the center until it closed in January 2003. (RT 10577; 10578.) Kim Western
16 and Lori Ellsworth were there daily from when it opened until it closed. (RT 10557; 16417.)
17 There were volunteers working full-time to find Laci. (RT 10571.) People were able to gather and
18 pick up flyers and there were maps on the walls for areas for people to search. (RT 9018.) There
19 were pictures of Laci portrayed at the volunteer center. (RT 9018.) The Sund/Carrington
20 Foundation got involved and helped to coordinate a vigil on New Year's Eve. (RT 9198-9199.)

21 The defendant made a rule that no pictures of him with Laci, such as wedding photos,
22 were permitted to be posted in the volunteer center or provided to the media. (RT 10520;
23 10558.)⁵⁶ He claimed that he wanted it to be "about Laci." (RT 10521.) The defendant also
24 made a rule that the media was not permitted in until 9:30 a.m. which is when the defendant would
25 leave, if not sooner. (RT 9019; 10519; 10536; 10558; 10570.)

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27 ⁵⁶ If someone would put up a picture that included the defendant with Laci, it would be taken down. (RT
28 10520.)

1 At one point, the defendant left a thank you note for volunteers on the door of the center
2 which he signed “Laci’s Husband” instead of his name. (RT 16420-16421; People’s Trial Exh.
3 212.)

4 **XV. SCENT ARTICLES and SEARCH WARRANTS**

5 **A. Street Barricaded and The Medinas’ Handcart is on Their Front Lawn**

6 Susan and Rudolfo returned from their trip to Los Angeles on December 26, 2002. As
7 they drove past the police department located downtown, they noticed a large amount of media
8 trucks around the police station. (RT 9597.) Susan called their son at 4:12 p.m. and asked why
9 Modesto was on the news. (RT 9597.) As they drove to their house, the police had the street
10 barricaded and Rudolfo had to show his ID to confirm he lived in the neighborhood before they
11 would let them through. (RT 9598-9599.) They approached their house and saw a lot of people
12 standing on their lawn and there were many police and police cars, including sheriff deputies from
13 Contra Costa. (RT 9600.) Susan also noticed that their dolly or hand cart was standing on the
14 front lawn which was quite unusual. (RT 9600-9601.) Rudolfo stopped in the driveway and
15 parked. (RT 9599.) They glanced at their front door and saw that it was shut. (RT 9600.) When
16 they checked the mailbox, they found that their outgoing mail was gone and they had two or three
17 small letters in the mailbox. (RT 9614-9615.)

18 The Medinas walked to the south gate which was still padlocked. (RT 9599.) After they
19 unlocked it, they immediately noticed their leaf blower which had been in their previously locked
20 shed, was now on the cement pad where their car had been parked on the morning of December
21 24, 2002. (Rt 9602.) The Medinas also noticed that the lock to the French doors leading to their
22 dining room had been damaged and someone had burglarized their house. (RT 9602.) Many, but
23 not all, of the rooms had been ransacked. (RT 9603-9604.) The safe, which required two to three
24 people to lift, was missing. (RT 9606.) Susan walked across the street and told the police officers
25 that they had been “robbed”. (RT 9604.) Susan observed one of the leather gloves she used in
26 the yard had been taken from the shed and a hammer had been placed inside it. It was now sitting
27 on their bed. (RT 9608.)

1 As discussed in further detail below, the police began an investigation into the burglary. (RT
2 9605.)

3 **B. Receipt for Scent Articles**

4 On December 26, 2002, three members from Contra Costa County Sheriff's Department
5 responded to Modesto Police Department's mutual aid request for a trailing dog. (RT 15917;
6 15918-15919.) Captain Christopher Boyer and California Dog Search and Rescue (CARDA) dog
7 handlers Eloise Anderson and Cindee Valentin met with members of the Modesto Police
8 Department. Together, they went with Modesto Police Detective Grogan to 532 Covena Avenue
9 and met with the defendant. (RT 15919; 16072-16703.) When they arrived at the house the
10 defendant was there with his parents and corporate attorney. (RT 15925.)

11 Captain Boyer introduced himself and explained to the defendant that he wanted to
12 conduct a quick missing person interview to get some information that would help them to try to
13 find his missing wife. (RT 15923.) The defendant agreed. As they sat around the Peterson's
14 dining room table, Capt. Boyer pulled out his notepad and began asking questions and started to
15 write notes in his notepad. Concerned about his table, depicted below in People's Trial Exhibit
16 Number 37Q, the defendant interrupted him and requested that Capt. Boyer not write on the
17 kitchen table because the defendant did not want it damaged. (RT 15923.) Capt. Boyer complied
18 with the defendant's request and took his notepad off the table before he continued with the
19 interview. (RT 15924.)



1 The defendant indicated he last saw Laci on Tuesday morning at 9:30am. (RT 15925.)
2 Laci was wearing a white long-sleeved top and black pants and was barefoot. (RT 15925.) Capt.
3 Boyer asked the defendant what type of footwear Laci wore when she walked the dog and the
4 defendant replied, “white tennis shoes.” Capt. Boyer asked the defendant if those shoes were in
5 the house. The defendant said he did not know. (RT 15926.) The defendant told Capt. Boyer
6 that Laci had a sunflower tattoo on her left ankle. (RT 15926.) The defendant told Capt. Boyer
7 that Laci had just inherited some jewelry that she was wearing which included a diamond solitaire
8 necklace, a bracelet with blue stones and diamonds, diamond earrings and a diamond watch. (RT
9 15926.) The defendant clarified that Laci’s earrings were screw-posts and that her ears were
10 tripled pierced, but she had no other body piercings. (RT 15927.) Since it was cold outside, Capt.
11 Boyer inquired about the type of jacket Laci would be wearing. The defendant indicated that she
12 typically wore one of his jackets, however, the defendant did not know if he was missing any of
13 his jackets. (RT 15927.) The defendant indicated that Laci was not wearing any barrettes or
14 clips in her hair. He told Capt. Boyer that prior to Tuesday, Laci had last walked on Sunday
15 around the neighborhood and that last Friday Laci walked in the park. (RT 15928.) The defendant
16 described Laci’s normal walking route was to the main park entrance, around the children’s play
17 area, the barbeque, to the path on Covenia. (RT 15928.)

18 The defendant told Capt. Boyer that Laci had planned to clean the house for guests, walk
19 the dog and then meet at the house with him at 4pm.⁵⁷ (RT 15929.) Capt. Boyer asked the
20 defendant if Laci’s wallet was at the house. He said he didn’t know.⁵⁸ (RT 15929.) The defendant
21 said that Laci did not take anything with her when she went on walks, including her keys. Capt.
22 Boyer asked if Laci did not have her keys, then how did she get back into the house and the
23 defendant replied that she usually left the back door unlocked. (RT 15930.) He asked the

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25 ⁵⁷ As a side note, this is the first time the defendant told any law enforcement officer that Laci planned to
meet with him at 4:00 p.m. when they had asked what her plans were for that day.

26 ⁵⁸ This was a lie. The defendant had observed the contents of Laci’s purse with Officer Spurlock and later
27 that night with Detective Brocchini on December 24, 2002. (RT 10012; 10735.)
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1 defendant for the whereabouts of Laci's keys and the defendant said that he had taken Laci's keys
2 out of her purse to look in her car. (RT 15992.) The defendant also told Capt. Boyer that he
3 reported Laci missing around 6:00 p.m. after he called her parents.⁵⁹ (RT 15930.)

4 The defendant was present and showed Capt. Boyer which hairbrushes belonged to Laci.
5 (RT 15930.) Eloise Anderson and Cindee Valentine, dog handlers, wore gloves and collected a
6 hairbrush, a pink slipper from Laci's closet, a sunglass case containing a pair of sunglasses from
7 Laci's purse and a green and brown man's slipper. (RT 15920, 16073.) These items were each
8 individually placed in separate Ziplock bags and then each of those were placed into a second
9 separate Ziplock bag which was then sealed around the first Ziplock bag. (RT 15932.)

10 Prior to leaving, with the items and beginning their search for Laci using the dog
11 tracking⁶⁰, the defendant asked for a property receipt from Capt. Boyer. (RT 15931.) This was
12 the first time that a family member of a missing person had ever requested a receipt for scent
13 articles, so Capt. Boyer had to create a receipt for the defendant. (RT 15931.) The scent articles
14 were later booked into the Modesto Police Department. (RT 15932.)

15 **C. Search Warrant at Defendant's House**

16 Less than 48 hours after Laci was reported missing, the Modesto Police Department
17 executed a search warrant for the Peterson residence beginning in the morning of December 26.

18 ⁵⁹ This was a lie. The defendant never called 911 to report Laci was missing, instead Ron Grantski did.
19 (RT 19934.)

20 ⁶⁰ Beginning on December 26, 2002 through December 28, 2002, dog handlers Cindee Valentin and Eloise
21 Anderson utilized their tracking dogs Merlin and Trimble, respectively, at 523 Covena Avenue, the
22 defendant's warehouse and the road leading out of town towards the San Francisco Bay. Defendant's
23 moving papers only articulate a limited portion of this evidence in their Statement of Facts and argument.
24 Starting February 24, 2004, the court conducted a four-day long evidentiary hearing regarding the
25 admissibility of all the dog tracking evidence at trial. Ultimately, the court determined the only dog
26 tracking evidence that would be admissible at trial was from December 28, 2002, from Eloise Anderson
27 and her dog Trimble and Ron Seitz and his dog TJ. (9795; 9865-9866; 10012.) The trial court's ruling was
28 reviewed by the Supreme Court in the opinion at People v. Peterson (2020) 10 Cal.5th 409. In the event
the court is going to consider the selected inadmissible evidence that the defense has proffered, the People
request an opportunity to make an addendum which includes a full and complete statement of facts which
includes where the dogs alerted or showed signs of interest and the defendant's subsequent conduct and
attempts to interfere with the dog tracking investigation/evidence by driving Laci's car around the dogs
as they worked.

1 (RT 10791; 12280.) Before the police started searching inside the house, they checked again for
2 signs of forced entry, but found none. (RT 12279.) They also checked outside the house for
3 footprints in the soil or broken tree limbs, anything that might indicate an intruder. (RT 12280-
4 12281.)

5 The primary purpose of the search on December 26 was to look for forensic evidence,
6 including blood and hair fibers. (RT 12326.) Federal Bureau of Investigation (“FBI”) personnel
7 assisted in the forensic search. (RT 12383-12384.) As mentioned above, police found two very
8 small spots, later confirmed to be the defendant’s blood, on the white duvet comforter on the bed
9 in the master bedroom. (RT 12338; 17033; 17196.) Police collected two hairbrushes from a
10 drawer of the vanity in the bathroom of the master bedroom. (RT 12370-12371.) That day, the
11 police also collected hair samples from the defendant. (RT 12377.)

12 1. Chicken Wire, Claw Hammer and Concrete Debris

13 Police did a cursory search of the defendant’s truck and Laci’s Land Rover. The patio
14 umbrellas, blue tarp and balled-up tan canvas tarp were no longer in the back of the defendant’s
15 pickup. People’s Trial Exhibit Number 116A shows a roll of cut chicken wire⁶¹, small chunks of
16 cement and a claw hammer with dried concrete powder residue were found in the bed of the
17 defendant’s pickup truck on December 26, 2002. (RT 11228-11229; 12504; 12601; People’s Trial
18 Exh 116A.) The vehicles were impounded and towed to a secure location for further processing.
19 (RT 12318; 12490-12492; 13315, 13318-13319.)

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21 ⁶¹ During a subsequent interview, the defendant told Detective Grogan that the roll of chicken wire was
22 new, however, that did not match the evidence as it appeared the roll had been released and cut. (RT
23 18648.)
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2. Patio Umbrellas and the Blue Tarp

The three patio umbrellas had been moved to the backyard under the covered patio and were found leaning against the fence. (RT 10741; People’s Trial Exh. 69H.) The blue tarp was found in the utility shed, where the lawnmower was stored, next to the covered patio. A backpack style sprayer commonly used for fertilizing or spraying weed killer, had a liquid substance in it and was found on top of the blue tarp. (RT 10743; 12340; People’s Trial Exh. 69H.) In People’s Trial Exhibit 69H, depicted below, the patio umbrellas are visible under the covered patio, propped against the fence wall separating the backyard from the driveway. Additionally, the storage shed containing the blue tarp and yard/weed sprayer are visible through the open shed door. (People’s Trial Exh. 69H.) People’s Trial Exhibit Number 111E, shown below, is a photo of the blue tarp and backpack sprayer after the searchers removed them from the patio shed. (People’s Trial Exh. 111E.)

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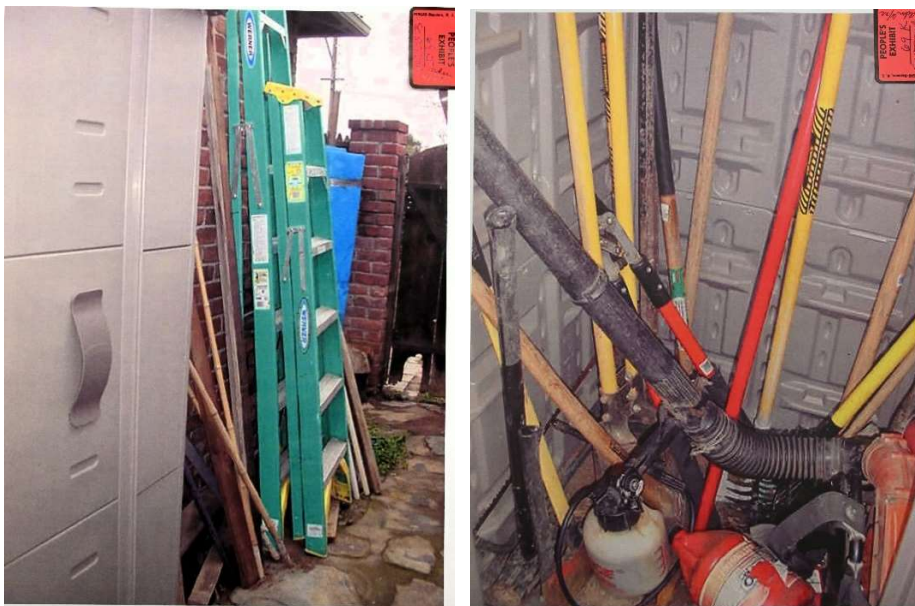
3. Boat Cover Soaked in Gas with Chunks of Concrete

The bunched-up tan tarp that Detective Brocchini saw scrunched up in a ball in the pickup

1 bed on Christmas Eve was the cover to the defendant's aluminum boat. (RT 10742.) When the
2 defendant purchased the boat on December 9th, the boat cover was in good condition according
3 to Bruce Peterson, the previous owner. (RT 12152; 18649; People's Trial Exh. 105D.) Although
4 the defendant had made an earlier trip to his warehouse on the morning of December 25 and
5 dropped off other items he had in his truck as discussed further below, the defendant did not store
6 the tan canvas boat cover back with the boat. (RT 18649.)

7 On December 26, 2002, this boat cover was found – still bunched up – in a separate stand-
8 alone plastic tool shed located on the back or south side of the house. (RT 10742-10744; 12290.)
9 A gasoline leaf blower had been placed on top of it and leaked gas all over it. (RT 10744; 12287-
10 12290; People's Trial Exh. 69J.) At trial, Captain Christopher Boyer explained that any volatile
11 or organic chemical, such as gasoline, kerosene, oleum, bleach, ammonia and fertilizer impedes
12 and makes it difficult for a tracking dog or cadaver dog to detect the human scent. (RT 15909.)

13 People's Exhibit Number 69J shows the plastic tool shed, located on the backside of the
14 house where the boat cover was found on December 26, 2002 and People's Trial Exhibit Number
15 69K shows the gasoline leaf blower that had been sitting on top of the boat cover. (People's Trial
16 Exhs. 69J and 69K.)



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27 The gasoline smell was so intense that day that the searchers had to hang the boat cover
28 over the fence to air it out before placing it into an evidence bag and loading it inside their vehicle.

1 (RT 12339; 12875-12876.) People’s Trial Exhibit Number 69L is a photograph of the gasoline-
2 soaked boat cover as it was hung up to air out on December 26, 2002. (People’s Trial Ex. 69L.)

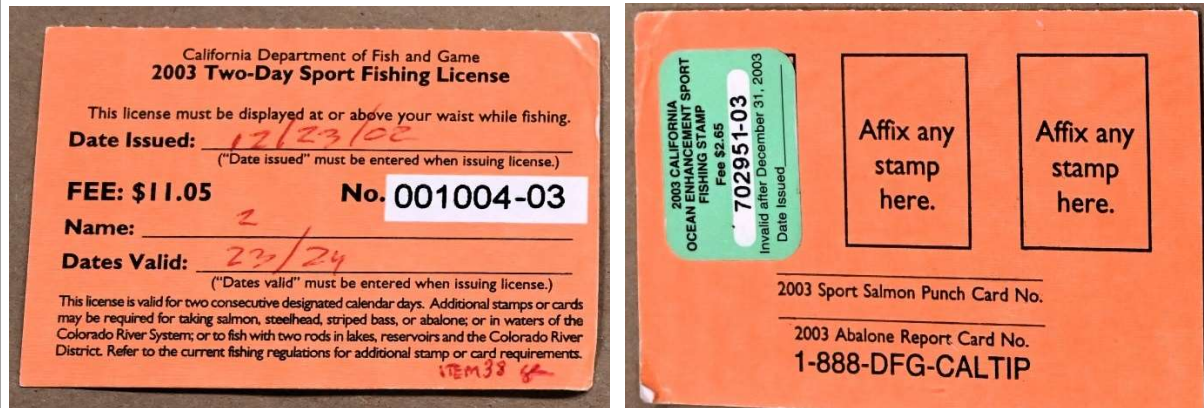


14 The boat cover was sent to the Department of Justice for forensic examination. (RT
15 17019.) Pin Kyo, a criminalist, examined the boat cover and found pieces of concrete which she
16 found were visually similar to the defendant’s homemade concrete anchor. (RT 17019-17024;
17 17104-10709; People’s Exh. 240E.)

18 4. Fishing License

19 Before leaving the residence for the officers to serve the search warrant, the defendant
20 gave the officers his two-day fishing license. (RT 10792-10793; People’s Exh. 79.) In red pen
21 someone had written the date “12/23/02” on the Date Issued line, number “2” in the Name line
22 and numbers “23/24” on the Dates Valid line. (People’s Exh. 79.) People’s Exhibit 79 shows the
23 defendant’s 2003 Two-Day Sport Fishing License on the front side and the 2022 Ocean
24 Enhancement Sport Fishing Stamp on the backside. (People’s Trial Exh. 79.)

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At trial, the manager of the Modesto Big 5 Sporting Goods store testified and confirmed that on December 20, 2002 the defendant came to that store and selected two fishing lures and a fishing combo which consisted of a disassembled saltwater (SW) fishing pole and fishing reel. (RT 12177; 12181; 12185.) He purchased a two-day fishing license with an Ocean Enhancement stamp. (RT 12177-12178.)⁶² The receipt indicated the defendant made the purchase at 3:49 p.m. (RT 12185; People’s Trial Exh. 73.) The manager explained that it is generally standard procedure for the cashier to fill in the detail on the license which includes writing the date issued which should have been 12/20/2002 in this case and then it is best practice for the cashier to fill in the two consecutive dates the customer was going to go fishing at the time of purchase. (RT 12178; 12181.) However, the former Christmas help employee who completed the transaction had failed to fill out the fishing license properly, whereby someone else wrote in the numbers with a red pen. (People’s Exh. 79.) A red ballpoint pen was documented as one of the items seen in the bottom of the defendant’s boat on December 24, 2002. (RT 10767; People’s Exhs. 70Q and 121B.)

5. Laci’s Jewelry

During the Christmas Day interview with Detective Grogan, the defendant theorized that Laci may have been kidnapped by a transient for someone for her jewelry. (RT 17652.) On December 27, the police continued their search of the Peterson residence. This time, they

⁶² At that time, the store did not have any 2003 year-long fishing licenses, however, a two-day license could be used either in 2002 or 2003. (RT 12182.) On the other hand, the Ocean Endorsement which is required to fish in the Bay, was only valid for the remaining eleven calendar days left in 2002. (RT 12183-12184.)

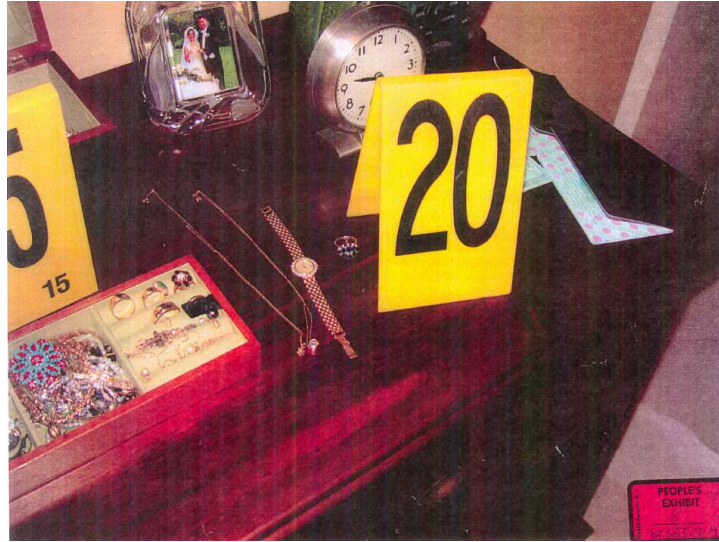
1 searched for specific items. (RT 12376.) In particular, police were looking to see if jewelry that
2 the defendant said Laci had been wearing on Christmas Eve morning was missing from the home.
3 (RT 17646-17677.)

4 Depending on which officer the defendant spoke to and on which date, he indicated that
5 Laci was wearing a variety of jewelry as she mopped the floor barefoot that morning. On
6 December 24, 2002 at 1804 hours, defendant told Officer Evers that Laci was wearing her
7 “diamond ring, diamond earrings and diamond necklace.” (RT 10033; People’s Exh. 54.) On
8 December 25, 2002, defendant told Det. Grogan and Investigator Mansfield that Laci was wearing
9 “diamond earrings, a necklace with a diamond solitaire and a wristwatch that had diamonds
10 around the face.” (RT 11823.) On December 26, 2002, the defendant told Contra Costa Sheriff
11 Deputy Chris Boyer that Laci was wearing “a diamond solitaire necklace, a bracelet with blue
12 stones and diamonds, diamond earrings and diamond watch.” (RT 15926.) On December 26,
13 2002, defendant told Det. Grogan that Laci was wearing “diamond earrings [with screw on clasps
14 at the back], a diamond solitaire on a gold chain and a watch with diamonds around the face.”
15 (RT 17652.) On December 30, 2003, the defendant told Detective Grogan that Laci was wearing
16 earrings and that she was wearing one of her two diamond-encrusted gold wrist watches. (RT
17 18644.)

18 Since the defendant’s account of what jewelry Laci was wearing changed, Detective
19 Grogan inventoried and accounted for each piece of Laci’s jewelry, including all the different
20 items the defendant claimed she had been wearing, with the exception of two items. (RT 17676-
21 17677.) The diamond screw-on earrings and the Croton watch were the only two pieces of jewelry
22 unaccounted for. (RT 10435; 12391; 176677, 176801 17809; 18182.) People’s Exhibit Number 8,
23 pictured below, shows Laci’s jewelry found during the execution of the search warrants on
24 December 26th and 27th which includes, but is not limited to, Laci’s diamond watch, diamond
25 solitaire necklace and sapphire ring. (People’s Exh. 8.)

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10 The investigation indicated that Laci was most likely still wearing her diamond screw back
11 earrings when she disappeared, but not the Croton watch. The jewelry Laci inherited from her
12 grandmother included a Croton gold style ladies dress watch with a small face in a circle of
13 diamonds. Amy Rocha said that she and Laci went through all the jewelry and neither of them
14 were interested in keeping the Croton watch. (RT 8902)

15 The defendant was very familiar with Laci's Croton diamond bezel ladies watch, as the
16 defendant put it up for auction for \$100.00 on his eBay account twice. On December 1, 2002, the
17 defendant listed an Amazing Diamond Bezel Ladies Watch, Croton, for \$100 on eBay. The
18 auction expired on December 8, 2002. Defendant relisted the same watch for auction on
19 December 8th and that expired on December 15, 2002. The records did not indicate if the item
20 was sold. (RT 14391-14395; 16637-16639; 17824; 18024; 18027; People's Exh. 183C-183Q.)
21 The payment was to be sent to Scott Peterson at the Covena address. (RT 14394.) However, not
22 once, in the defendant's varying descriptions to the officers of Laci's jewelry, did he claim that
23 Laci was wearing her grandmother's Croton watch.

24 Furthermore, the Croton watch had a dead battery. During the investigation, Detective
25 Grogan reviewed several segments of videotape that lasted for several minutes where Laci's and
26 the defendant's voices are heard as they are recording and rearranging four different watches
27 which included the Croton watch with diamonds around the face. (RT 18045-18046; People's
28 Exh. 279B.) Three different video segments were taken at different times which lasted several

1 minutes and the time never changed on the Croton watch, suggesting the battery was dead. The
2 Croton watch seen in these video clips matched the photos that were submitted and posted on
3 eBay. (RT 18028-18029; 18045-18046; 20120.) Furthermore, detectives followed up with Laci's
4 jeweler. Laci had brought several pieces of jewelry that she had inherited to her jewelry store in
5 McHenry Village, including a Geneve watch, to be repaired. Laci had never brought in the Croton
6 watch to be fixed or to have the battery replaced. (RT 17824-17825.)

7 Detective Grogan queried whether any Croton watches had been pawned at the pawn
8 shops and they found one pawn receipt relating to a Croton watch pawned on December 28, 2002.
9 ⁶³ (RT 18028.) However, the pawn receipt did not indicate the pawned watch had any diamonds
10 and mentioned the pawned watch was scratched which was not consistent with the description of
11 the Croton watch that Laci had inherited from her grandmother. (RT 18028-18029; People's Exh.
12 279B.)

13 6. Home and Work Computers

14 Authorities seized five computers during the execution of search warrants at defendant's
15 home and business in late December 2002 and February 2003. (RT 14146.) From the
16 Covena residence, police took one Compaq laptop computer, one Dell laptop and one Sotec
17 notebook computer. (RT 14121, 14144, 14155.) An IBM laptop computer and a Dell
18 desktop computer were seized from the warehouse. (RT 14144-14145.) Retired Modesto Police
19 Department computer forensics technician Kirk Stockham examined the hard drives of the
20 various computers. (RT 14166.) Detective Lydell Wall of the Stanislaus County Sheriff's

21 ⁶³ Investigators searched pawn records for a Croton watch and found one result which indicated a Croton
22 watch had been pawned on December 30, 2002, for \$20.00, however, the description indicated the watch
23 was scratched and there was no mention of diamonds. (RT 18027-18028.) Modesto Police followed up
24 regarding the Croton watch after the defense admitted a pawn shop ticket made out to Deanna Renfro,
25 Defense Trial Exhibit N, during trial. (Bates: 42674.) Modesto Police Lt. Smith interviewed the pawn
26 shop owner who indicated that Laci's watch was not the watch that was pawned. (Bates: 042674-42677.)
27 Authorities also tracked Deanna Renfro down in Oklahoma and she was shown photos of Laci's Croton
28 watch from the Ebay site. Renfro denied that her Croton watch was the same as Laci's watch. (Bates:
42675-42680.) Renfro described the differences between her watch and Laci's Croton watch. (Bates:
42686.) She also said that two investigators hired by the defendant's family had already visited her home
in February or early March of 2003 and she had provided them with the pawn slip to retrieve the watch if
they wished. (Bates: 42676; 42686.)

1 Office testified as an expert in computer forensics. (RT 14327.) Wall examined the
2 computers' hard drives with respect to internet usage. (RT 14328-14329.)

3 Email exchanges between defendant and Sibley from November and December 2002
4 were located on the couple's home laptop and defendant's work desktop computer that had
5 been deleted, but which still resided on the hard drive. (RT 14381- 14385.) There was also
6 an email sent to "slpetel@msn.com" confirming delivery of a package to Amber Frey. The
7 email had been deleted but was still otherwise accessible on the hard drive. (RT 14451-14452.)
8 The defendant had also deleted Eric Olsen's resignation email which had been sent on December
9 26, 2002, at 11:37 a.m. (RT 14410.)

10 As mentioned above, the forensic examination of Petersons' computers uncovered
11 numerous email exchanges involving the defendant's email address "slpetel@msn.com" and
12 the sale of jewelry on eBay in December 2002. (RT 14449-14450.) The search also
13 revealed an email exchange involving the private sale of a high-capacity Glock pistol
14 magazine that the defendant initially tried to sell on eBay but the site would not authorize
15 such a sale. (People's Exh. No 187A-D; 184.)

16 The forensic examination further showed that on December 24, 2002, at 8:45 a.m. the
17 home laptop computer showed activity from 8:40am until 8:45am. (RT 14419-14420.) The
18 defendant sent an email response from the Dell Laptop home computer from his email account to
19 an email address of "jschockley" regarding a golf bag the defendant sold on eBay. (RT 14419-
20 14421; People's Exh. 186.) This contradicted what the defendant told Detective Grogan during
21 the Christmas Day interview indicating that the golf bag email was sent from his warehouse. (RT
22 17655.)

23 The forensic search indicated that on December 24, 2002 from 10:30 a.m. until 10:56 a.m.,
24 there was activity on the defendant's Dell Work PC 4 located at his warehouse. (RT 14421-
25 14422.)

26 **D. Search Warrant at Defendant's Warehouse**

27 As mentioned above, on December 25, 2002 at the direction of Detective Grogan, officers
28

1 secured the defendant's warehouse to ensure no one entered until a search warrant was executed
2 on December 26 – 27th. (RT 17660-17661.) After his Christmas Day interview with Detective
3 Grogan and Investigator Mansfield, the defendant returned to his warehouse and learned that an
4 officer was stationed outside and would not allow him to enter. (RT 12881-12882; 17659; 17682.)

5 In the afternoon of December 27, after searching the defendant's residence, officers
6 executed a search warrant at the defendant's warehouse. (RT 12523; 12526.) The warehouse
7 remained secured until the officers arrived. (RT 12527.) Prior to conducting the search, the police
8 memorialized the condition and contents of the warehouse with a video recording which was
9 played for the jury. (RT 12529-12546; People's Exh. 118.)⁶⁴

10 The warehouse was about 70 feet by 30 feet. Most of it was stacked with pallets of
11 fertilizer product. There was a flatbed trailer that was sixteen feet long by seven feet wide. Next
12 to the trailer was the defendant's 14-foot Gamefisher, 15 horsepower motor aluminum boat and
13 boat trailer. (RT 12536-12538; 12543; See also People's Trial Exh. 55 [schematic of warehouse].)

14 People's Trial Exhibit Number 69G, shown below, was taken at the time of the search
15 warrant on December 27, 2002 and shows the defendant's boat, next to the flat bed trailer.
16 (People's Trial Exh. 69-G.)

17 _____
18 ⁶⁴ The jury was able to see the fluorescent overhead lights on the warehouse ceiling which had been turned
19 on and illuminated the warehouse. (People's Trial Exh. 118.)



PEOPLE'S
EXHIBIT
69 G
SC55500A

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1. Camouflage Jacket, Fishing Poles and Lures

16 The camouflage jacket that Detective Brocchini had seen in the back of the defendant's
17 pickup truck on Christmas Eve was lying on top of a green vinyl bag in the boat. (RT 10747-
18 10748; 10778; People's Trial Exh. 69G.) The Big 5 bag and receipt were located on a shelf in the
19 warehouse. (RT 12572.) The two unopened packages of fishing lures from Big 5 had been moved
20 from the defendant's truck and were found in the green vinyl bag in the front portion of the boat
21 (RT 12573-12574; People's Trial Exh. 74 [fishing lures].) Officers found two fishing poles in the
22 rear of the boat. (RT 12573-12574.)

23

2. Laci's Hair Mashed in the Jaws of the Pliers Found in the Boat

24 On December 27, 2002, the pair of needle-nose pliers was found in the same location
25 captured in Detective Brocchini's December 24th photo, still in the boat under the middle
26 seat. (RT 10837-10838; RT 12544.) Pictured below, People's Trial Exhibit Number 121A
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1 is a photo of the items located inside the defendant's boat on December 27, 2002 during the
2 execution of the search warrant at his warehouse. (People's Trial Exh. 121A.)



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17 On December 27, 2002, Hendee retrieved the needle-nose pliers from the boat and noticed
18 what appeared to be a human hair intertwined or wrapped around the teeth of the pliers. (RT
19 12555-12556.) Grogan later viewed the photographs taken during the execution of the search
20 warrant and also saw what appeared to be hair in the pliers. (RT 17837.) Grogan spoke to
21 detective Dodge Hendee and asked Hendee to retrieve the pliers from the police department's
22 evidence room and determine if there was hair attached and, if so, determine if it was suitable
23 for DNA testing. (RT 17837- 17838.)

24 Hendee retrieved the pliers and noticed what he thought was a single hair, about five
25 to six inches in length, looped around the pliers and fixed in the clamped portion. (RT 12554,
26 12556-12557; 13031.) There was some sort of vegetation material stuck to the hair.⁶⁵ (RT

27 ⁶⁵ An expert later identified the vegetation material as being consistent with an annual bluegrass found in
28 the Central Valley which grows during November through April. (RT 13482-13483.)

1 12556; 13034; People's Exhs. 159A and 159B.) Hendee inserted the pliers into an evidence
2 envelope, pulled the handles apart, removed the pliers from the envelope and looked inside
3 the envelope to ensure the hair was inside. (RT 12558; RT 12974.) It appeared to be a single
4 hair that was deposited in the envelope. (RT 12558.)



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15 Detectives Hendee and Brocchini retrieved the evidence envelope on February 12,
16 2003 for the purpose of determining whether the hair had a root. They inspected the contents
17 of the envelope and found there were two hairs inside. (RT 12563, 12566.) Hendee
18 confirmed that the evidence envelope was sealed and was not tampered with. (RT 12566-
19 12567.) He explained that what he initially perceived to be one hair in the pliers may have
20 actually been two that were held together in the clamped portion of the pliers. Alternatively,
21 if it had been a single hair, Hendee suggested the hair may have somehow broken inside the
22 envelope. (RT 12567.) In looking at a close-up photo of the hair when it was in the pliers,
23 Hendee pointed out that the entire hair was not visible. (RT 12591- 12592.) He took extra
24 precautions in repackaging the hairs. (RT 12567.)

25 Rod Oswalt, a Department of Justice forensic criminalist who specialized in hair
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1 evidence, later determined the evidence to be two separate hair fragments.⁶⁶ (RT 13617.)
2 Microscopically comparing the hair fragments to samples of Laci's hair taken from her
3 hairbrushes, Oswald concluded the hair fragments were microscopically consistent with the
4 samples of Laci's hair. (RT 13612-13617; 13644; 13658; 16599; 16603; People's Trial Exh.
5 164-B.) Microscopic analysis also revealed that the fragments were not consistent with
6 samples of the defendant's hair. (RT 16596.) Oswald noted there was splaying or flattening
7 out of the hair fragments that could have been caused by pliers. (RT 13656.) The fragments
8 could have initially been stuck together due to the clamping action of the pliers, or as a result
9 of hair spray or hair oils. (RT 13657.) The fragments were sent to the FBI's lab for
10 mitochondrial DNA testing. (RT 13660-13662.)

11 Noted FBI biologist forensic examiner Doctor Constance Fisher conducted
12 mitochondrial DNA ("mtDNA") testing⁶⁷ on a two-centimeter segment of one hair fragment.
13 (RT 16655.) Dr. Fisher determined that the mtDNA sequence in the fragment from the pliers
14 was the same as the reference sample received from Sharon Rocha. (RT 16676-16677.)
15 While mtDNA analysis did not permit the conclusion that the hair fragment was Laci's (RT
16 16696), the mtDNA in the hair fragment was of the same sequence as that found in Sharon's
17 mtDNA (RT 16676-16678). In other words, the fragment and reference sample shared the same
18 maternal linkage. (RT 16701.) Fisher's further analysis found that the sequence was relatively
19 rare. (RT 16701.) Fisher also compared the hair fragment to a sample of the defendant's hair,
20 but the sequences did not match. (RT 16675-16676.)

21
22 ⁶⁶ Oswald explained that if a root were present, it was referred to as a hair. If there was no root
present, it was considered a hair fragment. (70 RT 13617-13618.)

23 ⁶⁷ Dr. Fisher explained the two types of DNA: nuclear and mitochondrial. Nuclear DNA is inherited
24 from a person's mother and father, while mitochondrial was only inherited from the mother. Nuclear
25 DNA was unique to an individual (except for identical twins) and could, therefore, be used as a tool
26 of inclusion. On the other hand, mitochondrial DNA could not be used to make an individual
27 identification. However, it was a very reliable tool of exclusion for those instances, for example, where
there was a hair fragment but no root for nuclear DNA testing. (RT 16618-16622.) In mtDNA testing,
if there was no access to the subject individual, then an examiner could use a reference sample from
the subject's maternal relative to make a comparison to the evidence. (RT 16622-16623.)

1 As for the pliers, Sarah Yoshida, the state lab's senior criminalist who examined the tool,
2 explained that they were extremely rusted and hard to open at the time she completed her
3 examination. (RT 16441; 16471-16474.) She opined that saltwater could increase the
4 corrosiveness of the pliers over time, including during the intervening time since she first
5 examined them in February 2003. (RT 16442-16443.) Yoshida concluded that the pliers had not
6 been used recently, meaning since the rust formed. (RT 16470, 16477.) She did not observe
7 blood or tissue on the tool. (RT 16477.)

8 3. A Homemade Anchor Without Rope and Distinct Circular Shaped
9 Voids Left in the Spilled Concrete Powder on the Flatbed Trailer

10 A small, homemade, 8.6 pound concrete anchor was discovered inside the boat. It was
11 circular in shape and had a piece of bent rebar coming out of the top of it. (RT 12545; 10772-
12 10773; 17311-17312; People's Trial Exh. 72.) Even though there was no rope attached to this
13 object, it was commonly referred to as the "boat anchor" throughout the trial. (RT 17673-17674.)
14 People's Trial Exhibit Number 72, seen below, is a photo which shows the size of the defendant's
15 homemade concrete anchor that was recovered, without any rope attached, from inside his boat
16 on December 27, 2002. (People's Trial Exh. 72.)



1 Inside the warehouse next to the defendant's boat was a flatbed trailer with a significant
2 amount of concrete debris on it. (RT 17668-17669.) In the middle of the trailer, was a dustpan
3 and a gallon sized Rubbermaid pitcher. (RT 12539.) The pitcher was about one-third full of
4 grayish colored water and cement residue. (RT 12590.) There was also what appeared to be
5 spilled concrete powder on the trailer. (RT 12540.) Visible in the concrete powder were distinct
6 circular voided areas which appeared to be consistent in size. (RT 12591; 13061-13062; 17669;
7 People's Trial Exhs. 122A-122D.) Detective Grogan noted that it seemed like a tremendous mess
8 for making one eight-pound anchor. (RT 17670.) On the trailer, next to the concrete debris, was
9 an unopened package containing 200 feet of galvanized wire. (RT 12921.)





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8 Pictured above are three photos taken during the search warrant at the defendant's
9 warehouse on December 27, 2002. People's Trial Exhibit Number 122D shows the flatbed trailer
10 with concrete powder debris and distinct circular void patterns. People's Trial Exhibit Number
11 122C, illustrates the pitcher with grayish colored water, the dustpan and concrete debris mess on
12 the flatbed trailer. People's Trial Exhibit Number 122A shows several items on the trailer,
13 including an unopened yellow and blue package containing 200 feet of galvanized wire, a hose,
14 pump, with some straps and a PVC pipe apparatus that attached to the pump.⁶⁸ (RT 12540; 12921;
15 People's Trial Exh. 122A.) The chisel mortiser and its packaging were located at the front of the
16 trailer. (RT 12540.)

17 Robert O'Neill, who testified as an expert on construction materials and their
18 compositions, also called a petrographer, examined 14 different cement or concrete materials
19 recovered from various places during the searches. (RT 17275-17280; 17288.) O'Neill examined
20 the defendant's homemade anchor located inside the boat and found that, given the variation in
21 color and texture, the concrete ingredients were not thoroughly mixed in a container or mold. (RT
22 17295-17296; 17311-17312.) O'Neil opined the concrete ingredients were mixed in some sort of
23 container. (RT 17295-17296.) In a search for the type of container the defendant used, Detective
24 Grogan located a small circular shaped painter's bucket at the Home Depot which matched one

25
26 ⁶⁸ The defendant's former employee Eric Olsen indicated that TradeCorp did not need a lot of machinery
27 and did not use any farming equipment to sell the fertilizer. (RT 11641.) The only equipment they had
28 was a ten-horsepower engine with a transfer pump and hose to transfer the liquid fertilizer from one tank
to another. (RT 11641.)

1 the defendant had previously purchased. He found the defendant's homemade anchor fit perfectly
2 inside. (RT 17314-17315; 17335-17338.)

3 O'Neill further examined the debris inside the plastic pitcher located on the defendant's
4 flatbed trailer in the warehouse. This debris was similar to the debris that was vacuumed from
5 the defendant's boat. (RT 17318.) O'Neill determined that the concrete debris collected from the
6 defendant's warehouse floor, trailer, boat, bed of the defendant's pickup, boat cover and dining
7 room floor⁶⁹ was consistent in their composition: Portland cement, fly ash and aggregate. (RT
8 17318-17328.)

9 A bag of cement and a receipt for cement from Home Depot were also collected. (RT
10 12422, 12504.) O'Neill testified that the anchor was consistent with the Home Depot cement but
11 a sample taken from next to the defendant's driveway (where he told Brent he dumped the leftover
12 cement as discussed further below) was excluded as a source of the anchor material. (RT 10794-
13 10795, 19248, 17330-31.)

14 4. Examination of the Defendant's Boat

15 a. *Salt Water and Concrete Debris in the Boat*

16 Police searched Department of Motor Vehicle records relating to the boat and discovered
17 the defendant never registered the boat. (RT 17683.) The defendant's boat was seized and placed
18 in a secure storage facility operated by the Modesto Police Department. (RT 12445.) There, the
19 boat was vacuumed and debris from the boat was collected. (RT 12375.) They located water in
20 the bottom of the boat which they later had tested and confirmed was salt water. (RT 17785.)
21 There was also evidence of cement remnants found inside the boat. (RT 16971; People's Trial
22 Exh. 238.)

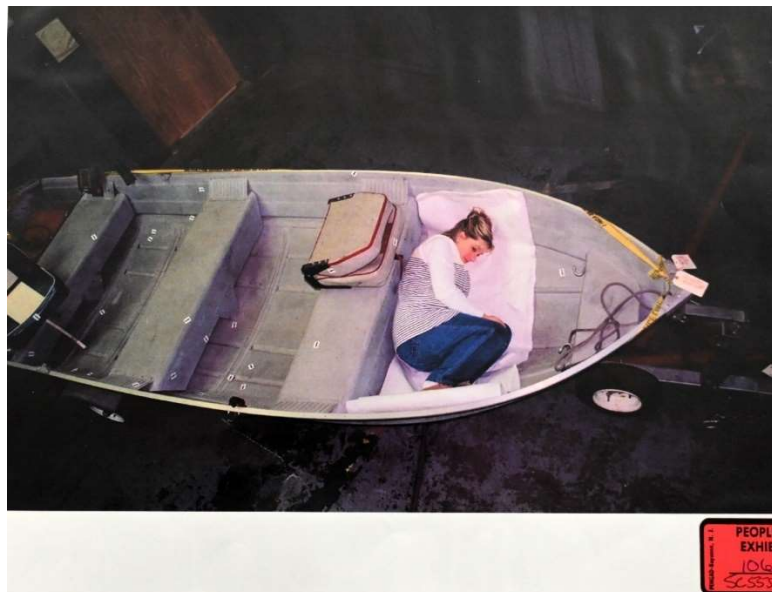
23 b. *Laci's Body Would Fit in the Boat*

24 Bruce Peterson, the original owner of the boat, testified that he and his wife would often
25 be in the boat together and both could move freely about the boat without any issues. (RT 12153-

26 ⁶⁹ During the subsequent search warrant conducted on February 18, 2003, Detective David Hawn retrieved
27 what appeared to be a very small piece of concrete on the dining room on the floor. (RT 13422;
28 13426.)

1 12154.) Bruce further indicated that there were many times both he and his wife would be on one
2 side of the boat together – one would be using the net while the other one would reel in a fish –
3 and this never created a problem with the boat. (RT 12154-12155.)

4 During trial, the People produced photos for the jury to show that Laci’s body could have
5 been placed in the defendant’s boat, concealed under the boat cover and transported undetected to
6 the Bay. (People’s Trial Exhs. 106F-I, J-L.) Kim Fulbright, an employee for the Stanislaus County
7 District Attorney’s Office, testified that at the time the photos were taken in January 2004, she was
8 38 weeks pregnant and similar height and weight as Laci, five foot two inches tall and 157 pounds.
9 (RT 12173-12174; 12191-12194.) People’s Trial Exhibit Numbers 106F, 106H and 106J pictured
10 below, show how Fulbright could fit any section of the defendant’s boat. (People’s Trial Exhs.
11 106F [rear section of boat], 106H [middle section of boat], and 106J [front of boat].)



1
2 **XVI. DEFENDANT'S LIES CONTINUE**

3 **A. Defendant Last Saw Laci Styling Her Hair**

4 On December 28, 2002, Sharon Rocha wanted to know what had happened to her
5 daughter. She approached the defendant at the Red Lion Hotel volunteer center and grabbed his
6 arm, pulling him into a separate room where she shut the door. Sharon asked the defendant what
7 Laci was doing on Christmas Eve morning. The defendant said that when he left the house that
8 morning, Laci looked so cute because she was sitting on her bench in front of the mirror styling
9 her hair the way Amy had shown her. (RT 9032; 9309.)

10 **B. Defendant is in New York and Flying to Paris**

11 On December 28, 2002 at 4:46 p.m., Amber called the defendant's cell phone and he
12 answered. She said, hello and he responded, "hello, hello," and there was a hangup. (RT 14704.)
13 Amber called again and he answered. (RT 14704.) She was surprised he answered because the
14 defendant was supposed to be leaving for this big trip. (RT 14704.) The defendant was supposed
15 to be leaving from New York and at the time she called he was supposed to be on the airplane on
16 his way to Paris. Amber thought she would just be leaving him a message on the phone and that
17 his cell phone would not be working in the air. (RT 14705.) He said that he was in Boston and
18 was taking a flight from Boston to Paris. (RT 14704.) He indicated that his flight had been delayed
19 and he spent the day in New York, but he did not call Amber in the morning to tell her this. (RT
20 14705.) The defendant claimed that the airport had comped him with a gift certificate or a hundred
21 dollars to get a massage and a meal and that he was just getting ready to go to the massage when
22 she called. (RT 14706.) The defendant said he would call her in two hours. (RT 14708.)

23 On December 28, 2002, Amber was upset that the defendant had not bothered to call her
24 that morning if he had spent the day in New York. (RT 14707.) She became more suspicious
25 regarding the defendant's whereabouts and confronted him. Amber brought up the fact that he
26 went to the trouble of telling her that he was monogamous and there was nobody else and that
27 they were going to have a future together, but she was having trust issues. Amber felt bad that
28 she was having trust issues with him. The defendant apologized and reassured her. He told Amber

1 that he should have been more sensitive to her feelings and more considerate and should have
2 called her. (RT 14707.)

3 After two hours, the defendant called Amber back at 6:28 p.m. and they had a short
4 conversation. He said that he was at the airport in New York and was getting ready for his flight
5 to Paris to leave. (RT 14708; People’s Trial Exh. 207F-2.)

6 **C. One Homemade Anchor and the Leftover Concrete**

7 During a subsequent interview on December 30, 2002, the defendant told Detective
8 Grogan that he had purchased cement to make an anchor. (RT 18651.) The defendant indicated
9 that he made the anchor at the warehouse. (RT 18205.) He claimed that he had made the anchor
10 in a plastic bucket. (RT 18651.) Searchers did not locate any plastic buckets or molds at the
11 warehouse. (RT 18651.)

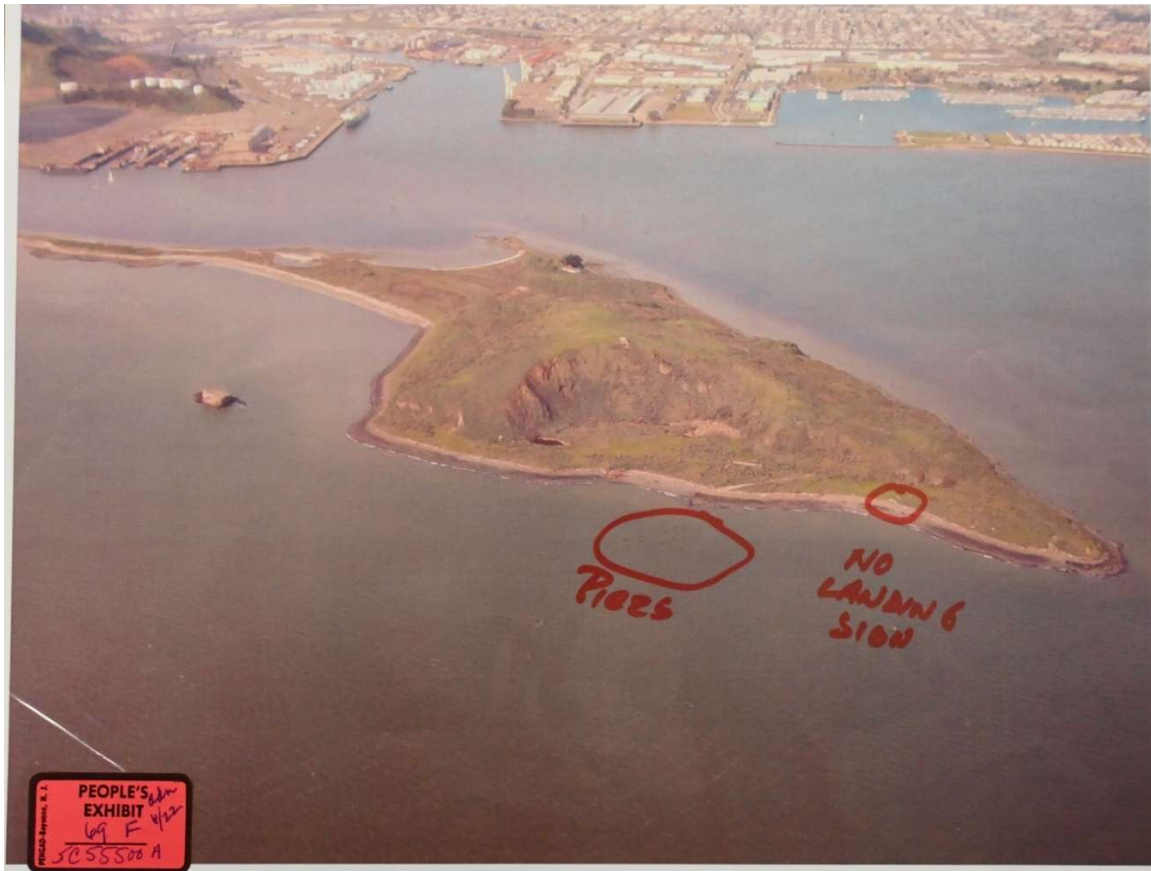
12 The defendant said he bought a bag of cement (and gestured the size to Grogan). Detective
13 Grogan interpreted his gesture as meaning a 60-pound bag and not either an 80- or 90-pound bag.
14 (RT 17724-17725.) The defendant told the detective that he threw the leftover bag of cement
15 away at his home. (RT 17725; People’s Exh. 266.) However, the defendant contradicted himself
16 in a recorded conversation when he spoke to Brent Rocha, Laci’s brother, on January 16, 2003.
17 Brent confronted the defendant about a news article which mentioned that only one homemade
18 anchor was found. The defendant told Brent that he made a boat anchor with cement and then
19 put some in his driveway. (RT 9210; 15411-15418 People’s Exh. 207B-2.)

20 **XVII. BAY SEARCHES BEGIN WHEN LACI’S SCENT IS DETECTED AT**
21 **THE BERKELEY MARINA**

22 **A. Defendant Accurately Described Brooks Island in Detail**

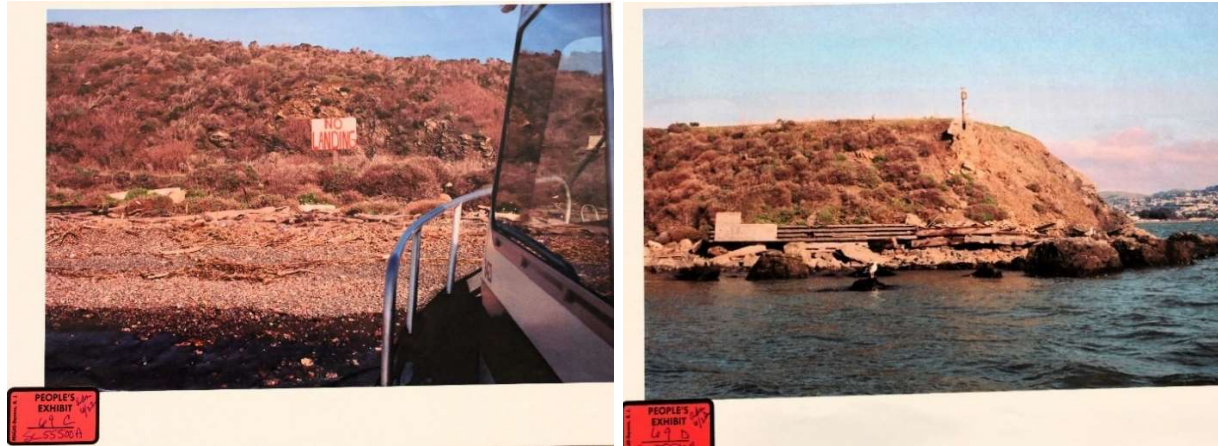
23 During the Christmas Eve interview the defendant had with Detective Brocchini and
24 subsequent interviews he had with Detective Grogan, the defendant spoke about the place he went
25 fishing. The defendant explained that he put his boat in the water at the Berkeley Marina and,
26 from there, he went north for two miles and found a little island. (RT 10726; People’s Exhs. 68
27 and 68A.) Defendant described the island in detail. Specifically, the island had a bunch of trash
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1 on it and a big sign that said, “No Landing.” He also described the broken piers he saw further
2 down. (RT 10727.) The defendant said he chose that spot because he assumed it would be a
3 decent shallow area. (People’s Exhs. 68 and 68A.) The defendant told Detective Grogan that he
4 went trolling for fish as he made his way to Brooks Island and back. (RT 17656.)



19 Authorities traveled to the backside of Brooks Island which is located less than two miles
20 from the Berkeley Marina and found the defendant’s description of the island was accurate. (RT
21 11042-11044; 15933) People’s Exhibit Number 69F, depicted above, shows where the “No
22 Landing” sign, pile of debris and broken piers were located on Brooks Island. (People’s Exh.
23 69F.) Furthermore, People’s Exhibit Numbers 69C, depicted below, shows the “No Landing”
24 sign posted on the island next to a large amount of debris on the shoreline and 69D shows the
25 broken piers the defendant had described around Brooks Island. (RT 10726-10729; People’s
26 Exhs. 69C and 69D.)

27 ///



B. Laci's Scent is Detected at The Berkeley Marina

On December 28, 2002, Capt. Boyer and dog handler Eloise Anderson, along with her trailing dog Trimble, responded to the Berkeley Marina. (RT 10205; 15933; 16075.)⁷⁰ Trimble is a labrador who has undergone extensive training beginning when she was puppy and is certified by the California Rescue Dog Association (CARD A) in trailing human scent. (RT 16027, 16050, 15055-16069.)

Capt. Boyer retrieved the scent articles from the Modesto Police detective and gave the sunglass case containing the sunglasses to Anderson. (RT 15933-15934; 16077; Exh. 78 [Laci's sunglasses].) Anderson presented the sunglasses to Trimble to see if Trimble could detect Laci's scent. (RT 16078.)⁷¹ They started at the first chokepoint entrance and Trimble smelled the scent article, searched and indicated that there was no trail. Anderson then went to the second chokepoint and again presented Laci's sunglasses to Trimble. This time Trimble detected Laci's trail and stretched out down to the ramp and to the pylon, stopping at the edge of the water and

⁷⁰ On December 28, 2002, Alameda County Sheriff's Department volunteer and dog handler Ronald Seitz also used his trailing dog, TJ and attempted to locate Laci's trail using Laci's pink slipper, however, TJ did not alert. (RT 19608; 19612-19613.)

⁷¹ At trial, the jury heard evidence regarding how tracking dogs detect scent when Captain Boyer explained that humans leave scent behind from their sweat and skin rafts as their skin sheds and the rafts come in contact with the environment or passes by an area. (RT 15904-15909.) A trailing dog has the ability to detect this human scent. A trailing dog may also detect live scent after a person died. A person can smell both alive and dead near the period, just post-mortem, right after they die. It is referred to as necrobiosis which is the planned or preprogrammed death of certain cells and as the cells continue to shed a trailing dog could still smell the residual live cells. (RT 15912-15913; 19619; 19646.)

1 Trimble indicated that was where Laci's scent trail ended, as the dog looked out towards the water.
2 (RT 16079-16085.)

3 **C. Bay Searches with Dive Teams Begin**

4 Beginning on December 28, 2002, professional dive teams from various law
5 enforcement agencies used side-scan sonar equipment⁷² to search San Francisco Bay from
6 the Berkeley Marina north toward Point Richmond and the Richmond Marina. (RT 10205-
7 10206.) This included the area between the Berkeley Marina and Brooks Island where the
8 defendant said he had been fishing. (RT 12221.) Through the investigation, detectives re-
9 evaluated all the information and evidence and identified 41 reasons they believed that Laci
10 Peterson would be found in the San Francisco Bay and, thus, continued to focus search efforts
11 there. (RT 18652-18653.) The Bay search operation was conducted over 15 days or so
12 beginning December 28, 2002 until May 2003. (RT 16497-16498.)

13 **D. Divers Battling Zero Visibility Wind and Currents**

14 The search conditions on the Bay were consistently difficult for the dive teams. (RT
15 12636-12637;16502.) First, the wind and wave action on the Bay made it nearly impossible
16 for the search boat captain to maintain a straight track on the water in carrying out the planned
17 search pattern. (RT 16494, 16051.) Second, due to extreme currents and flood tides at times,
18 divers could not see more than a foot in front of them. (RT 10208.) The currents and tides
19 also made it difficult for divers to dive down directly on a target; divers had to be dropped a
20 certain distance from the target and then float with the current until they reached the target.
21 (RT 10206-10207.) When the side-scan sonar registered an object the team wanted to
22 investigate further, they fixed coordinates to aid the dive team in locating the object. (RT
23 12638.) However, when the boat made a second pass over the area immediately after, the
24 object could not be located at the fixed coordinates. (RT 12638.)

25 _____
26 ⁷² The sonar can profile the bottom of a body of water in a search for missing objects. A computer
27 reconstructs images taken by a small torpedo- shaped device being towed by the boat (known as a
28 "fish"). The fish sends out a sound beam and reflections are reconstructed on the computer screen.
(RT 16489.) The sonar provides a 95-degree view of a body of water and 100 feet on either side of
the fish. There is a narrow blind spot because the sound beam is in the shape of a "V." (RT 16492.)

1 Dive teams from the FBI assisted in the Bay search. These teams employed
2 magnetometers and conducted a very methodical hand search on the floor of the Bay. (RT
3 12641.) Additionally, the East Bay Regional Park District and the California Highway Patrol
4 participated in a helicopter search of the shoreline area along San Francisco Bay. (RT 10214.)

5 Yet, despite these extensive and exhaustive search efforts, nothing of evidentiary
6 value was found. (RT 10298, 10305-10307.) That was not surprising to Geoffrey Baehr, the
7 head diver for San Mateo County's Sheriff's Office Marine Dive Cliff Rescue Unit, who
8 participated in the search. He explained that the conditions in the Bay made looking for a
9 body or a small weight difficult using the side-scan sonar, especially if either had become
10 buried in or covered with mud. (RT 16485, 16509-16510, 16518-16519.)

11 **XVIII. AMBER DISCOVERS THE DEFENDANT'S PREGNANT WIFE IS**
12 **MISSING**

13 On December 29, 2002, Amber was attending a party with Shawn Sibley. (RT 14711.)
14 At about 1:00am on December 30, 2002, she received a phone call from her friend who told
15 Amber that there was a Scott Peterson from Modesto who was the husband of a missing pregnant
16 woman. (RT 11729, 11731, 14712-14713.) Amber immediately called the Modesto Police
17 Department and spoke to a dispatcher in an attempt to determine if it was the same Scott Peterson.
18 (RT 14712-14713.) Once the dispatcher confirmed the defendant, was, indeed the husband of the
19 missing pregnant woman, Amber provided the information that she had been dating the defendant
20 for over a month. (RT 14711-14713.)

21 After a few hours when no one had contacted her, Amber called Modesto Police Dept.
22 back and this time spoke to Detective Al Brocchini. (RT 14714.) After the phone call, Det.
23 Brocchini and Detective Jon Buehler drove approximately 100 miles from Modesto to Amber's
24 house in Madera and interviewed Shawn Sibley and Amber Frey. (RT 11729, 14715.) Prior to
25 this discovery, Amber had been unaware the defendant was married to a woman named Laci and
26 that she was now missing. (RT 14715-14716.) Amber explained the relationship and showed the
27 detectives photos and gifts. (RT 14715-14716.) She later turned over these personal items from
28 their relationship. (RT 19062, 19064, 19072.) Amber agreed to work with the police and tape
record her phone conversations with the defendant. (RT 14716-14719.) The police provided
Amber with a recording device and showed her how to use it. (RT 10798-10799; 14717-14718.)

1 Amber would carry the recorder with her and began recording as many calls as was feasible. (RT
2 14719.)

3 On December 30, 2002, the defendant called Amber from the defendant's second phone
4 three times. (People's Trial Exh. 207F-2.) The defendant had told Amber that he was traveling
5 to Europe for business, so he could make changes in his travels, to be able to travel less and spend
6 more time with her. (RT 14724-14725.)

7 **XIX. A CANDLELIGHT VIGIL AND A NEW YEAR'S CELEBRATION IN
8 PARIS**

9 On December 31, 2002, one week after Laci disappeared, the family held a candlelight
10 vigil at the East La Loma Park beginning at 4:30 p.m. (RT 9019.) The defendant called Amber
11 from his second phone four times. They spoke at 4:20 p.m. which was ten minutes before the
12 vigil was supposed to begin for Laci. (RT 14723-14725; People's Trial Exhs. 195E and 196E.)
13 Amber recorded the phone call. The defendant told her that he was calling from Paris and
14 described what New Year's Eve atmosphere in Paris was like. (People's Trial Exhs. 195E-F and
15 96E-F.) The defendant said, "It's pretty awesome. Fireworks there at the Eiffel Tower. A mass of
16 people all playing American pop songs." (People's Trial Exhs. 195E and 196E.)

17 Meanwhile, approximately 1,200 to 1,300 people showed up for support and to pray for
18 Laci's safe return. (RT 9019-9020.) The media was present to spread the word. (RT 9020.) The
19 police had moved their mobile command center to the park and a platform stage was set up for
20 the family. (RT 9019; 14259.) Ron and Sharon, Brent and his wife Rose, Amy and Dennis Rocha
21 were on stage representing Laci. The defendant's parents, Jackie and Lee Peterson, were also on
22 stage. The defendant never went on stage. (RT 9020.) Seeing the defendant was in the crowd, a
23 family friend suggested to him that the defendant go on stage with his family, but the defendant
24 said something to the effect of, "I'd rather be here, be happier here." (RT 14299.) Sharon never
25 saw the defendant during the entire vigil. (RT 9020.) The vigil lasted a couple hours and
26 throughout it the defendant chose not to sit on the stage with his parents or Laci's family, but
27 stood in the crowd, near the back. (RT 9020-9021; 9200; 14262.)

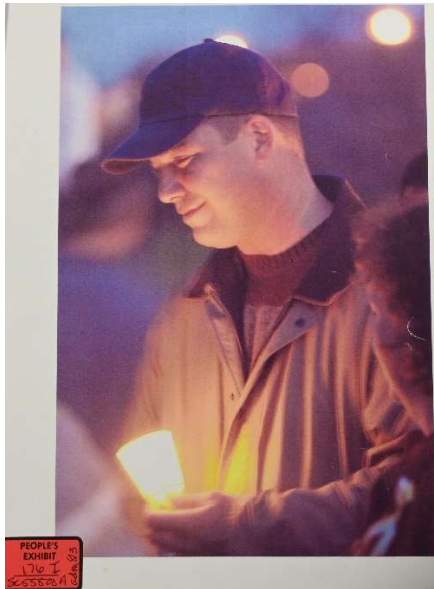
28 Several friends of the Rocha family, who also knew the defendant, noticed his cheerful
demeanor that evening. (RT 14288.) The defendant seemed like he was "very relaxed" and "in a
very good mood," "somewhat jovial." (RT 14288.) Another individual observed that the
defendant showed no emotion at the vigil. (RT 14262, 14280.) Pictured below are People's Trial

1 Exhibit Numbers 176A, 176H and 176I which were taken one week after Laci disappeared at the
2 December 31, 2002, candlelight vigil. (People's Trial Exhs. 176A, 176H, 176I.)



15
16

PEOPLE'S
EXHIBIT
176-A
SC55500A
1/1/03



25

PEOPLE'S
EXHIBIT
176-A
SC55500A
1/1/03



26

PEOPLE'S
EXHIBIT
176-H
SC55500A
1/1/03

27 One minute after midnight, now January 1, 2003, the defendant called Amber using his
28 second cell phone to wish her a Happy New Year. Amber recorded their long phone conversation.

1 (RT 14725; 14757-14758; People’s Trial Exhs. 207F-4; 195G and 196G.) Amber asked the
2 defendant when he was coming back home from Europe and the defendant responded that he was
3 trying to reschedule his return trip for the end of January, but that he needed to travel to
4 Guadalajara, Mexico, for a few days at the end of January and beginning of February. (People’s
5 Trial Exhs. 195G and 196G.) The defendant told Amber about the French food he had sampled
6 and that he was going for a run. (People’s Trial Exhs. 195G and 196G.) At one point in the
7 conversation, the defendant complained that there was a “fucking dog” next to his hotel that “just
8 keeps barking.” (People’s Trial Exhs. 195G and 196G.) Defendant said, “I just want to kill it.”
9 (People’s Trial Exhs. 195G and 196G.) Amber could hear a dog barking in the background.⁷³
10 (RT 14761-14762.)

11 When the defendant called Amber the following night on January 2, he again complained
12 about the barking dog. The defendant asked Amber, “Can you hear that damn dog?” (RT 14761-
13 14762; People’s Trial Exhs. 195I and 196I.) During the conversation, the defendant claimed that
14 he had fallen while jogging in Brussels and fell onto the cobblestones causing his right hip to be
15 “very, very dark blue.” (People’s Trial Exhs. 195I and 196I.)

16 **XX. DEFENDANT MAKES SEVERAL TRIPS TO THE BAY BUT STAYS**
17 **ONLY A FEW MINUTES**

18 **A. Police Begin Surveilling Defendant**

19 Beginning on Wednesday, January 3, 2003, the Modesto Police Department began
20 physical surveillance of the defendant. (RT 15152.) Authorities set up a hidden camera
21 (referred to as a "pole camera") outside the defendant’s Covena residence to monitor his
22 comings and goings so they could then follow him. Police resorted to this measure because
23 staking out the Covena residence in unmarked cars had proven difficult in the quiet
24 neighborhood and with the media. (RT 16151.)

25 ///

26 _____
27 ⁷³ Since the defendant was not in a hotel in Paris, it is quite possible the barking dog was the family dog
28 McKenzie who may have been barking at the New Year’s Eve fireworks, however, the identity of the dog
was never confirmed. (RT 20316.)

1 **B. Defendant Rents Multiple Vehicles**

2 During the months of January and February 2003, the defendant rented several
3 vehicles in Modesto. (RT 15824.) He rented a Dodge Neon on January 2 and returned it one
4 day later. (RT 15824.) On January 6, the defendant rented a Honda Civic and returned it the
5 same day. (RT 15824.) On January 8, defendant rented a Chevy S-10 Sonoma pick-up truck.
6 (RT 15825.) He returned the Sonoma pick-up truck on January 10 and exchanged it for a
7 Saturn. (RT 15825.) On January 16, the defendant returned the Saturn and rented a Lincoln
8 Town Car. (RT 15825-15826.) He returned the Lincoln on January 23. (RT 15826.)
9 Defendant rented a Dodge Dakota pick-up truck on January 27 which he returned two days
10 later. (RT 15826.) On February 18, the defendant rented a Chevy Tahoe and returned it the
11 next day. (RT 15826.)

12 Detective Grogan asked the California Department of Justice for a surveillance team.
13 (RT 17704.) After securing a warrant, authorities also installed Global Positioning System
14 ("GPS") devices on several of the vehicles defendant drove. (RT 15835, 16275-16277.) As
15 detailed below, defendant traveled to the Berkeley Marina on five days in January 2003. He
16 drove a different vehicle each time.

17 **C. While Police Search for Laci, Defendant Makes Several Quick Trips to The**
18 **Berkeley Marina and Plays Games with Law Enforcement**

19 While law enforcement continued to conduct searches and dives in the Bay, the defendant
20 made multiple quick trips to the Berkeley Marina. On the morning of January 5, 2003, there were
21 three vehicles, besides the Land Rover, parked at the defendant's house. At 7:30 a.m., the
22 defendant left his residence, driving the Land Rover and arrived at the volunteer center at 7:45
23 a.m. He was wearing a blue sweater and blue jeans. (RT 16159.) The defendant left and went to
24 his business at 9:20 a.m. where he stayed for three to five minutes and then returned home. (RT
25 16158-16159.) At 9:40 a.m. until 11:30 a.m., the defendant and another male left in the Land
26 Rover and were observed handing out "missing" fliers. (RT 16159.) At 11:39 a.m. they returned
27 to the defendant's house and the male left. (RT 16160-16161.)

1 By 1:10 p.m., authorities observed the defendant had changed his clothing. (RT 16160-
2 16161; 16181.) The defendant left the Land Rover parked at his house and got inside a gray
3 Subaru. (RT 16161.) The defendant made no stops and drove the Subaru approximately 85-
4 90mph straight to the Berkeley Marina and arrived at 2:00 p.m. (RT 16162.) The defendant drove
5 on both sides of the marina. He did not stop or talk to anyone and left after about five minutes
6 when he got back onto the freeway and drove back to Modesto. (RT 16163-16164.) The
7 defendant was driving extremely fast at about 85-90mph and the surveillance units were having
8 trouble keeping up with him. (RT 16166.) He took an off ramp by a gas station and drove past
9 the gas pumps but did not stop and then got back onto the freeway and continued. (RT 16166-
10 16167.) He did the same thing again near Grant Line Road, taking the off ramp and driving
11 through two gas stations before he stopped and got gas. (RT 16167.) The defendant got back
12 onto the freeway and drove to Modesto where he resumed driving normally. (RT 16167.) The
13 defendant returned home at 3:35 p.m. At 4:45 p.m, the defendant got into a blue Ford SUV and
14 went to the Del Rio Country Club for an hour. (RT 16168-16169.)

15 On January 6, 2003, Modesto Police officers conducted further surveillance on the
16 defendant. He left his residence that morning and went to the volunteer center at 7:30 a.m. in the
17 Land Rover. He left the volunteer center around 8:36 a.m. The defendant stopped at his business
18 for three minutes, between 8:53 a.m. - 8:56 a.m. and then drove to other locations. At 10:21 a.m.,
19 the defendant went to Enterprise Rent-A-Car where he rented a red Honda and left his Land Rover.
20 The defendant returned to his business for almost ten minutes before he left and drove the Honda
21 to the Berkeley Marina. (RT 16171.) This time the defendant was driving slower than the day
22 before at about 80mph. He arrived at the Berkeley Marina at about 11:52 a.m. and had not made
23 any stops along the way. (RT 16172.) At the marina, the defendant drove up to Spinnaker, a
24 street near the marina, and then up to the northern roundabout where he pulled over, stopped for
25 two minutes with his brake lights illuminated. (RT 16172.) After about two minutes, the
26 defendant drove into a parking lot. Officer Bettis tried to reposition his undercover vehicle;
27 however, the defendant began following the officer. The officer took a series of turns driving out
28

1 of the marina and into the city of Berkeley, however, the defendant continued to follow him for
2 about five to ten minutes. (RT 16175-16177.) The officers lost the defendant in the City of
3 Berkeley. (RT 16177.) They found the defendant when he returned to Enterprise Rent-A-Car and
4 returned the red Honda between 5:00 p.m. to 5:30 p.m. that night. (RT 16177.) He picked up his
5 Land Rover and drove to a strip mall parking lot and then eventually returned to his house at 5:42
6 p.m. (RT 16178.) The silver Subaru was still parked at the defendant's house at that time. (RT
7 16178.)

8 On January 8th, officers observed the defendant drive the Land Rover to the Modesto
9 Police Department. He made a complete circle of the various police buildings and then left
10 without getting out of the car.⁷⁴ (RT 16273-16274.) Defendant went to Enterprise, left the
11 Land Rover and drove away in a white pick-up truck. (RT 16274-16275.) An unidentified
12 female who had been with defendant, drove Laci's Land Rover back to Covena. (RT 16232.)

13 On January 9, the defendant left home just after 7:00 a.m. in the white pick-up truck.
14 (RT 16280.) He stopped at the warehouse for five minutes and then headed back to the
15 Berkeley Marina where he arrived around 10:40 a.m. (RT 16280-16281.) At the marina, the
16 defendant proceeded along Spinnaker Way around the traffic circle. He drove around both
17 sides of the marina, including the boat launch parking area, before leaving. (RT 16281-
18 16282, 16284, 16286.) As with his other trips to the marina, the defendant did not stop to
19 talk to anyone. (RT 16282.) On his way home, the defendant drove to the Medeiros reservoir
20 area which was another one of the other areas being searched. (RT 16286-16287; 16329-
21 16330.)

22 That same day, officers who were surveilling the defendant noticed that he was driving in
23 an unusual pattern. (RT 16323.) Over a 2-hour period, defendant would exit the freeway, drive
24 down a street, make a U-turn, pull into a parking lot, get back on the freeway, exit the freeway
25 again and proceed into a parking lot. This driving pattern occurred repeatedly on multiple

26
27 ⁷⁴ As discussed below, by this time Amber had confronted the defendant about Laci and told him in a
28 conversation the previous night that she was considering going to the police department the following day.
(RT 17722-17723.)

1 freeways. (RT 16323.)

2 On the morning of January 11, officers who were monitoring the pole camera observed
3 the defendant leave the house, walk to the Land Rover in the driveway, crouch down and inspect
4 different areas of the undercarriage of the vehicle. (RT 16352.) The defendant went back into
5 the house, came out a short while later, got into a silver Saturn parked at the house and left. (RT
6 16352.)

7 Later that day, authorities followed the defendant as he was driving in the Saturn
8 southbound on State Route 99. At one point, the defendant pulled to the shoulder of the freeway.
9 (RT 16342, 16357.) A female agent, Tera Farris, started to pull in behind defendant, but she was
10 called off so that she would not expose the surveillance. (RT 16345, 16356.) Faris drove past the
11 defendant on the shoulder and took the first exit off the freeway. (RT 16356.) She pulled in
12 behind a business just off the freeway. Faris heard on the radio that the defendant had also taken
13 the same exit. (RT 16356.) At that point, Faris saw that the defendant had pulled in alongside
14 her. (RT 16357.) He made eye contact with her and showed her a piece of notepaper he was
15 holding. (RT 16357.) Faris drove off. The defendant followed her for one or two blocks before
16 leaving her alone. (RT 16357.) Based on the events of that day, authorities concluded the
17 defendant was aware that he was being surveilled. Authorities shut down the camera surveillance.
18 (RT 16324.)

19 Tracking data supplied by manufacturers of the GPS systems also disclosed that the
20 defendant also drove to the marina on January 26 and 27. (RT 16906-16907; 16913-16915;
21 16956; 16959). On January 26 he took the Land Rover, while on January 27 he drove the
22 Dodge Dakota he rented that day. (RT 16970-16971.)

23 **D. Wiretap Indicated Defendant Continued His Trips to The Bay**

24 After the defendant's suspicious trips to the Bay and his antics with law enforcement,
25 Modesto Police Department obtained a court-authorized wiretap for the defendant's cellular
26 phones. Investigator Steve Jacobson of the Stanislaus County District Attorney's Office was
27 the supervisor for the court-authorized wiretaps of defendant's cell phones. (RT 15365,
28

1 15368; RT 15372.) The first wiretap took place beginning January 10, 2003 until February 4,
2 2003. (RT 15367.)

3 On the morning of January 11, searchers on San Francisco Bay were trying to
4 determine if a recent sonar hit was a body. (81 RT 15395.) This search activity was reported
5 heavily by the media. (RT 15395.) Defendant's cell phone activity revealed that he was
6 around the Berkeley Marina that morning. (RT 15396-15397.) At 10:48 a.m., the defendant
7 received an incoming call from his mother while he was in the area of the marina. (RT
8 15397.) The defendant told his mother he was in west Fresno. (RT 15397-15398; People's
9 Trial Exhs. 207A [recording], 207A2 [transcript], 207A3 [visual depiction of call area].)

10 That afternoon, defendant received a voicemail message from Sharon Rocha in which
11 she, with obvious relief, told defendant that the sonar hit turned out to be an anchor and not
12 Laci. (RT 10212-10213; People's Trial Exhs. 207A and 207A5.) The wiretap recorded
13 defendant listening to the voicemail message. Immediately after Sharon said that it was not
14 Laci and that she just wanted defendant to know, the defendant could be heard to let out an
15 audible sound which could reasonably be characterized as a whistle. (People's Trial Exh.
16 207A, 01.11.2023 at 12.55.39.)

17 **XXI. LACI KNEW ABOUT DEFENDANT'S AFFAIR, BUT NO ONE ELSE**

18 **DID**

19 **A. Police Question Defendant About Affair and His Doppelganger**

20 On January 3, Detective Grogan met with the defendant. During the meeting the detective
21 showed the defendant the faxed photo of him and Amber in front of a Christmas tree and asked
22 the defendant to explain. (RT 17708.) The defendant looked at it for a few seconds and then
23 asked, "Is that supposed to be me?" (RT 17708.) He went on to say that the female in the photo
24 looked like a girl he went to college with, but he did not think it was her. (RT 17710.) Grogan
25 told defendant that if he was having an affair, he should come clean about it because having
26 an affair did not necessarily mean that he had harmed Laci. (RT 17713-17714.) The
27 defendant assured the detective that the last time he dated anyone other than Laci was before
28

1 they were married. (RT 17714.)

2 That evening, the defendant had dinner at Sharon's house with Laci's family. The
3 defendant said that the police had shown him pictures of him with another woman and that they'd
4 done a really good job because the guy really did look a lot like him. (RT 9022.) The defendant
5 never mentioned that he was having an affair, or the woman was Amber Frey. (RT 9021-9022.)

6 The defendant continued to contact Amber after the police confronted the defendant with
7 a photo of the two of them. On January 4, 2003, the defendant asked, "Wouldn't it be fun to be
8 able to stay in a mindset of just constant discovery?" (People's Trial Exhs. 195N and 196N.) On
9 the subject of love and commitment, the defendant said "love doesn't mean that people can be
10 together forever." (People's Trial Exhs. 195N and 196N.) During the same conversation, the
11 defendant would self-deprecate and refer to himself as chubby. He claimed he had fallen again
12 and had bruised his hip. (People's Trial Exhs. 195N and 196N.) He told Amber that he was
13 packing up because he was heading to catch a train to Madrid, Spain. (People's Trial Exhs. 195N
14 and 196N.)

15 **B. Amber Confronts Defendant About His "Lost Wife"**

16 On Monday, January 6, 2003, investigators decided that it was time for Amber to
17 confront the defendant about being married to the missing woman. (RT 11718; 19068.)
18 Following the investigator's instructions, Amber left a message for the defendant indicating
19 that she received a voicemail message from a friend who was out of state and called from the
20 airport. Amber told the defendant that in her friend's voicemail, she said she needed to speak
21 to Amber right away and was concerned about Amber's wellbeing. (RT 14768-14769.)

22 Doing damage control, defendant phoned Amber and she recorded the call. Amber
23 confronted the defendant about him telling her that he had "lost his wife" and this would be
24 his first holiday without her in early December. (People's Trial Exhs. 195R and 196R.) The
25 defendant admitted that he had told Amber he had lost his wife. (People's Trial Exhs. 195R
26 and 196R.) He also told her that the wife that he said he "lost" was, in fact, missing. (People's
27 Trial Exhs. 195R and 196R.)

1 In a later conversation with Amber on January 6, defendant referred to Conner as only
2 being Laci's child. He said: Our hope and it's a sad hope, is that ... well, I mean we need a tip,
3 that's why we have such a big reward. And we just hope that someone is holding her for *her* child
4 and that we can, you know, get her back with a tip. (People's Trial Exhs. 195S, 196SI, 196S2
5 emphasis added.) He went on to say, "I think we will find her well and with her child." (People's
6 Trial Exhs. 195S, 196SI, 196S2 emphasis added.)

7 **C. Defendant's Affair Is Exposed**

8 On January 15, authorities decided to tell the Rocha and Peterson families about
9 defendant's affair with Amber Frey because a media publication was going to break the news. (RT
10 17775.) Detectives Buehler and Brocchini advised the Rochas while Detective Grogan flew to
11 San Diego to meet with defendant's parents. (RT 17776-17777.) No one was aware of any
12 problems in Laci and the defendant's marriage. (RT 8912; 8979; 9134; 9229-9230; 10562-
13 10563.) Neither Laci's family nor her close friends were aware of the defendant was cheating on
14 Laci with Amber Frey. (RT 8890; 8979; 9121-9122; 10521.) The defendant's father did not
15 know about the affair until Detective Grogan revealed its existence. (RT 16867-16868.)
16 Defendant's close friends Gregory Reed, Mike Richardson and Aaron Fritz were also equally
17 unaware of the defendant's affair with Amber. (RT 14441; 19005; 19009.)

18 Laci's family's relationship with the defendant became strained after they learned of
19 defendant's affair with Amber Frey. They no longer supported him. (RT 9144.) Terri Western,
20 whose daughter Stacey was close friends with Laci, decided to close the volunteer center after she
21 learned of the affair. (RT 16417.) The Rochas agreed to begin taping their conversations with the
22 defendant. (RT 17777- 17778.)

23 **D. Laci Knew About the Affair and She was Okay with It**

24 Although he lied to everyone else, the defendant maintained to Amber Frey and ABC's
25 Diane Sawyer that Laci knew about the affair. (People's Trial Exhs. 195T; 196T-2; 131A; 270.)

26 When the defendant spoke to Amber on January 7, 2003, he told Amber that he still hoped
27 for a future with her. (People's Trial Exhs. 195T and 196T-1.) A little later in the conversation,
28

1 he claimed that Laci was aware of their affair. The following exchange took place:

2 FREY: But I'm saying now was Laci aware of the situation about me?

3 DEFENDANT: Yes.

4 FREY: She was?

5 DEFENDANT: Yeah.

6 FREY: Really? How did she respond about it?

7 DEFENDANT: *Fine.*

8 FREY: Fine?

9 DEFENDANT: *Yeah.*

10 (People's Trial Exhs. 195T and 196T-2, emphasis added.)

11 In fact, during a conversation on January 8, defendant told Amber that he shared news of
12 the affair with Laci after defendant's first date with Amber in November. (People's Trial Exhs.
13 195U and 196U.) Later in the call, this exchange took place:

14 FREY: So did you love Laci and your baby?

15 DEFENDANT: I love Laci. I loved Laci, no question. And she
16 doesn't...

17 FREY: Yeah, but ... go ahead.

18 DEFENDANT: She doesn't deserve to be missing.

19 (People's Trial Exhs. 195U and 196U.)

20 In his interview with Sawyer for "Good Morning America," which aired in late
21 January 2003, the defendant lied and said that he told police "immediately" "the first night"
22 about his affair with Frey. (RT 17799, 17818; People's Trial Exhs. 131A and 270.)

23 Defendant also told Sawyer that he revealed the affair to Laci in early December.
24 (People's Trial Exh. 131A.) Hearing defendant's explanation about Laci's purported reaction,
25 Sawyer asked defendant, in a somewhat incredulous tone: "Do you really expect people to
26 believe that an eight-and-a-half-month pregnant woman learns her husband has had an affair
27 and is saintly and casual about it, accommodating, makes a peace with it?" (People's Trial
28 Exh. 131A.) Defendant replied: "Well, yeah, you don't know-no one knows our relationship
but us." (People's Trial Exh. 131A.) Defendant told Sawyer that he told Laci because it was

1 the right thing to do. (People's Trial Exh. 131A.) Yet, defendant confirmed that he continued
2 his relationship with Frey even after purportedly telling Laci. (People's Trial Exh. 131A.)

3 In the second segment of the Sawyer interview that aired on January 29, defendant
4 described his marriage to Laci as "glorious." (People's Trial Exhs. 131B and 270.) Sawyer
5 then pointed out that the defendant had not mentioned his unborn son. Seconds passed and
6 then the defendant, devoid of emotion, said, "Hmm... that was-it's so hard." With regard to
7 the nursery, the defendant said, "Can't go in there." (People's Trial Exh. 131B.) When
8 Sawyer asked defendant about whether he loaded something large into his vehicle on
9 Christmas Eve morning, he said he did, but they were large market umbrellas. (People's
10 Trial Exh. 131B.) Defendant explained: "Because it was raining, put in warehouse."
11 (People's Trial Exh. 131B.)

12 After watching the broadcast of the interview, Detective Grogan called the defendant.
13 During their conversation, the defendant admitted that he lied when he told Sawyer that he
14 had disclosed the affair to authorities. The defendant told Grogan that, "they caught me
15 answerin' a question about that I told you about a girlfriend ah-is not true. We both know
16 that." (RT 17808; People's Trial Exh. 271A.)

17 Other portions of Sawyer's interview with defendant aired on ABC's "Prime Time" on
18 August 4, 2003, after defendant had been arrested. (People's Trial Exhs. 131C and 270.)
19 Again, defendant lied to Sawyer and stated that, two days after Laci went missing, he told
20 Amber Frey that he was married.⁷⁵ (People's Trial Exhs. 131C and 270.) The video segments
21 were played for the jury. (RT 17805-17806.)

22 **E. Defendant Gives Amber Gifts and Wants to Continue the Affair**

23 Despite Laci's family and the media finding out about the defendant's affair, he
24 continued contacting Amber and she continued taping her conversations with the defendant.
25 (People's Trial Exhs. 198; 199A-199H.) During their conversation on January 28, Amber

26
27 ⁷⁵ As indicated above, Amber Frey learned of the defendant's true marital status and his connection to the
28 Modesto woman from friends at a party on December 30, 2002. (RT 11729; 14711; 15122.)

1 brought up the defendant's recent statement during the television interview that he was not
2 in love with her. (People's Trial Exhs.198 and 199H.) The defendant responded, "Yeah. I
3 thought that might bother you." (People's Trial Exhs.198 and 199H.) Defendant told Amber
4 that he was coached to reply that way and that he actually said more positive things after that,
5 but the positive statements about Amber had been edited out. (People's Trial Exhs.198 and
6 199H.)

7 On February 7, the defendant suggested that he and Amber get away to his friend's
8 lake house in Southern California. (People's Trial Exhs. 200 and 201B.)

9 On Amber's birthday, February 10, the defendant told her to go to a certain location
10 because he had left a package for her there. (RT 14863.) The package had been retrieved and
11 inside, among other items, was a necklace. (RT 14866.)

12 **F. Amber Terminates Contact**

13 On the morning of February 19, 2003 – the day after the second search warrant – police
14 directed Amber to end her communications with the defendant. (RT 19071.) Amber called the
15 defendant and told him that they should stop talking to each other. The defendant agreed.
16 (People's Trial Exhs. 200K and 201K.)

17 **XXII. POLICE CONTINUE SEARCHING AND EXHAUSTING MULTIPLE** 18 **TIPS**

19 **A. Police Tip Line and America's Most Wanted**

20 Modesto Police Department set up a phone bank for the public to report tips. (RT 10155.)
21 Viable tips were redirected to the search command center for further review. (RT 10155.) Due
22 to the magnitude of tips coming in, the department assigned an investigator to review all the tips
23 and he would give those to a sergeant, who would assign them to various detectives for follow-
24 up. (RT 18518; 18573.) As of December 30, 2002, six days after Laci was reported missing,
25 Modesto Police had received over 500 tips on the hotline and continued to investigate all credible
26 leads. (Defense Trial Exh. D7V-1.)

1 Modesto Police Department continued to seek the community's help with multiple media
2 releases. (RT 18597-18598; Defense's Trial Exh. D7V-1-6.) They asked property owners,
3 especially those in rural areas, to search their orchards, fields and land for any evidence that may
4 help in the investigation. (Defense Trial Exh. D7V-5.) One of the tips that was called into the
5 hotline was regarding some remains located eight miles east of Modesto. (RT 10324;10356-
6 10357.) A deputy coroner was called out and determined it to be animal remains. (RT 10324;
7 10357.) Police also investigated an errant pair of men's socks found in the park, suspicious
8 vehicles and a latex glove. (RT 10157, 10164, 10324-10325, 10328, 10327.)

9 Although a month had passed, Modesto Police continued to seek the community's help in
10 locating Laci and Conner. On January 25, 2003, America's Most Wanted presented the Laci and
11 Conner disappearance as one of their cases and showcased the reward of \$500,000. (RT 10815.)
12 The case generated five call-ins that night and a few subsequent tips after that, however, none of
13 those tips led to any information for the recovery of Laci or Conner (RT 10815.)

14 **B. Defendant Sets Up His Own Tip Line**

15 During the investigation, the defendant's inquiries and requests for updates on the police
16 investigation changed. (RT 18628.) At the beginning, the defendant contacted the detectives daily
17 asking for updates on the status of the investigation into his missing wife. (RT 18628.) The nature
18 of the defendant's contacts shifted in later conversations, where he was concerned with the return
19 of property, such as the return of records and his vehicle. (RT 18628.) His daily inquiries were
20 not weekly, but instead became monthly. (RT 18629.) After the service of the first search warrant
21 in December 2002, Sharon Rocha had asked for photos of Laci and a couple of items of
22 memorabilia, however, the defendant would not let her in the house and told Detective Grogan he
23 did not want them to come in the home and look through items. (RT 18657.)

24 The defendant distanced himself more from the Rocha family and the police and he created
25 an entirely separate tip line from law enforcement.⁷⁶ Defendant called it the Laci Info Line where

26 _____
27 ⁷⁶ Knowing that Laci's family and friends had coordinated a large search for Laci on the weekend of
28 February 9, 2002, the defendant held a separate search and sent out a press release and flyer for National
Search for Laci Day scheduled for the same weekend. (RT 18654-18655.)

1 citizens could report tips. Detective Grogan contacted the hotline, identifying himself and tried
2 to find out information about where these tips were going, however, they were uncooperative and
3 would not tell him. (RT 17840-17841.) On February 18, 2003, the defendant told Detective
4 Grogan that the defendant was able to retrieve the messages from the Laci Info line and these
5 messages also went to his mother and some were faxed to the defendant's office. (RT 17850.) On
6 February 21, 2003, detectives attempted to see if the defendant would forward tips to the Modesto
7 police. An agent from law enforcement called the Laci Info line and left a tip. (RT 18022.) After
8 hearing nothing, Detective Grogan contacted Jackie Peterson on February 24 and requested tips
9 from the Laci Info line. (RT 18023.) On February 28, 2003, Jackie Peterson, the defendant's
10 mother faxed the police department a few pages of tips that came into the Laci Info Line, however,
11 many were duplicate pages and were not of significance. (RT 18026-18027.)

12 **C. Search of the Modesto Foothills and Surrounding Areas**

13 At that time, Modesto Police Department was comprised of 260 officers assigned to
14 various units such as patrol, investigations, detective bureau, tactical unit, traffic division and the
15 narcotics unit. (RT 10365.) Officers and resources were pulled from all units to conduct this
16 investigation. (RT 10366.)

17 Covena Avenue and La Loma neighborhood had been canvassed several times. (RT
18 18578.) For multiple days, several systematic searches were conducted in the rural areas and
19 officers would outline which areas had been searched and which areas still needed to be searched
20 each day. (RT 10358-10359; 10361.) Through the investigation, grid searches – where officers
21 line out an area and go check it foot-by-foot – and area searches were completed. (RT 10359.)
22 They searched the Stanislaus River from Oakdale to the Recreation area. (RT 10364.)

23 In December, the search for Laci continued to expand into Alameda, Calaveras, Mariposa,
24 Merced, San Joaquin and Tuolumne counties. (RT 10271.) Searchers on horseback and quad
25 runners searched the area around Mapes Ranch, 10 miles west of Modesto, including a wildlife
26 reserve. (RT 10163; 103.) Divers probed local bodies of water in those areas, as well as
27 waterways between Berkeley and Modesto. (RT 10168, 17686.)
28

1 On January 4, 2003, officers went to Tulloch Lake and used cadaver dogs and dive teams.
2 (RT 10345; 18590.) After three cadaver dogs alerted, three separate dive teams from three
3 different counties responded and conducted intermittent dives for several days, however, they did
4 not locate anything of evidentiary value. (RT 10346-10347; 18590.) On January 6, 2003,
5 Modesto Police Department personnel searched the Modesto foothills, including mineshafts in
6 the area, using an all-terrain vehicle. (RT 9756-9757.)

7 On January 10, 2003, Modesto Police travelled 40 miles to the Tracy area and investigated
8 an anonymous tip that Laci was being held in a storage container behind two small white houses.
9 (RT 10329-10330; 10338-10343; 16392.) Upon receiving the tip, Officers responded to the area
10 which is on the San Joaquin and Alameda County line. (RT 10340-10341.) At the request of the
11 Modesto Police Department, personnel from the San Joaquin County Sheriff's Department and
12 the Alameda County Sheriff's Department, who were familiar with the area, searched over a four-
13 day period, the locations specified in the tip including various residences and with the use of a
14 helicopter. However, neither Laci nor anything related to her disappearance was discovered. (RT
15 10330; 16393-16394; 16406.)

16 People's Trial Exhibit 58 illustrated for the jury all the different areas and counties the
17 police extensively searched for Laci. (People's Trial Exh. 58.)

18 **D. Laci Sightings and Vans**

19 Police followed up on reported sightings of Laci. (RT 10314.) In all, authorities received
20 over 10,000 tips. There were purported sightings of Laci all over the world. (RT 11474.) There
21 were also numerous reported sightings of the defendant and his boat. (RT 11474.) There were
22 at least 74 reported sightings of Laci, including sightings of her at the San Francisco Bay on
23 December 24. (RT 17761) The jury saw multiple maps illustrating all the different Laci
24 sightings that had been reported to the police. For instance, People's Trial Exhibit Number
25 267 was a map of Modesto which showed each spot Laci had been sighted. (People's Trial
26 Exh. 267 [map showing Modesto area sightings].) People's Trial Exhibit Number 268A
27 showed all the different locations that Laci had been sighted within California. (People's
28

1 Trial Exh. 268A [California sightings.] While People’s Exhibit Number 268B not only
2 showed the numerous purported sightings of Laci nationwide which included in 26 different
3 states, but also showed that Laci Peterson was reported to have been seen overseas in Canda,
4 France, Italy and the Virgin Islands at St. Martin. (RT 18077; People's Trial Exh. 268B
5 [sightings of Laci nationwide and abroad].)

6 During the canvas of Laci’s neighborhood, investigators located a number of women who
7 were pregnant at the time and walked, many with their dogs. At trial, the jury heard evidence
8 that there may have been pregnant women-some with dark hair like Laci's-walking alone or
9 with their dogs in the area of La Loma Park that morning, or who usually walked in the area,
10 but none of whom were Laci Peterson. (RT 16705-16714 [witness C. Van Sandt], 16732-
11 16736; 16740-16741 [M. Dempewolf], 16743-16749; People’s Trial Exhs. 224A-224D [J.
12 Visola-Prescott], 16753-16755; People’s Trial Exhs. 225A-225B [E. Guptill], 16760-16763;
13 People’s Trial Exhs. 226A-226B [J. Lear]; 16802-16807 [K. Westphal], 16815-16818 [P.
14 Mewhinney], 16830-16832 [J. Lee], 16835-16837 [D. Merenda], 16843-16845 [M.
15 Martinez].)

16 In fact, a couple of these prosecution witnesses reported nothing out of the ordinary
17 on Covenia on Christmas Eve morning. Brian Lee left his home around 10:00 a.m. to go for a
18 run reaching Covenia around 10:15 a.m.. (RT 16824.) He "didn't see a soul." (RT 16825.)
19 Kim Westphal was walking with a neighbor that morning. Westphal estimated they reached
20 Covenia around 10:50 a.m. and walked past the Peterson residence. There was no activity on
21 the street at the time. (RT 16807.)

22 Because of Diane Jackson’s reported tip, the police searched for the various vans – white,
23 off-white, tan, dullish brown and blue colored – that were seen in and around at the timeframe of
24 Laci’s reported disappearance. (RT 18574.) The police researched traffic collisions involving
25 vans for approximately two months prior to Laci’s disappearance which generated 9 possibilities.
26 (RT 18575.) Detective Buehler also ran all the calls for service – everyone who called 911 – for
27 the past two months that involved a van in the vicinity which produced 24 possibilities and
28

1 documented the results. (RT 18576.) Despite their efforts, there were no credible leads. (RT
2 18501-18503.)

3 **E. Defendant's Initial Theory – Kidnapped by Transients**

4 Defendant told the detectives that Laci had been wearing some of the jewelry she inherited
5 when he last saw her on Christmas morning. He thought that it was possible that Laci wore it
6 when she went walking in the park and a transient robbed her of the jewelry and kidnapped her.
7 (RT 17652; 18159.) As indicated above, Detective Grogan conducted an accounting of Laci's
8 jewelry.

9 Throughout the investigation, police also tracked down parolees and registered sex
10 offenders, known as 290 registrants and accounted for their whereabouts. (RT 10147, 10156-
11 10157, 10169, 10331; 10354.) As of December 30, 2002, Modesto Police had contacted 155 sex
12 offenders who lived in the southeast area of Modesto. (Defense Trial Exh. D7V-1.) Officers also
13 contacted homeless people living in Dry Creek Park or near the Tuolumne River confluence and
14 those who had provided the Gospel Mission, a local homeless center, as an address. (RT 10354-
15 10355; 10363.) Police also ran a query on everyone who had been arrested in the park area and
16 down the Yosemite Boulevard corridor which is where the Gospel Mission was located, to the
17 downtown area. (RT 18576.)

18 **F. Defendant's Latest Theory – Laci Kidnapped for The Baby**

19 Defendant contacted Detective Grogan on January 1, 2003 and suggested a new theory –
20 as an alternative to his earlier theory about Laci being robbed and kidnapped by transients for her
21 jewelry – perhaps she was kidnapped for the baby. (RT 17703.) Authorities sent information to
22 hospitals nationwide about Laci and Conner in the event there were any suspicious circumstances
23 involving newborns brought in by someone other than the birth mother. (RT 17826.)

24 **G. Half Million Dollars and \$50,000 Rewards Remained Unclaimed**

25 The family and friends of Laci Peterson had established a reward for her safe return, or
26 information leading to the safe return of Laci Peterson. As of December 26, 2002, that amount
27 was \$125,000. (Defense Trial Exh. D7V-2.) With the help of the media interest, the reward for
28

1 information leading to Laci and Conner's return had grown to \$500,000 by December 28, 2002.
2 (RT 9205, 10160-10161; Defense Trial Exh. D7V-4.)

3 Although there was a large reward and over 10,000 tips as discussed above, nothing
4 credible was generated in way of tips related to Laci's disappearance. (RT 10313-10314.) As
5 Detective Grogan explained, it became clear to authorities that since no one had come forward
6 with information, given the sizeable reward, it was less likely authorities were dealing with
7 multiple people involved in Laci's disappearance. (RT 17814.) If someone had limited
8 involvement in her abduction, the high dollar amount was a strong incentive to come forward.
9 (RT 17814.) In early March 2003, an additional reward of \$50,000 was offered for
10 information leading to the recovery of Laci's body. (RT 18027.) Otherwise, there would be
11 no incentive for someone who knew Laci was dead or who knew the location of Laci's body
12 to provide that information. (RT 17813-17814.) No one ever came forward to provide
13 information and claim either reward. (RT 17815.) In comparison, the Medina burglars were
14 turned in for \$1,000. (RT 10365; 20055.)

15 **XXIII. DEFENDANT'S CONDUCT SUGGESTS HE KNOWS LACI AND**
16 **CONNER ARE NOT COMING HOME**

17 **A. Defendant Upgrades the Cable and Adds Hardcore Adult Programming**

18 About two weeks after Laci disappeared, on Monday January 8, 2003, the defendant
19 contacted DISH Network and added the Playboy Channel. (RT 14240.) This was a change in
20 programming from when Laci opened the account nearly two years earlier. In March 2001, the
21 subscription was for the top 100 channels in the greater Sacramento area and for Home Box Office
22 (HBO). (RT 14239.)

23 Five days later, the defendant dropped the Playboy Channel entirely and added the Ten
24 Ecstasy Channels. (RT 14240, 14243-14244.) Ecstasy programming was comprised of two
25 different channels of very explicit sexual content – the most sexually explicit of the DISH
26 Network's adult programming. (RT 14240-14241.)

27 **B. Defendant Closes Down the Warehouse**

28 On Saturday January 13, 2003, the defendant contacted the property management

1 company that maintained the warehouse on North Emerald and advised that he intended to break
2 the contract and vacate the premises in thirty days. (RT 16575.) The lease was not due to expire
3 until October 2003. (RT 16575.)

4 **C. Defendant Tries to Sell the House, Fully Furnished**

5 Three weeks after Laci’s disappearance, on Sunday, January 14, 2002, the defendant went
6 to the Volunteer Center and asked Terri Western, a real agent, about selling the house. (RT 16418-
7 16420.) Ms. Western told the defendant that now was not the time nor the place to discuss that.
8 (RT 16419.) The defendant never brought it up to her again. (RT 16420.)

9 Instead, the defendant contacted Brian Argain, another realtor, about selling the Covena
10 home. The following week, the defendant told Argain, “I’d like to put it on the market right now.”
11 The defendant asked if he could sell the house furnished. Defendant repeatedly asked him to keep
12 quiet about the matter. Their conversations were captured over a wiretap recording and People’s
13 Trial Exhibit Number 207C was played for the jury. (People’s Trial Exhs. 207C [recording] and
14 207C2 [transcript].)

15 The defendant and Argain spoke again on January 29, 2002. Argain told the defendant
16 that the defendant needs to consult with an attorney on whether he could sell the house with Laci’s
17 name still on the title. (People’s Trial Exhs. 207C and 207C5.) After a brief conversation about
18 possible legal ramifications involving the sale, defendant discussed the idea of renting the house
19 instead. People’s Exhibit Number 207C-1 shown below illustrates the timing of the defendant
20 and Argain’s conversations regarding selling Laci’s home. (People’s Trial Exh. 207C-1.)

21 ///

22 ///

23 ///

24 ///

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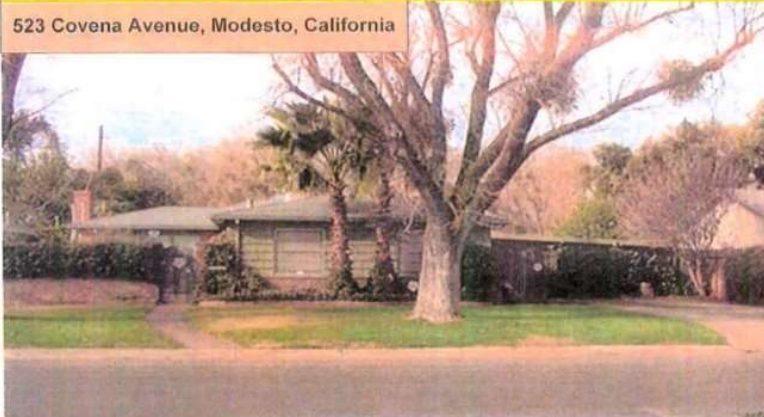
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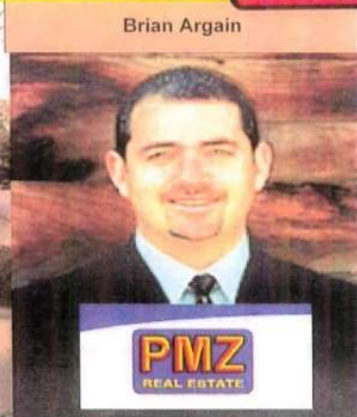
28

Scott Peterson's Interest in Selling his and Laci's Home

523 Covena Avenue, Modesto, California



Brian Argain



1/22/03 at 5:39 pm

Scott called Brian and discussed the sale of his house.
Scott: "I'd like to put it on the market right now."
Scott: "Can I sell it furnished?"

1/23/03 at 5:42 pm

Scott called Brian and left a voicemail message wanting to talk to him about the house.

1/27/03 at 5:41 pm

Brian called Scott and asked Scott if he wanted him to talk to his manager.

1/29/03 at 3:32 pm

Brian called Scott. Brian told him after talking to his manager he would need to talk with his attorney in order to sell it.
Scott: "Hey, what about renting it?"

C-1

D. Defendant Sold Laci's Land Rover

Just over a month after Laci had disappeared, on January 29, 2002, the defendant traded in Laci's Land Rover for a new Dodge Dakota pickup truck. (RT 16429; People's Trial Exh. 213.)

E. Defendant Forwarded the Mail

On January 30, 2003, the defendant completed and signed forms requesting that all mail addressed to him or Laci or both, at 523 Covena Avenue, be immediately forwarded to the post office box the defendant had set up on December 23, 2002. (RT 18952-18953; People's Trial Exh. 285B.)

F. Defendant No Longer Wearing His Wedding Ring

A second search warrant was served on the Covena residence on February 18, 2003. (RT 10845.) Before the police began the search, the defendant asked if he could retrieve some bags that he had already packed. (RT 17843.) An officer searched the bags, before

1 turning them over to the defendant and found \$2,081 in cash, clothing, a watch, defendant's
2 wedding ring – which he was not wearing – and a bottle of wine. (RT 17845-17849; People's
3 Trial Exhs. 274A-274I.)

4 **G. Laci's Wedding Photos Found in a Garbage Can in a Storage Locker**

5 Police also searched the defendant's storage facility in Modesto. (RT 13346.) Inside,
6 they found some items that had been in the defendant's warehouse. (RT 13354.) Among the
7 items in the storage unit was a photo album from the defendant's and Laci's wedding. (RT
8 13351.) The album was stored inside a waste basket. (RT 13351; 13353.)

9 **H. Conner's Nursery Becomes a Storage Room**

10 In February 2003, Modesto Police Department conducted a second search warrant at the
11 defendant's residence. Detective Darren Ruskamp conducted the searches of the nursery in
12 December and February. (RT 13247.) He observed that when the police returned less than two
13 months after Laci had gone missing, the defendant had converted the nursery into a storage room
14 of sorts. The nursery now contained office chairs, bedding and other items which made the room
15 difficult to navigate around. (RT 13248-13249; People's Trial Exh. 147A.)

16 **I. Defendant Not Interested in a Lead or Any Attempt to Locate Laci**

17 On January 30, 2003, defendant received a phone call at 9:09 p.m. from Rita Cosby
18 at FOX News. (People's Exhs. 207D and 207D2.) During the call, Cosby asked defendant if
19 he had heard about a possible sighting of Laci in Longview, Washington that was reportedly
20 captured on videotape. The defendant said he had "definitely" heard about the tip. However,
21 he relied on Cosby to provide him with the detail. (People's Trial Exhs. 207D and 207D2.)

22 About 10 minutes later, the defendant received a phone call from his friends Heidi
23 and Aaron Fritz. (People's Trial Exhs. 207D and 207D3.) Heidi also mentioned the possible
24 sighting. The defendant told Heidi that he had called the Longview Police and talked to "this
25 guy" who was pulling the tapes together and that the defendant was going to "keep checking
26 with him." (People's Trial Exhs. 207D and 207D3.) Investigator Steve Jacobson, who was
27 monitoring defendant's phone calls during this time, testified that defendant made no such
28

1 call to Longview police before speaking to the Fritzes. (RT 15422.) Additionally,
2 Investigator Jacobson called the Longview Police Department and confirmed the defendant
3 had not contacted them. (RT 15878.)

4 The next morning, January 31, the defendant received more phone calls about the
5 possibility that Laci was in Longview, including from his mother Jackie which was captured
6 by the wiretap. (People's Trial Exhs. 207D and 207D5.) In the voicemail message she left for
7 the defendant, Jackie suggested that defendant get on a plane to Washington as soon as
8 possible and that he could stay with "Rachel," a relative who attended school in
9 Washington. Jackie also mentioned that Rachel was putting up posters about Laci in
10 Washington. (People's Trial Exhs. 207D and 207D5.) At the end of Jackie's message, the
11 defendant can be heard chuckling. (People's Trial Exh. 207D, 1.31.2003 at 8:35.56.)

12 The defendant eventually spoke to his mother at 9:29 a.m. that same day. In discussing
13 the Washington tip, Jackie said to defendant, "Why don't you hop on a plane?" Defendant
14 replied, "I'll definitely ... you know, I called up there and talked to one of 'em." (People's
15 Trial Exhs. 207D and 207D6.)

16 After two days of repeated conversations with members of the media, friends and family
17 asking defendant about the possible sighting of Laci in Washington, at 10:02 a.m. on January
18 31, defendant called directory assistance for the phone number for the Longview Police
19 Department. However, the wiretap monitoring of the call was disconnected by an incoming
20 call on defendant's phone. (RT 15425-15426; People's Trial Exhs. 207D and 207D7.)

21 On February 1st, the defendant spoke to his sales associate, Eric Olsen, at 11:25 a.m.
22 Defendant told Olsen that he was "hanging out by the airport" in case he needed to go up to
23 Washington "real quick." (People's Trial Exhs. 207D and 207D9.) Information from
24 defendant's cell phone records disclosed that the defendant was not near an airport and was
25 currently in Atwater. (People's Trial Exh. 207D1.)

26 On February 2nd the defendant had a phone conversation with Janey Peterson
27 captured on the wire. At the time, he said he was in Del Mar at the beach with his parents and
28

1 they were trying to coordinate meeting up at a local establishment. (People's Trial Exh. 207
2 D17.)

3 Joan Faria, who was involved with the defendant's search center for Laci had left the
4 defendant a voice mail. (RT 15432-15434.) On February 3, 2003, the defendant returned
5 Faria's phone call and said that he had been in grief counseling for the past four days, out in
6 the hills with no cell phone service. (People's Trial Exh. 207D19)

7 On February 4, investigators shut down the first wiretap operation of the defendant's
8 phones because, during a recent conversation, the defendant told his sister-in-law Janey Peterson
9 that his phones were tapped. Defendant was careful not to reveal his location during that call.
10 (RT 15523-15524.)

11 **XXIV. DEFENDANT CHANGES HIS APPEARANCE AND LIES ABOUT HIS**
12 **WHEREABOUTS AND IDENTITY**

13 **A. Defendant Lies About His Whereabouts**

14 In addition to the calls described above, defendant had numerous phone conversations
15 on the afternoon of January 11, 2003, during which he said he was in one place, but he was
16 actually in another: defendant told several people, including Sharon and his father, that he
17 was in Bakersfield, but he was actually in Gilroy (People's Trial Exhs. 207A7- 207A11);
18 defendant told his friends Mike and Heather Richardson that he was in Button Willow, while
19 he was calling from Hollister (People's Trial Exhs. 207A13-207A14); and the defendant told
20 another friend that he was in Button Willow when he was really in San Jose (People's Trial
21 Exh. 207A15).

22 **B. Defendant Purchases New Car and Lies About His Identity**

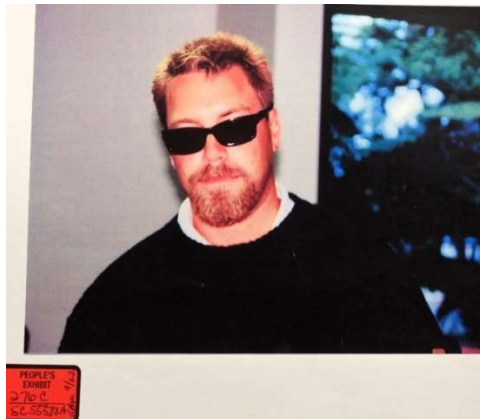
23 On April 11, 2003, while he was in the San Diego area, the defendant looked at buying a
24 1990 Saab convertible from Mario Ruvalcalba. (RT 18963.) After arriving at a verbal agreement
25 with the defendant about the purchase price and transfer, Ruvalcalba completed his portion of the
26 requisite paperwork. (RT 18964.) In completing the buyer's portions of the documentation, the
27 defendant wrote down his mother's name. (RT 18966, 18969-18970; People's Trial Exh. 286
28

1 [sealed].) Defendant also signed the documents in his mother's name. (RT 18968.) The agreement
2 fell through and Ruvalcalba did not ask defendant about this at the time because Ruvalcalba did
3 not look at the paperwork until after defendant had left. (RT 18970.) Ruvalcalba ultimately sold
4 the car to another individual who had previously expressed interest. (RT 18965.)

5 The next day, April 12, 2003, the defendant negotiated the purchase of a Mercedes from
6 Michael Griffin. (RT 18976.) Again, defendant wrote "Jacqueline Peterson" as the buyer on the
7 DMV documents. (RT 18977; People's Trial Exh. 277.) Griffin asked the defendant if he was
8 buying the car for his wife. (RT 18977.) The defendant replied, "No, that's my name." (RT
9 18977.) Griffin then asked the defendant if that was a "French thing" like "Jacques." (RT 18978.)
10 Defendant responded, "No, it's kind of a boy-named-Sue type thing. That's what my parents
11 hung me with. I go by Jack." (RT 18978.) Griffin asked the defendant if he had a driver's license.
12 (RT 18978.) The defendant gave Griffin a driver's license number and said it was from Florida
13 which Griffin wrote down on a piece of paper, including the expiration date the defendant
14 provided. (RT 18978-18979; People's Trial Exh. 288.) The defendant paid for the car with cash
15 giving him thirty-six \$100 bills. (RT 18980.)

16 C. Defendant Changes His Appearance

17 On April 16, law enforcement officers observed the defendant in Southern California after
18 Laci and Conner's bodies were recovered on April 13th and 14th. The defendant had grown a
19 thick goatee and mustache and his hair, including his eyebrows, was now an orange-blond
20 color. (RT 17968- 17970, 17972; People's Trial Exhs. 276A-276E.) Pictured below, in
21 People's Trial Exhibit 276C, is a photo of the defendant's changed appearance in April 2003.



1 **XXV. THE REMAINS OF CONNER AND LACI WASH ASHORE IN THE BAY**
2 **AFTER A STRONG APRIL STORM**

3 **A. A Major Wind Event and Storm on Friday April 12, 2003**

4 There was a strong storm that went through on April 12, 2003. (RT 11884.) Doctor Ralph
5 Cheng, a senior research hydrologist for the U.S. Geological Survey, testified at trial as an
6 expert in hydrology and fluid dynamics as it concerned the processes underlying the
7 movement of water in San Francisco Bay, including the ways in which the tides and currents
8 affected objects in the Bay. (RT 18858, 18866.)

9 Dr. Cheng explained that on April 12, 2003, the day before Conner's body washed
10 ashore and two days prior to Laci's body coming ashore, there was a major wind event that
11 created a great deal of energy in the water in the Bay. (RT 18897.) Dr. Cheng also explained
12 that in the spring, the low tides around the Bay shoreline were exceedingly low. (RT 18895.)
13 In fact, a very low tide occurred right after noon on April 12 in the area where Laci's and
14 Conner's bodies were recovered. (RT 18896.) The water level in that area was very shallow
15 and would rise to no more than about two to five feet. (RT 18902-18903.) In Dr. Cheng's
16 view, the energy generated in the water by the strong winds on April 12 had sufficient force
17 to move bodies from shallower areas of the Bay, if they were not weighted⁷⁷ down. (18904-
18 18905.)

19 **B. Baby Conner is Found on Saturday April 13, 2003**

20 On April 13, 2003, Michael Looby and his wife were walking their dog along the shoreline
21 area of Bayside Court in the city of Richmond. They were looking for a place where their dog
22 could swim. (RT 11871.) It was low tide and as they walked along the beach and over a rocky
23 area toward the marsh, they saw the body of a small baby. (RT 11873-11874, 11880.) It was
24 obvious that the baby was deceased. (RT 11881.) The baby was later positively identified as
25 Conner Peterson. (RT 13599.)

26 _____
27 ⁷⁷ As discussed in further detail below, there were no weights affixed to the part of Laci's body that
28 remained when she was recovered on April 14, 2003.

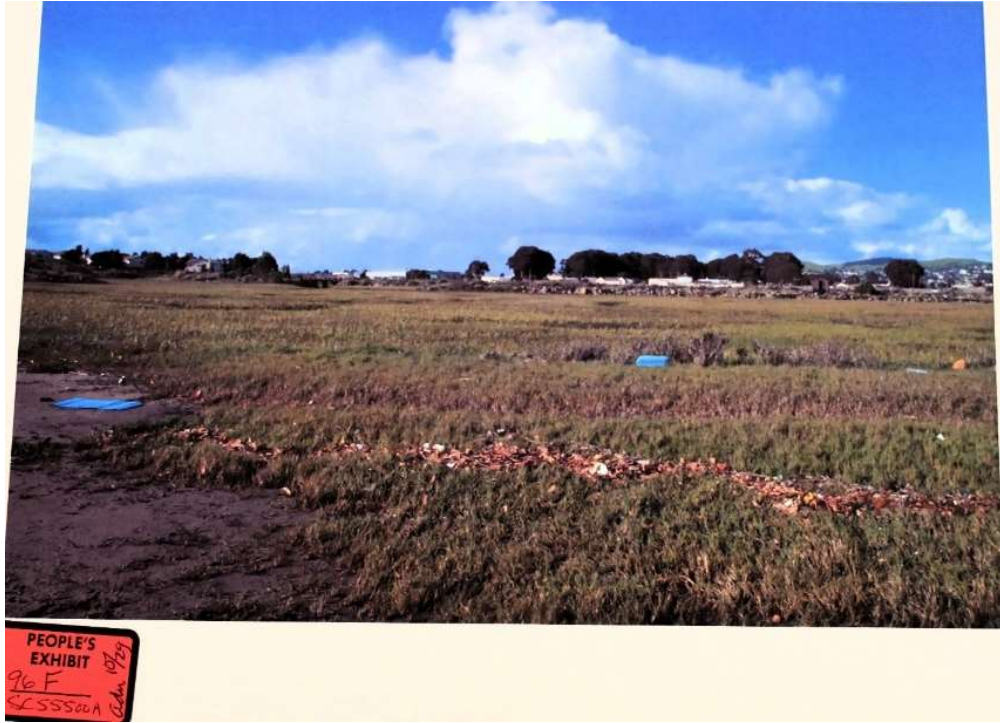
1 Neither Looby nor his wife had a cell phone, so they had workers in the area call 911. (RT
2 11882.) The Richmond Fire Department received the alert at 4:49 p.m. (RT 11905.) When the
3 fire department arrived a few minutes later, Lobby took them to the body. (RT 11882.) Richmond
4 Fire Department Captain Erik Newman put in a call to the Richmond Police Department and then
5 with other fire department personnel preserved the scene until the police arrived. (RT 11901-
6 11903.)

7 Police sealed the area, contacted witnesses and searched for evidence. (RT 11905.)
8 Officer Tod Opdyke, the first responding police officer, observed that Conner's body was located
9 within the high tide water line⁷⁸, as was the debris that surrounded his body. (RT 11922, 11942.)
10 Opdyke opined that Conner's body would have been submerged at high tide. (RT 11922.)

11 Not only was there debris near the Conner's body, but there was a lot of debris on the
12 beach nearby and all over due to a strong storm that had come in the day before. (RT 11884-
13 11885.)⁷⁹ Fellow officer Brian Gard also recalled the large storm in the area the night before. (RT
14 11976.) As a result, the tides rose higher than what was typical. (RT 11986.) Gard explained
15 that when debris came in on the tide, it became trapped along the beach and breakers as the water
16 moved back out. (RT 11977, 11986.) The tidal area where Conner's body was found was
17 connected to San Francisco Bay. (RT 11987.) People's Trial Exhibit Number 96F, depicted
18 below, shows just some of the large amount of debris located along the shoreline on April 13,
19 2003. (RT 11885-11886; People's Trial Exh. 96F.)

20
21 ⁷⁸ The area where Conner and the debris were found is covered with water at high tide. When the tide is
22 low, the water recedes and allows for people to walk the area. (RT 11919-11922.) The first low tide in the
23 area on April 13 occurred at 4:04 a.m. and the second was at 4:23 p.m. (RT 11979.) When the Richmond
24 Fire Department received the emergency call on the report of a baby down at 4:49 p.m. (RT 11905), it was
25 less than 30 minutes after the afternoon low tide.

26
27 ⁷⁹ The storm on April 12, 2002 was so strong that it caused waves that created a line of debris that scattered
28 much further inland and then back out towards the ocean. (RT 11884.)



C. Laci's Remains Recovered on Sunday April 14, 2003

The following morning, around 11:15 a.m., Alena Gonzalez was at the dog park at Point Isabel with her family and their dogs. (RT 11990; 12004.) Point Isabel was situated along the San Francisco Bay shoreline in the city of Richmond-part of the East Bay Regional Parks District. (RT 17553-17553.) After the dogs were let off their leashes, they ran ahead. Gonzalez and her family followed behind. (RT 11992.)

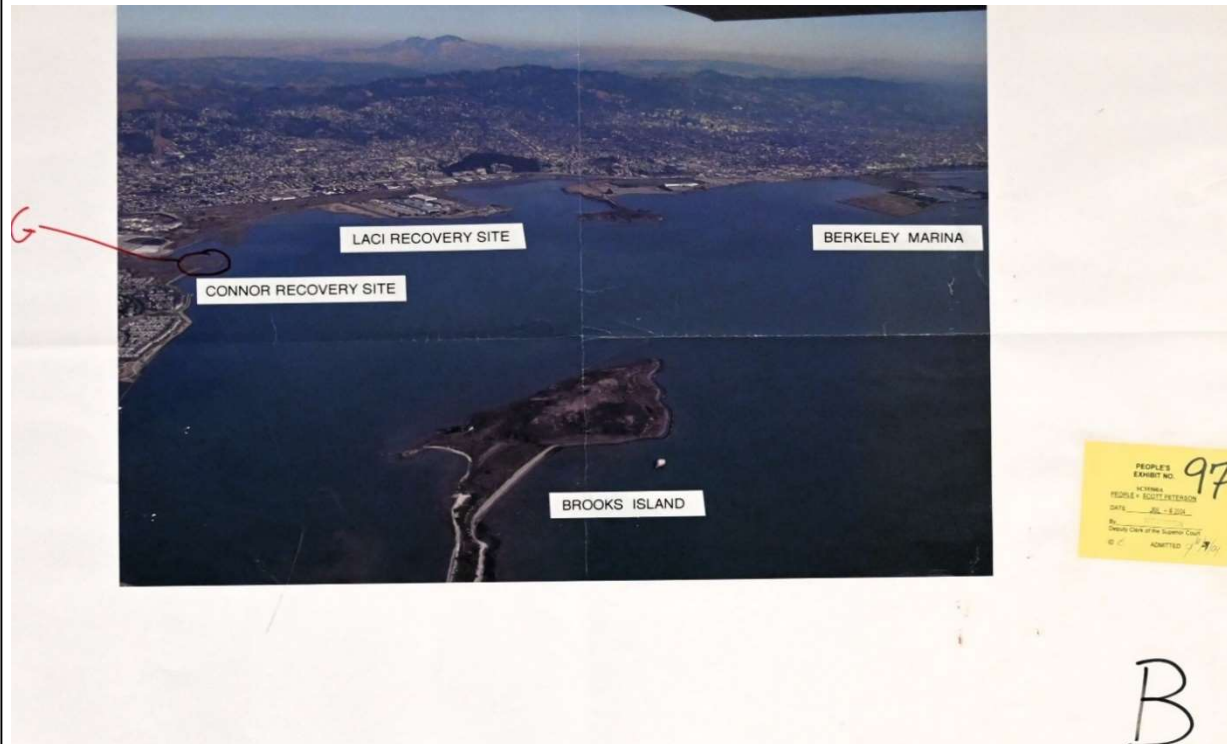
On the rocks near the water, Gonzalez observed another dog that appeared to be focused on something. (RT 11993.) Gonzalez realized it was a human body. (RT 11993.) The body which was partially clothed, was later identified as Laci Peterson. (RT 12724; 13598.) Gonzalez had her father and sister stay with the body while Gonzalez went to call for police. (RT 11994.) When the fire and police departments responded, Gonzalez led them to Laci's body which was partially submerged in the water. (RT 111995, 11998.)

Contra Costa County Coroner Investigator Deputy Leo Martin, along with other officers, transferred Laci's body onto a sheet and then placed it in a vinyl bag. (RT 12045.) Deputy Martin transported the body to the Coroner's Office. (RT 12045.) Although the bodies had not yet been positively identified, Detective Jeff Soler from the Richmond Police Department contacted

1 Modesto Police Department after the female body had washed ashore the day after the baby had
2 been found. (RT 17617.) Detective Grogan was notified. (RT 18051.)

3 **D. Laci And Conner’s Remains Were Found Approximately One Mile Away**
4 **from Where Defendant Went Fishing.**

5 People’s Trial Exhibit 97B illustrates the proximity of the Berkeley Marina, in conjunction
6 with Brooks Island and where Conner and Laci’s bodies were recovered.



19 The area along the Bay shoreline where Laci’s body was recovered was less than a mile
20 from where Conner’s body was found. (RT 12625-12626; People’s Trial Exh. 280.) The distance
21 from Brooks Island, where the defendant said he went fishing, to where Laci’s remains were
22 located was about one and one-quarter miles. It was the same distance from Brooks Island to
23 Conner’s body. (RT 12625; People’s Trial Exh. 280.) From where Michael Looby stood next to
24 Conner’s remains, he could see the U.S. Post Office processing facility which is a distinct building
25 with blue sides, located across the bay on Point Isabel, near where Laci was recovered. (RT
26 11877.)

27 The Modesto Police Department asked Dr. Cheng if he would be able to work
28

1 backward from where Laci's and Conner's bodies were recovered to help determine where in
2 the Bay Laci's body had been deposited. (RT 18900-18901.) Using equations derived from
3 the U.S. Army Corps of Engineers Coastal Engineering Handbook and calculations of hour-
4 by-hour movement of the Bay waters based on wind drift, Dr. Cheng concluded that the
5 location where Laci's body was likely deposited was within a quarter- mile square area that
6 lay between the Berkeley Marina and Brooks Island. (RT 18912-18915; People's Trial Exh.
7 284.) Dr. Cheng pointed out that his calculations were based on the highest probabilities and
8 were not a conclusive determination. (RT 18914, 18930-18931.) Dr. Cheng also noted that
9 if Laci's body had been placed in deeper water, it would have washed out to the ocean or,
10 perhaps, behind Angel Island. (RT 18916-18917.)

11 Dr. Cheng was able to estimate a trajectory for the movement of Conner's body to
12 shore, but not Laci's. (RT 18925.) This was because of the difference in size of the bodies,
13 as well as the possibility that Laci's body may have been weighed down initially which would
14 have caused her body to behave differently in the water. (RT 18913, 18942-18943.)

15 **XXVI. AUTOPSIES, EXAMINATION OF THE BODIES AND EVIDENCE**

16 Forensic pathologist Doctor Brian Peterson⁸⁰ who was with the Contra Costa County
17 Coroner's Office conducted the autopsies on Laci and Conner on April 14, 2003. (RT 17394-
18 17395.) At the time of trial, Dr. Peterson had performed approximately 5,500 autopsies in his
19 career. (RT 17391.) He was board-certified in the areas of anatomic and clinical pathology and
20 forensic pathology. (RT 17391.) Dr. Peterson testified as an expert in forensic pathology between
21 100 and 200 times. (RT 17391-17392.) In each of those cases, he was called upon to provide
22 his expert opinion on a cause of death. (RT 17392.)

23 **A. Laci**

24 1. Condition of Laci's Body

25 At the time of the autopsy, Dr. Peterson did not know the body was that of Laci
26 Peterson. (RT 17395-17396.) Several of her body parts were missing, including her head,

27 ⁸⁰ Dr. Brian Peterson is not related to the defendant.
28

1 neck, forearms and the left lower leg. (RT 17396.) Much of the soft tissue and internal organs
2 were also absent from the body. (RT 17396-17397.) The only internal organ still in the body
3 was the uterus. (RT 17397.) Peterson attributed the postmortem changes to several possible
4 causes including the effects of the water, being acted on by bacteria and feeding on the body
5 by marine life. (RT 17397.)

6 During his external examination of Laci's body, Dr. Peterson observed that the only
7 skin remaining was a small amount on the left thigh. (91 RT 17401.) Skeletal muscle was
8 exposed in some places; in other places there was still some fat beneath the skin. (RT 17401.)
9 From the waist up, there was very little soft tissue remaining; her bones were exposed,
10 including ribs, vertebrae and shoulder blades. (RT 17404.) Her body fat had undergone
11 postmortem changes and was now adipocere. (RT 17404.) Dr. Peterson explained that
12 adipocere resulted when body fat body was exposed to a cold, moist environment. The fat
13 turned into a "crumbly white material" and appeared soapy. (RT 17404, 17415.) A marine
14 environment could cause this change, developing over a period of weeks to months. (RT
15 17405.) The presence of adipocere, mineralization, barnacles on the thigh bone and stony
16 deposits on her clothing, confirmed that the body had been in a marine environment. (RT
17 17408-17409.)

18 2. Physical Evidence Collected from Laci's Body

19 As discussed in further detail below, Laci's body was partially clothed with a maternity
20 bra, underpants and portions of what appeared to originally have been tan colored slacks, although
21 they had deteriorated to the extent that they resembled shorts. (RT 9974; 12725-12727;
22 13498;18306-18307; People's Trial Exh. 51 [sealed].) Laci's bra was in the normal position of
23 wear and remained secured by two hook and loop fasteners. (RT 17399.) What was left of
24 the light-colored slacks was also in the normal position of wear. (RT 17399-17400.) There
25 was duct tape on the front of the body which adhered to the waistband of the slacks and around
26 one leg and which extended up to the zipper area of the slacks. (RT 17400, 17417.) The
27 button closure and zipper on the slacks were still in place, as was the drawstring cord in the
28

1 waistband. (RT 17400.) The crotch of the slacks was shredded and stony mineral deposits
2 were mixed in with fibers that remained. (RT 17400.) The underpants were on Laci's body
3 beneath the slacks, but the portion of the underwear covering the buttocks was missing. (RT
4 17400.) The front portion was intact and part of the elastic band was in place around each leg.
5 (RT 17400.)

6 A criminalist who later examined Laci's clothing found barnacles on what remained of
7 Laci's slacks. (RT 17066.) Laci's clothing contained no rips or tears. (RT 17065-17066.) Nor
8 was there any blood or other biological fluids on the clothing. (RT 17081.)

9 The duct tape on Laci's body and other biological evidence is discussed in further detail
10 in the Penal Code 1405 section below, including the results from the defendant's first Post
11 Conviction DNA motion filed in 2013.

12 3. Autopsy Findings

13 1. *Laci's Remains Were Consistent with Disarticulation Caused by a* 14 *Marine Environment and Her Limbs Having Been Anchored*

15 During the first portion of the examination, Dr. Peterson reviewed the x-rays of Laci's
16 body. He looked specifically for any foreign material such as bullets or fragments of a knife.
17 (RT 17398-17399.) The x-rays disclosed no significant findings. (RT 17399.)

18 Although Laci was missing her head, forearms and lower left leg, Dr. Peterson did not
19 find evidence of dismemberment. He did not observe any tool marks on Laci's joints which
20 indicated to him that tools were not used to dismember parts of the body. (RT 17406; 17433.)
21 He found that tidal action and marine animal feeding could explain removal of the
22 extremities. (RT 17406.) Dr. Peterson explained that gravity would have caused the body to
23 have been floating face down with the arms and legs hanging down. (RT 17407.) As the body
24 sank to the bottom or near bottom of the Bay, the tides and currents could have dragged the
25 body along the bottom such that the extremities were susceptible to encountering things like
26 rocks and debris. (RT 17407.) The combination of decomposition and tidal action, even
27 without animal feeding, could have dislodged the limbs, head, or neck from the body. (RT 17407-
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1 17408.) Regarding the possible weighting of Laci's body prior to being released into the Bay, Dr.
2 Peterson opined that Laci's remains were consistent with disarticulation caused by a marine
3 environment and, likewise, consistent with her limbs having been anchored. (RT 17470.)

4 *2. Laci Died While Still Pregnant*

5 Internally, Laci's uterus-the only organ remaining-was substantially enlarged
6 corroborating the fact of her pregnant state. (RT 17410, 17424.) Dr. Peterson explained that the
7 uterus remained intact because it was relatively protected down in the pelvic area and, therefore,
8 resistant to degradation. (RT 17424.) The top portion of the uterus was abraded and open. (RT
9 17411.) For the upper portion of the uterus to have become abraded, portions of the abdominal
10 wall would have to have been missing, including the peritoneum. (RT 17431.) Dr. Peterson also
11 noted the uterine wall was very thin. (RT 17411.) The condition of the uterus caused him to
12 conclude that the uterus had contained a baby. (RT 17411.) Aside from changes related to
13 decomposition, there was no evidence of injury to Laci's external genitalia. (RT19029-
14 19030.)

15 Dr. Peterson determined that Laci died while pregnant. (RT 17432.) He explained that
16 after birth, the uterus shrinks back down to the size of an orange or apple. (RT 17431-17432.)
17 The fact that Laci's uterus did not reduce in size indicated that the baby was still inside when she
18 died. (RT 17432.) Furthermore, Dr. Peterson also concluded that the baby did not pass through
19 the birth canal because her cervix and lower uterus-the birth canal-were still closed. (91 RT
20 17411-17412.) Also, there was no incision near the pubic bone or in the uterus, or other tool
21 marks, that would indicate a Caesarian section birth. (RT 17412, 17423; 17516.) Since the uterus
22 was open at the top, Dr. Peterson concluded the baby exited through the abraded area of the uterus.
23 (RT 17412, 17423.)

24 4. Laci's Cause of Death Undetermined

25 Normally, fingerprints, teeth, blood, urine, or fluids in the eye would be used for
26 identification purposes, but that was not an option in this case. (RT 17435.) Instead, Dr.
27 Peterson removed the right tibia and some of the remaining skeletal muscle which were sent
28

1 to the California Department of Justice's DNA lab for analysis for Laci's subsequent positive
2 identification. (RT 17434.)

3 The considerable postmortem changes to Laci's body precluded isolating a cause of death.
4 (RT 17396-17398; 17438.) The doctor explained:

5 My challenge with Laci is that so much was missing. Could there
6 have been damage before she died to the head, to the neck, to organs
7 in the chest? There most certainly could have, but I simply found
8 no evidence that I could point at and say [t]his must correlate to
9 antemortem injury. No bullets, no cut marks, just nothing that I
10 could make into lethal damage. The toxicology was also not
11 productive. We found some decomposition chemical and some
12 caffeine. We probably all have caffeine. So at that point I was left
13 with determined. Nothing positive there that I could make cause
14 death.

14 (RT 17464.)

15 When queried about the possibility that Laci was strangled to death, Dr. Peterson
16 stated:

17 Well, the challenge there is that -- one principle of forensic
18 pathology is that parts of the body that are injured tend to decompose
19 quicker, for a number of reasons. Could there have been damage to
20 her neck or to her face? Sure. But the problem was her neck and her
21 face were missing, so I simply couldn't say that in a positive way.

21 (RT 17465.)

22 With respect to possible manifestations of death by suffocation, Dr. Peterson explained:

23 Asphyxia-type death in general can be associated with more fluid
24 inside the lungs which is a reaction to asphyxia. And somebody who
25 is going through that process can certainly have bloody foam coming
26 out of their nose and mouth. But not always. In terms of - there's
27 not really a nice way to put this, but in terms of ways of killing people
28 that aren't going to leave that kind of material outside the body,

1 certainly smothering is one of those ways that's more likely not to
2 produce blood and fluid outside the body.

3 (92 RT 17466.)

4 Dr. Peterson also pointed out that strangulation with a ligature and poisoning were
5 other modalities of inflicting death that could leave little, if any, evidence of death external to
6 the body. (RT 17466.) In some cases, however, even this manner of death might result in
7 postmortem urination, defecation, or purging of stomach contents.⁸¹ (RT 17497-17498.)

8 During trial, the doctor reviewed the autopsy photos (which are under court seal) and
9 described what each depicted, highlighting what he had previously explained about his
10 observations and conclusions. (RT 17413-17423.)

11 5. Forensic Anthropologist Examination – Laci Had Been in the Water for
12 at Least Three Months

13 Although the exact time of Laci's death could not be determined, Dr. Peterson estimated
14 that "it was months." (RT 17471.) After the autopsies were completed, Dr. Allison Galloway,
15 a forensic anthropologist, was brought in by the Contra Costa County Coroner's Office to try
16 and determine two things: how long Laci had been in the water and Conner's age. (RT 17509-
17 17510, 17520-17521.)

18 After examining Laci's remains, in addition to corroborating many of the findings
19 made by Dr. Peterson, Dr. Galloway noted that the rib fractures were perimortem defects.
20 (RT 17525.) This meant that the two rib fractures which Dr. Galloway described as "clean
21 fractures" and which she distinguished from the "very frayed" portion of what remained of a
22 third rib, could have occurred from the time period prior to Laci's death before healing began,
23 until the time postmortem when the bones lost their resiliency. (RT 17525-17526.)

24 Based on an examination of Laci's bones, the nature and extent of the decay of
25 remaining tissue on the body, the presence of adipocere in large amounts and the amount of

26 ⁸¹ Dr. Peterson expounded, however, that purging typically occurred after a matter of days. (RT 17507.)
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1 hemoglobin in the muscle tissue, Dr. Galloway determined that Laci had been in the water for
2 a minimum of three months and as long as six months. (RT 17528.)

3 **B. Conner**

4 1. Condition of Conner's Body

5 Since the baby was found first, Dr. Peterson had started Conner's autopsy before Laci
6 was even found. He did not know the identity of "Baby Doe" at the time of the autopsy. (RT
7 17438-17439, 17461.)

8 Conner's body was decomposed and had undergone a great deal of postmortem
9 change. (RT 17439.) Autolysis and maceration had occurred.⁸² (RT 17438.) Although
10 Conner's organs were inside his body, "they were remarkably liquefied." (RT 17441.)
11 However, there were no body parts missing. (RT 17440.)

12 2. Physical Evidence Collected from Conner's Body

13 There was no clothing on Conner's body. (RT 17442.) There was a piece of plastic tape
14 around Conner's neck and under his left arm. (Dr. Peterson referred to the twine as tape, although
15 the criminalist referred to it as twine.) Dr. Peterson found that on one end of the tape, near
16 Conner's left shoulder, was a knot. He observed there were about two centimeters between the
17 tape and Conner's neck. (RT 17444.) The skin underneath the tape was not damaged, nor were
18 the organs. (RT 17445.) Because there were no external or internal injuries associated with the
19 tape, Dr. Peterson concluded that the tape was debris that had become associated with the body.
20 (RT 17445.) Dr. Peterson explained that had the tape been a ligature purposefully placed around
21 the neck, there would have been evidence of injuries associated with such use. (RT 17445-17446.)
22 (See People's Trial Exhs. 258A-E [sealed] for further details on placement of the twine.)

23 The forensic examination of the twine on Conner's body, including the comparison with
24 twine located from other piles of debris, is discussed in further detail in the Penal Code 1405
25 section below.

26 _____
27 ⁸² Autolysis occurs when chemicals in the body, i.e. acid in the stomach or enzymes in the pancreas,
28 facilitate organs digesting themselves. (RT 17425.) Maceration is the process of decompensation by which
the body becomes liquified as a result of being immersed in fluid over a period of time. (RT 17441.)

1 Although Conner's body exhibited decomposition associated with soaking in fluid, in Dr.
2 Peterson's view, it did not suffer the effects of exposure to animal feeding and tidal effects
3 that Laci's did. (RT 17453.) He opined that as small and as soft as Conner's body was, if he
4 had spent substantial time unprotected in the water, he would have been eaten. (RT 17453.)

5 Comparing his examination of both bodies, including the condition of Laci's uterus
6 relative to the rest of her body, Dr. Peterson concluded that Conner was protected by Laci's
7 uterus. (RT 17453.) Over time, the uterus was abraded open and Conner's body was released
8 into the Bay and eventually washed ashore. (RT 17453-17354.) Dr. Peterson further opined
9 that it took some time for Laci's abdominal wall to wear away to reach the point where the
10 uterus was exposed and even more time to wear away the top of the uterus permitting Conner
11 to be released from Laci's body. (RT 17454.)

12 Although Dr. Peterson could not definitively rule out the chance that Conner was born
13 alive and protected by something else in the marine environment, the doctor stated: "My opinion
14 is that when Laci was deposited in the marina environment, Conner was still within Laci. And
15 ultimately, because of the effects of environment, animal feeding and decomposition, Laci's front
16 degraded sufficiently to allow access of the uterus to the outside world and ultimately Conner."
17 (RT 17469, 17474, 17493.)

18 4. Conner's Cause of Death Was as a Result of Laci's Death

19 Based on his examination, including the fact that there was nothing anatomically wrong
20 with Conner's body, Dr. Peterson concluded that Conner would have survived outside the womb.
21 (RT 17446-17447.) At trial, Dr. Peterson said, "truly, I believe that whatever - for whatever
22 reason that Laci met her demise, it was her death that caused Conner's death; that he was still
23 in the uterus. And I base that, again, on the difference in the bodies in terms of presence and
24 absence, feeding, no feeding, protection, no protection. (RT 17461.)

25 Given the condition of Conner's body, Dr. Peterson could not determine a cause of death.
26 (RT 17457, 17460-17461.) However, he ruled the manner of Conner's death was a homicide.
27 (RT 17463.) As he did in the case of Laci's autopsy, Dr. Peterson explained the photos
28

1 associated with Conner's autopsy which are also under seal by order of the court. (RT 17448-
2 17451.)

3 5. Forensic Anthropologist Confirms Conner's Age

4 As discussed above, Doctor Esther Tow-Der, Laci's gynecologist, saw Laci on December
5 23, 2002 for her routine prenatal check-up. (RT 17728, 17234.) She found Laci's pregnancy was
6 progressing normally and Laci reported that Conner was very active. (RT 10125-10126; 17230.)
7 Based on ultrasounds, Conner's age on December 23 was 32 weeks. (RT 10117; 10394-10395.)
8 However, if the date of Laci's last menstrual cycle and her fundal height were incorporated into
9 the calculation, Conner's gestational age on that day was 32 weeks 6 days. (RT 10393-10394.) In
10 the opinion of Dr. Tow-Der, the baby would have been viable had he been born on December 23.
11 (91 RT 17230.) As indicated above, Dr. Peterson also shared this view. (RT 17446-17447.)
12 Utilizing post-autopsy anthropological measurements of the growth of Conner's limb bones, Dr.
13 Galloway, the forensic anthropologist, estimated Conner's age to be within a range of 33 to 38
14 gestational weeks.⁸³ (RT 17529-17530.) She arrived at this estimate using studies that correlated
15 age with bone measurements.⁸⁴ (RT 17529.)

16 Doctor Gregory Russell DeVore, a specialist in high-risk obstetrics and maternal-
17 fetal medicine, was asked by the prosecution and the Modesto Police Department to assist in
18 determining Conner's gestational age and the approximate date that Conner died. (RT 17861.)
19 Dr. DeVore saw about 6,000 pregnant patients each year, who were referred to him by
20 approximately 700 different OB/GYN doctors in the greater Los Angeles area. (RT 17858.)

21 ⁸³ Dr. Galloway's estimate utilized the mother's last menstrual cycle. (RT 17532.) Although Dr. Peterson
22 initially thought the baby was full-term at nine months, (RT 17472-17484), his estimation was based on
23 crude measurements. (RT 17479-17480.)

24 ⁸⁴ Dr. Galloway noted that the tables she used for her calculations were generated by studies involving
25 children of Eastern European descent and that the tables needed to be adjusted for American babies. (RT
26 17510-17511, 17532.) According to Dr. Galloway, the baby's environment-including the mother's health-
27 could affect the accuracy of the age calculation. (RT 17533.) If the mother was in an adverse environment
28 with poor nutritional levels and disease, the baby was typically shorter which caused for some variation
from the studies. (RT 17533.) Dr. Galloway accounted for this variation by providing an age range. (RT
17534.) Although Dr. Galloway's measurements initially indicated an age closer to 35 or 36 weeks, she
explained that she used a standard interval of two weeks on either side of the estimated age so as to include
95 percent of children in the range. (RT 17545-17546.)

1 He estimated that he had conducted 75,000 ultrasound examinations of pregnant women in
2 his career. (RT 17859, 17933.)

3 Dr. DeVore reviewed Laci's obstetric medical records, along with Dr. Galloway's
4 report and conclusions. (RT 17861, 17872.) Dr. DeVore explained the importance of the
5 first-trimester ultrasound in determining the baby's age and the estimate of the time of
6 conception. (RT 17877-17880.) In his opinion, the first ultrasound measurements were the
7 "gold standard" to use as reference points and ensured greater accuracy in determining the
8 age of the fetus. (RT 17864, 17946-17947.) The question to be answered was how much did
9 Conner grow since the first trimester ultrasound and what that growth meant in terms of
10 Conner's age at the time of his death. (RT 17955.)

11 Dr. DeVore took three separate measurements of Conner's femur bone using a method
12 that was very similar to the first-trimester ultrasound. (RT 17868-17870, 17888-17889.) Dr.
13 DeVore's measurements resulted in a "very, very good" correlation with the ultrasound
14 measurements. (RT 17869.)

15 He also compared his measurement results to Dr. Galloway's and the difference was
16 quite small. In Dr. DeVore's opinion, it was a "very precise correlation" despite the fact that
17 he and Dr. Galloway used different approaches. (RT 17871-17872, 17916.) Dr. DeVore
18 explained that the study upon which Dr. Galloway based her interpretation of her
19 measurements involved babies who had died due to some pathology which would have
20 affected growth rates. (RT 17914.)

21 Dr. DeVore estimated the date of Conner's death as December 23, 2002. (RT 17881.)
22 Using the femur bone measurement from the first ultrasound as a reference point,⁸⁵ as well as
23 the three measurements DeVore obtained himself, he initially determined three estimated

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25 ⁸⁵ Dr. DeVore explained at length that, in his view, using the crown-rump measurement from the first
26 ultrasound was the most reliable reference point in determining the baby's gestational age; not the femur
27 length from the second ultrasound. (RT 17933-17942.) If Dr. DeVore had used the femur length
28 measurement from Laci's second ultrasound, four days would be added to Conner's estimated date of
death. (RT 17942-17943.)

1 dates of death that were within a three-day range: December 21, 2002, based on a
2 measurement of 64 millimeters and a gestational age of 32 weeks, 8 days; December 23,
3 based on a measurement of 64.7 millimeters and a gestational age of 32 weeks, 6 days; and
4 December 24, based on a measurement of 65 millimeters and a gestational age of 33 weeks,
5 2 days.⁸⁶ Dr. DeVore averaged these measurements to arrive at a date of December 23, based
6 on 64.5 millimeters and a gestational age of 33 weeks, 1 day. (RT 17880-17883, 17960.)

7 **XXVII. THE PHYSICAL EVIDENCE INDICATES THAT LACI MOST**
8 **LIKELY NEVER LEFT HER HOUSE ALIVE AFTER DECEMBER 23,**
9 **2002**

10 **A. Laci's Curling Iron**

11 On December 23, 2002, per Amy's request, Laci took her curling iron to Salon Salon
12 because Laci asked Amy to show her how to style and curl her hair after a recent haircut. (RT
13 9819.) After a missing person investigation began on Christmas Eve 2002, Crime Scene Officer
14 Doug Lovell responded to Peterson house and photographed the rooms. (RT 12428-12429.)

15 In one of the photos, he captured Laci's curling iron was placed on the countertop in the
16 master bathroom. (RT 9819; People's Trial Exh. 37-D.) People's Trial Exhibit Number 37-D,
17 pictured below, was taken the night of December 24, 2002 and shows the curling iron still on the
18 bathroom counter and the toilet seat in the down position. (People's Trial Exh. 37-D.)

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20 ⁸⁶ With respect to the fact that the evidence established that Conner was alive at least until the late afternoon
21 or early evening of December 23 which meant that one or perhaps two of Dr. Devore's measurements were
22 incorrect, he explained that the focus was on a timeframe within a couple of days of when Conner most
likely died. The timeframe suggested by Dr. Devore's measurements was consistent with other
information concerning when Conner died. (RT 17904-17905.)



14 At the time the officers executed the first search warrant, they did not know what, if any,
15 significance the curling iron had until they spoke to Amy Rocha. When officers returned on
16 February 18, 2003 to execute a second search warrant, they looked for and located the curling
17 iron, properly stored, in the bathroom drawer along with the other hair products. (People's Trial
18 Exh. 111J.) Pictured below is People's Trial Exhibit Number 111J, showing the master bathroom
19 drawer containing the curling iron and the toilet seat in the up position which was taken on
20 February 18, 2003. (People's Trial Exh. 111J.)



1 **B. The Hamper and Laci’s Wadded Up Maternity Blouse**

2 Equally, at the time, officers did not know the relevance of the photo of the hamper that
3 they had taken on December 26th. It was later in the investigation, after Detective Grogan spoke
4 to Amy Rocha, that he learned what Laci had been wearing the night before she was reported
5 missing. (RT 18017.) Amy indicated that when she last saw her sister on the evening of December
6 23, Laci was wearing cream-colored-Capri style slacks, a black blouse with cream-colored polka
7 dots or flowers, a black jacket and a cream-colored scarf and black shoes. (RT 8847.)



17 On February 18, 2003, pursuant to Detective Grogan’s request, Amy Rocha went to Laci’s
18 house to help identify and account for Laci’s clothing like she had with Laci’s jewelry. They
19 opened Laci’s top dresser drawer and pulled out the wadded up black maternity blouse which still
20 had the sleeves turned inside out. (RT 18018; People’s Trial Exh. 10.) Laci’s blouse appeared to
21 have been wadded up and shoved into her dresser drawer unwashed.⁸⁷ Amy confirmed this shirt
22 to be most like the one Laci had been wearing when she was at Salon Salon on the evening of
23 December 23, 2002. (RT 8867-8868; 18018; People’s Trial Exh. 10.) During trial this blouse,
24 marked as People’s Trial Exhibit 10, was confirmed to be the black and tan blouse with a three-

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⁸⁷ The black and tan maternity blouse was forensically examined by Criminalist Kyo and smelled of perfume or linen spray and contained very fine pieces of clear fibers, blue fiber, green fiber, off-white fibers and a light brown hair that was possibly animal hair. (RT 17079;17080.) The blouse did not have any bloodstains or tears on it. (RT 17079; 17143.)

1 quarter bell sleeve Laci had purchased from Motherhood Maternity. (RT 9979.) Pictured above
2 is People's Exhibit Number 252 which is a photograph of People's Trial Exhibit Number 10.

3 The photographic evidence taken on December 26th showed that Laci came home on
4 December 23, after seeing Amy at the salon and took off her maternity blouse and placed it in the
5 clothes hamper in her bedroom. (RT 18661-18663; People's Trial Exhs. 7 and 10.) People's
6 Trial Exhibit Number 7, pictured below, is the photo of the clothes hamper taken on December
7 26, 2002. The black maternity blouse with cream colored polka-dots is visible, just below a blue
8 item with buttons and brown trousers with brown belt. (People's Trial Exh. 7.)



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24 On December 24, 2002, the defendant put on a pair of jeans, blue t-shirt and green pullover
25 which he wore while he went fishing in the Bay. The defendant claimed that he had gotten his
26 clothes wet because it rained so he put those clothes in the washing machine and washed them.
27 (RT 18634-18635.) Before he began looking for his missing wife, the defendant took a shower
28 and got dressed. (RT 18634.) He put on a blue button-up collared shirt, brown trousers and a

1 brown belt which he wore when he reported Laci missing on Christmas Eve and through his
2 interview with Detective Brocchini which went the following morning. (RT 18634.)



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13 Shown above is People’s Trial Exhibit 281B, a screenshot from the interview recording
14 conducted with Detective Brocchini in the early hours of Christmas Day morning. The screenshot
15 shows the defendant wore a blue button-down shirt and brown pants with a brown belt during his
16 interview which is consistent with the blue shirt and brown pants seen on top of Laci’s maternity
17 blouse in the clothes hamper in People’s Trial Exhibit Number 7 photographed during the search
18 warrant on December 26, 2002. (RT 18631; 18634; People’s Trial Exhs. 281A-281B.)

19 **C. Laci’s Scarf and Purse**

20 Detective Grogan and Amy looked for Laci’s scarf that she had been wearing when Amy
21 last saw her on December 23, 2002. Amy positively identified the soft cream-colored scarf that
22 was hanging on a nail next to Laci’s purse as the same scarf Laci had been wearing on December
23 23, 2002. (RT 8869; 18018; People’s Trial Exh. 9.) Depicted below is People’s Trial Exhibit
24 37L which shows Laci’s purse and scarf hanging in her closet on December 24, 2002. (RT
25 10735-10736.)
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8 Amy also picked out a pair of Mary Jane flat shoes in Laci's closet as the type of shoes
9 Laci had been wearing when she last saw her. (RT 18018.) After going through all of Laci's
10 clothing, they could not locate the cream-colored maternity capri pants.

11 **D. When Laci's Body Washed Ashore, She Was Still Wearing the Motherhood**
12 **Maternity Tan Capri Pants She Wore on December 23 and Her Maternity**
13 **Bra but No Shirt.**

14 As previously indicated, when Laci washed up onto the shore of Point Isabel on April 14,
15 2003, her body was partially clothed with a maternity bra, underpants and portions of what
16 appeared to originally have been tan colored slacks. (RT 9974; 12725-12727; 13498;18306-
17 18307.) The pants tag, containing the company's name Motherhood Maternity, was still attached
18 to the clothing. (RT 17400; People's Trial Exh. 51 [sealed].)

19 Modesto Police Detective Owen contacted Mother's Work Incorporated and spoke with
20 Phillip Williams, the National Loss Prevention Manager, who oversees Motherhood Maternity
21 stores. (RT 9955.) Detective Owen provided Williams with the numbers which represent the
22 garment's style and color located on the tag inside the pants Laci was wearing when recovered.
23 Williams determined the garment was a pair of stone cropped pants.⁸⁸ (RT 9957-9959.)

24 As discussed above, Williams searched their database and found that Laci made two
25 separate purchases from Motherhood Maternity. (RT 9964.) Williams sent Modesto Police

26 ⁸⁸ Khaki, stone or tan have been used to describe the color of these capri pants. (RT 9972-9973.)
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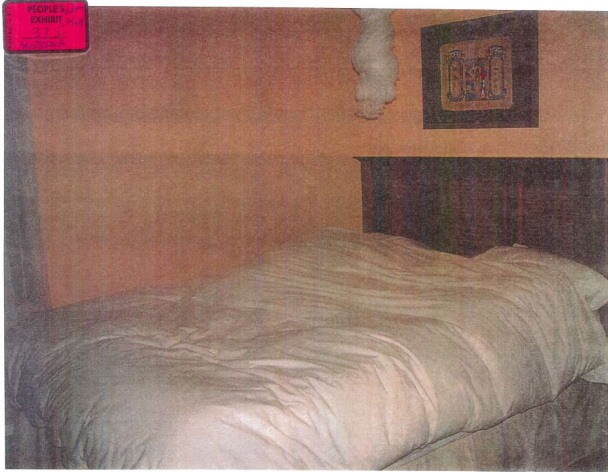
1 Department photos of each garment Laci had purchased and a copy of the receipts.⁸⁹ (RT 9966;
2 People's Trial Exh. 42-52.) Williams confirmed that People's Trial Exhibit 10 was the black and
3 tan blouse that Laci purchased in August 2002. (RT 9970-9971.) When shown a photo of the
4 stone cropped maternity pants sold by Motherhood Maternity, Amy said the pants appeared
5 to be similar to what Laci had been wearing when she last saw her sister on the evening of
6 December 23. (RT 8892-8893; RT 8940-8941; People's Trial Exh. 11.)

7 **E. A MISSING PILLOW CASE**

8 On December 24, 2002, the bed in the master bedroom belonging to Laci and the defendant
9 was made with a white duvet comforter and linen. (RT 9821; People's Trial Exhibit 37 I.) On
10 Christmas Eve night, the two pillow shams from the bed were placed on a chair in their master
11 bedroom as photographed in People's Trial Exhibit 37 H, depicted below. (People's Trial Exh.
12 37 H.) One of the pillows from the master bedroom was absent and had been moved to the bed
13 located in the spare bedroom containing the defendant's clothing and where the duffle bags were
14 found upside down. (RT 9790; 10020; People's Trial Exh. 37 N.) During the February 18, 2003,
15 search warrant, the pillow was located, however, the pillowcase was missing and never found.
16 (RT 18682.)

17 People's Trial Exhibit Number 32I shows the one pillow missing from the bed in the
18 master bedroom on Christmas Eve 2002. People's Trial Exhibit Number 32H is a photo of the
19 chair in the master bedroom with two white pillow shams matching the white duvet taken that
20 same night. People's Trial Exhibit Number 32N, depicted below, shows a white pillow, which
21 matches the master bedroom linens, placed on the bed in the spare bedroom that contained the
22 defendant's clothing. During the subsequent search warrant conducted on February 18, 2003,
23 investigators were unable to locate the white pillowcase for one of the bed pillows. (RT
24 18682.)

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26 ⁸⁹ In addition, Williams sent Detective Owen three advertisement photographs of a model wearing the
27 same pants and an actual pair of pants that were the same style and color but not the same size. (RT 9960-
28 9961; People's Trial Exh. 11; 39-41.)



**XXVIII. DEFENDANT ARRESTED AFTER ANOTHER GAME WITH
LAW ENFORCEMENT**

After the autopsies and forensic examinations, Detective Grogan began working on an arrest warrant. (RT 18061.) In addition to what the investigation had uncovered at that point, Grogan explained that his decision to seek a warrant was based on the fact that Laci and Conner's bodies were found in the same general location where defendant said he was during the time Laci disappeared; the clothing on Laci's body did not match what defendant said she was wearing when he left; the autopsy results suggested Conner was in utero until shortly before the bodies were recovered and there was no indication from the autopsy that Laci had given birth; and the extent of decomposition of Laci's body correlated with her having been in the Bay for months. (RT 18062- 18063.)

1 **A. Defendant Plays Another Game of Cat and Mouse with Law Enforcement**

2 As Grogan pursued authorization for the arrest warrant to be issued, it was decided to
3 continue surveillance of the defendant so that he did not flee the area before he could be
4 arrested. (RT 18063.) Special Agent Alex Quick of the California Department of Justice was
5 one of the agents assigned to surveil defendant while he was in the San Diego area in mid-
6 April 2003. (RT 17968.) Agents located the defendant on April 16. (RT 18003.) Defendant
7 was driving two different cars, neither of which were previously associated with him: a
8 Mercedes and a Lexus. (RT 17974.) The defendant's brother was driving the defendant's
9 new truck. (RT 17972-17973.)

10 On the morning of April 16, Deputy Ronald Schweitzer of the San Diego County
11 Sheriff's Office was also assisting in the surveillance of defendant. (RT 18619-18620.)
12 Schweitzer was in an unmarked car. (RT 18620.) At one point during the surveillance,
13 defendant pulled up alongside Schweitzer's car and asked the deputy what agency he was
14 with and whether it was state or local. Schweitzer responded that he did not know what the
15 defendant was talking about. (RT 18620-18621.) Defendant shook his head and said,
16 "Right." (RT 18621.) The defendant drove forward a bit and then appeared to write down
17 the license plate number of the deputy's vehicle. (RT 18621.) Defendant told the deputy that
18 he saw the deputy following him all morning. (RT 18621.)

19 A few minutes later, the defendant walked up to Special Agent Kevin Kolbe as Kolbe
20 was sitting in his unmarked vehicle. (RT 18800.) While standing at the driver's side window,
21 defendant said something to the effect of: "That was a real nice block-off maneuver that that
22 guy in the green van did." (RT 18801.) Kolbe told the defendant that he did not know what
23 defendant was talking about, although Kolbe was aware that the person in the green van was
24 an undercover officer also surveilling defendant. (RT 18801.) The defendant then recited the
25 license plate number of the van and Kolbe repeated again said that he did not know what the
26 defendant was talking about. (RT 18801.) The defendant asked Kolbe what agency Kolbe
27 worked for-state or local. (RT 18801.) When Kolbe reiterated that he did not know what
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1 defendant was talking about, defendant said, "Yeah, whatever," in a disgusted tone and
2 walked off. (RT 18801.)

3 Special Agent Sonia Ramos was also part of the team surveilling defendant on April
4 16. (RT 18833.) Ramos suspected the defendant knew they were surveilling him. On one
5 occasion, when the defendant was on foot and Ramos was following him, the defendant
6 doubled back and ducked down an alley. (RT 18834.) Ramos paralleled the defendant's path,
7 walking along a different street. When the agent arrived at the corner, the defendant was
8 standing there waiting and smiling. (RT 18834.)

9 On the morning of April 18, Agent Quick rejoined the surveillance team at 7:00 a.m.
10 (RT 17975.) Defendant was driving through a gated community in Escondido, north of San
11 Diego. He was in his recently purchased Mercedes. (RT 17976.) Defendant proceeded south
12 on Interstate 15 to the Ocean Beach area. Quick surmised that defendant knew he was being
13 followed because just as Quick caught up to the defendant on the freeway, defendant exited
14 the freeway and then immediately got back on. (RT 17977.) Seeing Quick, the defendant
15 extended his middle finger and flipped the agent off. (RT 17978.) Quick continued to follow
16 the defendant through a residential area. During that time, the defendant engaged in odd
17 driving maneuvers such as stopping on the side of the freeway, U-tums, three-point turns and
18 alternating between fast and slow driving speed. (RT 17978.)

19 The defendant left the residential area around 7:45 a.m. and over the next hour headed
20 north on Interstate 5 to Orange County. (RT 17980; People's Trial Exh. 277.) Defendant
21 and the surveillance team passed through a border checkpoint near San Clemente. (RT
22 17981.) Over the police radio, Agent Quick heard that defendant exited the freeway and was
23 now traveling north on State Route 57. (RT 17982.) While on route 57, the defendant jumped
24 from lane to lane which signaled to Quick that the defendant was trying to determine if he
25 was being followed. At that point, there were 9 or 10 unmarked cars trailing the defendant.
26 (RT 17982, 17990-17991.) Special Agent Claude Jubran saw the defendant clapping his
27 hands up by his right shoulder as defendant went from the first lane, traveled across all the
28

1 other lanes to the shoulder of the freeway and then re-entered the freeway. (RT 18824-
2 18825.) In Jubran's opinion, the defendant was applauding the agents for keeping up with
3 him. (RT 18828.)

4 Next, the defendant took State Route 91 east toward Riverside County. From there,
5 the defendant entered Interstate 15 and headed south. It was 10:00 a.m. (RT 17983.) The
6 defendant stopped to buy gas in Temecula. (RT 17984.) Afterward, he got on the freeway
7 and made his way back to San Diego County. (RT 17984-17985.) The 160-mile excursion
8 ended when authorities stopped the defendant on his way into the Torrey Pines Golf Course
9 in La Jolla and arrested him. (RT 17986, 17999; 18846.) The decision had been made to
10 arrest the defendant for murder. (RT 17986.)

11 **B. Defendant Arrested With \$15,000 Cash, Other People's Identification and**
12 **Credit Cards, Multiple Cell Phones and Outdoor Survival Equipment**

13 Although Detective Grogan had been working on the arrest warrant affidavit, he
14 explained that the decision to arrest the defendant at that point was based on the defendant's
15 change of appearance, defendant's conduct toward the agents which suggested he was aware
16 that he was being surveilled and a report that someone matching defendant's description had
17 previously eluded the surveillance units when they attempted to follow. (RT 18058-18060.)

18 Grogan and other detectives arrived in San Diego early in the morning on April 18.
19 (RT 18063.) Although the recoveries of Laci and Conner had been highly publicized in the
20 media, after the defendant was handcuffed, he asked Detective Grogan, "'Have they found my
21 wife and son?'" (RT 18005-18006.) Detective Grogan noticed that the defendant was not
22 wearing his wedding ring at the time. (RT 18066.)

23 Among the items police found in the Mercedes were the following:⁹⁰ nearly \$15,000
24 in cash (RT 19106); foreign currency⁹¹ (RT 19100-19101); a ticket stub for a Mexican exhibit

25 _____
26 ⁹⁰ The contents of the Mercedes were documented in photographic exhibits. (See People's Trial Exhs. 293-
1 through 293-46.)

27 ⁹¹ This appeared to be Mexican currency. (People's Trial Exh. 293-29.)
28

1 at a local museum from the preceding day (RT 19102-19103); two driver's licenses-one
2 belonging to defendant and the other to his brother John (RT 19095); a credit card belonging
3 to another family member (RT 19096); a check written out to defendant by a family member
4 dated April 12, 2003 (RT 19101); a backpack containing folding knives, scissors, razor
5 blades, a water purifier, cooking utensils, pots and pans, binoculars, a hammock, a camp axe
6 and an unopened package with a snorkel and mask (RT 19097-19099); four cell phones (RT
7 19101); a shovel (RT 19099); a considerable amount of clothing including a snowboarding
8 jacket, shoes, pants, sweatshirt, shirts, shorts, sweaters, ties, belt and socks (RT 19099-
9 19100); a fishing rod and reel (RT 19099); a photo of defendant and Laci (RT 10987) and a
10 MapQuest printout dated April 16, 2003 which corresponded to Amber Frey's place of
11 employment (RT 19085-19087).

12 **XXIX. POLICE TRIED TO FIND THE REST OF LACI'S REMAINS**

13 Despite the defendant's arrest, the police continued to look for the rest of Laci's remains
14 and any other evidence in the Bay. Modesto Police contacted additional resources including
15 Doctor Cheng, a Senior Research Hydrologist, from the U.S. Geological Survey for
16 assistance in potential locations to recover Laci's missing body parts or cement weights. (RT
17 12811:26-12814:23.) In May 2003, searchers returned to the Bay with sonar equipment to try
18 and locate additional remains or other evidence. (RT 12206.) Twelve law enforcement
19 agencies and three civilian⁹² side-scan sonar operators participated in the search. (RT 12227-
20 12228; 12627.)

21 Teams searched from May 16 to May 23 under very poor conditions-including strong
22 undercurrents and near-zero visibility for divers-but found nothing related to the
23 investigation. (RT 12207, 12211-12112, 12265; 12268, 12271;12627.) There was also a
24 great deal of garbage underneath the Bay, some of which was encountered during the search.
25 (RT 12247, 12260-12265.)

26 _____
27 ⁹² Gene Ralston, a private citizen who previously worked with the FBI, was among those who
28 volunteered the use of his Side-Scan Sonar system and continued to work with the Modesto Police
Department to locate evidence. (RT 10276; 12816.)

1 In June 2003, the search management team plotted a targeted area with a perimeter of
2 one and one-quarter miles in length and one and three-quarters mile down. (RT 12629;
3 12729.) Detective Hendee explained the targeted area was the equivalent of 21 football fields
4 across and 39 football fields down, from end zone to end zone. (RT 12629, 12631.) This area
5 was then broken down into one-quarter mile grids. (RT 12630.) Global positioning system
6 coordinates were used to pinpoint search targets. (RT 12632-12633.) To aid in the searches,
7 authorities rented a Remote Environmental Unit ("REMUS") which was a self-propelled
8 sonar unit. (RT 12644.) The advantage to using REMUS was that it could proceed in a straight
9 line, unlike the side-scan sonar towed by the boats. (RT 12645.)

10 Searchers returned to the Bay in July, September and October 2003, but did not find
11 anything of evidentiary value pertaining to the case. (RT 12206; 12709-12710; 12844.)

12 All told, the Bay search teams covered approximately 75 to 80 percent of the targeted area:
13 one and one-eighth mile east to west and one and one-half miles north to south. (RT 12710.)

14 **XXX. NOT NEW EVIDENCE**

15 Most, if not all, the arguments that the defendant has raised in his motion as “new
16 evidence” – defendant's suggestion to authorities that Laci walked McKenzie on Christmas
17 Eve morning and was abducted by transients for her jewelry, or kidnapped for “her” baby, or
18 several men in a van who may have also been responsible for a burglary that occurred in the
19 neighborhood a couple of days after Laci disappeared had taken her – were all previously
20 raised at trial and rejected by the jury. Below is the evidence that was introduced at trial which
21 the jury considered and discounted. Furthermore, as indicated above, the prosecution's evidence
22 addressed and refuted these theories.

23 **A. Laci Sightings and Various Vans**

24 Through Detective Grogan, the jury was permitted to hear statements made by Grace
25 Wolf, Homer Maldonado, Tom Harshman, Kristin Reed, Victoria Pouches and Tony Freitas – not
26 offered for their truth – but in order to evaluate whether Modesto Police Department conducted a
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1 reasonable investigation.⁹³ (see e.g. RT 18476-18511.) The jury was allowed to consider Diane
2 Jackson's statements for their truth.

3 The court admonished the jury accordingly:

4 Ladies and gentlemen of the jury, I have to sort of -- in order to put
5 all this evidence, we've been receiving the last couple days back into
6 context. A lot of this information that the -- Detective Grogan got on
7 the tip line is not being offered for the truth, okay? It's being offered
8 to explain the reasonableness of Detective Grogan's conduct; what
9 did he do as a result of this information that he received, okay? With
10 respect to the testimony and it's going to come in now as it relates to
11 Ms. Jackson, that is being offered for the truth, okay? A little different
12 from the other -- other stuff. **You can give this evidence whatever**
13 **weight you think it's entitled to. That's for you to decide.**
14 Whatever you want, but it's being offered for the truth; all right?
15 That's the distinction between this tip line stuff -- this is also tip line
16 stuff, but this is a little different, okay? All right. Hope that explains
17 it. Go ahead.

18 (RT 18561, emphasis added.)

19 1. Grace Wolf

20 Detective Grogan never spoke to Grace Wolf, but he had reviewed Wolf's reported
21 sighting of Laci. (RT 18672.) Grace Wolf never contacted the Modesto Police Department in
22 December 2002 or in January 2003. (RT 18477; 18672.) Wolf's first documented interview was

23 ⁹³ Throughout the course of the prosecution's case-in-chief, the trial court permitted defense counsel, during
24 cross-examination of prosecution witnesses, to elicit a large number of hearsay statements. (See, e.g., RT
25 18476-18511 [hearsay statements from several individuals concerning purported sightings of Laci where
26 none of the individuals testified – and therefore not subjected to cross-examination].) The prosecution
27 repeatedly expressed its concerns to the trial court. (See, e.g., RT 11371-11379; 11523-11529) The court
28 permitted the questioning since the stated objective was to enable the jury to assess the reasonableness of
the police investigation. (RT 11371-79; 11523-11529.) The trial court provided the jury with occasional
reminders that, aside from one instance, the evidence could not be considered for its truth. (RT 11379-
11380; 18561.) The court also permitted the prosecution to present evidence that the hearsay declarants
were alive and, thus, available to testify. (RT 11537.) After the defense guilt-phase argument, the
prosecutor reminded the jury of the judge's admonitions concerning the hearsay testimony. (RT 20524.)

1 with a defense investigator, Gary Ermoian.⁹⁴ Ermoian's report indicated that Wolf exchanged
2 hellos with a lady who was walking a dog with and a white male as they walked past her residence
3 on the Sunday before December 24, 2002. (RT 18477-18478; 18673.) Wolf had seen the same
4 couple walking past her house in November before Thanksgiving. (RT 18478.) Wolf indicated
5 that she saw the same lady on December 24th between 9:30 a.m. and 9:45 a.m. at the intersection
6 of Encina and Santa Barbara (RT 18488; 18676.) Wolf told Ermoian that when she saw the photos
7 of Scott and Laci in the paper and on television, she was convinced that the couple that walked
8 by her house in November and December were the same. (RT 18478.) Wolf further reported that
9 Laci was wearing black pants and a white shirt, the same description of clothing that had been
10 reported by the media. (RT 18676.)

11 **2. Homer Maldonado**⁹⁵

12 On January 1, 2003, Homer Maldonado called the Modesto Police tip line. (RT 18492.)
13 Maldonado did not receive a call back and went to the police Command Post and spoke to a police
14 chaplain. (RT 18499.) On January 10, 2003, an investigator hired by the defendant interviewed
15 Maldonado. (RT 18494; 18498.)

16 Detective Grogan reviewed Homer Maldonado's statements and explained to the jury the
17 reasons for what steps he took in the investigation was in part based on the fact that Maldonado
18 gave different statements on different days. (RT 18675.) Initially, Maldonado reported that he
19 saw Laci Peterson by a gas station located at Miller and Camelia from 9:45 a.m. to 10:00 a.m.,
20 however, he did not provide any description of what Laci was wearing during this initial tip. (RT
21 18492; 18675.) On January 10, 2003 when Maldonado was interviewed by defense investigator
22 Gary Ermoian, he indicated that Laci was wearing dark pants and a light top. (RT 19494-19496;
23 18675.) Maldonado was positive that he saw Laci Peterson walking a Golden Retriever as he

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25 ⁹⁴ Gary Ermoian was a defense investigator who worked for the defendant's first attorney Kirk McAllister
and then later for defense counsel Mark Geragos. (RT 17736; 18494.)

26 ⁹⁵ Detective Grogan had never spoken with Homer Maldonado. Instead, he had been interviewed by
27 Modesto Police Detective Stough. (RT 18494.)
28

1 drove west on Miller past Covena and provided the defense investigator a copy of his receipts for
2 a timeline which was introduced into evidence at trial. (RT 18495-18498; Defense Exh. D7R.)
3 Maldonado also said in one of his tips that he got gas and there was a tan van with yellow
4 somewhere on it at the gas station with one occupant and that is when he noticed the pregnant
5 woman walking the dog near the corner of Miller and La Loma. (RT 18493.)

6 3. Diane Jackson

7 Although Detective Grogan had never spoken to Diane Jackson, the court allowed defense
8 counsel to elicit hearsay statements to come in at trial. (RT 18524.)

9 Diane Jackson, who lived in the 1400 block of Edgebrook, reported that she saw a van.
10 (RT 18523; 18525.) On December 27, 2002, Jackson phoned in a tip that indicated on December
11 24, 2002 she saw a van and a safe being removed from the house on Covena. (RT 18526.)
12 Modesto Police Sergeant Ed Steele was assigned to the volunteer center after it opened. (RT
13 18562.) He passed information on to the tipline indicating that “Diane Jackson witnessed a
14 burglary on December 24 at 11:40 a.m. and she saw a van and a safe being removed from the
15 house.” (RT 18562-18563.)⁹⁶ Detective Stough was assigned to follow up and spoke to Jackson
16 on December 27, 2002, at 6:60 p.m. (RT 18564.) Jackson said she had been driving by 516
17 Covena – where the Medinas live – and saw three short, dark-skinned but not African American
18 guys standing next to a van. (RT 18565.) Two of the males were standing near the back of the
19 van and one was standing near the front. (RT 18566.) Jackson initially believed they were
20 lawncare workers. As she drove by, they stopped and looked at her. (RT 18565.) Initially,
21 Jackson told the officers that the van was white, but later, upon thinking about it further she
22 believed the van was either tan or a brown color. (RT 18566.) Jackson thought it was older and
23 it had either a door or two doors that would open to the rear, but she really didn’t remember. (RT
24 18566-18567.)

25 _____
26 ⁹⁶ It was unknown whether Diane Jackson spoke to Sergeant Steele directly or this information had been
27 relayed to him and in turn, he relayed it to the tip line. (RT 18562.)
28

1 Although Jackson indicated that she would not be able to identify the males if she saw
2 them again, (RT 18565-18566.) The information that Diane Jackson provided was incorporated
3 into the flyer for the \$1000 reward leading to information regarding the burglary that took place
4 at the Medinas' residence. (RT 18562-18563; 18567; Defense Exh. NN.) Police never located
5 the van. (RT 18564.) Susan Medina was asked if she recognized the description of the van or the
6 males and Susan Medina did not. (RT 18567-18568.)

7 Detective Grogan further explained to the jury that when Diane Jackson was subsequently
8 interviewed by the police on January 16, 2003 there was no indication that Jackson saw a safe or
9 claimed that she witnessed a burglary. (RT 18681.) Instead, Jackson indicated that after she had
10 heard about the burglary that occurred at the Medina residence and recalled seeing a van with
11 three short, dark-skinned males standing around it, that it could be related to the burglary. (RT
12 18681-18682.) Jackson indicated it was at 11:40 a.m. on Christmas Eve day when she saw the
13 van – which was the same time that Amie Krigbaum and Tera Venable were at home – and made
14 no unusual observations.

15 The jury heard evidence during trial that the officers had followed up on various tips
16 involving vans, including Diane Jackson's tip regarding an older model white or tan van. (RT
17 10359.) Although this was a high priority, officers never found a van that fit her description. (RT
18 10360.) Furthermore, during a video depicting the traffic pattern in the Covena, La Loma and
19 Encina neighborhood, the jury could see that there were a number of different vans driving around.
20 (RT 18682; People's 279B.) Regardless, Diane Jackson's information from her initial tip was
21 highly publicized and had an impact on future tips.

22 4. Tom Harshman⁹⁷

23 Tom Harshman called the Modesto Police Department tipline on December 28, 2002 and
24 reported that he saw a pregnant lady being pushed into a van. (RT 18505; 18517-18518.)
25 Harshman indicated that he was driving on Scenic, east of Coffee and saw a woman being forced
26 into an older, white 80s van, with three windows and a tan stripe on the side. (RT 18505; 18519.)

27 ⁹⁷ Tom Harshman is deceased.

1 The female had dark hair and was wearing a red shirt and black pants. The man was a white male
2 adult in his 40s with a ballcap. (RT 18505; 18519.)

3 Harshman called the tip line again, however, his name was recorded as Tom Harsh. In the
4 tip, Harshman indicated that he was driving and stopped at a T-intersection when he looked over
5 and saw an older van, described as a 70s, American-made model, beige van, parked on the south
6 side of Scenic, west of Claus. (RT 18508; 18514.) Harshman saw a pregnant female who was
7 squatting down next to a chain link fence. The female had her hands up above her shoulders
8 holding onto the chain link fence and appeared to be urinating. There was a man standing next to
9 her – over the top of her - with his hands against the fence. (RT 18515-18517.) The man then
10 walked with the female back to the driver’s side of the van. (RT 18515.) The door opened on the
11 van on the driver’s side and Harshman saw a male’s hand reach out and take the females hand’s
12 and help to pull her into the van, with the other male standing behind her. (RT 18516.)

13 Harshman was not satisfied when no one called him back, so he went to the command
14 center and contacted Sgt. Cloward. (RT 18521-18523.) Harshman’s wife, who had been with
15 Harshman, relayed the information to a relative in New York. In turn, the wife’s relative told a
16 friend who then called the New York Police Department and they called Modesto Police
17 Department on February 14, 2003. (RT 18506; 18517; 18520.)

18 In preparation for trial, Detective Grogan conducted a tape-recorded interview with Tom
19 Harshman over the phone on May 18, 2004 which was provided to the defense. (RT 18521.)
20 Detective Grogan researched the timeframe of Harshman’s reported sighting of Laci and
21 determined that Harshman saw this on December 28, 2002 between 2:00 p.m. and 4:00 p.m. (RT
22 18509; 18670.) The detective explained to the jury that when Harshman initially called the
23 Modesto Police Department’s tip line for the first time on December 28, 2002, he said that he
24 called the same day he made the observations. (RT 18670.) Harshman also indicated that his
25 observations were about a week after Laci disappeared and that Harshman had seen the media
26 reports about Laci’s disappearance and that flyers were already up when he made these
27 observations which Detective Grogan indicated clearly could not have been on December 24,
28 2002. (RT 18670.) Furthermore, Detective Grogan found that on January 3, 2003, Harshman had

1 contacted somebody at the Command Post which had been documented by Sgt. Cloward in the
2 daily log for that day and Harshman said he had seen the incident six days prior – which would
3 have been the 28th. (RT 18670-18672.)

4 **5. Kristin Reed⁹⁸**

5 Kristin Reed provided a tip which was subsequently followed up by Detective Brocchini
6 on September 12, 2003, regarding a van. (RT 18569.) Detective Brocchini’s report indicates that
7 Reed drove down Covena and saw a larger vehicle – not a white car – parked across the street
8 from the Peterson house. (RT 18569.) It was not white but she knew for sure there was another
9 vehicle on the street. (RT 18569.) Reed believed that it was older, either an older Chevy Astro or
10 older like a Dodge brown van. (RT 18569.) Detective Brocchini wrote in his report that Reed
11 thought it seemed like a brown metallic Dodge kind of make; it was tapered up was how she
12 described it. (RT 18570.)

13 Kristin Reed also told Detective Brocchini that Laci always walked with McKenzie on a
14 leash because she could not control him like Scott could. (RT 18570-18571.) Reed had questioned
15 the reliability of her own recollection regarding the vehicle that she saw parked on December 24th
16 across from the Petersons’ residence and told Detective Brocchini that her recollection could have
17 been based on the power of suggestion or something that she had read. (RT 18680.)

18 **6. Victoria Pouches⁹⁹**

19 Victoria Pouches phoned in a tip and was contacted by Officer Beffa and told him that she
20 was in East La Loma Park on Christmas Eve day and saw a dog barking like crazy that morning.
21 (RT 18571.) The description was that the dog was on the north side of Dry Creek, west of El Vista
22 Bridge and was pacing back and forth, barking like crazy. It was a gold-colored dog with a leash
23 on. (RT 18572.)

24 _____
25 ⁹⁸ Kristin Reed was interviewed by Detective Brocchini and never spoke to Detective Grogan, however,
26 defense counsel questioned Detective Grogan about her statements to determine the reasonableness of his
27 investigation. (RT 18569.)

28 ⁹⁹ Victoria Pouches was interviewed by Officer Beffa and never spoke to Detective Grogan, however,
defense counsel questioned Detective Grogan about her statements to determine the reasonableness of his
investigation. (RT 18569.)

1 The jury further heard that Victoria Pouches reported that she had seen this dog running
2 loose in the park between 9:10a.m and 10:00 a.m. that morning – during the time when the
3 defendant was still at 523 Covenia Avenue. (RT 18680.)

4 7. Tony Freitas

5 Tony Freitas was driving a bread truck on La Loma Avenue. (RT 18481; 18673.) As he
6 approached La Loma and Santa Barbara, he saw a woman walking her dog and she was wearing
7 light colored pants and a dark colored jacket or pullover sweater. (RT 18482; 18488.) The dog
8 was reddish brown in color and appeared to be pulling the woman who he believed was Laci. (RT
9 18482.) Freitas also noticed two dirty looking males in raggedy clothing in the park next to the
10 bus bench. (RT 18482; 18490-18491.) Freitas had reported this tip on December 30 and was told
11 a detective would call him, but no one did. (RT 18483; 18489; 18490.)

12 On July 29, 2003, a DA investigator followed up with Freitas. The jury was shown a video
13 which showed the traffic within the La Loma neighborhood, including going up and down La
14 Loma Avenue towards the roundabout, where Freitas indicated that he saw Laci. (RT 18673-
15 18674.) From the video, the jury could see that La Loma is a fairly busy street. (RT 18674.) The
16 area on La Loma where Freitas indicated that he thought he saw Laci walking was approximately
17 a quarter mile, or six blocks, from the Petersons' home on Covenia. (RT 18674.)

18 During the trial, the defense had Detective Grogan indicate on a diagram where these
19 sightings occurred in the La Loma neighborhood. (RT 18475-18510; 18677.) Detective Grogan
20 explained to the jury that he did not consider these sightings verifiable when he compared them
21 to the physical evidence which included the timeframe when the defendant left his house at 10:08
22 a.m. – which was supported by the forensic examination of his cell phone – and 10:18 a.m. when
23 Karen Servas located McKenzie. (RT 18677.) Furthermore, Detective Grogan pointed out that
24 the sightings were spread out quite a distance away from one another and the time that it would
25 take someone to walk that distance. (RT 18678.) Detective Grogan also explained to the jury that
26 many of the reported Laci sightings, from all over, indicated she was observed wearing black
27 pants and a white shirt after the media had released the clothing description – initially provided
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1 by the defendant's statements – that Laci was last seen in black pants and white shirt. (RT 18678.)
2 The only difference between the reported sightings documented in People's Trial Exhibit Number
3 268B, discussed above, – which were the Laci sightings in the United States and various countries
4 – was the fact these at least occurred within her neighborhood. (RT 18679.)

5 **B. The Medina Burglars**

6 On Saturday December 28th, the defendant called Karen Servas and asked Karen if she
7 could give a more precise time when she found McKenzie on Christmas Eve day. (RT 9438;
8 9450.) The defendant explained that he was asking Karen to narrow the timeline down of when
9 she found the dog to determine if Laci's disappearance was linked to the burglary at the Medinas
10 house that occurred across the street. (RT 9449; 9460.) Karen agreed to do so. She was able to
11 retrace her path that she took on the morning of December 24 and produced evidence based on
12 phone records of the people she called and her receipt from Austin Christmas Store which
13 indicated she purchased the ornaments at 10:34 a.m. (RT 9430-9437; 9461; 19050-19053;
14 People's Trial Exhs. 28, 29.) Upon retracing her steps, Karen Servas determined that she had
15 found McKenzie no later than 10:18 a.m. on Christmas Eve morning. (RT 9438; 9476-9477.) She
16 provided this information to Modesto Police Detective Buehler in a note dated January 3, 2003.
17 (RT 9477; People's Trial Exh. 30.)

18 As mentioned above, Modesto Police Department offered a \$1000 reward for any
19 information regarding the burglary occurring at the Medina residence. (RT 20055.) Officers
20 showed people in the area and their confidential informants the flyer and attempted to gather
21 information regarding who did the burglary. (RT 10364-10365.) It worked; shortly thereafter,
22 credible information came in from a confidential informant who later collected the reward. (RT
23 10365; 20055.)

24 Based on the tip, officers identified two residences that were potentially associated with
25 the Medina burglary. (RT 10336; 20014-20015.) Glenn Pearce lived with his mother and
26 Pearce's two small children for the last sixteen years in a trailer on the back of the property at
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1 1406 Tenaya Avenue. (RT 20050.) Steven Todd was living in the shed at the back of the property.
2 (RT 20050.)

3 On January 2, 2003, two teams of officers went to 1406 Tenaya and 1407 Tenaya. (RT
4 10336; 20016.) Officers contacted the property owner and obtained consent to search. (RT 10362;
5 10336.) On the side yard, near the garage, officers located an overturned wooden trunk. Lying
6 beneath it was an off-white colored safe that had been damaged and forced open. (RT 10337.)
7 Officers searched the entire property and located items belonging to the Medinas, including
8 several pieces of jewelry, their safe and a wooden box. (RT 10335-10338.) Steven Todd's sister,
9 Lisa Stringfellow, was there and directed the officers to her residence to recover the stolen weed-
10 eater. (RT 10337.) Officers did not find any evidence at all related to Laci Peterson despite their
11 search of the entire property at 1406 and 1407 Tenaya Avenue. (RT 10362.)

12 Glenn Pearce and Steven Todd were arrested and charged with burglary. (RT 10336.)
13 Pearce and Todd were separated and interviewed.¹⁰⁰ (RT 10337.) Todd admitted his involvement
14 in the burglary but denied having anything to do with the missing woman. (RT 20015-20016.)
15 Officer Hicks asked Todd what woman he was talking about and Todd said the missing woman
16 and baby. (RT 20016.) Both Todd and Pearce were cooperative and willing to provide
17 information to assist in recovering the stolen property. (RT 20053.) During their interviews, both
18 Todd and Pearce described the items they had removed from the safe including expensive
19 women's jewelry. (RT 20023.) Although they did not recover the Medinas' tools, police
20 recovered the two stolen firearms and some of the jewelry and jewelry box in addition to the safe
21 and weed eater. (RT 9631-9632.)

22 Officer Michael Hicks had known Steven Todd for seven years and knew that Todd did
23 not have a car, but rather he always rode a bicycle. (RT 20051.) During the interview, Steven
24 Todd explained that he has ridden up and down Covena hundreds of times because it is a shortcut

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26 ¹⁰⁰ The court permitted Steven Todd's and Glenn Pearce's hearsay statements to come in – not for the truth
27 – but for the jury to evaluate the reasonableness of the officers' conduct and investigation. (RT 20015-
28 20016.)

1 for him to get to his mom’s house from the airport district where he lives. (RT 20017.) On
2 Christmas day, Todd rode past the Medinas’ house at 516 Covenana and noticed their mail sticking
3 out of the mailbox and saw that their car was gone which made him believe no one was home.
4 (RT 20017-20018; 20054; 20057.) He rode his bicycle to his mom’s house and spent time with
5 his kids for Christmas. (RT 20054.) Todd left at about three o’clock in the morning – which was
6 the morning of December 26th.¹⁰¹ (RT 20054.) After he left, Todd rode his bicycle back home
7 but felt bad that he did not have any presents for his kids on Christmas, so he decided to ride past
8 the Medinas’ house again. (RT 20019; 20054.) Officer Hicks confirmed that Todd and Pearce
9 live a very short distance from Covenana. (RT 20059.)

10 During the interview, Todd told Officer Hicks the detail about the various steps he took
11 when they got to Medinas’ house. (RT 20055.) Todd said he arrived at about 3:00 a.m. and
12 parked his bicycle near the fence. (RT 20019.) Todd jumped the fence and started to look around
13 in the shed where he saw Craftsman air tools, air stapler, air compressor, a weed-eater and air
14 blower. (RT 20019-20020.) Todd loaded several things in his backpack and then stacked the
15 larger items by the fence. (RT 20020.) Todd made multiple trips from the Covenana house to his
16 house, taking the property. (RT 20020.) When he returned between 5:00 a.m. and 6:00 a.m.,
17 Todd made some noises outside to see if anyone would wake up before he broke in through the
18 French doors using his foot. (RT 20020-20021; 20054-20055; 20057.) Todd found the safe in the
19 master bedroom and he retrieved the dolly from the backyard, loaded the safe on it and moved it
20 out the front door, to the porch and hid it in some bushes in the front yard. (RT 20021.) After he
21 staged the safe, Todd rode his bicycle back to his house with other stolen property and woke up
22 Glenn Pearce between 6:30 a.m. and 7:00 a.m. (RT 20021; 20055; 20058-20060.) Pearce agreed
23 to help him and Pearce drove his mom’s white car to the house. (RT 20022; 20057; 20058-
24 20060.) Todd wheeled the dolly and safe over to the car and rolled the safe inside before they

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26 ¹⁰¹ Initially, Todd thought he committed the burglary on the morning of the 27th but told Officer Hicks that
27 he was confused on the date and clarified that he committed the burglary on the 26th which correlated with
28 when the Medinas came home at about 4:30 p.m. Also, the evidence from other witnesses’ interviews
indicated that he dispersed most of the property on the 26th, including giving some property to someone
named Mark. (RT 20018-20019; 20056-20057.)

1 left. (RT 20057-20060.) They were only at the house just long enough to load up the safe and left
2 between 6:30 a.m. and 7:00 a.m. (RT 20059-20060.) Todd told Officer Hicks that he saw a media
3 van parked down the street from the Medinas' house. (RT 20059.) Besides the things from the
4 shed, Todd told Officer Hicks that he had taken a few items from a couple closets, but most of the
5 items stolen were from inside the safe. (RT 20023.)

6 During his interview with Officer Hicks, Glen Pearce said that in the early morning hours,
7 around 6:30 a.m. to 7:00 a.m. on December 26, Todd came into his trailer and woke him up. Todd
8 asked Pearce to drive him to a house and help him move a safe and he agreed to help. (RT 20050-
9 20051.) Pearce drove his mom's white, small four-door Honda to the Medinas' house and parked
10 with the passenger side facing the house. As he waited in the car, Pearce watched as Todd got
11 out and retrieved a safe that was on a dolly in the front yard. (RT 20057.) Todd wheeled the
12 dolly and safe to the front passenger side door and Todd had to roll the safe onto the front
13 passenger seat because it was so heavy. Todd closed the door and Todd rode in the back seat,
14 while Pearce drove them back to 1406 Tenaya. (RT 20051-20052.) When they got back to the
15 house, Todd and Pearce unloaded the safe together, but because it was so heavy they dropped it
16 halfway up the driveway and they had to roll it into the backyard where they worked together and
17 opened it. (RT 20052.) Pearce said that they used a sledgehammer and some pry tools to bust
18 the dial mechanism off the safe and eventually pried it open. (RT 20052-20053.)

19 After the burglary, the defendant met with Susan and Rudolfo Medina a couple times to
20 discuss the burglary and on the second occasion he brought Gary Ermoian, his defense
21 investigator, with him. (RT 9633-9635.) The Medinas were offered their recovered property back
22 after Todd and Pearce's arrest in January 2003, however, the Medinas were not interested in
23 keeping the safe, so they authorized the Modesto Police Department to release it to the defendant
24 and his defense counsel. (RT 9607-9608.) Six months later, on July 18, 2003, the defendant,
25 through his counsel, contacted Detective Grogan and requested the safe for forensic testing.
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1 (18612-18613.) Detective Grogan followed up with the police technical services, he was advised
2 that the Medinas' safe had been destroyed after the burglary investigation.¹⁰² (RT 18614.)

3 **XXXI. PENAL CODE SECTION 1405 EVIDENCE**

4 **A. Duct Tape on Laci's Remains**

5 1. Duct Tape Recovered from Laci's Pants

6 Department of Justice Criminalist John Nelson had attended Laci's autopsy performed
7 by Dr. Peterson and documented and collected the physical evidence and samples from her
8 body. (RT 13492-13497.) Like Dr. Peterson explained above, Nelson observed piece of gray
9 duct tape that was adhered to the slacks in the waistband area and draped down across Laci's right
10 thigh, which was among the evidentiary items he collected and labeled as 1-5. (RT 13501.) The
11 duct tape was approximately 15 inches long. (RT 13501-13502.)

12 Duct tape is made of components described as backing which was gray in color in this
13 case and gauze-looking material called scrim. (RT 17069.) The scrim has a grid or weave pattern
14 which consists of fibers called yarn threads.¹⁰³ (RT 17069.) Depending on the manufacturer,
15 criminalists can examine a piece of duct tape and make comparisons to other duct tape based on
16 its width, type of backing, type of adhesive, type of scrim and thread counts. (RT 17073)

17 Department of Justice Criminalist Pin Kyo photographed and examined the duct tape,
18 labeled 1-5, which had been removed from Laci's body during the autopsy. (RT 17067-17068;
19 Trial Exh. 250: A-N.) A corner of the duct tape had been folded over. (RT 17206.) Kyo
20 distinguished the duct tape wrapped around Laci's remains from all other duct tape recovered in
21 this case, including the various duct tapes for which the defense is now requesting DNA testing.
22 The 15.5-inch x 1.5 inch duct tape recovered from Laci's pants was 5 millimeters wide and Kyo
23 counted 38 threads across the width of this duct tape. (RT 17071; 17073)

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25 ¹⁰² Steven Todd and Glen Pearce were convicted of residential burglary on February 4, 2003, in Stanislaus
26 County Case Number 1052511. It is a standard practice for law enforcement to dispose of property in a
27 general felony case after a conviction once the time for appeal has passed.

28 ¹⁰³ Wrap yarn are the threads that run parallel in length and fill yarns are the threads that run the width of
the duct tape. (RT 17069.)

1 In addition, Criminalist Kyo also smelled decomposing tissue coming from the victim's
2 clothing and this duct tape found on the victim. (RT 17078.) Consistent with the barnacles found
3 on Laci's clothing and body, this duct tape had barnacles growing on it and a tangled mass of
4 fibers and tissues along the adhesive side of the tape. (RT 17068-17071.) More barnacles were
5 also observed growing on the shiny or non-adhesive side of the duct tape. (RT 17072.) There
6 were also hairs located on this duct tape and, upon Criminalist Rod Oswalt's examination, he
7 found they belonged to Laci Peterson's pubic hair as discussed below. (RT 17078.)

8 This piece of duct tape that came from Laci's body was submitted for DNA testing which
9 was conducted by Department of Justice Criminalist William Hudlow. (RT 17180-17181.)
10 Hudlow performed a DNA analysis on the duct tape, however, no genetic profile was developed
11 from the samples which included the folded corner that contained a brown or tan substance which
12 Kyo described as fat or decomposing tissue. (RT 17206-17207.) Hudlow did detect a low level
13 of human DNA in both the samples, but there was not sufficient DNA or the DNA was not of
14 acceptable quality to generate a profile. (RT 17207.) Hudlow explained to the jury that when a
15 person decomposes he believed their DNA would decompose as well. (RT 17207.)

16 As discussed in greater detail below, the duct tape located on Laci's body was compared
17 and distinguished from the duct tape located on the Target bag and the other separate loose duct
18 tape that had been collected among the debris. (RT 13523.)

19 2. Laci's Hairs and Defendant's Prior DNA Request

20 There were a total of 12 hairs or hair fragments found on Laci's body. (RT 13667.) Only
21 two were human: one brown pubic hair with a root was one of the four loose hairs collected from
22 Laci's body and the other was a brown pubic hair fragment found on the duct tape. The rest were
23 animal hairs. (RT 13667.) Using microscopic analysis, criminalist Rod Oswalt compared the
24 pubic hair and hair fragment to reference samples taken from Laci and determined the pubic hair
25 and hair fragment were consistent with Laci's reference samples, belonging to her. (RT 13619,
26 13667, 13694-13696, 13704.)

1 On January 28, 2013, the defendant, through his appellate and habeas corpus counsel, filed
2 a Post Conviction DNA motion pursuant to Penal Code section 1405 and requested DNA testing
3 on the pubic hair attached to Laci's groin (item 1-7-D) and a pubic hair fragment (item 1-5B-H2)
4 which had been adhered to the duct tape located on Laci's body. (People v. Scott Lee Peterson,
5 Def. Mtn. for DNA Testing Pursuant to Pen. Code 1405, Jan. 28, 2013, Stanislaus Case 1056770.)
6 After briefing, a hearing was held on March 22, 2013, where defense argued the defendant's
7 theory for the PC 1405 motion was the pubic hair fragment attached to the duct tape – which had
8 been floating in a marine environment – could have been the perpetrator's pubic hair fragment.
9 Defense argued, "Our hypothesis, if this perpetrator had sexually attacked [Laci], would be that
10 the hair was contributed in the same area as her own hair, was corralled by the underwear just the
11 same way as her hair could have migrated out, the hair from the third party could have migrated
12 out." (Hearing on Motion for DNA Testing, March 22, 2013, Stanislaus Case 1056770; CT
13 238:20-28.) After the hearing, the Stanislaus County Court found the requirement for DNA
14 testing was met and granted mitochondrial DNA testing on the pubic hair and pubic hair fragment.
15 (People v. Scott Lee Peterson, Order for DNA Testing, April 17, 2013, Stanislaus Case No.
16 1056770.) However, the results of the DNA testing did not exonerate the defendant and indicated
17 both the pubic hair attached to Laci's groin and the pubic hair fragment attached to the duct tape
18 affixed to her remains belonged to Laci.

19 **B. Target Bag, Pieces of Duct Tape and Packages of Debris**

20 1. Found Approximately 800 – 1000 Feet North of Laci's Remains

21 After Laci's body was discovered along Point Isabel, Officer Timothy Phillips of the
22 East Bay Regional Park District Police Department was called at 12:45 p.m. and asked to
23 assist. (RT 19558.) First, Officer Phillips helped to photograph and document Laci's body,
24 position, clothing and additional evidence when she was rolled over. (RT 19579.) He
25 observed the duct tape that was located on Laci's remains. (RT 19475; 19579.) The officer
26 spent 7 to 7-1/2 hours next to Laci's remains. (RT 19579.) Officer Phillips acknowledged
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1 that decomposition a pretty strong odor that is discernable and it is the kind of smell that lasts
2 with you. (RT 19579.)

3 His next assignment was the task of walking the shoreline to look for items that might
4 have any evidentiary value and, if so, document and collect them. (RT 19572.) Officer
5 Phillips acknowledged that there were a lot of materials and things in the area and that the
6 shoreline was covered in litter and various things brought in from the ocean. (RT 19549.)
7 The standing order for that police department for a long period of time was to collect anything
8 in the area where the remains were found and book any such item into evidence.¹⁰⁴ (RT
9 19573-19574).

10 For instance, Officer Phillips located a piece of fabric wedged into the boulders at the
11 Hoffman Inlet which was approximately 528 feet north of Laci's remains. (RT 19476.) This
12 fabric was a pair of underwear that were in substantially newer condition than the maternity
13 pants (or underwear) that was on Laci's body. (RT 19573.) Despite this, he and other officers
14 collected fabrics based on their proximity to the remains. (RT 19475; 19548; 19573.)

15 Between 8:00 p.m. to 8:15 p.m., a citizen came up to Officer Phillips and indicated
16 that she may have found something of interest and directed him to the location. (RT 19550;
17 19557; 19576.) It was a plastic bag¹⁰⁵, with a Target logo, that was 800 to 1000 feet north of
18 Laci's remains. (RT 12053-12054-16060; 19558.)

19 Officer Phillips was aware the cadaver dog did not alert on the Target bag but decided
20 to collect it anyway. (RT 19583.) He noticed there was duct tape on the bag and since there
21 was duct tape on Laci's body that was one of the reasons they collected it. (RT 17583; 19580.)
22 The Target bag was tangled and wedged into the riprap and Officer Phillips had to pull it out
23 of the broken concrete debris. (RT 19552-19553; 19555; 19577.) The bag had been wrapped

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25 ¹⁰⁴ In fact, Officer Phillips indicated that the East Bay Regional Parks District continued to get calls
26 two and a half months after Laci's and Conner's bodies were recovered and officers collected items
27 into June 2003 from the Berkeley Marina north through the Golden Gate Fields because of their
28 policy. (RT 19574.)

¹⁰⁵ Officer Phillips also referred to the Target bag as a tarp. (RT 19582.)

1 around a severely rusty and brittle metal bar that was covered in barnacles. (RT 19578.) The
2 duct tape actually broke in pieces when he pulled it out. (RT 19578.) Compared to the metal
3 bar that it had been wrapped around, the duct tape looked pretty clean and did not have any
4 barnacles on it. (RT 19578.)



16 Pictured above is an enlarged view of People’s Trial Exhibit Number 98-B, showing
17 where Officer Phillips indicated he located the Target bag, on the other side of Hoffman
18 Channel about 800 to 1,000 feet north of where Laci's body was recovered. (RT 19549-
19 19551, 19558.) At trial, Officer Phillips memorialized the locations by drawing a line and
20 writing the words “Target Bag” and “Fabric” at the bottom of People’s Exhibit Number 98-
21 B. (RT 19552; 19566.)

22 Pictured below is Defense Trial Exhibit Number D8M13 which depicts the Target bag
23 and duct tape tangled in the riprap on April 14, 2003.

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10 Although it was not documented in his report, Officer Phillips testified at trial that he
11 smelled an odor and believed it was similar to the odor of the human remains that were
12 recovered earlier. (RT 19554; 19580.) On the other hand, Detective Ian Frazer, the lead
13 investigator, was also present and did not detect the smell of human remains, but rather he
14 observed that the bag had been in the water for a long period of time and smelled like the typical
15 shoreline of seaweed and algae. (RT 17582.) Officer Phillips took the items he collected to
16 the Coroner's Office, where Laci's remains had also been taken and he turned the items over
17 to a criminalist. (RT 19554.)

18 2. Common for Duct Tape to be Attached to a Target Bag

19 Richard Atkinson, an employee of TARGET Products Limited, a manufacturer of
20 cementitious.¹⁰⁶ products that are used in the construction industry, testified at trial. (RT 17240-
21 17242) The company is based out of Canada but has distributors up and down the West Coast of
22 the United States. (RT 17242.) Generally, their product will be shipped through the distributors
23 but there are times that they will direct ship from their manufacturer when they have large
24 products. (RT 17245-17246.)

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26 ¹⁰⁶ Cementitious products are materials that contain cement, cement byproducts and sand. (RT 17241.)
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1 Their product is shipped in two ways. Either 56 individual 55-pound bags are shipped on
2 a single pallet, or the cementitious material may be shipped in bulk in a large bulk bag. (RT
3 17242.) Either way, in preparation for shipping and keeping the product dry, the pallet and the
4 bulk bags are covered with a waterproof bag which they call a “poly cap” and then stretch wrap
5 is placed around the Poly cap to secure the Poly cap (or Target bag) in place. (RT 17245.)

6 Atkinson confirmed that People’s Trial Exhibit Number 251-A, depicted below, is a
7 photograph of one of their Target Products Limited waterproof pallet cover bags, known as a
8 “Poly cap.” (RT 17243-17244; People’s Trial Exh. 251A.) He explained that the bag is a six-mil
9 poly bag shaped in the form of 4 feet by 4 feet by 4 feet. The Poly cap has their company blue
10 and yellow bulls-eye logo depicted with the word TARGET written at an angle across it.¹⁰⁷ (RT
11 17243-17244; People’s Trial Exh. 251A.)



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23 In 2003, Atkinson’s company had a large job at the Richmond/San Rafael bridge in the
24 Bay – just north of where Laci’s remains were found – which required four to 5000 pallets and
25 3000 bulk bin bags of material for the job, shipped over a period of several weeks. (RT 17246.)
26 This job equated to approximately 8000 poly cap bags. The poly caps are not returned to their

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28 ¹⁰⁷ This Target company manufactured cementitious products for use in the construction industry and had no affiliation with the well-known retailer with the same name. (RT 17241.)

1 company and usually considered garbage and disposed of at the job site. (RT 17246-17247.)
2 Atkinson was aware that at the Richmond/San Rafeal bridge project the contractor had a large
3 holding yard, referred to as a lay-down yard, where he would order the material, sometimes five
4 truckloads a week, and have it stockpiled there so that it could be put on barges and hauled back
5 and forth to the middle of the bridge spans when it was required. (RT 17248.)

6 Atkinson described how it was common for duct tape to be placed on the poly caps. When
7 loading the bulk bin bags, the material was moved from the holding area and loaded onto the
8 barge by a forklift. However, they had to use a small crane, called a cherry-picker, to pick it up.
9 In order for the crane to pick it up, the workers would cut the stretch wrap off and remove the
10 Poly cap so the crane can connect to the lugs located on the top of the bulk bin bag, pick up the
11 bag and move it to the location on the bridge. The workers would then place the Poly cap back on
12 and since there is no stretch wrap the crew will frequently use duct tape, wrapping it around the
13 bottom of the poly cap bag to secure it in place to weatherproof their materials. (RT 17249-
14 17250.) Atkinson acknowledged that the wind at the Bay could easily pick up a loose Poly cap
15 bag and blow it away. (RT 17250.)

16 3. Target Bag Duct Tape and Three Separate Pieces of Duct Tape Were
17 Distinguished from the Duct Tape found on Laci's Body

18 The defendant is requesting DNA testing on (1) Target bag; (2) duct tape attached to
19 Target bag; (3) pieces of duct tape; and (4) debris from Target bag. (Def. Mtn. For DNA Testing,
20 pages 4-5.) Department of Justice Criminalist Pin Kyo photographed and examined item 1-10¹⁰⁸
21 which was a Target products bag with a piece of duct tape associated with it and an item labeled
22 as 1-11 which contained three additional pieces of duct tape. (RT 17073; 17075-17077; 17165;
23 17169-17170; People's Trial Exh. 251: A-B.) In addition to the piece of duct tape that had been
24 affixed to the Target product plastic bag, Kyo observed shrimp-like crustaceans on the bag. (RT

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26 ¹⁰⁸ Kyo examined the Target products bag and corresponding piece of duct tape, labeled 1-10, on two
27 different occasions. The first request was number 15 was the original request in May 2003 which included
28 her examination of all the items. The second request was in August 2004 which was for Ms. Kyo to
examine and document any distinct smells of decomposition. (RT 17189-17190.)

1 17188.) She also documented other items and debris that were associated with the bag, such as
2 shells, white foam, belly of an insect and seaweed.¹⁰⁹ (RT 17170; 17186.) Kyo noted short, fine
3 hairs on the Target products plastic bag which were repackaged with the rest of the debris and
4 resealed with the Target bag.¹¹⁰ (RT 17187.)

5 Like Officer Frazier, Kyo did not detect any decomposition or rotting tissue smell from
6 the Target bag or duct tape, but rather it just smelled like a normal item that had come out of the
7 ocean. (RT 17076; 17078; 17167- 17168.)

8 Kyo's examination of the other duct tape was to evaluate whether it had any association
9 to the duct tape that was on Laci's remains. (RT 17167.) She did not locate any barnacles on
10 either the duct tape located on the Target bag or on the Target bag labeled 1-10, or the three duct
11 tapes from the bay labeled item 1-11. (RT 17076.) Nor were there any tissues or any fat or
12 decomposition type materials found on either the Target bag, the duct tape attached to the Target
13 bag or the three pieces of loose duct tape. (RT 17076.) Kyo found that the duct tape attached to
14 the Target bag contained a thread count of 44 and the three pieces of duct tape, labeled 1-11,
15 contained thread counts of 42, 42 and 40, but she further explained that the one with 40 threads
16 had missing threads which she was definitively unable to count. (RT 17077.) Based on her
17 examination, Kyo found the duct tape from the Target bag and three loose pieces of duct tape
18 were distinguishable from the duct tape found on Laci's remains.

19 **C. Twine and Package of Debris**

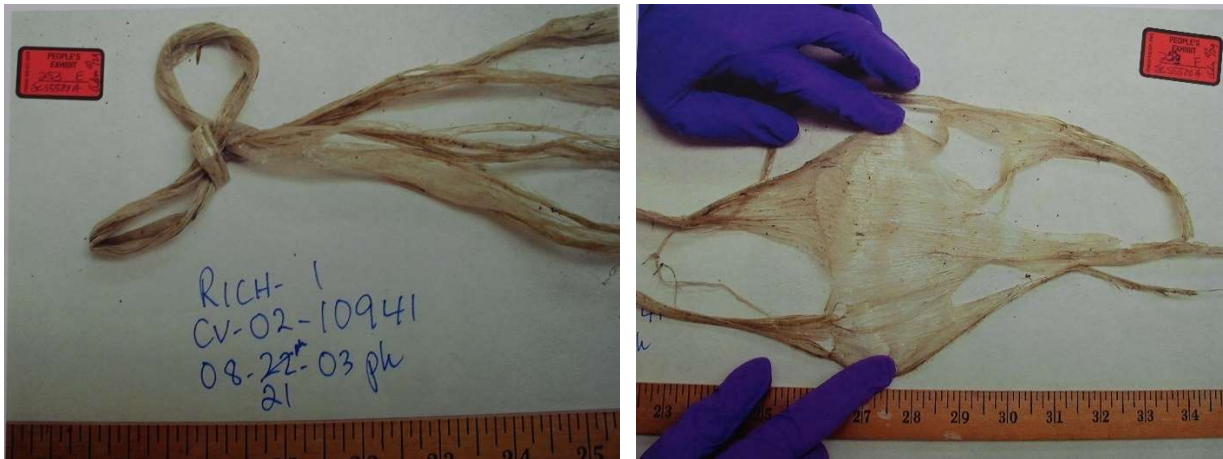
20 There was no clothing on Conner's body. (RT 17442.) There was a piece of plastic twine
21 or tape around Conner's neck and under his left arm. Dr. Peterson referred to the twine as tape
22 although the criminalist referred to it twine. Dr. Peterson found that on one end of the tape, near
23 Conner's left shoulder, was a knot. He observed there were about two centimeters between the

24 ¹⁰⁹ Prior to examining evidence, Kyo placed white butcher block paper on the counter and then any debris
25 that falls off from the item, here the Target bag, was collected and repackaged. (RT 17186.)

26 ¹¹⁰ This is not new evidence. Defense counsel was aware and had cross-examined Criminalist Kyo during
27 trial regarding these "short fine hairs" that were associated to the Target products bag along with the other
28 debris. (RT 17186-17190.)

1 tape and Conner's neck. (RT 17444.) The skin underneath the tape was not damaged. (RT 17445.)
2 Because there were no external or internal injuries associated with the tape, Dr. Peterson
3 concluded that the tape was debris that had become associated with the body. (RT 17445.) Dr.
4 Peterson explained that if the tape had been a ligature purposefully placed around the neck, there
5 would have been evidence of injuries associated with such use. (RT 17445-17446.) (See People's
6 Trial Exhs. 258A-E [sealed] for further details on placement of the twine.)

7 Department of Justice Criminalist Pin Kyo photographed and examined the twine found
8 on Conner's body. (RT 17084-17085; 17088; People's Trial Exh. 253: A-I.) The twine appeared
9 to be curled over or tied in a very loose bow-like knot which Kyo easily undid. (RT 17085-17086;
10 17145.) People's Trial Exhibit Number 253 E, pictured below, shows the loose bow-like knot
11 Kyo described.



19 Once she unraveled the bow, she was able to stretch the twine out and saw a taut, very
20 tight, overhand knot on the left end which had nothing to do with the bow. (RT 17086-17087;
21 17146.) People's Trial Exhibit Number 253 F, pictured above, shows the material stretched out.
22 (People's Trial Exh. 253 F.) Kyo found it was approximately 50 inches long and 6-inches wide
23 and Kyo described the twine to have a "musty smell, not like the ocean smell, but a more mustier
24 smell." (RT 17086; 17088; 17146-17147.) There were no hair-like fibers or barnacles found on
25 the twine. (RT 17089-19090.) Criminalist Sarah Yoshida determined that the material was
26 polyethylene seine twine which Kyo researched and learned that type of material is commonly
27 used in the packaging industry and fishing industry. (RT 17087-17088; 17147-17148.)
28

1 Kyo also had examined a package of materials that had been recovered from Point Isabel
2 by the East Bay Regional Park District Police Department which contained debris from the Bay.
3 (RT 17090; 17092; 17177; People’s Trial Exh. 254: A-E.) The plastic and other debris smelled
4 like the ocean, not decomposition. (RT 17177.) Among the debris and junk¹¹¹ were pieces of
5 plastic type twine. (RT 17092, 17094; Exh. 254: D-E.) People’s Trial Exhibit Number 254 D,
6 depicted below, shows some of the additional twine and various items that were found in the pile
7 of debris which included a purple glove, food packaging material and caution tape. (RT 17092-
8 17093; People’s Trial Exh. 254 D.)

9 Criminalists Sara Yoshida and Pin Kyo examined one of these pieces of plastic type twine
10 that came from the Bay debris and found that it was chemically consistent in appearance and
11 width and material as the plastic polyethylene seine twine from Conner’s body. (RT 17094-
12 17095, 17149.)



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26 ¹¹¹ The debris consisted of a variety of junk which, in addition to the plastic type twine, included white
27 paper wrap, pieces of plastic, hairs, fiber-like debris, purple glove, food packaging, empty Brisk drink
28 container, a green glove, half inch green ties, quarter inch yellow ties, yellow caution tape, a dirty sock, a
twig, 17-inch long piece of plastic, plastic material and pieces of plastic type twine. (RT 17091-17094.)

1 **D. Black Tarps**

2 1. Black Tarp Located on April 15, 2003 by Jean Bonadio¹¹²

3 On April 15, 2003, at about 1115 hours, Regional Parks Dispatch advised Sgt. David
4 Dubowy with the East Bay Regional Park District Police Department, that a park user had found
5 a large black plastic tarp along the Point Isabel Shoreline where the female remains had been
6 recovered the day before. Sgt. Dubowy responded and met with Jean Bonadio who told him that
7 she arrived at Point Isabel at 9:55 a.m. to walk her dogs. At about 11:00 a.m., Bonadio was
8 walking southward along the shoreline directly across from the “Mud Puppies” concession stand
9 when she saw a large black plastic tarp laying amongst the rocks. Bonadio said she was aware of
10 the body recovery the previous day and called the police. She led Sgt. Dubowy to the tarp that
11 was located in the shoreline’s rip-rap several hundred feet south of Laci Peterson’s recovery site.
12 (Bates:: 17094; 20033.)

13 This was not Jean Bonadio’s first involvement in the investigation of Laci’s
14 disappearance. On January 4, 2003, Jean Bonadio called the Modesto Police tip line and said she
15 was a former deputy with the sheriff’s office in Contra Costa and Alameda County. She indicated
16 that she had two dogs that the police could utilize. A handwritten note, next to the tip, says to
17 forward this tip to Sgt. Cloward. (BATES: 14974.)

18 After that, on February 13, 2003, Jean Bonadio sent an email in response to the America’s
19 Most Wanted segment on Laci Peterson that aired on January 25, 2003. She sent the email and
20 titled it “suggestion.” She provided the same phone number.

21 “I’m unable to type in the suggestion fields in the lacipeterson.com site--even
22 the 'webmaster' form is non-functional. Unknown if others have reported the
23 problem-please relay this to the family.

24 Would like to know the feasibility of searching the San Pablo Dam and
25 Lafayette Reservoir (both are near the route to the Berkeley area). If these two
26 bodies of water are known to Scott, it may be worth a search. I have 2 search

27 ¹¹² It appears that Jeanette Rose “Jean” Bonadio passed away on August 22, 2013.
28 (www.findagrave.com/memorial/119801821/jeanette-rose-bonadio.)

1 sniffer dogs who have also been successful in finding deceased animals. I'm a
2 former Marine Deputy Sheriff. At this point I have my doubts if having
3 anything with Laci's scent would be beneficial, but if you feel the search with
4 or without a scent sample in these two areas would be helpful, let me know.

Jean Bonadio (phone number redacted)” (Bates: 13018.)

5 2. Black Tarp Located on May 11, 2003 by Jean Bonadio¹¹³

6 After calling the Modesto Police tip line on Monday, May 12, 2003, Jean Bonadio spoke
7 with Detective Al Brocchini regarding a piece of plastic she found at the San Francisco Bay on
8 the previous day. She had not called the local authorities, but instead, picked up the item and
9 collected it herself. Bonadio wanted to make arrangements to give it to the Modesto Police
10 Department. Brocchini relayed the information to Detective Grogan. (BATES: 3631; 21186.)

11 The following day on May 13, 2003 at 10:00 a.m., Jean Bonadio went to the Vallejo Police
12 Department with the piece of plastic tarp she had collected and told them it was evidence.
13 Members of the Vallejo Police Department contacted Detective Grogan who advised to have their
14 agency collect the piece of tarp and he would have someone call them later. (BATES: 3631.)

15 Later that day, Bonadio told Detective Grogan that after Laci Peterson was recovered on
16 the shoreline of Point Isabel, Bonadio went the following day (April 15th) to the location
17 specifically for the purpose of searching for evidence. Bonadio said she felt that the crime scene
18 had been broken down too soon by the local officers and that she might recover more evidence.
19 As indicated above, Bonadio found a black tarp on April 15, 2003 and contacted the East Bay
20 Regional Park Police to collect the item. She was disappointed that the East Bay Regional Park
21 Police officers had discussed the discovery of the first tarp with the media. This time she wanted
22 to avoid any media coverage of her recent tarp discovery. (BATES: 30631.)

23 Bonadio told Detective Grogan that on Sunday, May 11, 2003 at about noon, she had taken
24 her dogs to Point Isabel area to walk on the beach and look for additional evidence, if there was
25 any to be found in that immediate area. Bonadio found a piece of tarp that was white on one side

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27 ¹¹³ Bonadio is unavailable to establish foundation and chain of custody due to her death on August 22,
28 2013.

1 and black on the other with gray duct tape attached to it. She described the item as folded which
2 was about eighteen inches by one foot and she did not attempt to unfold it.

3 Bonadio did not know if this was evidence of the case or if it matched the other tarp that
4 she found but she felt compelled to turn it over to the police. She had such a prior negative
5 encounter with East Bay Regional Park Police, that she decided to collect the item herself rather
6 than contact them. The item remained in her car throughout Monday and then she saw that the
7 seaweed was beginning to dry on it so she took it to the Vallejo Police Department.

8 Bonadio indicated that she was a former Contra Costa County and Alameda County
9 Sheriff's Deputy but was currently unemployed in the law enforcement field. She also shared
10 that she was in the process of trying to purchase a house and was currently living out of a motel
11 and that is why she took her dogs for a walk at the beach. (BATES: 30632.)

12 On May 26, 2003, at 10:45 a.m. East Bay Regional Park District Police Officer A. Rosas
13 was assigned to collect the evidence Jean Bonadio had turned in. Officer Rosas spoke to Bonadio
14 who told him that at 9:50 a.m. she was walking her dogs on the west shoreline over at Point Isabel
15 Regional Park and found a black piece of plastic. The black piece of plastic was lying on the
16 rocks. According to Bonadio, the item was located two-tenths of a mile north of the south curb
17 line and 100 paces from the west curb. Bonadio decided to move the item with a stick and found
18 wet sand below it. Officer Rosas's report indicates that he collected the item after Lieutenant
19 Small and Sergeant Hall photographed the item at the scene. (BATES: 22524.)

20 **E. Medina's Work Glove and Hammer**

21 On December 26, 2002, Susan Medina observed one of her leather gardening gloves had
22 been removed from their outside storage shed and a hammer placed inside it. Both items were
23 found in the Medinas' bedroom sitting on their bed. (RT 9608.) The defendant is requesting
24 DNA examination of this gardening glove and hammer. The Modesto Police Department property
25 and evidence logs from the case do not indicate that the glove or hammer was collected during
26 the investigation. However, it is unclear from the defendant's moving papers whether Susan
27
28

1 Medina provided these items to the defendant and defense investigator in January 2003 when as
2 she met with the defendant and Gary Ermoian and authorized the release of their recovered safe.

3 **F. Arson Involving an Unreported Stolen Van on December 25, 2002**

4 The defendant is seeking Post-Conviction DNA testing on items related to 2002 arson
5 investigation involving an unreported stolen vehicle under Modesto Police Department case
6 number 02-142591. These items include: (1) cloth from mattress; (2) a piece of partially burned
7 mattress cloth; (3) cloth from van fuel tank; (4) metal fuel container in the center on a mattress.
8 (Defense Mtn. For DNA Testing, p. 3-4.)

9 1. An Arson and Stolen Van Investigation¹¹⁴

10 On December 25, 2002 at approximately 7:57 a.m., 911 Dispatch received a call from an
11 unnamed citizen regarding a vehicle on fire in the alley between Thrasher and Empire. Stanislaus
12 County Fire Department was dispatched to the location.

13 Fire Captain Delbert Jolly arrived on scene and found that this was a fully involved van
14 fire. There was a rag hanging out of the gas fill hole with the gas cap located on the ground,
15 however, that was not the cause of the fire. There were three or more gas cans in the vehicle with
16 evidence of flammable liquid used in the interior of the vehicle. The battery was missing in the
17 van. The fire department deemed the cause to be arson. Captain Jolly called in a fire investigator
18 to complete the investigation. He also requested a Police Community Service Officer to process
19 the scene, however, he was informed that they were all tied up on a different investigation.

20 The vehicle was a 1989 Chevrolet van, registered to Terry and Dottie Borden. Fire
21 Inspector Spitulski spoke to Terry Borden on the phone. Terry Borden stated that he did not know
22 the van was missing until he was contacted by dispatch. He owned a crane business called Borden
23 and Son's Crane and Rigging, located in Ceres. Borden reported that he had another vehicle
24 stolen from his yard about two weeks prior to this theft. The van was paid off and Borden only
25 carried liability insurance. Borden indicated that there would have been house jacks and fuel cans

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27 ¹¹⁴ The below information was taken from Modesto Police Department case 02-19142 marked as Bate
28 pages 3781; 4019-4110.)

1 located in the van. Borden indicated that any one of his workers would have access to the keys
2 to the van. He indicated there should not be a mattress in the back of the van.

3 The van was transported to a separate location and an arson investigation was conducted.
4 Upon inspection, the items missing were the front passenger window, the vehicle's battery and an
5 oil cap. The front of the van sustained the most fire damage, including the driver's side door,
6 dashboard, steering column, engine cover and both front and passenger seats. The investigator
7 was unable to determine if a key was used in the ignition due to the damage. There were three
8 fuel containers located in the rear of the van; (1) a red plastic container near the slider door; (2) a
9 metal fuel container in the center on a mattress; and (3) a yellow plastic fuel container marked
10 Diesel next to the slider door.

11 Spitulski determined that this was an incendiary fire which started in the front interior cab
12 of the van caused by an open flame device and ignited by ordinary common combustibles. At
13 that time, Spitulski took pictures and only collected the cloth from the fuel tank fill hole. The
14 cloth was booked into evidence at Modesto Police Department.

15 Meanwhile, Modesto Police Department was conducting two other investigations
16 involving the disappearance of Laci Peterson¹¹⁵ and a burglary which occurred on Covena
17 Avenue. Based on a December 27th tip from Diane Jackson, who claimed to have seen a white
18 van and three dark-skinned individuals on Covena at 11:40 a.m. on December 24, 2002, the police
19 were tracking down any and all vans involved in collisions or which officers had contacts from
20 traffic stops or investigations. (RT 18682; 20060-20061.)

21 As a result of this, on January 1, 2003, Community Service Officer Doug Lovell went to
22 AandR Towing to look for any evidence involved in Laci's disappearance or the burglary case.
23 From the outside of the vehicle, Lovell observed that the interior had almost been completely
24 charred, leaving only a small amount of bedding material and a pillow with original fabric. He
25 saw there were reddish brown stains on that fabric and took samples. Lovell conducted a

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27 ¹¹⁵ Spitulski's only involvement in the investigation involving the disappearance of Laci and Conner was
28 on January 2, 2003, when he contacted Detective Grogan to advise that he had heard an unsubstantiated
rumor that Laci Peterson had possibly been dating another man. (BATES: 0183.)

1 presumptive test for the presence of blood and received a faint positive reaction. Lovell then took
2 the van into a covered secure environment and collected a sample of the original fabric and a
3 second sample of the mattress sheet. Lovell gave both samples to Fire Investigator Spitulski and
4 Modesto Police Detective Stough. He took six photos during the process.

5 On December 31, 2002, Modesto Police Detective Shipley and Fire Investigator Spitulski
6 met with Terry Borden at his business located at 1112 East Service Road in Ceres.

7 2. Mattress Clippings and Defendant's Second Request for DNA Testing

8 On January 2, 2003, Department of Justice criminalist Pin Kyo examined the two pieces
9 of cloth, listed as items one and two from Modesto Police Department case number 02-142591.
10 The stains were examined on item number two and tested for blood. Item number two was listed
11 as a "clothe from mattress" and Kyo's notes described it as an approximate 12" diameter of
12 apparent burned piece of cloth with dark brown stains. Kyo found there was no blood detected on
13 item number two. Item number 1 was not examined. She released the items back to Modesto
14 Police Department.

15 The defendant requested additional DNA testing be done on items found in the stolen
16 orange van. In 2019, the parties signed a Joint Stipulation For Post-Conviction Examination of
17 Physical Evidence, whereby "Item #1" described as "cloth from mattress" and Item #2 described
18 as "a piece of partially burned mattress cloth" would be subjected to further DNA testing. The
19 parties agreed that if blood was detected on either item, DNA would be extracted and the gender
20 determined. If the source of the DNA was female, additional testing would be done to determine
21 the genetic profile. On June 18, 2019 the Honorable Thomas Zeff granted the order for DNA
22 testing pursuant to the parties stipulated conditions. (People v. Scott Lee Peterson, Order for
23 DNA Testing, June 18, 2019, Stanislaus Case No. 1056770.) The testing was done and the results
24 indicated the blood on the mattress clipping was a male profile, and as such, no further testing
25 was needed.

26 **RELEVANT PROCEDURAL HISTORY**

27 On April 21, 2003, defendant Peterson was charged with the First Degree special
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1 circumstance murders of Laci and his unborn son, Conner.

2 On November 12, 2004, following a change of venue to the San Mateo County Superior
3 Court (JNE Exhibit, “Exh.”, 1 and 2, Defendant’s Change of Venue Motion and the People’s
4 Opposition to Change of Venue Motion), a jury found defendant guilty of Premeditated First
5 Degree Murder of Laci and Second Degree Murder of Conner and found true the special
6 circumstance of multiple murders.

7 Defendant filed a Motion for New Trial on February 25, 2005. (JNE Exh. 3.) The Office
8 of the District Attorney filed an opposition on March 9, 2005. (JNE Exh. 4.) The Trial Court
9 denied defendant Peterson’s Motion for New Trial on March 16, 2005 and then sentenced
10 defendant Peterson to death.

11 Defendant Peterson filed his Opening Brief in his automatic appeal on July 5, 2012. (JNE
12 Exh. 5.) Defendant filed a Motion for DNA testing in 2013, the People opposed and the Court
13 granted defendant’s Motion for DNA Testing. (JNE Exhs. 6-8.) The results of the 2013 DNA
14 testing are included in JNE Exh. 9.

15 In 2015, defendant Peterson also filed a Petition for Writ of Habeas Corpus while his
16 appeal was pending. (JNE Exhs. 10-12.)

17 Following briefing, the California Supreme Court affirmed defendant Peterson’s
18 conviction on August 24, 2020, but remanded the matter to the trial court to retry the penalty.
19 (JNE Exh. 13.) 2020 On October 14, 2020, the California Supreme Court denied all but one of
20 defendant Peterson’s claims listed in his Petition for Writ of Habeas Corpus. (JNE Exh. 14.) On
21 December 20, 2022, following briefing and an evidentiary hearing, the trial court denied
22 defendant Peterson’s remaining claim in his Petition for Writ of Habeas Corpus. (JNE Exh. 15.)

23 Defendant Peterson filed a subsequent Petition for Writ of Habeas Corpus in the First
24 District Court of Appeal on April 19, 2023. (JNE Exh. 16.) The Attorney General’s Office replied
25 with an Informal Response on July 25, 2023. (JNE Exh. 17.)

26 On August 22, 2023, defendant Peterson’s newly appointed counsel, Coreen Ferrentino,
27 reached out to the Office of the District Attorney to schedule a meeting to discuss the newly
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1 discovered evidence. A meeting was scheduled for August 30, 2023 and then cancelled. (People’s
2 Opp. Exh. 1.)

3 On November 13, 2023, the Los Angeles Innocence Project substituted-in as counsel for
4 defendant Peterson and requested a suspension of defendant Peterson’s Habeas Corpus Petition
5 proceedings for litigation of post-conviction discovery and DNA testing in the Trial Court.

6 On November 14, 2023, the Office of the District Attorney received defendant Peterson’s
7 50+ page informal request for discovery as well as an email asking for DNA testing and a meeting
8 to confer. On December 14, 2023, the Office of the District Attorney responded and suggested a
9 meeting in January of 2024.

10 On January 17, 2024, the Office of the District Attorney received defendant Peterson’s
11 Motion for Post Conviction Discovery, Motion for DNA Testing and Motion to Seal via electronic
12 mail. Included within the email was a statement that “[t]he exhibit files are too large to send as
13 email attachments, but the service copies with complete exhibits have been placed in the mail and
14 should arrive in a few days.” (People’s Opp. Exh. 2.) The motions were filed in the Trial Court
15 with a date of January 17, 2024. However, the printed motions with exhibits in support of the
16 motions were received by the Office of the District Attorney on January 19, 2024. The Attorney
17 General’s Office received the exhibits to the motions on a flash drive on January 23, 2024 via
18 U.S. mail.

19 On January 22, 2024, Paula Mitchell contacted the Office of the District Attorney and
20 suggested a meeting in February of 2024. On February 13, 2024, Ms. Mitchell and other members
21 of the Los Angeles Innocence Project met with members of the Office of the District Attorney.

22 **WHILE THE COURT MAY TAKE JUDICIAL NOTICE OF PREVIOUSLY FILED**
23 **PETITIONS FOR RELIEF BY DEFENDANT, THE STATEMENTS FROM WITHIN**
24 **THESE PETITIONS ARE INADMISSIBLE HEARSAY;**
25 **REQUEST FOR JUDICIAL NOTICE**

26 The defendant has a second Petition for a Writ of Habeas Corpus (Petition) pending before
27 the California Court of Appeal, First Appellate District, Case No. A167615, filed April 19, 2023,
28

1 asserting violations of various claimed rights including his claim of newly discovered evidence.
2 The defendant asks this Court to incorporate by reference each of the facts he has alleged in his
3 Petition; he also requests this Court to take judicial notice of all pleadings and filings in *People v.*
4 *Peterson*, San Mateo County Superior Court Case Number SC055500A, *People v. Peterson*, Case
5 Number S132449, and *In re Peterson*, Case Number S230782.

6 While this Court may take judicial notice of the legal history of this case, including the
7 defendant’s conviction, the prior Supreme Court rulings against his legal and factual claims and
8 the denial of his prior Writ Petition, it may not accept his claimed facts in pleadings as evidence
9 in this proceeding.

10 In *People v. Tolbert* (1986) 176 Cal.App.3d 685, 690, the court held:

11 Judicial notice may be taken of the records of a court of this state (Evid.Code, §
12 452, subd. (d); *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914). This is not to say,
13 however, that judicial notice may be taken of the truth of facts asserted in every
14 document in a court record. (*Day*, at p. 904; *People v. Rubio* (1977) 71 Cal.App.3d
15 757, 766, 139 Cal.Rptr. 750.) Ordinarily a court may notice the existence of
16 another court’s findings of fact and conclusions of law in support of a judgment,
17 because they are conclusive and uncontrovertible in character and not reasonably
subject to dispute. **But judicial notice cannot be taken of hearsay allegations as
being true, even those made by a judge-declarant, just because they are part
of a court record or file** (*Day*, 50 Cal.App.3d at p. 914,; *Rubio*, 71 Cal.App.3d at
p. 766; see also Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice,
§ 47.2, at pp. 1757–1759.)

18 (Boldface added.)

19 We encourage this Court to take judicial notice as appropriate.

20 “A court cannot take judicial notice of hearsay allegations as being true, just because they
21 are part of a court record or file.” (*People v. Sur. Ins. Co.*, (1982) 136 Cal. App. 3d 556, 564;
22 citations omitted.)

23 “As was stated in *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914, (a) trial court may
24 properly take judicial notice of the records of any court of record of any state of
25 the United States. But, as is stated in Jefferson, California Evidence Benchbook
26 (1972) Judicial Notice, section 47.3, at page 840: Caveat: Limitations on judicial
27 notice of court records. What is meant by taking judicial notice of court records?
28 There exists a mistaken notion that this means taking judicial notice of the
existence of facts asserted in every document of a court file, . . . a court *cannot*
take judicial notice of Hearsay allegations as being true, just because they are part
of a court record or file. . . .” (*People v. Rubio*, (1977) 71 Cal. App. 3d 757, 766,

1 disapproved of on other grounds in *People v. Freeman* (1978) 22 Cal. 3d 434;
2 internal quotations and citations omitted; Italics in original.)

3 The People hereby ask this Court to take judicial notice pursuant to Evid. Code, § 451 –

4 Judicial notice shall be taken of the following: (a) The decisional, constitutional,
5 and public statutory law of this state and of the United States and the provisions of
6 any charter described in Section 3, 4, or 5 of Article XI of the California
7 Constitution;"

8 Evid. Code, § 452:

9 (a) The decisional, constitutional, and statutory law of any state of the United
10 States and the resolutions and private acts of the Congress of the United States and
11 of the Legislature of this state; ****

12 (d) Records of (1) any court of this state or (2) any court of record of the United
13 States or of any state of the United States;

14 And Evid. Code, § 453:

15 The trial court shall take judicial notice of any matter specified in Section 452 if a
16 party requests it and: (a) Gives each adverse party sufficient notice of the request,
17 through the pleadings or otherwise, to enable such adverse party to prepare to meet
18 the request; and (b) Furnishes the court with sufficient information to enable it to
19 take judicial notice of the matter.

20 The People ask this Court to take judicial notice of the Supreme Court's decision in
21 Supreme Court No. S132449 (JNE Exh. 13 affirming defendant's conviction); the Supreme
22 Court's opinion in Supreme Court No. S230782 (JNE Exh. 14, denial of defendant's Petition for
23 Habeas Corpus); the defendant's first Petition for Habeas Corpus and related pleadings to allow
24 this court to review the issues raised by the defendant and the Attorney General's Return/Reply
25 to the Petition (JNE Exhs. 10-12, 18) and the court file of this instant matter case number
26 SC055500A which includes the trial record (including all transcripts of all proceedings which
27 were previously provided on a disk) and accompanying exhibits (being lodged with this Court
28 this date). "The trial court takes judicial notice of its own records in the proceeding on trial."
(*People v. Rhodes* (1934) 137 Cal.App. 385, 391.)

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1 To assist the court, we have attempted to identify matters for which judicial notice does
2 not seem to be in dispute by marking the items with “JNE” before the assigned exhibit number.
3 To avoid confusion, we are using the actual trial numbers whenever possible. Additionally, the
4 defense has provided a transcript that is not consistent with the actual trial record as it includes
5 Stanislaus County proceedings in place of San Mateo hearings; as stated above to avoid confusion
6 on April 16th the People provided the court (and counsel) with a disk (CD) which has the day by
7 day trial record in PDF format as well as an index that will allow for electronic search commands.

8 LAW AND ARGUMENT

9 I.

10 **THERE IS NO SUBSTANTIVE CONSTITUTIONAL RIGHT** 11 **TO POST-CONVICTION DNA TESTING**

12 The People note at the outset that there is no constitutional entitlement to post-conviction
13 DNA testing because no substantive constitutional right is implicated.

14 The United States Supreme Court declined to create such a right in *District Attorney’s*
15 *Office for the Third Judicial District v. Osborne* (2009) 129 S. Ct. 2308 (557 U.S. 52; 174 L.Ed.2d
16 38.) The Court held that while the defendant in *Osborne* did possess a “liberty interest” in
17 attempting to demonstrate his innocence under the law of the state, this was not equivalent to the
18 rights he enjoyed before trial.

19 Rather, the Court made the fundamental point that once a defendant has received a fair
20 trial and been convicted, the presumption of innocence disappears. (*Id.* at pp. 67-70.) A state
21 then has greater flexibility in determining the procedures that must be followed to obtain post-
22 conviction relief. When a state chooses to offer assistance to defendants who seek to challenge
23 their convictions, the Court held, “due process does not dictate the exact form such assistance
24 must assume.” (*Id.* at p. 69, internal quotations and citations omitted.)

25 The decision in *Osborne* was reaffirmed last year by the United States Supreme Court
26 when it stated:

27 The Court has “rejected the extension of substantive due process to this area, and
28 left slim room for the prisoner to show that the governing state law denies him

1 procedural due process.” *Ibid.* (citation omitted); see *District Attorney's Office for*
2 *Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69, 72, 129 S.Ct. 2308, 174 L.Ed.2d
3 38 (2009).

4 (*Reed v. Goertz* (2023) 598 U.S. 230, 235.)

5 In the concurrence to Chief Justice Roberts’s decision in *Osborne*, Justice Samuel Alito
6 recognized that while DNA may produce “highly reliable results”... “it fails to provide ‘absolute
7 proof’ of anything.” (*District Attorney’s Office for Third Judicial Dist. V. Osborne* (2009) 557
8 U.S. 52, 80-81.)

9 Justice Alito explained the concerns noted by a scholar:

10 “[F]orensic DNA testing rarely occurs [under] idyllic conditions. Crime scene
11 DNA samples do not come from a single source obtained in immaculate
12 conditions; they are messy assortments of multiple unknown persons, often
13 collected in the most difficult conditions. The samples can be of poor quality due
14 to exposure to heat, light, moisture, or other degrading elements. They can be of
15 minimal or insufficient quantity, especially as investigators push DNA testing to
16 its limits and seek profiles from a few cells retrieved from cigarette butts,
17 envelopes, or soda cans. And most importantly, forensic samples often constitute
18 a mixture of multiple persons, such that it is not clear whose profile is whose, or
19 even how many profiles are in the sample at all. All of these factors make DNA
20 testing in the forensic context far more subjective than simply reporting test results
21” Murphy, *The Art in the Science of DNA: A Layperson's Guide to the*
22 *Subjectivity Inherent in Forensic DNA Typing*, 58 *Emory L.J.* 489, 497 (2008)
23 (footnotes omitted).

24 (*Id.* at 81.)

25 Justice Alito also identified the State’s “important interests in maintaining the integrity of
26 its evidence and the risks associated with evidence contamination increase every time someone
27 attempts to extract new DNA from a sample.” (*District Attorney’s Office for Third Judicial Dist.*
28 *v. Osborne, supra*, 557 U.S. at 82.) In doing so, he noted J. Butler’s text, *Forensic DNA Typing*
42 (2d ed.2005), that stated, “the [DNA] extraction process is probably where the DNA sample is
more susceptible to contamination in the laboratory than at any other time in the forensic DNA
analysis process.” (*Id.* at 82.) The Court found, “[M]odern DNA testing technology is so powerful
that it actually increases the risks associated with mishandling evidence.” *Id.*

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1 The People highlight Justice Alito’s concurrence because multiple items listed by
2 defendant Peterson (mattress samples from orange van, duct tape from Laci’s pants and hairs from
3 Laci’s body and that tape) have previously been tested – one, in fact, *by stipulation* with defendant
4 Peterson. We also point out that the defendant failed to advise this Court as required by statute of
5 additional DNA testing pursuant to Penal Code §1405. (JNE Exh. 8, Order of April 17, 2013) The
6 defendant sought testing of one hair found on Laci’s body and a hair fragment found on the duct
7 tape located on Laci’s body. Following testing, none of these items provided anything to remove
8 the abiding conviction of defendant Peterson’s guilt, in alignment with Justice Alito’s statement.
9 As recognized by the United States Supreme Court, additional testing may compromise the
10 samples and introduce potential for more contamination. Further, as argued below, there is
11 nothing raised by defendant Peterson now that has not previously been raised that would justify
12 additional DNA testing.

13 California provides the statutory ability to apply for post-conviction DNA testing in Penal
14 Code § 1405, but the statute outlines extensive requirements that must be met before relief is
15 appropriate. The defendant Scott Peterson cannot meet each of the mandatory requirements as
16 will be shown below. Furthermore, his motion is based on half-truths and inuendo and ignores the
17 fact that most of his “new evidence” was previously raised and thereafter rejected by the Supreme
18 Court (and cannot be raised again in this proceeding). The defendant’s claim is that he was denied
19 the trial he wanted and such a claim cannot now be bootstrapped into an argument for post-
20 conviction DNA testing. The defendant’s testing request must be guided by state law.

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1 **II.**

2 **DEFENDANT’S NEW EVIDENCE CLAIMS WERE OR COULD HAVE BEEN**
3 **PREVIOUSLY LITIGATED**

4 Defendant Peterson alleges new evidence supports his DNA testing request, stating: (1)
5 Laci was walking when defendant Peterson left for the Bay, (2) the Medina house was burglarized
6 on December 24, 2002, (3) Laci confronted the Medina burglars, (4) Laci was not killed on
7 December 24, 2002, (5) police failed to investigate a van fire on December 25, 2002, (6) there
8 was no body in defendant Peterson’s boat when he launched it into the Berkeley Marina, and (7)
9 Laci was placed in the Bay miles north of where defendant Peterson reported to be. However, the
10 California Supreme Court already reviewed and denied several, if not all, of these claims during
11 defendant Peterson’s automatic appeal and in his first Petition for Writ of Habeas Corpus.

12 **A. Law of the Case**

13 Defendant Peterson claims to be innocent after a jury of 12 unanimously convicted him
14 based on the overwhelming evidence of his murder of Laci and his unborn son, Conner, to include
15 his planning and premeditation. Not surprisingly, many convicted murderers deny their guilt years
16 and years after their crimes. Just because an inmate says he is innocent does not make it so. In
17 fact, the evidence of defendant Peterson’s guilt was and remains substantial beyond the reasonable
18 doubt standard. Furthermore, defendant Peterson’s third party culpability claims were raised at
19 trial, then again during defendant Peterson’s motion for new trial, then once again on appeal, and
20 also during defendant Peterson’s first Petition for Writ of Habeas Corpus. At each event, his
21 claims were found lacking. His claims remain meritless because he killed Laci and Conner.

22 The evidence conclusively proved that, weeks before Laci went missing, defendant
23 Peterson told Shawn Sibley that he had “lost” his wife, then later he told Amber Frey he had “lost”
24 his wife and this would be his first holiday without her (his wife). (RT 11724:1-7; RT 14620:3-
25 14623:25, People’s Trial Exh. 195R, starting at page 2.)

26 Defendant Peterson then bought a boat and hid it at his warehouse. (JNE Exhibit, Supreme
27 Court Opinion, p.13-14.) Even before he bought the boat, defendant Peterson searched online for
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1 currents, nautical charts and maps for the Berkeley Marina and San Francisco Bay, including the
2 area around Brooks Island. *Id.* Defendant Peterson told others he would be golfing on Christmas
3 Eve. Based on the golfing story, defendant Peterson even offered to collect a gift basket for his
4 sister-in-law, Amy Rocha, from a fruit stand not too far from defendant Peterson's golf course.
5 Amy Rocha testified during trial that she recalled what Laci was wearing the night before
6 Christmas Eve-- a black floral blouse and cream-colored capri pants which, for shorter females
7 (like Laci who was 5'1"), rested on Laci's ankles. (RT 8846:12- 8850:10.) When Laci's remains
8 were found on the rocks at Point Isabel, she was wearing a bra and the remnants of cream-colored
9 capri pants. The black blouse was found in the bedroom hamper. (RT 17398:24-17400:16,
10 17414:1-17417:21.)

11 Defendant Peterson's behavior upon returning from the Bay demonstrated consciousness
12 of guilt. After discovering his 8-month pregnant wife's car in the driveway, his dog loose in the
13 backyard with his leash attached, the side door to the house unlocked, the lights off, Laci's purse
14 still there, and the fact she had failed to answer the phone for hours, Peterson did not immediately
15 contact anyone when he found Laci was not at home. Instead, he took a shower, washed his
16 clothes, ate pizza and only then called Laci's mother to say she was "missing" (JNE Exh. 13,
17 Supreme Court Opinion. p.418.)

18 Within a short period of time, even though Laci and Conner had not been found, defendant
19 Peterson sold Laci Peterson's vehicle, tried to sell their home (furnished) and turned Conner's
20 nursery into a storage room. (JNE Exhibit 14, Supreme Court Opinion, p. 422.) Almost four
21 months after Laci went missing and within three days after Laci and Conner were found washed
22 ashore in the Bay, defendant Peterson had bleached his hair and was located in San Diego driving
23 a recently purchased (under an alias) used car and in possession of multiple credit cards (including
24 from his sister and mother), over \$14,000 in cash, his brother's driver's license, camping gear,
25 considerable extra clothing and multiple cell phones (JNE Exhibit 14, Supreme Court Opinion,
26 p.423; RT 19103:2-19104:26; People's Trial Exhs. 293-2, 293-37, 293-38, 293-41, 293-44.)

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1 *(1) Defense Claim re: Reports of Laci Walking (Previously litigated)*

2 Defendant Peterson lists multiple reports of Laci walking after he left for the San Francisco
3 Bay. (Defense motion, p. 23-38.) However, the reports, when reviewed in their entirety, mostly
4 identify a female wearing black pants. (Dean T., Bates 14750; Homer Maldonado, Bates 41913;
5 Vivian Mitchell, Bates 15510¹¹⁶; Grace Wolf, Bates 41915; and John Brazil, Bates 2106-2107.
6 (Brazil stated the woman he saw wore dark colored sweatpants but could not identify the woman’s
7 age or any other details about her description.) As noted in the Supreme Court Opinion, Laci was
8 found in the Bay wearing light-colored (i.e., tan/cream/beige) “Motherhood Maternity” capris on
9 April 14, 2003. (JNE Exhibit 14, Opinion, p. 422.) Defendant Peterson’s trial counsel also
10 presented evidence of many of these tips at trial. (RT 18489:2-18491:10 (Freitas); RT 18492:5-
11 18504:8 (Homer Maldonado, Defense Trial Exhibit M-1; RT 18494:25-18495:2 (Helen
12 Maldonado).)

13 In defendant Peterson’s first Petition for Writ of Habeas Corpus, he not only claimed that
14 he received ineffective assistance of counsel due to failure of counsel to present exculpatory
15 evidence - sightings of Laci Peterson after defendant Peterson was believed to have left for the
16 Berkeley Marina – but that Steven Todd, one of the burglars of the Medina residence, also saw
17 Laci Peterson after defendant Peterson left for the Berkeley Marina. (JNE Exh. 10, Petition for
18 Writ of Habeas Corpus, Claim 9 at p. 186 and Claim 10 at p. 200.) Defendant Peterson argued
19 this in part was supported by the tip by Lt. Aponte.

20 In his first Petition for Writ of Habeas Corpus, counsel for defendant Peterson listed
21 several sightings of Laci that were allegedly not presented at trial; however, their claims were not
22 entirely accurate. At trial, Detective Brocchini testified there were over 10,000 tips many of which
23 were Laci sightings across the world (RT 11474:3-18, RT18078, People’s Trial Exh. 267, 268A,
24 and 268B). Detective Grogan said there were more than 90 Modesto sightings of Laci Peterson

25 _____
26 ¹¹⁶ Ms. Mitchell not only reported this event to law enforcement, but also to the Modesto Bee. That article
27 was also discovered to defense counsel at Bates 13802. (However, members of law enforcement also
28 learned from neighbors of Ms. Mitchell that she had a tendency to confuse individuals with one another.
Bates 30866-30871.)

1 on or about December 24th. (RT 17761:1-17766:18.) Also at trial, the People presented several
2 charts depicting those sightings in People’s Trial Exh. 267, 268A and 268B. *Id.*

3 The California Supreme Court denied each of these claims outright on October 14, 2020,
4 and authorized further evidentiary hearing only as to the claim involving Juror No. 7. (JNE Exh.
5 13, Supreme Court Opinion)

6 *(2) / (3) Defense Claim re: Medina Burglary/Aponte Tip (Previously litigated)*

7 Defendant Peterson was permitted to elicit evidence regarding the Medina burglary during
8 trial. (JNE Exh. 13, Supreme Court Opinion p. 15.)

9 In his motion for new trial filed three months after his conviction, defendant Peterson
10 attempted to claim the evidence of a burglary near Laci Peterson’s residence and a phone call
11 made by an inmate allegedly implicated others in the murder of Laci and Conner. (JNE Exh. 3,
12 Defense Motion for New Trial, p. 4-5.) Enclosed with defendant’s motion was Defense Exhibit
13 29, prepared by Carl Jensen relaying a reported interview with Lieutenant (“Lt.”) Xavier Aponte
14 of the California Department of Corrections.

15 Contained within defendant’s motion for new trial was the acknowledgement that the
16 recording of the phone call could not be located at CDC. (JNE Exh. 3, Defense Motion for New
17 Trial, p. 6, lines 1 through 7.) In response to defendant Peterson’s motion, the People submitted
18 to the court a declaration of Lt. Xavier Aponte under penalty of perjury that further stated the
19 recording of the inmate could not be located. (JNE Exh. 4, People’s Opposition to Motion for
20 New Trial.) Also included in the People’s Opposition was a declaration of an employee of the
21 Office of the District Attorney who had discovered to staff of defendant’s previous counsel the
22 tip sheet related to Lt. Aponte’s phone call to Modesto Police Department. (JNE Exh. 3, People’s
23 Opposition to Motion for New Trial, Exhibit 1.)

24 In denying defendant Peterson’s motion for new trial based on the claim related to Lt.
25 Aponte’s tip, the court found that the evidence of the tip was presented to defense counsel on May
26 14, 2003 and was in their possession. (Court Reporter’s Transcript of Motion for New Trial, Mar.
27 16, 2005, (RT 21787:6-13.) The court also doubted the “trustworthiness” of an inmate at the
28

1 Department of Corrections. (RT 21788:3-23.) Following arguments at the hearing on the new
2 trial motion, the trial court denied defendant Peterson’s claims.

3 *(4) Defense Claim re: Date of Laci’s Death (Previously litigated)*

4 Evidence, including the fact her uterus was enlarged and her birth canal was closed,
5 reflected Laci died while pregnant. (JNE Exhibit 14, Supreme Court Opinion, p. 11.) The Court
6 also found Conner died before birth. (JNE Exhibit 14, Supreme Court Opinion, p.11.) When
7 recovered, Laci was found with barnacles (JNE Exhibit 14, Supreme Court Opinion, p. 10.).
8 Doctor Galloway estimated Laci had been in the water between three to six months. (JNE Exhibit
9 14, Supreme Court Opinion, p. 11.) At trial, defense counsel had an expert testify that Laci lived
10 until after Christmas. (JNE Exh. 13, Supreme Court Opinion p. 16.)

11 *(5) Defense Claim re: Van Fire on December 25, 2002 (Previously disclosed)*

12 See arguments set forth below; this van has no relation to this case.

13 *(6) Defense Claim re: Laci Was Not in Defendant Peterson’s Boat (Previously litigated)*

14 Evidence presented at trial proved that the boat would accommodate a pregnant woman at
15 various locations in the bottom of the boat that defendant used to dispose of Laci. (Supreme Court
16 Opinion, at page 15, Footnote 8; People’s Trial Exhs. 106F-106J and 106L-106O.) Defendant
17 Peterson’s trial counsel attempted to admit a demonstrative video of the boat’s stability, but the
18 evidence was excluded for several reasons: it was not the same boat, the weather and water
19 conditions were dissimilar to December 24, 2002, the weight belt made movement difficult for
20 the person doing the demonstration. (*Id.* at p. 71-74.) However, the trial court invited defendant’s
21 trial counsel to conduct an experiment with acceptable methods and with the actual boat, but
22 counsel elected not to do so. (*Id.* at p. 75-76.)

23 The jury heard the testimony that established that a pair of pliers was found in the bottom
24 of the boat on Christmas Eve during the “missing persons” walk-through. The yellow- handled
25 pliers were recovered in the same spot shortly thereafter and yielded Laci’s hair – two hair
26 fragments mashed within the jaws of the pliers. As will be discussed more extensively below, the
27 boat was a secret RT 20295:21-20296:13) and Laci had never been in it.

1 The anchors were made by the defendant – he claimed to have made only one but lied
2 about the disposal of the remaining approximately 52 pounds of concrete. The detectives found a
3 concrete anchor manufacturing area inside the defendant’s warehouse. The jury was shown
4 multiple photos depicting the remains of this “manufacturing process” but only a single 8.6 pound
5 anchor was found. (People’s Trial Exh. 72.) There was no rope attached to the metal rebar
6 protruding from the anchor. The jury was also told of the concrete debris found in the boat cover.

7 *(7) Defense Claim re: Laci and Conner Were Not Placed in the Bay by Defendant Peterson*
8 *(Previously litigated)*

9 Laci died while pregnant (JNE Exh. 13, Supreme Court Opinion, p. 11) When recovered,
10 Laci’s remains were found with barnacles attached (JNE Exh. 13, Supreme Court Opinion, p. 10).

11 When the California Supreme Court affirmed defendant Peterson’s conviction, they
12 denied error relating to the admission of the scent trailing evidence, but also found:

13 The trailing evidence did not add much beyond what could already be inferred
14 from other evidence. It also did not rule out the defense's theory “that somebody
15 [else] abducted her” and then disposed of her in the bay. And the trailing testimony
16 aside, **there was considerable other circumstantial evidence incriminating**
17 **Peterson**, from the simple fact that Laci's and Conner's bodies washed ashore 90
18 miles from their home but within sight of where Peterson admitted he went fishing
19 the day they disappeared; to the research Peterson did on bay currents in the weeks
20 preceding her disappearance and the fishing boat he bought but mentioned to no
21 one; to Peterson's inability to explain what he was fishing for in the middle of the
22 day; to his repeated subsequent surreptitious trips to the marina in the weeks after
23 her disappearance; to the many steps he took in the weeks after she went missing
— selling her car, exploring sale of the house, turning the nursery into a storage
room — that indicated he already knew Laci and Conner were never coming back.
Even under the most stringent harmlessness standard, for federal constitutional
error (*Chapman v. California* (1967) 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d
705), it is clear beyond a reasonable doubt exclusion of the limited dog-trailing
evidence admitted by the trial court would have had no impact on the jury's
determination that Peterson was guilty.

24 (JNE Exh. 13, Supreme Court Opinion, p. 59.)

25 “The law-of-the-case doctrine rests on a simple premise: ‘the *same* issue presented a
26 second time in the *same case* in the *same court* should lead to the *same result*.’ *LaShawn A. v.*
27 *Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996) (en banc).” (*Kimberlin v. Quinlan* (D.C. Cir. 1999)

1 199 F.3d 496, 500.)

2 “[W]here an appellate court states a rule of law necessary to its decision, such rule ‘ “must
3 be adhered to” ’ in any ‘ “subsequent appeal” ’ in the same case, even where the former decision
4 appears to be ‘ “erroneous” ’ ” (*People v. Boyer* (2006) 38 Cal.4th 412, 441, citing *People v. Whitt*
5 (1990) 51 Cal.3d 620, 638 (*Whitt*), quoting *People v. Shuey* (1975) 13 Cal.3d 835, 841.)

6 It has long been the rule that absent a change in the applicable law or the facts, the
7 court will not consider repeated applications for habeas corpus presenting claims
8 previously rejected. [Citations.] The court has also refused to consider newly
9 presented grounds for relief which were known to the petitioner at the time of a
10 prior collateral attack on the judgment. [Citations.] The rule was stated clearly in
In re Connor [(1940)] 16 Cal.2d 701, 705: "In this state a defendant is not
permitted to try out his contentions piecemeal by successive proceedings attacking
the validity of the judgment against him."

11 (*In re Clark* (1993) 5 Cal.4th 750, 767-768.)

12 Whether a factual finding is true is a different question than whether the truth of
13 that factual finding may or may not be subsequently litigated a second time. The
14 doctrines of res judicata and collateral estoppel will, when they apply, serve to bar
15 relitigation of a factual dispute even in those instances where the factual dispute
16 was erroneously decided in favor of a party who did not testify truthfully.”
17 (*Sosinsky v. Grant*, [(1992)] *supra*, 6 Cal.App.4th [1548] at p. 1569, 8 Cal.Rptr.2d
18 552.) In other words, even though a factual finding in a prior judicial decision may
not establish the truth of that fact for purposes of judicial notice, the finding itself
may be a proper subject of judicial notice if it has a res judicata or collateral
estoppel effect in a subsequent action.

19 (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 148.)

20 Additionally, appellants' contention is barred by the law of the case doctrine. Under
21 the doctrine, “The decision of an appellate court, stating a rule of law necessary to
22 the decision of the case, conclusively establishes that rule and makes it
23 determinative of the rights of the same parties in any subsequent retrial or appeal
24 in the same case.” (9 Witkin, *Cal.Procedure* (3d ed. 1985) Appeal, § 737, p. 705;
25 accord, *Eldridge v. Burns* (1982) 136 Cal.App.3d 907, 920.) Ordinarily, the
26 doctrine does not apply to points not raised by counsel on the prior appeal. (9
27 Witkin, *op. cit. supra*, § 753, p. 721; accord, *Olson v. Cory* (1983) 35 Cal.3d 390,
399.) However, “Where the particular point was essential to the decision, and the
28 appellate judgment could not have been rendered without its determination, a
necessary conclusion in support of the judgment is that it was determined. With
respect to such a point, the appellate decision is law of the case even though the
point was not raised by counsel or expressly mentioned.” (9 Witkin, *op. cit. supra*,
§ 754, p. 722, emphasis omitted; accord, *Olson, supra*, at p. 399.)

1 The doctrine applies to appellate determinations that the trial court's factual
2 findings are supported by substantial evidence. (*Stamler v. Kissinger* (1957) 154
3 Cal.App.2d 239, 240–241; see also *Hendershott v. Shipman* (1954) 124
4 Cal.App.2d 561, 563.)

5 (*Hanna v. City of Los Angeles* (1989) 212 Cal.App.3d 363, 376.)

6 The Supreme Court has ruled against most of the defendant's claims. He is not entitled to
7 relitigate the same claims again on the same basis in a lower court; this court is bound under the
8 law to find the same as the Supreme Court already has.

9 "There are limits, however, on the authority of one superior court judge to set aside
10 the order of another judge of the same court. "[U]nder article VI, section 4, of the
11 California Constitution, 'one [judge or] department of the superior court cannot
12 enjoin, restrain, or otherwise interfere with the judicial act of another [judge or]
13 department of the superior court.' " (*Konow*, at p. 1019.) This rule prevents a trial
14 court judge from acting as a " 'one-judge appellate court' over another judge." "

15 (*People v. Waldon* (2023) 14 Cal.5th 288, 306.)

16 **B. Collateral Estoppel**

17 As generally understood, "[t]he doctrine of *res judicata* gives certain *conclusive*
18 *effect* to a *former judgment* in subsequent litigation involving the same
19 controversy." (7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 280, p. 820.)
20 The doctrine "has a double aspect." (*Todhunter v. Smith* (1934) 219 Cal. 690, 695,
21 28 P.2d 916.) "In its primary aspect," commonly known as claim preclusion, it
22 "operates as a bar to the maintenance of a second suit between the same parties on
23 the same cause of action. [Citation.]" (*Clark v. Leshner* (1956) 46 Cal.2d 874, 880,
24 299 P.2d 865.) "In its secondary aspect," commonly known as collateral estoppel,
25 "[t]he prior judgment ... 'operates' " in "a second suit . . . based on a different cause
26 of action . . . 'as an estoppel or conclusive adjudication as to such issues in the
27 second action as were actually litigated and determined in the first action.'
28 [Citation.]" (*Ibid.*) "The prerequisite elements for applying the doctrine to either
an entire cause of action or one or more issues are the same: (1) A claim or issue
raised in the present action is identical to a claim or issue litigated in a prior
proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and
(3) the party against whom the doctrine is being asserted was a party or in privity
with a party to the prior proceeding. [Citations.]" (*Brinton v. Bankers Pension*
Services, Inc. (1999) 76 Cal.App.4th 550, 556, 90 Cal.Rptr.2d 469.)

(*People v. Barragan* (2004) 32 Cal.4th 236, 252-253.)

Defendant Peterson's prior claims of innocence were heard during his jury trial, in his
motion for new trial, appeal and in his Petition for Writ of Habeas Corpus. The uncalled witnesses,
the Medina burglary, the "new" scientific evidence (dates of death of Laci and Conner and their

1 placement in the Bay) and IAC (ineffective assistance of counsel) have all been resolved against
2 the defendant by a higher court. Claim Three of defendant Peterson’s first Petition for Writ of
3 Habeas Corpus offered yet another expert’s opinion on Conner’s age (JNE Exh. 12, Habeas
4 Petition Exh. HCP-000050.) There is nothing new here.

5 C. Third Party Culpability

6 In *People v. Robinson* (2005) 37 Cal.4th 592, the California Supreme Court reflected on
7 its previous holdings related to third party culpability finding:

8 With regard to third-party culpability, we note that [*People v.*] *Sandoval*, [(1992)]
9 *supra*, 4 Cal.4th 155, 176, and [*People v.*] *Alcala*, [(1992)] *supra*, 4 Cal.4th 742,
10 792, 15 Cal.Rptr.2d 432, 842 P.2d 1192, both followed *People v. Hall* (1986) 41
11 Cal.3d 826 (*Hall*). In *Hall*, we recognized that third-party culpability evidence is
12 admissible if it is **“capable of raising a reasonable doubt of [the] defendant’s**
13 **guilt,”** but also observed: **“[W]e do not require that any evidence, however**
14 **remote, must be admitted to show a third party’s possible culpability....**
[E]vidence of mere motive or opportunity to commit the crime in another
person, without more, will not suffice to raise a reasonable doubt about a
defendant’s guilt: there must be direct or circumstantial evidence linking the
third person to the actual perpetration of the crime.” (*Hall, supra*, 41 Cal.3d
at p. 833, italics added.)

15 (*People v. Robinson* (2005) 37 Cal.4th 592, 625.) (Boldface added.)

16 Applying the *Hall* standard, courts have frequently concluded that evidence providing
17 only a possible motive or opportunity to some third party is insufficient to raise a reasonable doubt
18 of guilt and, thus, properly excluded under Evidence Code section 352. (See, e.g., *People v.*
19 *Casares* (2016) 62 Cal.4th 808, 830; *People v. Linton* (2013) 56 Cal.4th 1146, 1201-1202.)
20 Similarly, marginal or speculative evidence linking a third party to the crime is insufficient to
21 trigger admissibility under *Hall*. (See, e.g., *People v. Lewis* (2001) 26 Cal.4th 334, 373; *People v.*
22 *Kerley* (2018) 23 Cal.App.5th 513, 572-574.) Finally, “[t]hird party culpability evidence that does
23 not identify a possible suspect is properly excluded.” (*People v. Brady* (2010) 50 Cal.4th 547,
559.)

24 Otherwise inadmissible evidence does not become admissible because it might establish
25 a third party’s culpability. Rejecting evidence of a third party’s alleged admission, the appellate
26 court in *People v. Huggins* (1986) 182 Cal.App.3d 828 ruled: “... *Hall* did not undertake to repeal
27 the Evidence Code. Incompetent hearsay is as inadmissible as it always was.” (*Id.* at p. 833,) Thus,
28 for example, mere evidence of a third party’s propensity for violence is insufficient to justify

1 admission under Evidence Code section 1101 as proof of that person’s identity as the perpetrator
2 of a murder. “Such evidence does not amount to direct or circumstantial evidence linking the third
3 person to the actual perpetration of the crime.” (*People v. Davis* (1995) 10 Cal.4th 463, 501; see
4 also *People v. McWhorter* (2009) 47 Cal.4th 318, 372-373.) Similarly, prior similar crimes that
5 are not sufficiently distinctive for admission to prove identity under Evidence Code section 1101,
6 are not admissible to establish third party culpability. (*People v. Elliott* (2012) 53 Cal.4th 535,
580-581.)

7 This will be at least the fourth time that a court has heard about potential burglar
8 involvement in the disappearance of Laci Peterson – the first time was during the actual trial of
9 defendant Peterson. (RT 10177:1-14, 10334:23-10336:24, 20014:18-20023:15, 20049:14-
10 20060:4.) The jury did not believe it at trial, the trial court did not believe it at the motion for new
11 trial, and the California Supreme Court did not believe it during its review on appeal nor during
12 its Habeas Corpus review. The People submit that defendant Peterson’s claims were resolved by
13 the California Supreme Court and there is no cause to revisit them any further. As such, requests
14 for DNA testing based on evidence and statements of others already litigated before and decided
15 by the California Supreme Court should be denied as a matter of law and fact.

16 III. SUCCESSIVE WRITS

17 In 2023, defendant Peterson filed a successive Petition for Writ of Habeas Corpus alleging
18 five claims that were already addressed by the California Supreme Court. He is seeking DNA
19 testing to further his Petition – if his Petition is faulty, then so too is this request:

20 "Like the rule in *In re Waltreus*, [(1965)] *supra*, 62 Cal.2d 218, the Miller rule
21 recognizes that a litigant should raise a claim at the earliest practicable opportunity,
22 and cannot—without persuasive justification—keep returning to the court for
23 second and third bites of the same piece of fruit. “ ‘In this state a defendant is not
24 permitted to try out his contentions piecemeal by successive proceedings attacking
25 the validity of the judgment against him.’ ” (*In re Clark, supra*, 5 Cal.4th at p. 768,
21 Cal.Rptr.2d 509, 855 P.2d 729, quoting *In re Connor* (1940) 16 Cal.2d 701,
705.) To hold otherwise would undermine society's strong and legitimate interest
in the finality of its criminal judgments."

26 (*In re Reno* (2012) 55 Cal.4th 428, 497], as modified on denial of reh'g (Oct. 31, 2012).)

27 The court’s disdain for successive habeas corpus petitions dates as far back as 1872:
28

1 [Penal Code section 1475] does not compel courts to consider successive petitions
2 on their merits, nor does it purport to restrict the court's inherent power to control
3 its calendar and prevent abuse of the writ. Section 1475 was initially codified in
4 1872 as part of the Penal Code of 1872. The Penal Code reenacted the preexisting
5 statutes implementing the inherent and constitutional authority of a court of record
6 to grant the writ (Stats. 1863, ch. 260, p. 334; Stats. 1859, ch. 19, p. 15), and
7 restricted the authority of the county courts to issuance of the writ on petitions by
8 persons located within the county. That restriction, however, reflected the initial
9 **legislative attempt to control abuse of the writ**, and the recognition that this
10 court had already been forced to impose judicial restrictions to curb judge-
11 shopping and repetitious petitions.

12 (*In re Clark* (1993) 5 Cal.4th 750, 771–772.) (Boldface added.)

13 [T]he court has emphasized that repetitious successive petitions are not permitted
14 and, in *In re Horowitz*, *supra*, 33 Cal.2d 534, 546–547, 203 P.2d 513, *In re Connor*,
15 *supra*, 16 Cal.2d 701, 705, 108 P.2d 10, and *In re Drew*, *supra*, 188 Cal. 717, 722,
16 207 P. 249, has condemned piecemeal presentation of known claims. Those
17 decisions reflect policies that supplement legislative restrictions on habeas corpus;
18 they also have as their purpose a curb on abuse of the writ of habeas corpus. Before
19 a successive petition will be entertained on its merits the petitioner must explain
20 and justify the failure to present claims in a timely manner in his prior petition or
21 petitions.

22 (*In re Clark* (1993) 5 Cal.4th 750, 774.)

23 Case law has also been consistent for decades regarding attempts to claim conflicts
24 presented at trial would support a petition for writ of habeas corpus.

25 We have consistently held that an issue which is raised in the trial court, and upon
26 which conflicting testimony develops, cannot serve as a basis for habeas corpus;
27 we cannot sanction piecemeal presentation or split adjudication of such issues * *
28 *.’ (*People v. Jackson*, [(1967)] 67 Cal.2d 96, 99; *In re Shipp*, [(1965)] 62 Cal.2d
547, 552, (cert. den. 382 U.S. 1012).)

(*In re Eli* (1969) 71 Cal.2d 214, 218–219.)

IV.

THE CALIFORNIA CONSTITUTION GUARANTEES THE VICTIMS’ FAMILY THE RIGHT TO FINALITY OF JUDGMENT AND NO HARASSMENT

[F]inality, “the idea that at *some* point a criminal conviction reaches an end, a
conclusion, a termination, ‘is *essential* to the operation of our criminal justice
system.’ ” *Prost v. Anderson*, 636 F.3d 578, 582 (C.A.10 2011). ...But if the rule
of law means anything, it means the final result of proceedings in courts of

1 competent jurisdiction *establishes* what is correct “in the eyes of the law.” *Herrera*
2 *v. Collins*, 506 U.S. 390, 399–400, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993).

3 (*Edwards v. Vannoy* (2021) 593 U.S. 255, 290–291, J. Gorsuch and Thomas concurring.)

4 Victims and their families are entitled to the rights provided under the California
5 Constitution. “The rights of victims . . . include broader shared collective rights that are held in
6 common with all of the People of the State of California and that are enforceable through the
7 enactment of laws and through good-faith efforts and actions of California’s elected, appointed,
8 and publicly employed officials.” (Cal. Const. art. I, § 28(a)(4)). “Marsy’s Law clearly demands
9 a broad interpretation protective of victims’ rights.” (*Santos v. Brown* (2015) 238 Cal.App.4th 398,
10 418.) An individual right of the victim provided by Marsy’s Law guarantees, inter alia, “a prompt
11 and final conclusion of the case and any related post-judgment proceedings.” (Cal. Const. art. I,
12 § 28(b)(9).)

13 The California Supreme Court has found the inception of Marsy’s Law was supported by
14 grievances due to:

15 the failure to build adequate prisons and jails, the early release of inmates “after
16 serving as little as 10 percent of the sentences imposed” (Prop. 9, Findings, ¶ 4,
17 West’s Ann. Cal. Const., *supra*, at p. 9), the pain caused victims’ families by
18 frequent parole hearings, the failure of the criminal justice system to give victims
19 “notice of important hearings in the prosecutions of their criminal wrongdoers,
20 failure to provide them with an opportunity to speak and participate, failure to
21 impose actual and just punishment upon their wrongdoers, and **failure to extend**
22 **to them some measure of finality to the trauma inflicted upon them by their**
23 **wrongdoers.”** (*Id.*, ¶ 9; see *id.*, ¶ 5.) Among the measure’s stated purposes are to
24 “[p]rovide victims with rights to justice and due process” (Prop. 9, § 3, ¶ 1 (Prop.
25 9, Purposes)), and to “eliminat[e] parole hearings in which there is no likelihood a
26 murderer will be paroled....” (*Id.*, ¶ 2.) According to the measure, “ ‘Helter
27 Skelter’ inmates Bruce Davis and Leslie Van Houghton, two followers of Charles
28 Manson convicted of multiple brutal murders, have had 38 parole hearings during
the past 30 years.” (Prop. 9, Findings, ¶ 6.)

(*In re Vicks* (2013) 56 Cal. 4th 274, 282.) (Boldface added.)

Defendant Peterson murdered Laci and Conner in December of 2002. Laci and Conner
were not discovered until April of 2003, following months where friends and family members of

1 Laci and Conner searched and searched for them, in the hope that they would both be found
2 unharmed and safe.

3 Defendant Peterson was convicted of the offenses in 2004 following testimony of over
4 180 witnesses, including several of Laci's and Conner's family and friends.

5 In 2020, the California Supreme Court affirmed defendant Peterson's convictions and
6 denied all but one of defendant Peterson's claims on Habeas Corpus. To protect the victims'
7 family from further protracted proceedings, the People declined to retry the penalty phase.

8 Prior to defendant Peterson's resentencing to life without the possibility of parole in
9 December 2021, Laci Peterson's family addressed the Court once more. The San Mateo County
10 Superior Court reviewed defendant Peterson's claim of juror misconduct and denied his Petition
11 for Writ of Habeas Corpus in December of 2022, almost twenty years after defendant Scott
12 Peterson murdered Laci and Conner.

13 The following quote from a court when discussing the use of Penal Code section 1405 is
14 illustrative of the problem before this court:

15 "In view of these facts, even if a blood sample were collected and preserved and
16 tied to Starla Baker by DNA testing, how would the test results "raise a reasonable
17 probability that, in light of all the evidence, [petitioner's] verdict or sentence would
18 have been more favorable if the results of DNA testing had been available at the
time of conviction"? (§ 1405, subd. (f)(5).) Based on the testimony of Baker and
petitioner, one would have expected to find Baker's blood at the crime scene.

19 We have elaborated on our prior opinion to illustrate that the instant request is the
20 start of a "wild goose chase" that will, in all probability, lead to absolutely nothing.
21 In another context, we have said: "Somewhere along the line, litigation must
22 cease." (*In re Marriage of Crook* (1992) 2 Cal.App.4th 1606, 1613.) Petitioner's
23 judgment is long final and there is something to be said for the sanctity of final
24 judgments. The State of California has a "powerful interest in the finality of its
25 judgments. This interest is particularly strong in criminal cases, for '[w]ithout
26 finality, the criminal law is deprived of much of its deterrent effect.' [Citations.]"
(*In re Harris* (1993) 5 Cal.4th 813, 831.) In light of the deference owed to final
27 judgments, at the very least prisoners should be required to make some showing
28 that DNA evidence would raise a reasonable probability of more favorable
treatment in the trial court before counsel is appointed. This is the original purport
of section 1405 before Senate Bill No. 83 was enacted in 2001. (See, *ante*, p. 804.)

The Legislature has apparently made a value judgment that prisoners such as
petitioner should have counsel appointed to investigate and, if appropriate, file a

1 motion for DNA testing. The Legislature has given such prisoners more rights than
2 a person filing a petition for extraordinary relief, who is not entitled to appointed
3 counsel as a matter of right. (E.g., *People v. Shipman* (1965) 62 Cal.2d 226, 232;
4 see also *People v. Chavez* 243 Cal.App.2d 761, 767.) To be sure, there have been
5 instances where DNA evidence has exonerated a convicted prisoner, and these
6 cases have been sensationalized in the press. However, the vast majority of
7 prisoners are in fact guilty and have been convicted and sentenced consistent with
8 the full panoply of constitutional and statutory safeguards. Such prisoners have
9 one traditional appeal as a matter of right and an unfettered ability to file petitions
10 for extraordinary relief in the trial and appellate courts. In our view, these
11 safeguards are sufficient to ensure that a truly innocent person is not unjustly
12 convicted or sentenced. In the rare case where DNA evidence may exonerate a
13 prisoner or reduce the prisoner's sentence, it is not too much to ask that he or she
14 make some showing to that effect before counsel is appointed.

15 In enacting the 2001 amendment to section 1405, the Legislature “apparently
16 succumbed to the discredited ‘ideal of perfectibility’ which is ‘the concept that
17 with the expenditure of sufficient time, patience, energy, and money it is possible
18 eventually to achieve perfect justice in all legal process.’ Such a ‘noble ideal has
19 consistently spawned results that can only be described as pandemoniac’ in our
20 criminal justice system.” (*In re Pratt* (1980) 112 Cal.App.3d 795, 890, fn. 45,
21 quoting Fleming, *The Price of Perfect Justice* (1974) p. 3.)”

22 (*In re Kinnamon* (2005) 133 Cal.App.4th 316, 324–325.)

23 In addition to a guarantee of finality, the California Constitution also provides that victims
24 shall be “be treated with fairness and respect for his or her privacy and dignity and to be free from
25 intimidation, harassment and abuse, throughout the criminal or juvenile justice process.” If this
26 constant duplicative barrage of post-conviction pleadings is not harassment and a violation of
27 finality in judgment, then the People do not know what would meet the Constitution’s definition.

28 V.

INADMISSIBLE HEARSAY MUST BE STRICKEN ON OBJECTION

29 Affidavits or declarations may not be used in evidence unless permitted by statute, by
30 stipulation of the parties, or by failure to object. (*Estate of Fraysher* (1956) 47 Cal.2d 131, 135;
31 *Houghtaling v. Superior Court* (1993), 17 Cal.App.4th 1128, 1149-1150; *People v. Dickinson*
32 (1976) 59 Cal.App.3d 314, 319.) Such affidavits or declarations are hearsay because they are
33 prepared without the opportunity to cross-examine the affiant. (*Windigo Mills v. Unemployment*
34 *Insurance Appeals Board* (1979) 92 Cal.App.3d 586, 597.) Even in situations where an affidavit
35 or declaration may be an acceptable method for the defense to make factual allegations, “the trial

1 court retains the discretion to permit the prosecutor to cross-examine a declarant [and] [i]f the
2 declarant refuses to testify or answer, the trial court may strike the declaration. (*People v. Estrada*
3 (2003) 105 Cal.App.4th 783, 794.)

4 It is elementary that inadmissible hearsay must be stricken on objection and must be
5 disregarded by the court. (*Ziegler v. Reuze* (1945) 27 Cal.2d 389, 398-399; *Houghtaling v.*
6 *Superior Court* (1993) 17 Cal.App.4th 1128, 1149-1150.) Thus, defense declarations and
7 affidavits offered to prove disputed facts are hearsay and are inadmissible under Evidence Code
8 section 1200. Such a declaration of a defendant was offered in *People v. Williams* (1973) 30
9 Cal.App.3d 502 in support of a pretrial motion. The appellate court ruled: “It is a commonly
10 known rule that no witness, even a defendant in a criminal case, will be permitted to testify
11 concerning a matter while refusing cross-examination as to the same matter. In such situations the
12 constitutional privilege against self-incrimination as to the subject matter of his direct examination
13 is deemed waived.” (*Id.* at p. 510.)

14 The People object to factual statements made in the defense pleadings, attachments and
15 exhibits that are not supported by the trial records and we object to all declarations based on
16 hearsay, lack of foundation, lack of personal knowledge, improper opinion and relevance as a
17 starting point. Newly added exhibits and declarations are inadmissible hearsay, of which judicial
18 notice may not be taken of post-conviction claims except as related to legal issues that have
19 already been adjudicated. The People will address our hearsay objections, evidentiary issues, and
20 collateral estoppel claims below as it relates to particular items offered by the defendant.

21 VI.

22 THE COURT SHOULD DENY DEFENDANT’S MOTION BECAUSE DEFENDANT 23 HAS FAILED TO MEET THE REQUIREMENTS FOR DNA TESTING UNDER 24 PENAL CODE § 1405

25 A. Penal Code § 1405 Establishes Requirements of Both Pleading and Proof.

26 Penal Code § 1405 is the statute that governs motions for post-conviction DNA analysis
27 and it contains two similar substantive requirements – the first governing the pleading itself and
28 the second describing the eight specific elements a defendant must meet with competent evidence.

First, § 1405(d)(1) establishes that such a motion must be verified by the convicted person
under penalty of perjury and must include all the following:

- 1 (A) A statement that he or she is innocent and not the perpetrator of the crime.
2 (B) Explain why the identity of the perpetrator was, or should have been, a
3 significant issue in the case.
4 (C) Make every reasonable attempt to identify both the evidence that should
5 be tested and the specific type of DNA testing sought.
6 (D) Explain, in light of all the evidence, how the requested DNA testing
7 would raise a reasonable probability that the convicted person's verdict or
8 sentence would be more favorable if the results of the DNA testing had been
9 available at the time of conviction.
10 (E) Reveal the results of any DNA or other biological testing that was
11 conducted previously by either the prosecutor or defense, if known.
12 (F) State whether any motion for testing under this section previously has
13 been filed and the results of that motion if known.

14 If the pleading requirements are met, the motion should be fully considered on its merits.

15 However, under § 1405(g) the court is only directed to grant a motion for DNA testing if all the
16 following are then established:

- 17 (1) The evidence to be tested is available and in a condition that would permit
18 the DNA testing requested in the motion.
19 (2) The evidence to be tested has been subject to a chain of custody sufficient
20 to establish it has not been substituted, tampered with, replaced or altered in any
21 material aspect.
22 (3) The identity of the perpetrator of the crime was, or should have been, a
23 significant issue in the case.
24 (4) The convicted person has made a prima facie showing that the evidence
25 sought to be tested is material to the issue of the convicted person's identity as the
26 perpetrator of . . . the crime . . . that resulted in the conviction or sentence. The
27 convicted person is only required to demonstrate that the DNA testing he or she
28 seeks would be relevant to, rather than dispositive of, the issue of identity. The
convicted person is not required to show a favorable result would conclusively
establish his or her innocence.
(5) The requested DNA testing results would raise a reasonable probability
that, in light of all the evidence, the convicted person's verdict or sentence would
have been more favorable if the results of DNA testing had been available at the
time of conviction. The court in its discretion may consider any evidence whether
or not it was introduced at trial. In determining whether the convicted person is
entitled to develop potentially exculpatory evidence, the court shall not decide
whether, assuming a DNA test result favorable to the convicted person, he or she
is entitled to some form of ultimate relief.
(6) The evidence sought to be tested meets either of the following conditions:

- 1 (A) The evidence was not tested previously.
2 (B) The evidence was tested previously, but the requested DNA test
3 would provide results that are reasonably more discriminating and
4 probative of the identity of the perpetrator or accomplice or have a
5 reasonable probability of contradicting prior test results.

6 (7) The testing requested employs a method generally accepted within the
7 relevant scientific community.

8 (8) The motion is not made solely for the purpose of delay.

9 The defendant in the instant case is requesting DNA testing on:

- 10 (1) "Cloth from mattress;"
11 (2) "A piece of partially burned mattress cloth;"
12 (3) "Cloth from Van Fuel Tank" of orange van;
13 (4) "Metal fuel container in the center on a mattress;"
14 (5) "Target bag" with four packages of marine debris¹¹⁷;
15 (6) "Duct Tape" recovered from the "Target bag;"
16 (7) Four packages of debris collected from "Target bag;"
17 (8) "50-inch-long tape or twine;"
18 (9) "15.5-inch Length of Duct Tape" recovered from Laci Peterson's pants;
19 (10) "Duct tape from bay," labeled Item 1-11, MPD #G82;¹¹⁸
20 (11) "Black Tarp" discovered on Tuesday, April 15, 2003, by East Bay Regional
21 Park District Police Department (EBRPDPD) personnel along the Point Isabel
22 shoreline;
23 (12) "Black Tarp" recovered from Point Isabel on May 11, 2003;
24 (13) Work glove or swabbed evidence; and
25 (14) Hammer or swabbed evidence collected from the hammer.

26 The People assert that the defendant has failed to meet all of the requirements set out in
27 §§ 1405(d) and (g). For example, with the exception of the "orange van" mattress item that has
28

¹¹⁷ The four packages of debris included here are the same items as what is listed in item defense #7. This was collected originally as MPD item G84 and initially was only three items. At the evidence viewing with Investigator Ermoian, defense attorney Kirk McAllister and Mark Geragos, an insect was found and placed in an envelope, according to Det. Grogan's report (Bates page 30975) and Geragos initialed the envelope. When item G84 was examined at DOJ, it was identified as 1-10: a "Target Products" plastic tarp/bag with duct tape from the bay near Laci's remains and three packages of debris and one package of "bug" from the debris (Modesto PD Item G84). (Bates page 42112).

¹¹⁸ Item 1-11 consisted of three pieces of duct tape marked originally as MPD #G82. Criminalist Pin Kyo examined both 1-10 and 1-11: "No odor associated with decomposing body was detected on the "Target Products" plastic bag and pieces of duct tape (Items 1-10 and 1-11). Additionally, no barnacles or decomposing fatty tissue were observed on the plastic bag or pieces of duct tape (Items 1-10 and 1-11). No long hairs or pubic hairs like fibers were observed [sic] on the plastic bag or pieces of duct tape (Items 1-10 and 1-11)." (Bates page 42115.).

1 already been DNA tested by the defense, the defendant has failed to establish the chain of custody
2 of all other items and therefore does not meet the threshold requirement of 1405(g)(2).

3 Further, defendant has failed to make a prima facie showing that the evidence he seeks to
4 test is material to the issue of his identity as the perpetrator of the murders and the defendant has
5 also failed to explain how DNA testing would raise a reasonable probability that the verdict or
6 sentence would be more favorable if the results of the testing had been available at the time of
7 conviction.

8 Under Penal Code § 1405, a person filing a motion for post-conviction DNA testing is
9 required to explain in his motion “in light of all the evidence how the requested DNA testing
10 would raise a reasonable probability that the convicted person’s verdict or sentence would be
11 more favorable if the results of DNA testing had been available at the time of conviction.” (Pen.
12 Code §1405, subd. (A)(1)(B).)

13 The statute effectively requires this court to balance the showing made by the convicted
14 person seeking DNA testing against the evidence of the person’s guilt in order to determine “in
15 light of all the evidence” whether there is a “reasonable probability” that the convicted person’s
16 verdict or sentence “would” have been different if the results of DNA testing had been available
17 at the time of conviction.

18 The term “reasonable probability” has already been defined in the context of a Penal
19 Code § 1405 motion.

20 **B. *Richardson v. Superior Court* Provides a Framework for Analysis of Post-Conviction**

21 **DNA Motions**

22 In *Richardson v. Superior Court* (2009) 43 Cal.4th 1040, a death penalty case, the court
23 interpreted “reasonable probability” to mean that “the defendant must demonstrate that, had the
24 DNA testing been available, in light of all the evidence, there is a reasonable probability-- that is,
25 a reasonable chance and not merely an abstract possibility-- that the defendant would have
26 obtained a more favorable result.” (*Id.* at 1051) *Richardson* adopted the US Supreme Court’s
27 definition of “reasonable probability” from *Strickland v. Washington* (1984) 466 U.S. 668,
28

1 another case interpreting “reasonable probability” in the context of claims of ineffective assistance
2 of counsel. There it was held a defendant must show “a probability sufficient to undermine
3 confidence in the outcome.” (*Richardson, supra*, 43 Cal.4th at p. 1050.)

4 In *Richardson*, the defendant was convicted of the murder of an 11-year-old girl and
5 numerous other related crimes. After being sentenced to death and losing his automatic appeal,
6 defendant brought a motion seeking testing of hairs that were found at the murder scene. The trial
7 court denied the motion, and the California Supreme Court affirmed that denial in response to a
8 petition for writ of mandamus. The Court determined that the trial court had not abused its
9 discretion in denying the motion, even though the case carried capital punishment, and even
10 though the hairs in question had been a substantial and much-contested topic at trial.

11 The *Richardson* court concluded that the appropriate standard of review for a ruling on a
12 motion for DNA testing is abuse of discretion. (*Id.* at pp. 1046-1048.) A ruling will stand,
13 therefore, unless the trial court has “exceeded the bounds of reason or contravened the un-
14 contradicted evidence.” (*Id.* at 1048.) On the substantive issue, the court agreed that the hairs
15 were relevant, but found that their significance had been *vigorously disputed and effectively*
16 *limited by the defense*. In testimony, experts for the People could say only that the hairs were
17 “consistent with” defendant’s hair, and the defense brought forth experts of their own to contradict
18 that view. The court therefore held that the hair evidence was thus “at most, simply one piece of
19 evidence tending to show guilt,” so “fiercely disputed” by the defense that it “may well have had
20 little significance in the jury’s determination of guilt or sentence.” (*Richardson, supra*, 43 Cal.4th
21 at p. 1053.)

22 Emphasizing that there was other and stronger evidence of the defendant’s guilt than the
23 disputed hairs, the court concluded that the defendant had not made the showing of “reasonable
24 probability” under § 1405(f)(5). (*Id.* at pp. 1053-54.)

25 The California Legislature did not see fit, as it might have, to authorize post-conviction
26 DNA testing in every case in which the convicted person requests it. Nor did the Legislature see
27 fit to authorize post-conviction DNA testing where there is only a “possibility,” or even a
28

1 “reasonable possibility,” that the convicted person’s verdict or sentence might be changed.

2 Instead, the Legislature selected a standard that requires the convicted person to
3 demonstrate a “reasonable probability” that the convicted person’s verdict or sentence “would” –
4 not just “might” or “could” – be changed if the results of DNA testing had been available at the
5 time of the person’s conviction.

6 The “reasonable probability” standard, in conjunction with the word “would,” means that
7 a court considering such a motion must not assume the result of DNA testing would be
8 exculpatory.

9 The defense cites one case, *Jointer v. Superior Court of Orange County* (2013), 217
10 Cal.App.4th 759 to say that this court must assume the results would be favorable. *Jointer* states
11 at that time the “only case interpreting section 1405, subdivision (f)(5) is Richardson” (*Id.*, at
12 765.) The reasoning of the *Jointer* court is a misapplication of *Richardson*, because *Richardson*
13 specifically held:

14 "We further conclude that the trial court did not abuse its discretion when it denied
15 petitioner's motion because it “believe[d] that there was a substantial amount of
16 other evidence linking him to this crime,” a statement which, in context, constitutes
17 a finding that petitioner failed to establish the reasonable probability requirement.
18 Petitioner emphasizes that the hair evidence was the only physical evidence linking
19 him to the commission of the offenses against the victim. The trial court, however,
20 found that this evidence was not “conclusive” on the issue of guilt and that the
21 defense substantially weakened whatever value the hair evidence had through
22 effective cross-examination of the prosecution's experts and use of its own experts.
23 We cannot conclude that the trial court abused its discretion by so finding."

24 (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1051.)

25 Even assuming, arguendo, petitioner has carried his burden of showing materiality under
26 Penal Code § 1405, he cannot show that, in light of all of the evidence, any results coming from
27 further testing would yield or raise a “reasonable probability that...the convicted person's verdict
28 or sentence would have been more favorable if the results of the DNA testing had been available
at the time of the conviction.” (*Richardson, supra* at pp. 1049-1050.) Additionally, “reasonable
probability” does not merely amount to “more likely than not.” Rather, it must be more than an
abstract possibility when considering the entire case. (See *Richardson, supra* at p. 1050.)

1 Likewise, it is not sufficient for the court to conclude that because DNA testing “could”
2 or “might” turn out to be exculpatory, and that there is no way to know unless the testing is first
3 done, that the statutory standard has been satisfied. If that were the case, post-conviction DNA
4 testing would be required in virtually every case with biological evidence. Here, the defendant
5 cannot meet the requirements of the statute or *Richardson*. Additionally, since this is his second
6 Section 1405 request the “reasonable probability” he can succeed seems to be less obtainable.

7 **C. The Court Should Deny the Defendant’s Motion for Post Conviction DNA Testing**
8 **Because He Cannot Satisfy the Pleading and Proof Requirements of Section 1405,**
9 **Subdivisions (d) and (g)**

10 As the People will demonstrate below, defendant Peterson has not met the pleading and
11 proof requirements of Section 1405, subdivisions (d) and (g). Given the number of items on
12 which the defense has requested DNA testing (14), the People will address them in groups as
13 hereinafter discussed. The People’s evaluation of the statutory requirements is outlined below.

14 1. Section 1405(d) Pleading Requirements

15 (1) The motion for DNA testing shall be verified by the convicted person under penalty of
16 perjury and shall include all of the following:

17 (A) A statement that he or she is innocent and not the perpetrator of the crime.

18 The defendant has met this requirement.

19 (B) Explain why the identity of the perpetrator was, or should have been, a significant issue in
20 the case.

21 In his motion, the defendant states: “I had absolutely nothing to do with the disappearance
22 and deaths of my wife and son.” (Def. § 1405 Motion, Exh. 4, paragraph 3.) It can be argued that
23 a blanket denial is insufficient for pleading purposes. Moreover, as stated in the People’s
24 Statement of Facts, the defendant has a long history of lying about his involvement with this case,
25 to include: lying about an affair with Amber Frey; claiming to be in Paris during the candlelight
26 vigil; telling some people he had been golfing before changing his story to fishing; lying about
27 the number of anchors he made and where he disposed of the excess concrete, and lying about
28 being in grief counseling while actually with family in Southern California... just to name a few.

The jury heard from the defendant’s own mouth during a recorded phone call that he
predicted that he would lose his wife and this would be his first holiday without her weeks *before*

1 she actually went “missing.” When confronted by Amber Frey, the defendant refused to explain
2 how he was able to predict the loss of his wife. This recorded phone call was tantamount to a
3 confession.

4 As stated by the People in our Statement of Facts, there was overwhelming circumstantial
5 evidence to convict the defendant. The Supreme Court has already rejected on direct appeal a
6 claim regarding the sufficiency of the evidence. The Supreme Court’s thorough factual recitation
7 didn’t even include many of the items in the People’s Statement of Facts proving that there was
8 and is more than enough evidence proving that Scott Peterson is responsible for the two murders
9 in this case. If this court were to consider the defendant’s prediction of his wife’s demise as an
10 admission, that would be direct evidence of his guilt. The defendant’s attempts to sell the family
11 home “furnished” (People’s Trial Exh. 207 C-1) and the defendant’s purchasing a porn channel
12 TV plan while Laci was missing was yet additional proof, as the trial judge acknowledged when
13 allowing the evidence to be admitted following this exchange:

14 THE COURT: And it's to -- your position that this -- this evidence comes in to
15 show that Scott Peterson was aware that his wife wasn't coming back because
16 Laci Peterson didn't order a pornographic channel; he did, and when the police
17 got there he had it disconnected.

18 MR. DISTASO: Yes, that's right, your Honor.

19 THE COURT: Is that what you're trying to tell me?

20 MR. DISTASO: Yes. (RT 14199:5-13, August 3, 2004.)

21 Further, the evidence at trial showed that two hairs from Laci Peterson were crushed
22 together in the jaws of a pair of pliers found on the bottom of the defendant’s boat.¹¹⁹ The boat
23 had been secretly purchased and was kept at his warehouse and the victim did not know about it.
24 The pliers were documented in photographs the evening of December 24th during the initial walk-

25 _____
26 ¹¹⁹ Testimony of Criminalist Rodney D. Oswald (RT 13603:21- 13710:24; Trial Exh. 144, 166 etc.) and
27 argument (RT 20305:1 – 20309:18).
28

1 through with Det. Brocchini and long before any information was released about the defendant
2 going to the Bay making it impossible for anyone to plant this evidence.

3 As the defendant has not demonstrated that DNA testing of the requested items would be
4 material to the identity of anyone, he cannot satisfy this proof requirement. Therefore, this
5 pleading requirement has not been met. (See also the discussion under § 1405, subd. (g)(3), *infra*.)

6 (C) Make every reasonable attempt to identify both the evidence that should be tested and the
7 specific type of DNA testing sought.

8 The defendant has failed to specify what specific types of testing should be done for each
9 and every item. As one example, his own expert states that the first item for which DNA testing
10 is sought (the burned mattress) may not be testable using the best sampling method because the
11 mattress cuttings are burned and possibly brittle, so it may not be feasible to use the M-Vac.
12 [Defense Motion Exhibit 13, Declaration of Anjaria Meहुल, paragraph 27.]

13 As another example, regarding the four packages associated with the “Target bag,” the
14 defense fails to identify what specifically was in each package and what specific testing they deem
15 is appropriate (or how DNA testing of an insect would exonerate the defendant)...

16 Attempts by the defense to bootstrap or generalize his DNA plan in the testing of potential
17 evidence, without providing a proper analysis, should be denied.

18 (D) Explain, in light of all the evidence, how the requested DNA testing would raise a
19 reasonable probability that the convicted person's verdict or sentence would be more favorable if
20 the results of DNA testing had been available at the time of conviction.

21 While Penal Code section 1405(d)(1)(D) is addressed below, the Penal Code section
22 1405(g)(5) requirements will be discussed in more depth in its respective section. This
23 requirement has not been met. The first group of requested items for testing relate to an orange
24 van - these items have no connection to this case. The best the defense can claim is that the police
25 report documenting a stolen burned van was cross-referenced to the Peterson case because early
26 on the police were looking into the sighting of a tan or white (not orange) van in the neighborhood.
27 Throughout the trial, witnesses described vans in the neighborhood; this is not new evidence as
28

1 claimed by the defense. (See Amie Krigbaum¹²⁰ and Russell Graybill's¹²¹ testimony at trial.)
2 Further, the defense attempts to make an orange *Blazer* that Mike Chiavetta said he saw in La
3 Loma Park on December 24th into a burned orange van. (Defendant's Motion, p. 61-62.)

4 The reality is that in 2002 Modesto was in the top ten metropolitan areas nationally for
5 auto thefts (See AG report, People's Opp. Exh. 3.) As stated above, Modesto was also the 15th
6 largest city in the state of California. It was not uncommon for vehicles to be stolen and the
7 defense cannot connect this case to every vehicle that was stolen – let alone one. Moreover, the
8 victim of the theft of the orange van had a second vehicle stolen from him just two weeks before
9 this van. Therefore, testing of the orange van items cannot raise a reasonable probability of a
10 more favorable result.

11 The second group of items was floating debris: (5) "Target bag" (6) "Duct Tape"
12 recovered from the "Target bag," (7) Four packages of debris collected from "Target bag" (8)
13 "50-inch long tape or twine, about 6 inches wide" recovered from the neck of Conner, (10) "Duct
14 tape from bay," (11) "Black Tarp" day after (12) "Black Tarp" month after.

15 Many of these items were testified to by Pin Kyo and eliminated as being connected to
16 Laci's remains. They were too new, too clean, had no barnacles or adipocere. Further, the various
17 segments of duct tape were the wrong thread count to match the tape on Laci's body. There has
18 been no showing by competent admissible evidence how testing of these items would change the
19 outcome of this case.

20 Item #8 is the twine from around Conner's neck/body. There was extensive testimony
21 from Dr. Peterson, the pathologist, about Laci and Conner's remains. Conner was never born but
22 was expelled from Laci's uterus after significant decomposition. There is no way for anyone to
23 place this twine around Conner's neck (discussed in more detail below). It was, as opined by the
24 doctor, debris. There has been no showing by competent admissible evidence how testing of this

25 _____
26 ¹²⁰ Krigbaum testified that she drove a white Chevy Astrovan and it would be parked on the street across
from the defendant's house. (RT 9497:25- 9499:16.)

27 ¹²¹ Graybill testified there was a white van parked across the street from the defendant's house...most days
28 (RT 9577:1-11.)

1 item would change the outcome of this case.

2 Laci's remains: (9) "15.5-inch Length of Duct Tape," labeled "Item 1-5," recovered from
3 Laci Peterson's pants at the time of autopsy. An excised portion of that tape was DNA tested in
4 2003 and shown to have human DNA present, but "the DNA was not of an acceptable quality to
5 generate a profile" at that time. Also, this is the second time the defense is asking to test samples
6 from Laci's remains (JNE Exh. 8, 2013 Court Order Granting DNA Testing.) The defense has
7 failed to address the decomposition. The thread count on the duct tape on the Target bag was not
8 the same as the thread count on the duct tape found on Laci. Furthermore, the tangled duct tape
9 which was tested was also inconsistent in thread count with what was found with Laci's remains.
10 There has been no showing by competent admissible evidence how testing of this item would
11 change the outcome of this case.

12 Medina Burglary: (13) Work glove or swabbed evidence and (14) Hammer or swabbed
13 evidence collected from the hammer- - the defense doesn't even show these items were ever
14 tested, swabbed or collected.

15 (E) Reveal the results of any DNA or other biological testing that was conducted previously by
16 either the prosecution or defense, if known.

17 The first item requested for testing by the defense is the "cloth from the mattress" that was
18 found in the stolen orange van. This item was tested and a male profile was developed. There is
19 *no* legitimate DNA test that will turn the male profile into a match for Laci. This item was taken
20 from a stolen orange van which was never connected to the Peterson case¹²² and the prior DNA
21 testing has eliminated any possibility of any connection, but testing is still requested. This
22 demonstrates a fishing expedition in search of a boat.

23 _____
24 ¹²² In fact, the defense has submitted as an exhibit a statement of Tom Harshman that he saw Laci getting
25 into a van four days after she disappeared; yet this orange van that they want tested was found burned on
26 12-25-2002, three days before his claimed sighting. The defense must concede that this orange van was
27 not involved if Harshman, or any of their other claims, is correct, and we know Harshman cannot be correct
28 based on other claims by the defense. A review of Harshman's various statements reflect shifting
descriptions of the van and its contents. (Defense Motion Exhibit 19B, 19C, 19E, and 19G.) The People
do not concede Harshman was correct, or that any of the defense claims are correct, as is discussed
elsewhere, but merely point this out as one of many inconsistencies in the defense claims of newly
discovered evidence.

1 Item #9, the tape from Laci’s pants, was previously tested and no profile could be obtained.
2 The defense’s DNA witness currently opines that, if tested now, it “may reveal” results. [Defense
3 Motion Exhibit 13, Declaration of Anjaria Mehul, paragraph 4.] As noted, this tape was attached
4 to the decomposed remains of Laci and recovered during her autopsy. “May reveal” is hardly
5 sufficient to meet the burden required here.

6 (F) State whether any motion for testing under this section previously has been filed and the
7 results of that motion, if known.

8 The defense neglected to mention that in 2013, pursuant to Penal Code section 1405, the
9 Court ordered that a single pubic hair recovered from Laci’s remains (1-7-D) and a pubic hair
10 fragment (1-5B-H2) recovered from the duct tape found on the remains of Laci be tested for DNA.
11 (JNE Exhibit 9, Order.) Nor did they provide the results. (JNE Exhibit 10, Results.)

12 In 2019, there was a stipulation for testing of items related to the orange van. (Defense
13 Motion Exhibit 5G.)

14 2. Section 1405(g) Proof Requirements

15 Notwithstanding the §1405 (d) threshold pleading requirements, §1405 (g) indicates that
16 the court shall grant the motion only if *each* of the next eight proof requirements are met.

17 (1) The evidence to be tested is available and in a condition that would permit the DNA testing
18 requested in the motion.

19 In his motion, the defendant requests DNA testing of (1) “Cloth from mattress;” (2) “A
20 piece of partially burned mattress cloth;”(3) “Cloth from Van Fuel Tank” of orange van; (4)
21 “Metal fuel container in the center on a mattress;” (5) “Target bag;” (6) “Duct Tape” recovered
22 from the “Target bag;” (7) Four packages of debris collected from “Target bag;” (8) “50-inch
23 long tape or twine; (9) “15.5-inch Length of Duct Tape” recovered from Laci Peterson’s pants at
24 the time of autopsy; (10) “Duct tape from bay;” (11) “Black Tarp” discovered on Tuesday, April
25 15, 2003 by East Bay Regional Park District Police Department (EBRPDPD) personnel along the
26 Point Isabel shoreline; (12) “Black Tarp” recovered from Point Isabel on May 11, 2003; (13)
27 Work glove or swabbed evidence collected from the work glove; and (14) Hammer or swabbed
28 evidence collected from the hammer.

1 The orange van items consist of: (1) "Cloth from mattress," (2) "A piece of partially
2 burned mattress cloth," (3) "Cloth from Van Fuel Tank" of orange van, and (4) "Metal fuel
3 container in the center on a mattress." With the exception of the two items previously tested
4 pursuant to stipulation that resulted in identification on one of the items of a trace amount of male
5 DNA, the defense fails to establish by competent evidence that the items are still available and in
6 a condition that would allow DNA testing.

7 The floating debris consists of: (5) "Target bag," (6) "Duct Tape" recovered from the
8 "Target bag," (7) Four packages of debris collected from "Target bag," (10) "Duct tape from
9 bay," (11) "Black Tarp" discovered on Tuesday, April 15, 2003, by East Bay Regional Park
10 District Police Department (EBRPDPD) personnel along the Point Isabel shoreline and (12)
11 "Black Tarp" recovered from Point Isabel on May 11, 2003. The defense fails to establish by
12 competent evidence that these items are still available and in a condition that would allow DNA
13 testing.

14 Lastly, (13) Work glove or swabbed evidence collected from the work glove and (14)
15 Hammer or swabbed evidence collected from the hammer. The defense fails to establish by
16 competent evidence that these items actually even exist much less that they are still available and
17 in a condition that would allow DNA testing. It is clear from their discovery motion that they have
18 no basis, other than speculation, to believe these items exist. Counsel's "belief" that the evidence
19 exists does not mean "[t]he evidence to be tested is available and in a condition that would permit
20 the DNA testing requested in the motion." (§ 1405, subd. (g)(1).) The People's argument for this
21 subsection must also flow into the next subsection based on the defense claims.

22 (2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has
23 not been substituted, tampered with, replaced, or altered in any material aspect.

24 As stated above, the defendant has not established where the evidence is located and even
25 whether it exists; he therefore has not met this criteria. The defense includes a 50-page declaration
26 from Paige McGrail (one of the defense attorneys), an 8-page declaration from their DNA witness
27 and a 3-page declaration from Paula Mitchell (another defense attorney) and nowhere in these
28

1 proffers is there any attempt to establish the existence of the evidence,¹²³ the chain of custody or
2 that the items have been preserved in any fashion that would allow for DNA testing to be
3 conducted. As just one example, to quote from page 126 of defendant’s motion:

4 “Mr. Peterson has not been provided with the complete file from the Medina
5 burglary investigation but has every reason to believe that law enforcement would
6 collect all evidence that could identify a perpetrator and maintain a proper chain
7 of custody for those items.”

8 “Every reason to believe” is hardly the proof mandated by this code section and the above-
9 cited caselaw.

10 The defense attempts to sidestep his burden by reference to certain code sections, such as
11 Pen. Code § 1417.9, as a basis for his claim that the evidence must still exist and be preserved.
12 His logic rests on a faulty premise – that the requested evidence relates to this case. Penal Code
13 §1417.1 discusses the destruction timeline on evidence that was introduced or filed in a criminal
14 case or proceeding. Penal Code § 1417: “All exhibits which have been introduced or filed in any
15 criminal action or proceeding shall be retained by the clerk of the court who shall establish a
16 procedure to account for the exhibits properly, subject to Sections 1417.2 and 1417.3 until final
17 determination of the action or proceedings and the exhibits shall thereafter be distributed or
18 disposed of as provided in this chapter.”

19 First, no declaration or proof has been provided that the defendant has confirmed the items
20 he requests to be tested are available, including the items from a separate 22-year-old arson
21 investigation or items from a separate 22-year-old burglary investigation, both of which the
22 defense also claims that MPD failed to investigate.

23 Second, the defendant’s claim is that the police must still have the evidence because they
24 "shall retain any object or material that contains or includes biological material that is secured in

25 ¹²³Provided with this motion, the defense has shown the chain of custody related to the prior DNA testing
26 on the mattress sample that developed a male profile. It is clear that the defense has the ability to locate,
27 document and establish the circumstances required to be proved by this code section when they so choose
28 – the failure of them to do so with the other remaining items must be taken as an admission that they cannot
meet their burden for this point.

1 connection with a criminal case for the period of time that any person remains incarcerated in
2 connection with that case. " (Pen. Code, § 1417.9.) Their motion makes it clear that none of the
3 orange van items were secured "in connection with a case where someone was incarcerated in
4 connection with that case." Peterson has never been charged with arson or auto theft and, on the
5 record before this court, neither has anyone else. The orange van investigation is therefore an
6 unsolved crime. In cases where no more can be said than that the evidence could have been
7 subjected to tests, the results of which might have exonerated the defendant, the failure to preserve
8 the evidence will not constitute a denial of due process, "unless a criminal defendant can show
9 bad faith on the part of the police." (*Arizona v. Youngblood* (1988) 488 U.S. 51, 57–58.) There
10 can be no violation where police act in good faith in accordance with their normal practice,
11 without animus toward the defendant or in a conscious effort to suppress exculpatory evidence.
12 (*California v. Trombetta*, (1984) 467 U.S. 479, 488.) Therefore, the presumptions the defense
13 attempts to use as a substitute for evidence are insufficient.

14 Next, the defense seeks to test evidence from the Medina burglary that: (1) was never
15 introduced in defendant's murder trial and (2) for which the responsible burglars pled to the crime.
16 Thus, no evidence was introduced in the criminal case or proceeding connected to an incarcerated
17 person and, further, the timeline for Todd and Pearce's appeal has run. As set forth above, the
18 defense has known as far back as 2003 that the Medina evidence was not maintained by MPD.
19 Geragos argued that fact as part of his theory to the jury, which rejected the claim. Again, there
20 can be no presumption of a fact based on an incorrect application of a law that doesn't apply to
21 the facts. Further, the defendant has misrepresented that the items, such as the hammer and work
22 glove, they seek to test for DNA are available even when there is no proof that these items were
23 ever collected by police and placed in evidence. Defendant has failed to meet this criteria.

24 (3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the
25 case.

26 This is addressed earlier in section VI(C)1(1)(B) as it is virtually identical to the
27 requirement in Penal Code section 1405(d)(1)(B).

28 The People address subparagraph (4) and (5) together below.

1 (4) The convicted person has made a prima facie showing that the evidence sought to be tested is
2 material to the issue of the convicted person’s identity as the perpetrator of...the crime...that
3 resulted in the conviction or sentence. The convicted person is only required to demonstrate that
4 the DNA testing he or she seeks would be relevant to, rather than dispositive of, the issue of
5 identity. The convicted person is not required to show a favorable result would conclusively
6 establish his or her innocence.

7 (5) The requested DNA testing results would raise a reasonable probability that, in light of all the
8 evidence, the convicted person's verdict or sentence would have been more favorable if the results
9 of DNA testing had been available at the time of conviction. The court in its discretion may
10 consider any evidence whether or not it was introduced at trial. In determining whether the
11 convicted person is entitled to develop potentially exculpatory evidence, the court shall not decide
12 whether, assuming a DNA test result favorable to the convicted person, he or she is entitled to
13 some form of ultimate relief.

14 The People include their earlier argument in section VI(C)1(1)(D) – the requirement in
15 Penal Code section 1405(d)(1)(D) as part of our response because it aligns with Penal Code
16 section 1405(g)(5).

17 The People emphasize that strictly-regulated access to DNA testing serves important state
18 interests, including respect for the finality of judgments and the efficient use of limited resources.
19 (*District Attorney’s Office v. Osborne, supra*, 129 S. Ct. 2308). With these policies in mind, the
20 defendant must show that, “had the DNA testing been available, in light of all the evidence, there
21 is a reasonable probability – that is, a reasonable chance and not merely an abstract possibility –
22 that the defendant would have obtained a more favorable result.” (*Richardson v. Superior Court,*
23 *supra*, 43 Cal.4th 1040, 1051; *State v. Dupigney* (2010) 295 Conn. 50, 66.) Additionally,
24 “reasonable probability” does not merely amount to “more likely than not.” Rather, it must be
25 more than an abstract possibility when considering the entire case. (See *Richardson, supra*, 43
26 Cal.4th 1040, 1050.) The trial court should not decide whether, assuming the DNA test result is
27 favorable to the defendant, that “evidence in and of itself would ultimately require some form of
28 relief from the conviction.” (*Ibid.*)

In *Richardson*, the California Supreme Court upheld the trial court’s finding that there was
a substantial amount of other evidence linking him to his crime. The Supreme Court stated this
constituted a finding that the defendant failed to establish the reasonable probability requirement.

1 (*Richardson v. Superior Court, supra*, 43 Cal.4th 1040, 1051.) The DNA evidence at
2 Richardson’s trial was not “conclusive” on the issue of guilt. In that case, pubic hairs were found
3 in the bathtub where the victim was found dead. (*Id.* at pp. 1051-1052.) During trial, the
4 prosecution’s experts could not agree whether or not the pubic hairs were consistent with the
5 defendant’s hair. (*Ibid.*) Additionally, a defense expert testified the hair samples were not
6 consistent with the defendant’s hair. (*Id.* at p. 1052.)

7 The Supreme Court of Connecticut in *State v. Dupigney* used the same reasonable
8 probability standard when it evaluated its similar DNA testing statute. (*State v. Dupigney, supra*,
9 295 Conn. 50, 63-65 “reaching the same conclusion when construing comparable California
10 statutes.”) In that case, the defendant requested DNA testing of a hat found at the murder scene.
11 (*Id.* at p. 53.) The court held that even if the DNA testing results were most favorable to the
12 petitioner, the other evidence presented at trial would not “undermine [their] confidence in the
13 fairness of the verdict.” (*Id.* at p. 73.) Other states have denied motions using the same reasonable
14 probability standard. (*Matheney v. State* (Ind. 2005) 834 N.E.2d 658, 663-64 [denying motion
15 for DNA testing under statute imposing reasonable probability standard when state presented a
16 ‘plethora of other evidence upon which the jury could have based its decision in convicting’ the
17 defendant of murder].)

18 Applying this standard to the defense’s theory of why DNA evidence testing should be
19 granted, it becomes immediately clear that testing is not appropriate – there is no new evidence,
20 the court has previously ruled against his claims and this amounts to an end around attack on trial
21 counsel which has already been rejected as part of the defendant’s first Petition for a Writ.

22 Taking each claim separately before addressing the items for which DNA testing is
23 sought, it becomes clear that the defendant has failed to raise a valid claim. To assist the court in
24 tracking the defense claims, we use the defense’s structure and numbering/ lettering to address
25 their claims.

26 **1. Defense Claim: *Laci Peterson Was Alive And Walking McKenzi (sic) In The La Loma***
27 ***Neighborhood On December 24, After Mr. Peterson Left Home For The Day*.....False**

28 The defense provides a gaggle of claimed witnesses that they represent saw Laci walking.

1 First, they neglect to tell this Court that these witnesses were known before trial (thus making it
2 impossible for this to be new evidence), that the defense used several of these witnesses'
3 statements under "Prop 115" at the preliminary hearing (attached as Defense Motion Exh. K to
4 defense pleadings, starting at page 1305), the defense chose not to call these witnesses at trial¹²⁴
5 (this issue was raised and rejected by the Supreme Court as part of defendant's first Habeas), and
6 that the trial jury was offered testimony about pregnant dog walkers during the trial (by the
7 prosecution) who resembled Laci or had a dog that looked like Laci's dog. More importantly, the
8 below witnesses adopted the false description that Scott Peterson gave to the police and the media.
9 Scott claimed, in one of his many lies, that Laci was mopping the floor wearing black pants and
10 a white top before he left the house. The facts show, however, that (1) the maid had already
11 mopped the floors the day before and left the bucket on the washing machine and the mop leaning
12 against the house outside the door by the washing machine per Laci's instructions (RT 8664:12-
13 8677:20) and (2) Laci's remains were recovered in tan/creamy pants that her sister had identified
14 as being worn by Laci the night before. Scott gave the story to the police that Laci was going to
15 go for a walk and described her clothing which was then widely disseminated. Laci's medical
16 providers testified¹²⁵ (and medical records established) that Laci was in late-stage pregnancy and
17 was having difficulty walking due to symptoms of dizziness or lightheadedness. (RT 10375:26-
18 10376:13.) Laci's doctors told Laci to stop walking or exercising after her complaints. (RT
19 10378:1-6.) Stacey Boyers, one of Laci's best friends, testified that Laci had stopped walking,
20 saying Laci said she "was told to stop walking because she was so late in her pregnancy, she was

21
22 ¹²⁴ Taken from the Prosecution Closing Argument at trial: "The defense put an exhibit in. I wrote it in my
23 notes here. D7Q. It was a map of these alleged witness sightings. And I think it included Tony Freitas, and
24 Grace Wolf, and Homer Maldonado. I'm pretty sure those were the people. If I'm wrong, just look at the
25 testimony, look at the map itself. Not a single one came in to testify. Why do you think that was? This is
26 a very experienced defense team. They are very good lawyers. They obviously know how to prove facts if
27 they want to. Why do you think they didn't bring in a single witness to testify that they saw Laci Peterson
28 walking that day? Remember, you heard a bunch of evidence about Tom Harshman. Remember that whole
thing with the fence, and the woman urinating, and the van, and all that crazy story? How come Tom
Harshman didn't get up here on the stand? Let's hear what he has to say if that's true. None of those people
came in and testified. You know why? You can assume because that what they were going to say was not
credible, that's why. (RT 20322:10-20323:2.)

¹²⁵ Doctor Tow-der, starting at RT 17226; Dr. Edraki, starting at RT10367.

1 nauseous and always tired.” (RT 10509:16-24.)

2 The following relates to each witness and the number relates to the page in defendant’s
3 motion.

4 **a) Homer Maldonado.25**

5 This witness described Laci as wearing black pants and a white top. (Exh. 6 of defense
6 motion, Ermoian report attached as Exh. B to Paige McGrail’s declaration). This witness provided
7 a copy of his trial subpoena to the current defense team. In his pleadings, the defendant mentions
8 and therefore must concede that this witness and his wife repeatedly talked to the defense before
9 trial.

10 **b) Helen “Sue” Maldonado.....27**

11 This witness admitted she “never looked up to see the woman...” now claimed to be Laci
12 Peterson. (Exh. 7 of defense motion; she, too, provided a copy of her trial subpoena.) This is not
13 new evidence as stated above relating to Homer Maldonado.

14 **c) Tony Freitas.27**

15 This person called in a tip to the police before trial (Bates page 14818, included as part of
16 Exh. 8 of defense motion). This caller was interviewed by the defense in 2003; Freitas described
17 the woman (ostensibly referring to Laci) as “wearing dark clothing.” (Exh. C of Freitas
18 declaration.) Freitas also said it was at least 0945 when he saw the woman; in his initial tip he
19 said it was 1000. Freitas admitted seeing the missing person flyer and Laci’s picture on the news.
20 Besides the usual question as to why someone would recall a random unknown person walking
21 on the street as you drive by, the spot that Freitas described where he saw Laci is over five blocks
22 from the Covena house. Scott Peterson, by his own admission did not leave the house until after
23 hearing a statement on an episode of Martha Stewart at either 0945 or 0946 (RT 18769:11-16).
24 Mary Anderson, an expert with AT&T, testified that the defendant retrieved a voice mail at 1008
25 hours while pinging off the cell tower for his house. (RT14994:13-14996:21.) Inv. Steve Jacobson
26 tested the cell tower location of the voicemail proving that the call originated at the defendant’s
27 address at 1008 hours (RT 15388:5-15392:8.) thus, making it impossible for Mr. Freitas to see
28

1 Laci five blocks away before the defendant even left the house.

2 **d) Dean T.28**

3 This person called in a tip (Bates page 14750) reporting he saw Laci while driving by at
4 0905 to 0910 in the morning. He described the person he saw as wearing a “white top and black
5 pants.” (Def. Motion Exh. 5, paragraph 55.) As stated above, this sighting, regardless of being
6 inaccurate in clothing description, is impossible due to the time and has been known to the
7 defense since before trial.

8 **e) Martha Aguilar.30**

9 This person was interviewed by the defense according to their reports in 2003. Ms. Aguilar
10 was driving down a street (several blocks from the Peterson home). Ms. Aguilar admitted to seeing
11 photos of Laci and never reported her sighting to the police. The defense report only states that
12 Aguilar said the person matched the description of Laci. Aguilar’s husband who was with her
13 specifically said that the person was wearing a “white blouse and black pants.” No declaration
14 has been provided by Ms. Aguilar and this might be due to her husband stating she suffered a
15 heart attack in 2007 that badly affected her memory. It should also be noted that Ms. Aguilar
16 claimed to be able to see an ankle tattoo while driving past from her car. Again, this is not new
17 evidence and is factually wrong.

18 **f) Vivian Mitchell.31**

19 **This witness is deceased.** However, she was interviewed by the defense in 2003 and was
20 on the defense witness list for trial. During her defense interview, she admitted to seeing photos
21 of Laci and described the person she claimed was Laci as “wearing a white top with long sleeves
22 and black slacks.” The “sighting” was claimed to be between 1000 and 1030¹²⁶ hours (page 4 of

23 _____
24 ¹²⁶ At trial, it was established by the Petersons’s neighbor, Karen Servas, that she found the dog McKenzie
25 dragging his leash in the street at 1018 hours and Servas put the dog in the backyard with the leash still on
26 the dog. The trial jury was provided with the above cellphone/tower evidence and Servas’s timeframe as
27 leaving only a 10-minute window between the defendant leaving the house and the dog being found. If
28 Laci were to have been subsequently abducted, the bad guys would have also had to return the dog to the
back yard where the dog was later claimed to have been found by the defendant still dragging the leash
(RT 17713:13-18) and also made Laci change her clothes (since her tan pants were not found in her hamper
from the night before, but were on her body when she was recovered).

1 defense interview.) This is not new evidence.

2 **g) Grace Wolf**32

3 As mentioned above, this person was known to the jury and her report was cleverly put
4 forth to the jury by the defense attorney by asking the case detective about it. Ms. Wolf said that
5 she was driving when she saw a woman she claimed was Laci wearing “black pants.” Wolf
6 admitted to having seen photos of Laci in the news. In 2009, Wolf submitted a declaration for the
7 defendant’s attorneys repudiating her prior claim; she stated “I did not see Laci walking on
8 December 24th, only on December 23rd.” (HCP-000348.) This is not new evidence.

9 **h) Gene Pedrioli**.....32

10 **This witness is deceased.** Mr. Pedrioli’s tip is documented at Bates page 13586; it has
11 been available to the defense since 2003. This is not new evidence.

12 **i) John Brazil**.....33

13 Brazil’s tip was documented at Bates page 2106. In his tip, he claimed that he saw a
14 pregnant woman (could not tell her age or any other details about her description) and she was
15 walking a dog. He said the dog got away and the lady “was walking pretty fast. It was not a
16 leisurely walk” to go after the dog. (Part of Paige McGrail’s declaration.) He said she had on
17 “dark colored sweatpants.” Brazil said this occurred when he was picking up trash in the park
18 between 0830-1000 hours.” Besides the inaccurate description, this sighting was impossible
19 because of the timeline described above... the defendant had not left his home yet. This is not
20 new evidence either.

21 **j) Sharon P.**34

22 This witness’s tip is documented at Bates page 15095. (Also part of McGrail’s
23 declaration.) Sharon described the person she saw as wearing “all black.” This is not new
24 evidence.

25 **k) Diane Campos**34

26 The defense had an MPD detective “Prop 115” this witness’s statement at the preliminary
27 hearing; part of the transcript has been submitted by the defense as an attachment to an exhibit.

1 The detective explained that Campos “said she watched these people [two males and one female]
2 for approximately five minutes while they walked the distance of approximately a football field,
3 or a hundred yards.” Campos admitted she had seen the missing person flyers and said the woman
4 was wearing a white top and what appeared to be sweatpants.” (Attached as Exh. K to defense
5 pleadings, starting at page 1309-1310.) Ms. Campos has provided a statement with this motion in
6 which she claims that a defense investigator for the defendant “kept telling [her] that [she] had
7 the time wrong. (HCP-000332 dated 2013.) She further said, “The investigator made me nervous
8 and he wanted me to change my timing. I have now reviewed the June 13, 2003, defense report
9 of my interview with Mr. Ermoian. The report indicates that I saw Ms. Peterson with her dog at
10 9:40 a.m. That is not correct.”

11 During the trial, multiple “look-alike” witnesses testified that they walked in the general
12 area of where Laci lived. The medical records and witness testimony disproved that Laci was
13 walking that morning. Diane Campos gave the publicly known description of the missing Laci
14 fed to the public by the defendant. More importantly, this is not new evidence.

15 It is apparent that these witness claims are not new but are simply attacks on how the
16 defense currently views how the trial was conducted. The defense isn’t even attempting to hide
17 this fact stating:

18 “It is equally concerning that both the prosecution and the defense told the jury
19 during opening statements at Mr. Peterson’s trial that they would hear testimony
20 from these witnesses, and yet neither side called a single eyewitness to testify that
21 they had seen Laci Peterson alive the morning of December 24, 2002, so the jury
22 could assess the credibility of those witnesses and the reliability of their testimony.
23 (See, e.g., 43 RT 8554–8556 [prosecution’s opening statement: “What I ask you
24 to do at this stage is—just opening statements—is pay attention to the evidence as
25 it comes in. Pay attention to what these people say, who saw Laci Peterson
26 (referring to Diane Campos and Homer Maldonado)];”] 44 RT 8656–8657
27 [defense’s opening statement: “The one thing that you’re going to hear and that
28 you’re going to see is that there is direct evidence in this case. The direct evidence
in this case specifically is of the eyewitnesses who saw [Laci] come around that
day and saw her walk the dog that day. The evidence is going to show you that she
was alive on December 24th when Scott went to the marina.”].) None of these
eyewitness accounts have been discredited or found to be unreliable to this day.”

1 Tactical decisions cannot support a claim of IAC much less a claim that has already been
2 litigated.

3 Courts give great deference to tactical and strategic decisions made during the
4 course of a trial, and generally reject ineffective assistance claims based on this
5 ground. When examining a claim of ineffective assistance of counsel, a reviewing
6 court defers to counsel's reasonable tactical decisions, and there is a presumption
7 counsel acted within the wide range of reasonable professional assistance, and the
8 defendant must overcome that presumption to establish ineffective assistance of
9 counsel. In particular, where there is a reasonable tactical explanation for the trial
10 counsel's action, the reviewing court must reject a defendant's ineffective
11 assistance of counsel claim. In the heat of a trial, it is defense counsel who is best
12 able to determine the proper tactics in light of the jury's apparent reaction to the
13 proceedings. Counsel's strategic choices made after a thorough investigation of the
14 law and the facts relevant to plausible options are virtually unchallengeable on a
15 claim of ineffective assistance of counsel, since the courts presume that counsel's
16 conduct falls within the wide range of reasonable professional assistance pursuant
17 to which great deference is accorded tactical decisions.

18 (19A Cal. Jur. 3d Criminal Law: Rights of the Accused § 171.)

19 Most evidentiary decisions, such as whether to cross-examine witnesses, whether
20 to object to inadmissible evidence and whether to call certain witnesses are
21 considered a matter of trial tactics within the discretion of trial counsel and rarely
22 provide an adequate basis on appeal for a claim of ineffective assistance of counsel.

23 (19A Cal. Jur. 3d Criminal Law: Rights of the Accused § 172.)

24 “When examining an ineffective assistance claim, a reviewing court defers to
25 counsel's reasonable tactical decisions, and there is a presumption counsel acted
26 within the wide range of reasonable professional assistance.”****

27 “It is all too tempting for a defendant to second-guess counsel's assistance after
28 conviction or adverse sentence, and it is all too easy for a court, examining
counsel's defense after it has proved unsuccessful, to conclude that a particular act
or omission of counsel was unreasonable. [Citation.] A fair assessment of attorney
performance requires that every effort be made to eliminate the distorting effects
of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and
to evaluate the conduct from counsel's perspective at the time. Because of the
difficulties inherent in making the evaluation, a court must indulge a strong
presumption that counsel's conduct falls within the wide range of reasonable
professional assistance; that is, the defendant must overcome the presumption that,
under the circumstances, the challenged action ‘might be considered sound trial
strategy.’ ” (*Strickland v. Washington* (1984) 466 U.S. 668, 689; see *In re Valdez*
(2010) 49 Cal.4th 715, 729–730 [quoting *Strickland*].)”

(*People v. Caparaz* (2022) 80 Cal.App.5th 669, 687.)

1 It is unfortunate that the defense withholds the rest of the story from this Court – the
2 defense at trial was able to get many of these witnesses’ claimed sightings before the jury without
3 the witnesses being cross-examined.¹²⁷ In fact, Det. Grogan, the lead detective, was cross-
4 examined regarding many of the mentioned witnesses:

5 Geragos: Okay. And can I ask you, there -- there was a number of other witnesses
6 that were provided to you, and I'll -- I'll go through and give you an opportunity at
7 the break so you can pull out your reports -- but there was a number of other
8 witnesses that -- 40161. A number of other witnesses early on, Grace Wolf, Homer
9 Maldonado, Tony Freitas. When was the first time that you were aware of one or
10 all of those people? (RT 18280:13-20.)

11 ****

12 Q. So Mr. Freitas called in -- was he one of the dots on the board that you
13 showed -- that we marked as an exhibit and showed to the jury?

14 A. Yes.

15 Q. Okay. And he called in and he said that he saw Laci Peterson walking a
16 Golden Retriever, correct?

17 A. Yes.

18 Q. He called in the tip line, correct?

19 A. Yes.

20 Q. And no -- you now know that he was working for Orowheat at the time,
21 correct? As a driver?

22 A. Yes. (RT 18281:23-18282:8.)

23 ****

24 Q. Okay. And this was a report where Mr. Ermoian on 26 January 10th made
25 contact with Homer and Helen Maldonado, correct?

26 A. Well, I don't know. I don't know when your investigator completed the report.
27
28

¹²⁷ When ruling on a hearsay objection the trial judge stated: “The inference has been raised that there has been a rush to judgment by the Modesto Police Department, that they decided -- they zeroed in on Scott Peterson and discarded all this other information, so the reasonableness of this conduct, what he did, is an issue here. So, under the law, there is caselaw on this, is that what he's been told, how did he act on it, and was it reasonable what he did. So I think that's the reason why I'm letting all this information in. Because there is an issue as to the reasonableness of the police officers' conduct. What did he do as a result of this information, okay? If they don't hear the information, they don't know whether his conduct was reasonable or not.” (RT11375:12-25.)

1 Q. Okay. I have got a report that's dated 1-10-2003. Did you get -- that's the same
2 one, correct?

3 A. Correct.

4 Q. Okay. Now, you reviewed that report which says Homer said he was at the
5 USA Mini Mart gas station, right, near the corner -- he calls it the corner of
6 Covena and Miller, right?

7 A. That's what he says.

8 Q. Okay.

9 A. I have seen the videotape interview.

10 Q. So he's got himself placed right there. Do you know where the gas station is?
11 The (*sic*) could it be right there, Covena and Miller?

12 A. No. I believe it's -- well, yeah, it's a little --it's on the corner of that Camelia
13 and Miller. And it would be to the bottom left hand side of that corner, right
14 about where the "C" is on Camelia.

15 Q. Okay. Now, the -- specifically he gave, for the most part, the same statement
16 to Mr. Ermoian that he had told the officers, that he had seen her and the dog,
17 described her. Said that she was located about the second house from the corner
18 of Miller; is that right? That she was on the west side of the street. The way he
19 describes it is, he's driving west on Miller past Covena. So that would be west on
20 Miller. Past Covena would be right there, correct?

21 A. Correct.

22 Q. And he says that he observed this beautiful young woman he described as
23 very pregnant, with a Golden Retriever dog, right?

24 A. Yes.

25 Q. And that he commented to his wife that it looked -- something -- I hope she
26 doesn't fall, because she is having some trouble with the dog. Right?

27 A. Correct.

28 Q. Okay. Now, as he is driving in this direction, he says that he described the
woman as being dressed in dark pants and light top, that she had dark hair, right?

(RT 18494:25 -18496:15.)

The current defense claim that none of these eyewitness accounts have been discredited

1 or found to be unreliable simply ignores the trial as it happened. As pointed out for each of the
2 witnesses above, they are incorrect or stating the impossible, seemed to be influenced by media
3 accounts or have repudiated their prior statements. And they were also known to the defense at
4 the time of the trial.

5 **2. Defense Claim: “The Medina Burglary Occurred the Morning of Dec. 24”False**

6 **a) New evidence confirms that Steven Todd, Glen Pearce, and others burglarized the Medinas’**
7 **home at or around the time Laci Peterson was walking her dog on December 24,**
8 **2002.....38**

9 At the outset, it should be noted that there is no new evidence that Laci was walking the
10 dog. In fact, this theory was presented to the jury by the defense, and it failed. Any complaint
11 about the outcome of the trial would have to have been addressed during direct appeal or the first
12 habeas proceeding. It was, *and* it was rejected by the Supreme Court. This proceeding is *not*
13 available for the defense to attempt to overrule a higher court.

14 The defense claim, though an oft repeated claim, is false. There was an unrelated burglary
15 that occurred across the street from the Peterson house two days after Laci “disappeared.” The
16 two burglars were turned in after a \$1,000.00 reward was offered for information relating to the
17 burglary. (Def. Motion Exh. 25 [Def. Trial Exh. NN].) The reward for information relating to
18 Laci’s disappearance at the same time was up to \$100,000.00 (Bates page 0001). One of the most
19 obvious reasons showing that the burglary didn’t occur until the 26th is that the burglars used a
20 dolly from the Medina house and left it laying in the front yard. (Susan Medina trial testimony at
21 RT 9600.) On the 24th and 25th, Laci’s family and friends as well as police and volunteers were
22 searching throughout the neighborhood and park for her. A dolly laying in the yard would have
23 attracted someone’s attention. Further, the Peterson house itself was burglarized on January 19,
24 2004 and that suspect was identified the next day (RT 11493:1-6). That crime was also unrelated
25 to Laci’s disappearance.

26 In trying to meet their burden, the defense constantly uses half-truths to tell the entire
27 story; here is one example in this section:

28 “According to Todd, he rode his bike to the Medinas’ home, packed up over 50
items into his backpack, including heavy tools, a large rolling toolbox full of tools,

1 and large gardening equipment, among other items, collectively weighing about
2 200 pounds, and carried them away on his bike.” (Def. Motion page 41, line 16-
19.)

3 However, the rest of the story is as follows... in another example of the trial attorney getting
4 information before the jury, attorney Geragos examined Det. Mike Hicks about Todd’s
5 statements regarding the burglary:

6 Q. And he said that he, that when he arrived he parked his bicycle near the fence,
7 right?

8 A. Yes.

9 Q. And then he jumped into the backyard, right?

10 A. Yes.

11 Q. And he said he started looking around the shed, right?

12 A. Correct.

13 Q. And then he saw, went inside the shed and he saw air tools, Craftsman air tools,
14 air stapler, air compressor, a weed eater and an air blower, correct?

15 A. Yes.

16 Q. And he said he loaded several of these items into a backpack, right?

17 A. Yes.

18 Q. Then he loaded it or stacked the larger items near the fence by the Covenana side
19 of the house; is that right?

20 A. Yes.

21 Q. Then he said he road his bike from that house at 3:30 in the morning, right?

22 A. Yes. I think it was between 4:00 and 5:00, actually.

23 Q. Well, if I understand your report correct, it looks like he left at 3:30 and went
24 back to his house and then between 4:00 and 5:00 he went back to the Medina's
25 again?

26 A. Yes.

27 Q. Okay. And he again said he was on his bicycle; is that right?

28 A. That's correct.

Q. Okay. And he said that he walked around the backyard and made noises, he said
he made noises himself?

A. Yes.

1 Q. To make sure no one was home at the residence?

2 A. Yes.

3 Q. Okay. Went over to a set of French doors, right?

4 A. Correct.

5 Q. Used his foot to push open the doors?

6 A. Yes.

7 Q. Then got into the house and he described what he did in the house, correct?

8 A. Yes.

9 Q. Okay. And said he got a dolly from the backyard and he used that dolly to move
10 the safe from the master bedroom out the front door of the residence to the porch
11 area; is that correct?

12 A. Yes.

13 Q. And then he said he moved that safe behind several bushes on the porch that
14 were located just south of the front door, right?

15 A. Yes.

16 Q. And after he moved the safe, he immediately got on his bicycle and road back
17 to his residence?

18 A. Yes.

19 Q. Okay. And he says he was riding away for the second time he noticed an elderly
20 female at a residence located on the south side outside feeding her cats, correct?

21 A. Correct.

22 Q. Okay. And then he says he made contact with this guy by the name of Pierce
23 (*sic*), woken from his sleep, and Pierce (*sic*) got up and they agreed to go and
24 retrieve the safe; is that right?

25 A. That's right.

26 A. Yes.

27 Q. Now what time did he tell you that was that he and Pierce (*sic*) went back to get
28 this safe?

A. I believe Pierce (*sic*) told me that he was woken up between somewhere
between 5:00 and 6:00 and that's when he went back.

Q. Okay. About 5:00 to 6:00 in the morning?

A. Yes.

1 (RT 20019:17-20022:9; emphasis added.)

2 There are two more important factors that Det. Hicks testified to in front of the jury
3 during the defendant's trial:

4 Fladager: Q. Did Mr. Pearce indicate that he had -- he agreed to assist Todd in taking
5 Todd back over to that Covenana address?

6 A. Yes, he did.

7 Q. What did he tell you happened when they got to the address?

8 A. He said they pulled up to the front of the house with the passenger side towards
9 the front door. Mr. Todd got out of the vehicle, went to the front of the house where
10 the safe was on the dolly. He wheeled it to the front passenger side. And then Mr.
11 Todd actually rolled it into the front seat, because it was so heavy. To close the
12 door, Mr. Todd actually got into the back seat, they drove away.

13 Q. Do you know what kind of car it was that Mr. Pearce was driving?

14 A. Yes. It was a small four-door Honda.

15 Q. This is like a white Honda?

16 A. A little white Honda.

17 Q. Is this the car that Mr. Pearce shares with his mother?

18 A. Yes. He actually drove up in it the night we were at the house.

19 (RT 20051:19 -20052:13.)

20 ***

21 THE COURT: That's his best estimate between 6:30 and 7:00.

22 Geragos - Q. 6:30 and 7:00?

23 A. It's a very short distance.

24 Q. Very short distance. Parks in front of the house. Does he tell you there is any
25 media there?

26 A. Mr. Pearce never said there was media. Although Todd told me that there was
27 media.

28 Q. Todd told you there was media. Mr. Todd said that, yes, he went in the back
way, right?

A. He never said that's the reason why he went. I would imagine burglars don't
run in the front door. Usually go around the back.

1 Q. Usually load the safe out on the 26th at a house where there is media camped
2 out?

3 A. He said there was one van parked down the street.

4 Q. One van?

5 A. Yes.

6 (RT 20059:10-20060:1.)

7 The jury heard and rejected the claims that the defendant is making once again. More
8 importantly, both Todd and Pearce admitted their involvement in the Medina burglary, pled guilty
9 to the crime occurring on the 26th of December, assisted in getting the stolen property back (that
10 could be recovered) and denied any involvement in Laci's abduction. (RT 20015:3-20023:15,
11 20053:2 – 20055:24.) Both of these burglars were on the witness list for trial and, in fact, Todd
12 was in the San Mateo jail waiting to be called as a witness (Def. Ex 28, paragraph 3). The defense
13 never called them because they were able to get the defense theory before the jury without taking
14 any chances by calling the actual witnesses.

15 The claim that third parties were responsible for the "abduction" in this case has been
16 litigated to the trial jury, has been appealed, and has been found wanting. Geragos was allowed
17 to admit Todd's statement to the jury so there was no need for him to be called as a witness and
18 the defendant cannot now claim error (as a basis for DNA testing).

19 The defense has consistently thrown into their pleadings that MPD failed to investigate
20 this case (or the Medina burglary) because they were focused on getting the defendant, as was
21 claimed by trial counsel. But they have never explained--why? Why would MPD ignore a
22 convicted felon (Todd) who was committing a burglary across the street so that they could focus
23 on or "get" a fertilizer salesman with no prior record? Why would Todd, with no connection to
24 Laci, abduct her, keep her and then kill her later to frame Peterson? The answer is the same now
25 as was argued during the trial...no one would.

26 Distaso: And I told you they wouldn't be able to address why those bodies ended
27 up exactly where Scott Peterson went. Told you that in argument. And, you know,
28 they didn't touch it, because they can't. There is only two -- only two possible
things that happened here. Either he killed them and he put them in the bay, like I

1 have been telling you for two days now, or someone else did it to frame him.
2 Because nobody -- no homeless person, no 290 registrant, sex registrant, no
3 burglar, takes a body and drives all way to the San Francisco Bay to dump it in
4 exactly the location he went, unless he's doing it to frame him. That's the only
5 reason. Otherwise, why do you take the risk of transporting a body all the way
6 from Modesto? It's just not going to happen. All right. So either he did it, or they
7 did it to frame him.

7 (RT 20525:14 – 20526:3.)

8 But even if there were some possible imaginary way that the defense story could be
9 possible... why would the killers take the risk of later driving all the way to the Bay – 90 miles
10 away where the police were diligently searching -- and then weigh the bodies down so they could
11 *not* be found...all in an attempt to frame the defendant? Even the defense experts concede that
12 Laci was on the bottom of the Bay for months ...weighted down.

13 The defense tries to add to their Medina story by claiming they have new witnesses. Said
14 witnesses claim that someone (who isn't Todd or Pearce) admitted the Medina burglary was where
15 Laci was abducted. The so-called new evidence is the most rank of hearsay from anonymous
16 witnesses whom the defense has repeatedly refused to disclose to the prosecution. More
17 importantly, the defense's own attachments to this motion show that the so-called witnesses blame
18 someone (listed below as D.M) who has denied that any such admission was ever made. More of
19 this will be discussed below to address the defense's claims as presented.

20 ***b) Numerous eyewitnesses reported a suspicious van in front of the Medinas' home on***
21 ***December 24.***..... .45

22 As with the prior sections, the defense uses speculation, conjecture and good old-
23 fashioned fiction to spin a yarn, but each step in their narrative is premised on the previous false
24 narrative. The defense starts this section stating:

25 As with the exculpatory eyewitness reports indicating Laci was alive after Mr.
26 Peterson left home for the day, which police refused to investigate, there were at
27 least five eyewitness reports called into the police to provide information about a
28 suspicious van spotted on Covena in front of the Medinas' home on December 24.

(Def. motion page 45.)

1 First, we have already addressed the claims of the so-called exculpatory nature of the
2 claimed witnesses and the police investigation. We have also shown from the trial testimony that
3 the burglars used a small white Honda – not an orange van or any van. For a van to have any part
4 in this tale, the defense must concede that Todd and Pearce were not involved since they had no
5 van¹²⁸. If Todd and Pearce had no part in this story, then the defense must also concede that any
6 description of a van or description of men nearby said van must be third parties unrelated to Todd
7 and Pearce or the Medina burglary. If those mystery men or mystery vans were somehow
8 involved, you have to ask -- doing what? They weren't involved in the Medina burglary so there
9 is no crime for Laci to interrupt, assuming she could have gone for a walk. However, we know
10 that a van belonging to Krigbaum was parked on the street because trial witnesses testified to it.
11 There is no direct connection of any van to the crime of which the defendant is convicted. The
12 law is clear that none of that type of evidence would be admissible.

13
14 In addition to articulating a general standard in *Hall*, we formulated more specific
15 guidelines to judge admissibility of evidence of third party culpability: the rule
16 does not require “that any evidence, however remote, must be admitted to show a
17 third party's possible culpability [E]vidence of mere motive or opportunity to
18 commit the crime in another person, without more, will not suffice to raise a
19 reasonable doubt about a defendant's guilt: there must be direct or circumstantial
20 evidence linking the third person to the actual perpetration of the crime.” (*People*
21 *v. Hall* (1986) 41 Cal.3d 826] *Id.* at p. 833.)

22 In the present case the record reveals that defense counsel in effect claimed the
23 right to question only Joan concerning the alleged incident with Jay-Jay Sheffner;
24 even if Pelletier's testimony had been admissible, counsel abandoned any intent to
25 call him as a witness. The most that counsel was prepared to establish was that
26 Sheffner had a motive for being angry with the victim's mother, and possibly with
27 the victim. But such evidence does nothing to link Sheffner to the actual
28 perpetration of the crime, as required by *Hall, supra*, 41 Cal.3d 826. (16b) We find
that the court was within its discretion in concluding that the slight probative value,
if any, of this evidence was substantially outweighed by the possibility of jury
confusion and undue delay."

(*People v. Kaurish* (1990) 52 Cal.3d 648, 685.)

¹²⁸ Det. Hicks testified at trial that in the seven years he had known Todd, Hicks had never known Todd to have a car (RT 20051:6-18); Pearce shared the white Honda with his mother (RT 20052:5-13).

1 Another court has explained it this way:

2 The court proceeded to rule on and grant the prosecutor's motion to exclude the
3 third party culpability evidence. It found the possible motive of ending child
4 support payments by killing one's former wife and son "very attenuated." It found
5 the proffered evidence "that Mr. Jordan is a habitual wearer of cowboy boots"
6 insufficiently probative of identity without further evidence of a brand or size of
7 boot that "in a logical chain" would link the print impression found at the crime
8 scene to Glenn Jordan. It found the defense theory regarding the proffered
9 evidence of Glenn's past or future acts of violence against women to be largely
10 propensity evidence that, without more, would not likely be admissible in a trial
11 for murder according to the rules of evidence.

12 We conclude the record supports the trial court's ruling. The motive defense
13 counsel ascribed to Glenn Jordan for the murders—that of killing one's former wife
14 and son in order to end child support payments—was entirely speculative. So too
15 was the attempt to establish identity by linking him to the crime scene based on
16 hearsay evidence that his daughter had "never seen her father, Glenn, with
17 anything other than cowboy boots on his feet"; defense counsel's own personal
18 attestation that "Richard McWhorter was not wearing cowboy boots on September
19 11, 1995"; and counsel's further suggestion that Glenn Jordan's "modus operandi"
20 was to beat his wives in a manner resulting in their heads banging against walls
21 and leaving dents in those walls.

22 We agree with the trial court that much of defendant's offer of proof consisted of
23 mere evidence of a propensity for violence to prove identity that would not have
24 been admissible in a trial for murder or, even if it was, would not itself have
25 established identity. As we explained in *People v. Davis* (1995) 10 Cal.4th 463:
26 "Hall did not abrogate Evidence Code section 1101 as applied to such evidence.
27 Subsequently, in *People v. Farmer* (1989) 47 Cal.3d 888, we specifically
28 addressed the application of Evidence Code section 1101 to proposed evidence
regarding prior criminal conduct of a third party alleged to have committed the
charged offense. The defendant in *Farmer* offered evidence of a third party's
history of violent crime, on the theory that it tended to identify him as the
perpetrator. We noted that under *Hall*, evidence linking a third person to the actual
perpetration of the crime should be treated like any other evidence. (Id. at p. 921.)
We went on to hold, however, that the proffered evidence was properly excluded
under Evidence Code section 1101, because it was offered not to show a fact other
than the third party's criminal disposition, such as motive or intent, but merely to
show that the third party was the more likely perpetrator because he had a history
of violence. (47 Cal.3d at p. 921.) Such evidence does not amount to direct or
circumstantial evidence linking the third person to the actual perpetration of the
crime." (*Davis, supra*, 10 Cal.4th at p. 501.)

26 (*People v. McWhorter* (2009) 47 Cal.4th 318, 372–373.)

27 ///

1 Yet again, this also is not new evidence. This is just a complaint of how Geragos conducted
2 the trial and dissatisfaction with the verdict. The guilty verdicts clearly establish how the jury has
3 already viewed the claims of a mystery van.

4 **(1) Linda Chilles..... 45**

5 Ms. Chilles called in a tip (Bates page 14786) and reporting seeing a van on Christmas
6 Eve at 0930 hours. In a later interview, she said it was “parked in front of the Medinas’ home with
7 three men standing around it.” (Def Motion Exh. 2, paragraph 16.) We know from the facts
8 produced at trial that the defendant was still home at this time, the Medinas had not yet left and
9 did not testify to seeing a van in front of their house when they did leave. What was also
10 established at trial was that the Medinas had a City Building Inspector at their house from around
11 0834 until 1033 hours. (Susan Medina’s testimony RT 9588:2-9593:5.) This is not new evidence.

12 **(2) Niniv T..... 46**

13 This person reported a tip on 12/28/2002. (Bates page 14791) He said on 12-24-2002 at
14 about 1145 hours on Covenia he “saw an older 75-80 van (chevy?) White full size no windows,
15 parked on east side of street. Three HMA 's 20-30 standing near vehicle.” Amie Krigbaum, who
16 lived on Covenia, testified at trial she had a white Chevy van parked in front of her house during
17 the time of this sighting. (RT 9497:13- 9502:6.) This is clearly not new evidence, is not an orange
18 van and has no legal connection to this case.

19 **(3) Susan Medina. 46**

20 Ms. Medina, who testified at trial, does not claim to see any suspicious van the morning
21 of the 24th, only she now claims that a man was riding a bicycle on the 24th and the “look of him
22 made Mrs. Medina feel uncomfortable.” This is not new evidence, is not an orange van, or a van
23 of any kind, and has no legal connection to this case.

24 **(4) Lillian V. 46**

25 This person reported a tip in 2003. (Bates page 14861.) This witness in this tip referred to
26 the burglary on Covenia not to Laci’s disappearance. Between 0930 and 1030, she saw a “transient
27 type of person, relatively well groomed, didn't respond to her saying hello” riding a bike.

1 Lillian V. reviewed the information in the report and stated that she did not recall
2 the specific details of what she had seen that morning but stated that the
3 information in the report was consistent with the type of activity she would have
4 alerted the police about, especially in the context that they were actively requesting
5 information related to a burglary that occurred on that street.

6 (Def. Ex 5, paragraph 50.)

7 This is also not new evidence, is not an orange van, or a van of any kind, and has no legal
8 connection to this case.

9 **(5) Diane Jackson.47**

10 The defense makes the following statement regarding Ms. Jackson: “The jury also did not
11 hear testimony from eyewitness Diane Jackson because police improperly hypnotized her, making
12 her unavailable as a witness for the defense.” However, this statement if taken at face value would
13 leave this court with a very false impression. The trial judge excluded two witnesses for a statutory
14 violation regarding hypnosis,¹²⁹ Diane Jackson and Kristen Dempewolf. Ms. Dempewolf would
15 have testified that she was pregnant and walking her dog past the Peterson house on the 24th
16 between 0920 and 0940 when *she saw the defendant loading something into the bed of his truck.*
(Bates page 14932.)¹³⁰ Ms. Dempewolf’s husband, who was not hypnotized, did testify that his

17 ¹²⁹ The trial judge stated at the time... I've already ruled that there was a violation of the -- of the code
18 section 795 of the Evidence Code, so we're not letting in Ms. Dempewolf's testimony. I'm not going to
19 revisit that issue because the burden is different between the prosecution and the defense. ¶ The
20 Constitution doesn't provide the prosecution with the same specific right to present witnesses as they do
21 the defense. ¶ Number one, I'm not accusing the prosecution of bad faith, I'm not accusing the prosecution
22 of misconduct. As I said before at the time that this hypnotization or hypnosis sessions took place, there
23 was a noble purpose behind it, and that was to see if they could find some way of recovering the -- finding
24 the body of Laci Peterson or whoever was responsible. So I don't find any misconduct on the part of the
25 prosecution. (RT 8382:13- 8383:2.)

26 ¹³⁰ During trial, the jury heard that when Det. Brocchini did the “walk-through” with the defendant shortly
27 after Laci was reported missing on the evening of the 24th, Brocchini saw four or five 4-foot long umbrellas
28 wrapped in a blue tarp in the back of Peterson’s truck. Peterson said he placed those umbrellas in the truck
earlier in the morning with the intention of storing them in the warehouse. On the 25th Peterson told Agent
Mansfield and Det. Grogan that he had placed the umbrellas inside his truck prior to leaving at 9:30 a.m.
Peterson told both Det. Brocchini and Det. Grogan in separate interviews that he forgot to leave the
umbrellas at the warehouse when he picked up or dropped off his boat. When a search warrant was served
on Peterson's home on December 26, 2002, the defendant had removed the umbrellas that had been
wrapped inside the tarp; the blue tarp was found stored in a shed nearest the back door of the residence

1 wife walked their dog in the area and that she was pregnant. (RT starting at 16732:17.) Photos of
2 Ms. Dempewolf were marked as exhibits. Prior to his testimony, the defense objected to him being
3 called as a witness and the following exchange took place:

4 MR. DISTASO: Pretty much. He's going to testify, judge, that his -- picture of
5 wife, what she looks like, she's got a dog that looks like a Chocolate Lab, and not
6 a Golden Retriever. His wife is about the same height, about the same pregnant --
7 I mean pregnant stage. About the same hair length. And she was walking through
8 the park in the neighborhood that morning.

9 THE COURT: What's wrong with that?

10 MR. GERAGOS: Then how -- so now we have effectively got in the portion that
11 was suppressed.

12 THE COURT: No, it wasn't.

13 MR. GERAGOS: Prosecution is going to get that in. Yet I can't get the stuff that i
14 (*sic*) want to get in from her.

15 THE COURT: No, no, no. That's not -- I suppressed the fact that she was -- saw
16 him loading something in the truck.

17 (Defense Motion Exh. 35, RT 16718:20 – 16719:9 [Sealed].)

18 Diane Jackson did not testify, but the defense was allowed to enter her pre-hypnotized
19 statement into evidence because the trial judge felt it was important. The court stated in part – “As
20 far as I'm concerned that evidence has to be admitted in this case, notwithstanding the fact that
21 Miss Jackson was in fact improperly hypnotized. So I'm of the opinion, and it's going to be the
22 court's ruling, that the defense interview of Miss Jackson can be presented as evidence. Mr.
23 Geragos can refer to it as -- in his opening statement and deal with it that way.” (RT 8385:1-7.)
24 And he did.

25 _____
26 and the umbrellas were found in the backyard. (Bates page 22183-22184.) Of note, the blue tarp was found
27 to be contaminated with fish fertilizer. The boat cover had also been secreted in a second shed located
28 behind the property and it had been saturated with gasoline. (RT 12338:11-12340:19.) The evidence also
showed that strong chemicals and things like fertilizer hampered scent dogs' abilities (RT 15909:3-
15910:10; 1791:14-22.) The jury also heard of a conversation with the defendant on the 25th where
Peterson “wanted to know if we were using cadaver dogs. Q. And what did you say to that? A. I said I
hadn't considered Laci dead yet, so, no, we weren't using them.” (RT 10785:1-5.) It was argued that the
umbrella bundle was consistent with the size of Laci's body and would provide an excuse if anyone were
to see the defendant loading something into his truck.

1 The statement of Ms. Jackson came in repeatedly (and was argued to the jury by both
2 sides), as one example:

3 “Q. Officer Hicks, perhaps the answer is not given, your last answer. You are also
4 not familiar with the report that Diane Jackson made -- you are not familiar with
5 the report that Diane Jackson made at 10:30 in the morning on December 27th
6 where she talks about seeing three dark-skinned males near a white van. She
7 reports seeing this at 11:40 in the morning. She didn't recognize the men. It was a
8 white van with no markings. Men were not wearing uniforms. She couldn't
9 remember what they were wearing. She could not recall any details about the van,
10 other than what was white. She gave no other information than that. You don't
11 know with that report either?

12 A. Actually I am familiar with that one, yes.”

(RT 20060:22-20061:8.))

13 Although Ms. Jackson did not testify herself, her statement was told to the jury and was
14 argued to the jury. This is not new evidence and is explained away by just a few of the other
15 witnesses mentioned previously. This is also an issue raised during the first habeas proceeding
16 and cannot be relitigated here.

17 **3. Defense Claim: “Steven Todd Saw Laci Alive the Morning of December 24, 2002”.....False**

18 **a) Shawn Tenbrink, an associate of Steven Todd, reported that Laci encountered Todd during
19 the burglary and Todd threatened her.....49**

20 This accusation is not new evidence. This claim relates to a phone call that was provided
21 as a tip to MPD in 2003 (Bates page number 15311) and was provided to the defense on May 14,
22 2003 (JNE Exh. 4, attached as part of the Opposition to the New Trial Motion including a
23 declaration from the discovery clerk establishing the date signed and received by the defense.)
24 This tip was used by the defense as the basis for a claim relating to a new trial. The trial judge
25 found that the defense had possessed this tip since before the trial and denied the new trial motion.
26 The denial by the trial judge was not due to Karen Servas’s timeline; it was due to the defense
27 having the tip all along. The denial by the trial court was then used as the basis for appellate relief,
28 which was also denied. This claim is not justiciable at this point.

1 More importantly, the defense attaches but fails to address the Lt. Aponte declaration that
2 was submitted in 2005 as part of the new trial motion (Def Ex 15.) In it, Aponte states:

3 I listened to this recording and heard Adam Tenbrink tell Shawn Tenbrink [the
4 inmate] something about the Laci Peterson case. Adam said he was told by
5 someone, *presumably Steven Todd* as his name was mentioned during the call, that
6 Laci Peterson had seen Todd and others committing a burglary in the
7 neighborhood. Adam's statement to Shawn did not sound as though Adam was
8 present at the burglary, *nor that he had any first hand knowledge of the facts.*
9 Shawn's only knowledge of the incident sounded as though it was based only on
10 Adam's statement. (Paragraph 3; emphasis added.)

11 Further, Shawn Tenbrink, the subject of the tip and defense spin, was interviewed by the
12 post-conviction defense team in 2009. A declaration from Tenbrink was included as part of this
13 claim during the defendant's first habeas petition. (Def Motion Exh. 31, HCP 00432.) The
14 pertinent part of Shawn's statement is:

15 "My brother, Adam Tenbrink, told me that he knew who robbed the house across
16 the street from the Petersons. ¶ I knew all about the Petersons because Laci's
17 disappearance was on TV and it was basically in my neighborhood. ¶ Adam *said*
18 *someone told him* that Laci had seen Todd rob the house. ¶ I don't remember if
19 Adam told me if Todd robbed the house with others." Emphasis added.)

20 There is no declaration from Adam Tenbrink who was the source of this "telephone game"
21 information. The Tenbrinks also clearly fall within all the "third-party" cases cited above and
22 neither what they said nor heard could be used without the defense calling Todd as a witness; if
23 they were not called, then Aponte could not have been called either. This is old news, legally
24 resolved during the first habeas and insufficient in this matter to prove anything.

25 ***b) Medina burglar "D.M." confesses: Laci was killed because she saw the burglary in
26 progress and threatened to call the police.....51***

27 As we have stated before, the defense builds their story on supposition and inuendo, then
28 states the claim as fact. Here they claim that Danny Chapman *told the defendant* about "D.M."
Chapman is also dead. However, the defense submits statements from anonymous witnesses
identified as ST (Ex 17) and KM (Ex 18) to support the inadmissible hearsay. In 2022, some 20
years after the crime, these two claim that D.M. implicated him-or-herself in Laci's murder. Just
on their face, these claims lack merit, but the defense neglects to explain what happened next.

1 D.M. has not submitted a declaration for this court, but the defense has attempted to admit
2 his alleged involvement through a declaration of an investigator (Def. Ex.30.) However, even in
3 this totally inadmissible fashion, D.M. denies what the defense claims:

4 “D.M. denied that he ever told anyone he was involved in Laci Peterson's abduction or
5 murder.” (Paragraph #17.) ¶ “D.M. stated that he felt that Steven Todd would not have been
6 involved in abducting Laci and that Steven Todd would probably just run away if something
7 happened.” (Paragraph 18.)

8 The People have not been told who ST, KM, or DM are. In ST and KM’s claim, they relate
9 that “they [the killers] saw on the news where Scott Peterson went fishing, and that’s where they
10 took Laci’s body and dumped it.” We already know that Todd and Pearce were in a small white
11 Honda (as seen by the detective), with a safe (that was recovered in Todd’s yard (RT 10336,
12 20052)), yet the claim is that Laci was abducted because “they had to shut her up” and they then
13 held onto her body until at least the next day... because she isn’t even reported missing until later
14 on the 24th and the news doesn’t report where Peterson went fishing until days later. And,
15 inexplicably, they weighed her body down in an attempt to frame the defendant. This is not the
16 first time the defense has raised this kind of claim; in fact, the prosecution responded to the similar
17 claim during argument at trial:

18 So let's look at what the press releases say. I'm holding them all here. Those are
19 the exhibits. ¶ You are going to get these. On December 25, information was
20 released about the defendant. It said he went to the Bay Area to go fishing. Well,
21 they have already shown us -- part of their argument is, he could have gone to a
22 bunch of places in the Bay Area. So how are these nameless, faceless people, how
23 are they to now -- based on December 25th, the next day, how are they to know
24 that he went fishing at the Berkeley Marina off of Brooks Island and put the bodies
25 exactly there based on this? It's not reasonable. ¶ So we know then that they had
26 to have held her for at least one day, right? Because that didn't give us the
27 information necessary. ¶ Well, let's look at what came out December 26th. He went
28 fishing in the Bay Area. Well, now they have to have held her for two days, unless
they are clairvoyant, or unbelievably lucky, that they said let's take a wild stab, and
let's look at that map of California, and let's look at the entire Bay Area, which is
thousands of square miles, and we're going to pick exactly where he went. It's not
reasonable. ¶ So now they have had to have held Laci Peterson for two days. This
is December 26th. Again, the same press release. ¶ Next one came out on
December 27th. Left to the Bay Area to go fishing. That's all it says. So now they
have had to have held her for three days. And now the thing is getting harder to

1 put Laci Peterson in the bay, because the police are there. And the police are
2 starting to search the bay. You heard that. ¶ So now these people that grabbed Laci
3 Peterson have to hold her for this period of time. They don't know where she is
4 yet, but now they have to go into a location where the police are actively searching.
5 So now in order to frame him, they have to say -- they have to take this risk. I'm
6 going to -- I have held her now for three days, where I have killed him or just killed
7 her. Now I'm going to drive to the Berkeley Marina while there is police there out
8 searching the bay and dump the bodies in the exact location he went to frame him.
9 It's not reasonable. ¶ On December 28th they do mention a marina in Berkeley. So
10 I guess that would be the first time that these nameless, faceless people would
11 know at least the Berkeley Marina. So someone has to hold her for four days before
12 they have any idea where that guy went.

13 (RT 20527:16- 20529:10.)

14 This claim is not only patently absurd but, more importantly, it eliminates the orange van
15 (burned the morning of the 25th before news reports) and all other items associated with that van
16 that have been requested for DNA testing.

17 **c) *Laci Peterson was protective of her neighborhood.*54**

18 This evidence was presented by the defense at trial. It cannot be claimed to be new.

19 **4. Defense Claim: “*New Credible Scientific Evidence The Jury Did Not Hear Shows That*
20 *Laci Was Abducted On December 24, But Alive Until January 3, 2003*”False**

21 This is false and not new evidence. This matter relates to a witness the defense used during
22 the prior Petition for Habeas Corpus, Dr. Phillippe Jeanty,¹³¹ where they claimed new scientific
23 evidence had been discovered post-trial. A closer look at what was stated during that petition is
24 that this new witness disagreed with the prosecution’s expert – Dr. Gregory DeVore. Dr. Jeanty
25 discussed Dr. DeVore’s trial testimony and stated that DeVore used formulas that were still
26 appropriate in the community (and written by Dr. Jeanty), but that Dr. DeVore used the correct
27 formulas¹³² for some parts but that he should have not used them for others. For his opinion, Dr.
28 Jeanty did not use any new studies or relate to any new evidence after Dr. DeVore’s testimony;

¹³¹ In his original declaration, Dr. Jeanty stated: “In March of 2009 I was contacted by counsel for Scott Peterson and asked to render an opinion on the fetal development of Connor Peterson.” Ex 20, paragraph 2, HCP-000051.)

¹³² At paragraph 10, Dr Jeanty states: “Using data published in P. Jeanty, Cousart, Cantraine, Hobbins, Tack and Stmyven, A Longitudinal Study of Fetal Limb Growth, 1 American Journal of Perinatology 1.36 (1984), this measurement shows that Connor was at the 50th percentile for fetuses of this age. Dr. DeVore reached this same conclusion using my published data.” (RT 17879:9-17881:2.)

1 he just thought the time frame of death should have been expanded. Unfortunately for the defense,
2 they called an expert during the trial to rebut Dr. Devore. Dr. March told the jury that Conner was
3 alive long after what Dr. DeVore testified to. A difference of opinion by experts, which does not
4 involve any change in the science, is not new evidence – just different opinions. Once again, they
5 just don't like the outcome.

6 To further bolster the claim of “new credible scientific evidence” the defense reverts to
7 the Tom Harshman¹³³ tip. It is ironic that the citations the defense gives for this “new” evidence
8 is the trial transcript. (Def motion page 56.) Trial counsel was (once again) able to get all of
9 Harshman's story before the jury without him being subjected to cross-examination. Harshman's
10 claim was that he was driving by when he saw a pregnant Laci leaning up against a fence urinating,
11 and then someone helped her/pulled her into an older white van with tan stripes and three windows
12 on December 28th. (RT 18504:9–18511:13; 18513:6 –18523:17, 18693:6-24.) [People's Trial
13 Exhibit 268 B provided a visual representation of the Harshman sighting; RT 18693.] Out of the
14 presence of the jury, the judge put on the record a basis for his allowing in the Jackson and
15 Harshman evidence.

16 “*****So it's obvious, if the jury follows the testimony of these two witnesses, that
17 the Berkeley --Berkeley; the burglary had to occur after 10:30 in the morning
18 because up until that time Susan Medina was still home. ¶ And then with respect
19 to Harshman's observations, he called the command center, according to the
20 afternoon testimony, at 1/3/03 yesterday -- 1/3/03 he called the command center,
21 and based upon relating back to when he told them he said he saw the -- this
22 incident six days prior, which would have put it on December 28th, between 2:00
23 and 4:00 p.m. in the afternoon, so that would indicate that, if they had anything to
24 do with the disappearance of Laci Peterson, they had kept her in a van for four
25 days, and that seems highly unlikely.

26 MR. GERAGOS: Seems what?

27 THE COURT: Highly unlikely that you would kidnap somebody and keep them
28 in a van in the same city for four days. So, on balance, that's why I let that
evidence in. Just so they would -- so -- so the record is clear; okay?”

(Defense Motion Exhibit 35, RT 18689:20 – 18690:15. [Sealed.]

Harshman also described the woman as wearing “a red shirt and black pants.” (RT
18511:6-9) Laci's body was found in a pair of tan Motherhood Maternity pants. (RT 12724:24-

¹³³ The People believe Mr. Harshman may have passed away in 2023.

1 25) Motherhood Maternity business records established that Laci purchased the pants she was
2 found in. (RT 9953:26-9985:9.) Not only was it “highly unlikely” that Harshman was correct, but
3 it was also impossible. This is not new evidence and it clearly is not scientific. It is just wrong.

4 **5. Defense Claim: “MPD Failed To Investigate Whether The December 25 Van Fire In The**
5 **Airport District Was Related To Laci Peterson’s Abduction”False**

6 This claim is wrong on so many levels. First, this case was completely unrelated but had
7 an MPD Detective, a Fire Investigator, a CSO and criminalists with DOJ work on it. Because of
8 an early tip regarding a van, this case was cross-referenced to the Peterson case solely because it
9 involved a van. No one ever saw an orange van and, under the various points previously discussed,
10 nothing in or from the van could change the outcome of the trial. This is also not new evidence.
11 It was provided to the defense at Bates pages 4095 to 4110. Interestingly enough, the very next
12 page of discovery (Bates 4111) is the supplemental report written by Det. Hicks regarding the
13 burglary investigation which was used during trial for testimony related to defense claims
14 regarding Mr. Todd.

15 **6. Defense Claim: “There Was No Large Object Such As A Dead Body Inside Mr. Peterson’s**
16 **Boat On December 24, 2002, When He Put His Boat In The Water At The Berkeley Marina**
17 **Launch Ramp”False**

18 Once again, speculation becomes claims that cannot be substantiated. For this claim, the
19 defense states that Yuri Faria would have been able to see something in the bottom of Peterson’s
20 boat on December 24th and he doesn’t remember seeing anything so, therefore, there was nothing
21 to be seen. However, the defense doesn’t even provide a statement under oath from Mr. Faria.
22 Instead, they provide a statement from Mr. Ermoian, a defense investigator. In his motion, the
23 defendant states that Ermoian “concluded that there was nothing large, like a body, inside Mr.
24 Peterson’s boat that day or it would have been visible to Mr. Faria...” This is not even close to
25 being admissible as evidence. Mr. Ermoian’s credibility was questioned because he was the
26 investigator that Diane Campos accused of trying to get her to change her statement as noted
27
28

1 above¹³⁴. Lastly, Yuri Faria was on the trial witness list and was in communication with the
2 defense throughout the trial but, as the defense concedes, Mr. Geragos chose not to call him. (Def.
3 Motion page 69.)

4 **7. Defense Claim: “New Evidence Shows That Laci’s Body Was Not Placed In The Bay At**
5 **The Location Where Mr. Peterson Fished”False**

6 **a) The bay searches were orchestrated to find evidence that would point to Mr. Peterson’s guilt,**
7 **rather than to learn the truth about what happened to Laci and Conner; no evidence was found**
8 **implicating Mr. Peterson.71**

9 The People are not required to respond to this section because it does not demonstrate any
10 new evidence, point out how DNA testing would make any difference in this case and instead is
11 an argument that attempts to rehash days’ worth of trial testimony where the defense claimed that
12 since divers found a “glass bottle” and other small items, Laci’s body wasn’t there. (Trial
13 transcripts for dates – 6/16/2004; 7/12/2004; 7/14/2004; 7/15/2004.) What the jury heard was the
14 vast scope of the area being searched; just one day’s search grid covered 14.5 nautical miles (RT
15 12747:1-5) and a second search covered 156.63 nautical miles (RT 12739:15-22). The technology
16 used (sonar for example) created targets for the divers to go check... one device produced 3,835
17 possible targets (RT 12740:3-7, Defense Trial Exh. NNN.) Divers had to be surface-tethered on
18 a rope or commercial divers fed air due to the currents. (RT. 10287:1-8) Visibility was poor at
19 best; the jury was given an example of how difficult it was to find anything in the bay.

20 Q. And you said basically the conditions were very difficult.

21 ¹³⁴ Mr. Ermoian, the hearsay declarant for Mr. Faria, has previously been convicted of a Federal offense
22 for Conspiracy to Submit False Statements. (See attached People’s Opp. Exh. 4.) Courts have repeatedly
23 held that a hearsay declarant may be impeached:

24 "Evidence Code section 1202 provides, in relevant part: “Any other evidence offered to
25 attack or support the credibility of the declarant is admissible if it would have been
26 admissible had the declarant been a witness at the hearing.””

27 (*People v. Carkhum-Murphy* (2019) 41 Cal.App.5th 289, 294.)

28 The non-testifying defendant in the *Carkhum* case offered an inculpatory hearsay statement
through another witness, which the trial court found triggered the prosecution’s ability to impeach the
statement with the defendant’s prior convictions, stating:

"Defendant's theft conviction involves moral turpitude and dishonesty (*People v. Wheeler*
(1992) 4 Cal.4th 284, 297, 14 Cal.Rptr.2d 418, 841 P.2d 938) as does his conviction for
providing false information to a police officer."

(*People v. Carkhum-Murphy* (2019) 41 Cal.App.5th 289, 297–298.)

1 A. Correct.

2 Q. Was there -- what did the Side-Scan Sonars look like?

3 A. They looked like a torpedo, for lack of a better term. Approximately five feet
4 long, with a diameter of approximately six inches. They are yellow in color. They
5 weigh approximately 40 to 60 pounds in weight. And they are towed behind a boat
6 with a cable that is approximately a half inch to three quarters of an inch thick.

7 Q. And they -- so basically they just kind ever run behind the boat, and they shoot
8 down these little sonar images of the bottom of the Bay, right?

9 A. Correct.

10 Q. And then you can read it on a screen inside the boat?

11 A. Correct.

12 Q. At some point on one of these days, did something happen to the sonar unit?

13 A. Yes. Actually the first time I went out, which was actually May 10th, we were
14 in the -- do you want me to --

15 Q. Go ahead.

16 A. We were in the water at approximately 2:00 o'clock. The Side-Scan Sonar, the
17 torpedo actually hit a sand bar underneath the water which wasn't tracked. So they
18 hit the Side-Scan Sonar, got stuck in the sand bar, and immediately lost image of
19 what was going on.

20 Q. Let me stop you. Then after that happened, did the Side-Scan Sonar somehow
21 become dislodged from the boat?

22 A. Yes, it did.

23 Q. How did that happen?

24 A. The driver of the boat turned, the propeller cut the cable cord, which left the
25 Side-Scan Sonar in the water.

26 Q. When the sonar was lost, is this an expensive piece of equipment?

27 A. Yes. It's roughly about \$10,000 just for the sonar itself.

28 Q. So whose boat were you on, what agency?

A. San Mateo County Sheriff's Department.

Q. So I'm assuming they want their sonar back?

A. Yes, very much so.

Q. When the sonar got lost, did they do anything -- did you see them do anything

1 to mark the location of that?

2 A. Yes. As we were doing our search, we were -- actually, they were tracking the
3 search by the GPS. And immediately soon as then lost the sonar, they marked the
4 location to be able to identify the general location of where they lost the Side-Scan
5 Sonar in order to be able to come back and retrieve it.

6 Q. And did you go back with the boat on that day and anchor the boat down where
7 you thought it might be, and send divers to try to find it?

8 A. Yes. Immediately afterwards we turned around, ran -- went back to the location.

9 Q. What happened?

10 A. The divers went down, and searching under the water, they were not able to
11 locate it after about approximately an hour of searching.

(RT 12208:11 – 12210:15.)

12 The rest of the defendant’s statements in this section are pure conjecture. Of much more
13 significance than the exhaustive, but unsuccessful, attempts to find Laci during those same bay
14 searches, the defendant repeatedly snuck over to the Bay in various vehicles to surveil where the
15 divers were searching (RT 20272:24-20274:4), demonstrating his consciousness of guilt/fear that
16 the divers would find the body of his wife and son. After one possible sonar hit, the defendant hid
17 out and lied about his whereabouts until he received a phone call from Sharon Rocha (RT 9033:3-
18 15, 15405:24-26; People’s Trial Exh. 207A-5). That wiretap call was played to the jury where
19 the defendant can be heard whistling upon hearing that Laci had not been found.¹³⁵

20 ***b) In August 2023, underwater search expert Gene Ralston confirmed to Mr. Peterson’s***
21 ***counsel that Laci Peterson’s body was located northwest of Brooks Island off Point***
22 ***Richmond..... 77***

23 Once again, the defense submits the hearsay declaration of one of their attorneys in place
24 of a declaration from the actual witness; has the witness refused to sign a declaration attesting to

25 ¹³⁵ It has been argued that Peterson could have been relieved that his missing wife had not been found and
26 the whistle heard on the tape was just a “whew” whistle of relief. That is why the people played another
27 wiretap call regarding a claimed sighting of Laci in Longview, Washington. This wiretap call (RT 15423:3-
28 15, People’s Trial Exh. 207D-5) was from the defendant’s mother who left a voicemail regarding the
sighting. She said that he must be wanting to hop on a plane to go put up posters...the defendant can be
heard chuckling at his mother as he terminates the call.

1 the defense's claims? And, once again, there is a claim that the defense didn't know about
2 exculpatory evidence, yet they attach the witness's report which includes the Bates page numbers
3 provided in discovery. (Def. Motion Exh. #5A.) Det. Phil Owens documented the following in
4 one of his reports:

5 Six (6) CD's containing sonar images obtained by Gene RALSTON between 01-
6 24-03 and 05-23-03. These images were obtained while RALSTON was operating
7 a Marine Sonic sidescan sonar device on the San Francisco Bay. The six CD's
8 arrived at the Modesto Police Department, via US mail, on or about 06-30-03.

8 (Bates page 21732)

9 The defense also attempts to mix two separate "findings" by Ralston into one story;
10 Ralston stated in his report back in 2003:

11 It was not until mid-February that I was able to review the side scan images made
12 during January. While reviewing the images, an object caught my attention
13 (**24Jan019.mst**). It was located 148 feet east of Buoy 4 and measured about 5.3
14 feet in length. The remarkable part of the image was that it appeared to have two
15 small objects on opposite sides of one end. I e-mailed a copy of the image to
16 Sergeant Cloward and called him to discuss my interpretation of it and suggested
17 that the object should be investigated further. (Emphasis added.)

15 ***

16 On March 11th we imaged the location of the object in image **24Jan019.mst**. The
17 object in question was not seen but its previous location was marked with an
18 underwater target and buoy. The TCSO ROV was deployed but was not able to
19 find any indication of the object.

18 ***

19 Later in the afternoon [March 27th], the acoustic target was placed near Buoy 4
20 where an earlier object and two smaller objects had been imaged with the side scan
21 sonar (**24Jan019.mst**). The diver was deployed and, after a short time, found two
22 concrete blocks which had a corroded metal strap imbedded in each. Both were
23 brought to the surface and photographed. They were dropped back into the water
24 at another location at the direction of one of the MPD detectives. The large object
25 was no longer there.

24 The defense states in his motion that there "is no indication from the record that these
25 concrete blocks were considered and ruled out..." The police report that documented this search,
26 however, states (at Bates page 23422 – Det. Owen):

27 The weights consisted of two cement round cylindrical weights that had a metal
28 bracket at the top which held a rope to the weights. The rope had a plastic tube

1 around the rope which protected the rope against the grommet that was in the
2 cement weight. The weights were photographed. One of the weights had the
3 grommet rusted through. There appeared to be approximately forty feet of rope
4 that was tangled and wrapped between the two weights. The weights appeared to
5 have been painted white and had appeared to be in the water for quite some time.

6 There is no mention by Ralston, or the contemporaneous police report, of flesh, tissue or
7 clothing embedded in the rope. Assuming it had been used to tie a body, some trace would have
8 been expected.

9 However, that sonar target was not the one Ralston identified in his 2003 report as target#1
10 and target#2 which he claimed related to a body:

11 “We proceeded and determined that the ROV was located at the object on the west
12 side of the elevated mound. Hereafter, this object will be referred to as "Target 1".
13 The second object to the east side of the mound was named "Target 2"...”

14 Just before finishing the day's searching, we made an image of a distinct object
15 projecting a shadow similar to how we expected a late-term, pregnant woman
16 might appear (11Mar352.mst). [A few paragraphs later Ralston would write the
17 “human form”] appeared to be face down. (CD100, discovered to defense and
18 receipt signed by Attorney Pat Harris on Dec. 30, 2003.)

19 11Mar352.mst

20 Det. Owen documented the target #1 and #2 search that occurred on March 26th (Bates
21 pages 023419 -023420):

22 At 0820 hours, divers were ready to deploy. At approximately 0825 hours, Gene
23 [Purtell] entered the water. The incident was recorded. While Gene [Purtell] was
24 on the bottom searching for the suspicious target *he identified the bottom as very
25 soft mud, and very uneven. He stated that the current was moderate and visibility
26 was approximately four inches.* Gene [Purtell] was directed to the two targets by
27 RALSTON and Kevin PEHLE. The diver reported that he found two mud hills
28 that were apparently the targets identified by RALSTON’S side scan images. The
diver reported negative finds on any of the suspicious targets. The diver was up
out of the water at 0845 hours.

The defense also argues “At the time Sgt. Cloward testified, the defense had not been
provided with Ralston’s video of the object Ralston observed and believed to be the body of Laci.
In fact, Mr. Peterson has not, to this day, ever been provided with that exculpatory evidence,
which was also hidden from the jury.” Once again, while making false claims the defense ignores

1 their own proffer. As stated by Mr. Ralston, there was no video:

2 Mr. Ralston recalled that the live-feed video was intended to be recorded and
3 preserved, but on that occasion, they did not have the proper cord and hook-up to
4 the computer in order to record. Mr. Ralston did recall that someone on the boat at
5 the time who was viewing the object he believes to be Laci Peterson's remains
6 utilized a video-camcorder to record the output screen of the live feed.... (Defense
7 Motion Exh. 5 paragraph 14.)

8 However, in 2003 contemporaneously to this event, Mr. Ralston wrote in his report (which
9 the defense attached as an exhibit):

10 An attempt to rig a video camera to the video out of the ROV control to record the
11 video image was not successful. I suggested that the video camera be used to tape
12 the monitor output directly. The attempt was only partially successful due to the
13 monitor scan rate being out of sync with the camera.

14 The defense seems to contend that somehow, because Laci wasn't found sooner in the
15 Bay, that the defendant didn't do it. The defense includes an interview that Det. Grogan conducted
16 with Dr. Boyd Stephens who was at the time of the investigation the Medical Examiner for the
17 city and county of San Francisco since 1968 (Bates page 17447-17450).

18 Dr. Stephens related he was aware of cases where weighted bodies went directly
19 to the bottom of the bay and stayed in that location and other locations where the
20 bodies traveled a distance of 5 miles after being weighted and put into the bay. Dr.
21 Stephens said there were a lot of variables that affected the travel and potential
22 recovery of bodies in the San Francisco Bay.

23 Det. Grogan also interviewed Mr. Ralston who also had an opinion to share:

24 On Thursday, 1-23-2003 from 1730 hours to 1815 hours, I met with Gene
25 RALSTON, who planned to do a sonar scan of portions of the San Francisco Bay
26 on the following day, 1-24-2003. I allowed him to view Internet sites viewed on
27 Scott PETERSON's computer, which focused on an area near Berkeley Marina in
28 the San Francisco Bay. I also told RALSTON that I believed there was a strong
likelihood that Laci PETERSON's body had been placed in the bay. RALSTON
told me that depending on the amount of weight and the water current situation
near where her body was placed in the water, it was possible that her body had
been swept out of the bay and would be un-retrievable.

(Bates 0328-0329).

The last defense fall back related to Ralston is that Geragos didn't call him. Again, this is
not a cognizable claim for this DNA motion and has been rejected by the Supreme Court. This is

1 not new evidence, has no bearing on this motion and is a legally rejected claim. Geragos knew
2 about Ralston, asking Det Dodge Hendee:

3 Q. Then based upon that, you wanted to also involve Gene Ralston -- the jury, I
4 think, has heard that name before. Gene Ralston is the gentleman who is a private
citizen who was volunteering to let you use his Side-Scan Sonar, correct?

5 A. Yes. He was involved in the operations as well. (RT 12816:11-16.)

6 The defense claims they don't know why Ralston wasn't called. The answer is simple and
7 comes from Ralston's own report, where he stated in 2003:

8 At the time, the image in the video was insufficient to determine for absolute
9 certainty that the object was in fact a human body. (Def Motion Exh. 5A, page 5;
Bates page 26854.)

10 It is ironic that the defense, in their pleadings, states in the very next section that "MPD
11 Det. Hendee consulted with John DeMille, of Marine Sonic Technology, and asked him for "a
12 second opinion on Ralston's March 12th / 13th images," which "Ralston thought could be Laci
13 Peterson."⁵² (Defense Motion Exh. 5 at ¶ 101.) That same day, DeMille advised Hendee that "in
14 his opinion there was no body in any of the images." (*Id.*) The next day, a colleague of DeMille
15 named Clayton Fenn reported to Det. Hendee that he "viewed all of 18 or 19 images that [Ralston]
16 sent him" and Fenn "saw nothing that resembled a body." (*Id.*)

17 Sometimes if you look long enough at clouds you see horses, or cows, or dragons, and
18 sometimes you see the shadow of a pregnant women even when she is face down. And sometimes
19 a smart defense lawyer doesn't call a witness who speculates.

20 ***c) When MPD was unable to tie paint from Buoy 6 to Mr. Peterson's boat, MPD tried to***
21 ***discredit Ralston's evidence that Laci's body was near Buoys 4 & 6.....88***

22 The People are at a loss to even understand what is meant in this section. The defense
23 claims the police saw a red transfer on the boat, tested it and didn't find a match to anything so
24 they are therefore trying to discredit a witness who didn't testify? None of this is new, except for
25 the novel theory, and has nothing to do with any of the requested DNA testing. The boat was
26 purchased "used" by the defendant (RT 17683). The defense does claim now in 2023 that they
27 examined the boat cover and the "nylon loops on the boat cover appeared to be in mint condition."
28

1 This is a boat cover that has been folded in storage since 2004. This is also the same boat cover
2 that was concealed in a shed around the back of the house, soaked in gasoline, had to be hung on
3 the fence to be aired out (RT 10744:1-24, 13322:21 – 13323:20, People’s Trial Exh. 38, 69L) and
4 that had chunks of concrete-like material fall out of it when examined by Pin Kyo from DOJ
5 (RT17022). [People’s Trial Exh. 240B-E.] This is just another attempt at a do-over, because the
6 current defense team would argue it differently or make different objections. That is not the
7 purpose of Penal Code section 1405.

8 ***d) Law enforcement consulted with Dr. Ralph Cheng, who made guesses about where Laci’s***
9 ***remains would be discovered but was unable to determine a point of origin in the bay.....97***

10 The defense attacks Dr. Cheng for assuming that Laci was weighted down, yet that is what
11 the pathologist stated could have caused the disarticulation of Laci (RT17470:3-25) and would
12 explain why Laci and Conner did not wash up for four months. Further, it is a fact which their
13 own “water” expert used as a basis to explain his opinions.¹³⁶ Every witness expressing an opinion
14 on water issues, including Dr. Cheng, explained the multiple variables that had to be factored in
15 as part of their opinions. The jury heard all the defense questioning of Dr. Cheng’s testimony
16 during trial. This claim is not new. The only item the jury didn’t hear is the concession the defense
17 expert made during the first Petition:

18 Dr. Cheng adopted a scenario, in which the bodies were placed in the water south of
19 Brooks Island. This is described generally in paragraph 18(A) above. *While I agree that*
20 *this conclusion is plausible, I find various portions of Dr. Cheng's testimony*
21 *scientifically unreliable.” [HCP-000292 -000293; emphasis added.]*

22 ***e) Evidence found on and near Conner and Laci’s remains indicates the bodies were wrapped***
23 ***in a protective covering and placed in the bay north of Brooks Island, perhaps at or near***
24 ***Richmond Bridge.....101***

25 There is no new basis for any of the defendant’s claims and, unfortunately, he neglects to
26 cite to the actual trial evidence that was produced. To assist the court in understanding why these
27 claims are baseless, let’s start with what trial counsel already argued. Geragos argued to the jury:

28 ¹³⁶ The defense witness, Rusty Feagin, stated during the defendant’s first Petition, “It is possible that the high winds occurring between March 26 and 28 contributed to the loosening of the bodies from their moorings.” [HCP-000291] Merriam-Webster defines a “mooring” as “a device (such as a line or chain) by which an object is secured in place.” <https://www.merriam-webster.com/dictionary/mooring>

1 The fact of the matter is, though, that that baby, it looks like, had something that
2 was wrapped around it that protected it, and it looks like that that rope or twine, or
3 whatever you want to call it, was tied and it was tied with a knot and with a bow.
4 And if that's the case, it is not Scott Peterson who did that. If that's the case, then
that baby was handled outside of the womb. Obviously somebody other than Scott
Peterson did that.

5 (RT 20507:13-21.)

6 Therefore, this new claim is the same claim the jury has already rejected. There was
7 extensive testimony from Dr. Peterson (no relationship to the defendant) regarding the conditions
8 of the bodies that would help explain the facts for this court.

9 Dr. Peterson: Sure. Due to the state of decomposition, there were a lot of
10 postmortem changes in this case. There were a lot of parts missing that I would
11 normally examine. The head, the neck, the forearms, the left lower leg were all
12 absent. Much of the soft tissue was 17397 absent. Much of the internal organs were
absent. So in terms of the standard autopsy sequence, it was abbreviated in many
ways, because there was actually so little there.

13 (RT 17396:22-17398.)

14 ****

15 As I said, there was a large amount of this body that was actually missing. For
16 example, in terms of the internal organs, the only internal organ present was the
uterus. Everything else was gone.

17 (RT 17397:22-25.)

18 ****

19 Q. Can you explain that for me?

20 A. Sure. That's a process that involves exposure of fat to a cold, moist environment.
21 And the fat undergoes a chemical change, becomes a soapy, rancid kind of
22 material. That's adipocere. And, for the most part, the fat in this case had begun
that process

23 Q. You are saying the fat is exposed to this cold environment. Is this something that
happens instantaneously?

24 A. No. I would say that adipocere information takes a period of weeks to months.

25 Q. And cold environment, could a -- such as a marine environment, or being in the
26 ocean, have that type of effect?

27 A. Sure.

28 (RT 17404-17405.)

1 *****

2 THE WITNESS: I'm sorry. Thigh bone. I was stuck on barnacles there. So seeing
3 barnacles, to me, was suggestive that the body had been in a place with access to
4 the organisms that forms those things, namely marine. (RT 17409.)

5 *****

6 So up here would actually be the top of the uterus when it's swung back in
7 anatomic position. And that's where it was, where it had come apart. I described
8 the edge of that as being friable, crumbly, fragile. I did not see -- speaking of tool
9 marks, I did not see evidence of tool marks on the uterus, such as cuts, for
10 example. Simply this friable, crumbly edge. (RT 17423:11-17.)

11 *****

12 Q. So looking at Ms. Peterson's remains, looking at that uterus, from your expert
13 opinion there had been a baby inside that uterus?

14 A. That's correct. And it never had a chance to go back down in size again.

15 Q. Again, just from the lay person's point of view, that means that Ms. Peterson
16 was pregnant and the baby had not been delivered and she had died while that
17 baby was still there?

18 A. That is my opinion. (RT 17432:8.)

19 *****

20 So the changes that I saw involving Conner were more along the lines of autolysis
21 and maceration. Additionally, to my eye there was no evidence of animal feeding.
22 There weren't the parts missing, in other words, that there were in Laci. So, to start
23 out with it was the same type process. Here was a body that had undergone
24 substantial post-mortem degradation, and my job was to try to determine if this
25 baby had ever been born, if it were a live birth or a still birth, and maybe come up
26 with a cause of death. (RT 17440.)

27 *****

28 Conner's body was, relatively speaking, in much better shape with respect to most
of the parts being there, compared to Laci's where, as you recall, we were missing
substantial soft tissue, and even some bones from the arms and the legs. Conner's
body had undergone a similar type process with respect to autolysis, maceration,

1 body soaking in fluid, and so forth. But there wasn't quite the evidence that it had
2 been exposed so much to the other physical forces that we discussed yesterday,
3 namely the tidal action and animal feeding. So there were some similarities, but
4 again, to my eye, marked differences, particularly including -- particularly because
5 Conner was so much smaller. And my thinking was that as small he was and as
6 softened as he was, that if he had spent substantial unprotected time in the water,
7 like Laci did, he would have been eaten. There simply wouldn't have been anything
left. (RT 17452:22- 17453.)

8 *****

9 Q. And did you have an opinion of how he was protected?

10 A. I did. And ultimately this came by comparing the two autopsies and by
11 comparing the condition of Laci's uterus to the rest of her body. My thinking was
12 that Conner had likely been protected by that uterus, and ultimately, with time in
13 the water and with tidal action, the uterus was abraded open. At that time Conner
14 was released and ended up washing ashore very shortly thereafter. (RT 17453-
15 17454.)

16 *****

17 But, truly, I believe that whatever -- for whatever reason that Laci met her demise,
18 it was her death that caused Conner's death; that he was still in the uterus. And I
19 base that, again, on the difference in the bodies in terms of presence and absence,
20 feeding, no feeding, protection, no protection. (RT 17461.)

21 *****

22 A. My opinion is that when Laci was deposited in the marina environment, Conner
23 was still within Laci. And ultimately, because of the effects of environment, animal
24 feeding and decomposition, Laci's front degraded sufficiently to allow access of
25 the uterus to the outside world, and ultimately Conner.

26 Q. And you were talking about in this marine environment some movement an
27 disarticulation that you already talked about. If someone were to have put anchors
28

1 on that particular body, is that something that would keep a body in a marine
2 environment?

3 A. Well, it sure can. You know, because of post-mortem gas formation, it's possible
4 for bodies to float up, even anchored. It kind of depends on how much anchor, and
5 there's no way to depict that in advance. But if -- depending on where anchors were
6 placed on a body, it could hold the body in one place for a while. Depending on
7 how the anchors were attached to the body, say, for example, they were attached
8 to the arms and legs, once joints start falling apart because of the decomposition,
9 the rest of the body could have exited, leaving the arms and legs and anchors there.
10 It all depends.

11 Q. And what you found with the remains of Laci Peterson, is that consistent with
12 disarticulation in a marine environment? Kind of these normal environmental
13 causes that you described?

14 A. It is.

15 Q. And could that also be consistent with those missing limbs being anchored?

16 A. Sure. (RT 17469:20 – 17470.)

17 *****

18 Q. Doctor, in terms of going back through that -- some of these other potential
19 ideas or hypotheticals, the one that I think that we do know from the physical state
20 of the body of Laci Peterson that you examined is, Conner was not born vaginally;
21 is that correct?

22 A. That's correct.

23 Q. Didn't come out of an incision?

24 A. I found no incision.

25 Q. So the only way that the body could have come out was through that torn, frayed
26 portion at the top of the uterus?

27 A. Correct.
28

1 Q. So, again, by the laws of anatomy that you have described for us before, means
2 that she has to be decomposing, or exposed to the environment at the top of the
3 uterus for the -- for Conner to come out at that particular spot?

4 A. That's my opinion. (RT 17504-17505.)

5 ****

6 Q. From your examination of Conner and the state that he was in, versus Laci,
7 what did that kind of mean to you?

8 A. My conclusion was that Conner had been protected, certainly protected to a
9 greater degree than Laci was.

10 Q. And did you have an opinion of how he was protected?

11 A. I did. And ultimately this came by comparing the two autopsies and by
12 comparing the condition of Laci's uterus to the rest of her body. My thinking was
13 that Conner had likely been protected by that uterus, and ultimately, with time in
14 the water and with tidal action, the uterus was abraded open. At that time Conner
15 was released and ended up washing ashore very shortly thereafter.

16 Q. In terms of Laci's body, was the inside of her uterus somewhat protected or in a
17 different state compared to the rest of her body?

18 A. Well, the fact is that her uterus was there at all, which was different compared
19 to every other organ that she had had. So I think based on its location lower in the
20 pelvis and however she acted against things at the bottom, and so forth, it took a
21 while to wear away that part of her abdominal wall to get to the point where the
22 uterus was exposed. It took further time to wear away the top of the uterus, which
23 ultimately caused Conner's release.

24 Q. Now, the term you kept using, you used several times, you described it for us
25 before, that's that macerated term. That basically means that something had to be
26 in a fluid environment?

27 A. Correct.

1 Q. And Laci was in a fluid environment, but she wasn't protected in the same way.
2 Can you describe the difference there?

3 A. Sure. We'll even use the term maceration in a hospital pathology where we're
4 looking at a still birth and a baby that's died in the uterus and then, perhaps, is
5 delivered a day or two or three or more later will undergo the same type changes.
6 Not to the degree that we see in Conner, but maceration-type changes anyway. In
7 a fresher stillborn, those will often involve skin changes, overriding of the skull
8 plates, and, to a certain degree, liquefaction of the organs. So we'll see that in a
9 hospital setting, too, and that's where that term maceration would be used. I think
10 the difference is they were both in fluid -- they were both in fluid environments,
11 but Conner was much more protected than Laci. So the question is how can one
12 reasonably explain the fact, both fluid environments, there's so much more of her
13 missing, there's really little of him missing, how does that happen. And my
14 conclusion was the fluid was different. He was protected in the uterus. There was
15 amniotic fluid. She was in the ocean. Different kind of protection. (RT 17453:15
16 -17455.)

17 This testimony was unrefuted. At trial, the defense had Dr. Cyril Wecht listed as an expert
18 witness to discuss Dr. Peterson's opinions (Defense Motion Exhibit #35, RT 19874:11-21), but
19 they chose not to call him.

20 (1) *Conner: twine*.....101

21 The defense claim here is that someone put this twine around Conner's neck and,
22 therefore, there might be DNA. This premise is based on a flawed review of the above facts. As
23 stated by Dr. Peterson, Conner died inside Laci's womb. It took a substantial period of time for
24 Laci to decompose enough for her uterus to be exposed and abraded. Only after all of that was
25 Conner expelled. It was, therefore, impossible in light of the evidence for someone to tie the twine
26 around Conner's neck as claimed by the defense. In fact, Dr. Peterson testified:

27 Dr. Peterson - As received, one and one half loops of plastic tape are around the
28 neck of the fetus with extension to a knot near the left shoulder. The skin is
uninjured beneath this loop, and the slack between the loops and the neck is

1 roughly two centimeters.

2 Q. I want to go back and figure out what that means. Two centimeters, about how
3 big is that?

4 A. A little under an inch.

5 Q. Now, if you've got something that's kind of looped around someone's neck, does
6 that cause you any concern? Or would you examine that further?

7 A. Well, there's certainly, as -- as a forensic pathologist, we have certain habits.
8 We're as much creatures of habit as anybody. And when we're presented with
9 something around the neck, habit takes over, and the habit is to try to preserve that
10 as much as possible, while still removing it without damaging the body. So my
11 suspicion is that in this case I could have pulled that off of Conner's head, but I
12 probably would have damaged the head by doing that. So I simply cut around the
13 neck. The knot that I saw was near the left shoulder. I cut it over on the right-hand
14 side and simply removed it and handed it to Officer Soler.

15 Q. Now, did you examine it to see if it had anything to do with any injury or any
16 cause with Conner?

17 A. It wasn't so much of examining the tape, or whatever it was. It was more a
18 matter of examining the neck. And I looked at the skin beneath that loop, and the
19 skin was undamaged. And I also dissected the neck organs beneath the skin, and
20 they were undamaged. So my --

21 Q. So what does that mean?

22 A. My conclusion was that that material had not caused damage to the neck. And,
23 in fact, *my opinion was and is that it was simply debris that had become associated*
24 *with the body.*

25 (RT 17444-17445, emphasis added.)

26 Dr. Peterson described the "twine" as debris. Additionally, a large quantity of the same
27 type of twine material was found on June 21, 2003 in the Point Isabel Regional Park. (RT 19033:8-
28 19036:26; Ex 290C.) The bundles of twine were examined by Criminalist Pin Kyo (RT starting at

1 17091; Trial Exh. 254A-E) and tested for chemical properties by Criminalist Sarah Yoshida who
2 found it to be similar in nature to the twine found with Conner – polyethylene. (RT 16451:17-24,
3 16453:1-16.) Yoshida and Kyo also testified that the material was common in the packing
4 industry, the fishing industry and used in shrink-wrap. (RT 16453, 17147:26-17148:6.)

5 Dr. Peterson also explained to the jury how knots can be made in umbilical cords by fetuses
6 just moving around (RT 17458-17459) and those knots can be tight enough to cause death. The
7 defense has also mentioned in their pleadings the argument the prosecution made regarding cords,
8 or Christmas light getting tangled and knotted as an explanation for the post-mortem twine on
9 Conner’s neck. However, the defense also had Henry Lee (a defense expert in criminology or
10 forensics) on their witness list (Defense Motion Exh. 35, RT 19396:1-2) but chose not to call him.
11 Lee could have challenged the evidence. It therefore stands unrefuted that the twine was post-
12 mortem debris.

13 The testing of this item for DNA would not raise a reasonable probability of a different
14 outcome and would just subject the victims’ family to grief and hardship.¹³⁷

15 (2) Conner: black adhesive, tape-like substance.....103

16 All of our statements in reference to the twine apply with equal force here. Furthermore,
17 Dr. Peterson believed that the item was kelp.

18 Q. 258 C, somewhat more of a closeup. That item that you were describing that
19 you thought was kelp, has that been removed in this photograph?

20 ¹³⁷ The California Constitution states:

21 "(6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and
22 other post-judgment proceedings that challenge criminal convictions, frequent and
23 difficult parole hearings that threaten to release criminal offenders, and the ongoing threat
24 that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime
25 victims for many years after the crimes themselves have been perpetrated. This prolonged
26 suffering of crime victims and their families must come to an end." Cal. Const., art. I, §
27 28. The Constitution further states that victims, their families and legal representatives
28 have enumerated rights such as, the right..."(9) To a speedy trial and a prompt and final
conclusion of the case and any related post-judgment proceedings." Cal. Const., art. I, §
28.)

1 A. It has. There is still a stain there, and I remember thinking *Well, that's pretty neat*
2 *because iodine can do that, and there's iodine in kelp*, so that was my thinking.
3 (RT17450:10-23.) (Emphasis added.)

4 The defense attempts to insinuate that Conner's ear was somehow flattened by the so-
5 called tape but neglects Dr. Peterson's testimony:

6 It shows the ear is kind of flattened because that's -- it's not necessarily well-formed
7 cartilage in the ear at that point. (RT17450:13-23.)

8 They also insinuate wrongdoing because Dr. Peterson did not collect items, but they admit that
9 an evidence technician was present. That technician, Jeffrey Stoler, testified:

10 A. Again, my job is to collect and to preserve any item of evidence that's associated
11 with this -- with this crime. In the case of Baby Conner most, if not all, the items
12 that were found either on the body or on the blanket in which he was wrapped in
13 this were vegetation that was found near the scene or just bodily fluids. The only
14 item that was -- had any evidence evidentiary value to it was the tape or twine that
15 was around that the baby was tangled in.

16 Q. If something is on the body and it's not of an evidentiary nature, as you are
17 describing it, what's done with it?

18 A. It's -- after it's been documented, in this case with photographs, it will be
19 discarded along with anything else that has no evidentiary value.

20 Q. Now, you indicated something about Conner being wrapped in a blanket. Was
21 Conner wrapped in the blanket out at the scene?

22 A. No.

23 Q. How did he get wrapped in the blanket?

24 A. It was by the Deputy Coroner's Investigator Chris Martinez. We requested that
25 he wrap the baby in a blanket or some sort of object like that so we could examine
26 it at the autopsy.

27 *** Q. Now, that particular item, the darker item on the side of that baby's head, if
28 that been something like electrical tape, what would you have done with it?

A. That would have some relevance, or potential relevance, and it would have been
collected. (RT 17612:8-17614:7.)

1 ***THE COURT: Can I go back for a just one second? Were you able to determine
2 what that object was along the side of Conner's head?

3 THE WITNESS: When the object was removed by Doctor Peterson, it was
4 determined just to be vegetation.

5 THE COURT: Did you look at it yourself?

6 THE WITNESS: Yes, sir.

7 THE COURT: Did you form the same opinion?

8 THE WITNESS: Yes, sir. (RT17615:3-11.)

9 Debris found in the ocean would not have changed the outcome of the defendant's trial.
10 More importantly, according to the defendant's own claim, the vegetation was not collected and
11 cannot now be transformed into electrical tape. There is nothing new and nothing to move the
12 needle closer for the defendant.

13 (3) *Laci: Target bag & debris collected therefrom*.....104

14 The defense claims that Officer Timothy Phillips collected a "Target" bag because it
15 smelled like decomposition. However, left out of the discussion is the fact that Off. Phillips, as a
16 lower ranking officer on scene, was standing around Laci's body for between 7 and 7 ½ hours.
17 (RT 19578:25-19579:4.) Off. Phillips also admitted that the smell was a strong smell that stays
18 with you. (RT 19579:11-15.) Also left out of the discussion is that Off. Phillips reported that a
19 "cadaver dog" was run by the "Target" bag and did not give any alert. (RT 19574:21-19576:3.)
20 Detective Frazer was with Off. Phillips when they brought the "Target" bag to the Coroner's
21 facility and spread it out. (RT 17571:4-16.) When attorney Geragos questioned Detective Frazer
22 about whether the bag smelled like decomposition, Frazer responded, "It was much more an odor
23 of something that had been in the water for a long time." (RT 17572:2-3.) Further, Pin Kyo, a
24 criminalist for the Department of Justice, tested the Target bag (Trial Ex 251A, etc.) and testified
25 it "smelled like normal item that come out of the oceans" (RT 17075:26-17076:11) and it did not
26 have any tissue or fat or decomposition type of material on it (RT 17076:18-26). The duct tape
27 associated with the Target bag also did not have any residue on it and an examination of the duct
28 tape in comparison to the tape found with Laci's body showed a different thread count, *meaning*
no match. (RT 177076 – 17077.) Off. Phillips also testified that he collected a second pair of

1 women's panties, even though he knew that Laci's body was found with her panties in place. (RT
2 19572-19573.) Off. Phillips explained why:

3 Q. And the pair of women's panties were in a substantially newer condition than
4 the ones that were on Laci Peterson's body, weren't they?

5 A. Yes.

6 Q. But because of the proximity, because it was there within yards, it was decided
7 to be collected, right?

8 A. Yes, sir.

9 Q. And as you went around and did these things, wasn't there a standing order from
10 the East Bay Regional Parks District, basically the authorities there, that anything
11 that kind of washed up there for a long period of time be collected and turned over?
12 Or be collected and booked into evidence?

13 A. Yes, sir. Within close proximity. I mean, within reason, yes, sir.

14 Q. In fact, things were still being collected as far as June two, and a half months
15 after the bodies were recovered, correct?

16 A. Yes, sir. (RT 19573-19574.)

17
18 The defense then adds a statement from another defense attorney (former) for the
19 defendant to show where this Target bag may have come from, and that said location wasn't
20 connected to Modesto. However, if it wasn't connected to Modesto, how did any of the third-party
21 subjects previously blamed for this crime obtain the bag? The suggestion is that these unknown,
22 unseen parties drove (after borrowing a vehicle) to a job site near the Richmond-San Rafael Bridge
23 where they stole a bag and then wrapped Laci in it, weighed her down and then threw her in the
24 Bay. The defense even adds the graphic on page 108 showing the location of this job site for
25 Target bags as it relates to Ralston's claimed findings. They neglect to show this court People's
26 Trial Exh. 97A (RT 12623- 12626.)

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Laci was found at the Point Isabel Regional Park (the dog park area) and Conner was found in the tidal flats on the shore of Richmond (RT 11954:2-25.) In the defense graphic, it is easily twice as far from either the Target source or the Ralston sighting to where the bodies were actually found (multiple miles) compared to Brooks Island; however, the defendant always said he was “fishing” at Brooks Island. As one witness said:

Q. Okay. What would be the distance from Brooks Island to where Laci's body was recovered?

A. A mile and a quarter.

Q. And the distance between Brooks Island and where Conner was recovered?

A. About the same, a mile and a quarter.

Q. What's the distance between where Conner and Laci were recovered?

A. About three quarters of a mile to eight-tenths of a mile. (RT 12625.)

The other problem with the defense graphic is that their “water” expert has already opined:

According to a 1987 article by L.H. Smith entitled "A Review of Circulation and Mixing Studies of San Francisco Bay," even though the tides flow in and out over

1 the course of the day, there can still be a net circulatory pattern over a period longer
2 than a single portion of the tidal cycle. There is such a circulatory pattern of water
3 movement in the portion of the bay around Berkeley and Richmond. ***The***
4 ***topography of this part of the bay leads me to conclude that water circulation is***
generally occurring in a clockwise direction. (Ex 22 paragraph 14B, HCP –
00287, emphasis added.)

5 It is clear that this Target bag and other debris had no connection to the case; testing it
6 would not change the outcome. Additionally, the Target bag and debris is not new evidence; the
7 defense had this information back in 2003.

8 (4) *Laci: duct tape on pants, Target bag, metal bars*.....109

9 When Laci’s body was recovered it had a strip of loosely adhered duct tape on the lower
10 right side of her body. (RT 17401, 17415, 17417.) That tape was subjected to testing for any and
11 all trace evidence. The DOJ DNA report (attached as a def. motion exhibit, Bates page 38517)
12 says:

13 The section of duct tape from L. Peterson’s remains (Item 1—5) was examined
14 visually and observed to be partially covered with barnacles and tan-brown
15 material. Additionally, a single corner, approximately 1” x 1/2”, of the section of
16 the duct tape was observed to be folded over on itself. This folded over corner of
17 the duct tape was excised from the larger section of the duct tape, swabbed three
18 times (designated as items 1-5 S1, 1—5 S2 and 1-5 S3) to remove the tan-brown
19 material from the exterior and trimmed to remove the outer adhesive edge of the
duct tape with adhering tan-brown material. A slide (Item 1-5 S1 Slide) was
prepared from a portion of the tan—brown material from the 1st swab from the
folded over corner of the duct tape (Item 1-5 S1), histologically stained and
examined microscopically, but no epithelial cells were observed.

20 A low level of human DNA was detected in the folded over corner of the duct tape
21 (Item 1—5) and the first and second swabs from the tan-brown material of the
folded over corner of the duct tape.

22 Ultimately summarizing –

23 No genetic profile was detected for the folded over corner of the duct tape (Item
24 1-5) from L. Peterson's remains or the swabs of the tan-brown material from the
25 exterior of the folded over corner of the duct tape (Items 1-5 S1, 1-5 S2 and 1-5
S3).

26 Bill Hudlow, the DOJ DNA analyst, testified to the following at trial (RT 17207):

27 Q. And were you able to obtain any results from those three swabs
28 and that folded over corner?

1 A. Ultimately no genetic profile was developed from any of those
2 samples. However, a low level of DNA was detected in each of
3 three of those samples.

4 Q. What does that mean?

5 A. That means that I was able to detect human DNA in both the
6 cutting of the duct tape as well as the first two swabs from the
7 outside of the duct tape. However, there wasn't sufficient DNA or
8 the DNA was not of acceptable quality to generate a profile.

9 Q. Now, when you say acceptable quality, as a person decomposes,
10 does their DNA decompose as well?

11 A. Yes, I believe it would.

12 Q. And the outside, this tissue or the items that you were talking
13 about, this tan kind of substance, Ms. Kyo described as fat and
14 decomposing tissue. So even though that was there, you were still
15 not able to get a DNA profile?

16 A. That's correct.

17 Q. And that was the same with what was on the outside as what
18 was on the inside?

19 A. Essentially the same, yes.

20 The testimony of multiple witnesses at trial demonstrated that Laci was in the marine
21 environment for months, was dotted with barnacles and her remains had turned into adipocere.

22 Penal Code section 1405 mandates that the convicted defendant:

23 (d)(1)(C) Make every reasonable attempt to identify both the evidence that should be
24 tested and the specific type of DNA testing sought.

25 and

26 (g)(1) The evidence to be tested is available and in a condition that would permit the
27 DNA testing requested in the motion.

28 The defense, having the above high burden to meet, provided the following statement from their
DNA witness:

39. In 2004, an attempt was made by the California Department of Justice
laboratory to extract DNA from a single folded-over corner of the duct tape found

loosely adhering to Laci Peterson’s remains. Human DNA was obtained from certain areas sampled; however, no DNA profile could be obtained (Exhibit G).

40. However, the Profiler Plus™ testing kit and 310 Genetic Analyzer used in the 2004 testing pales in comparison to the methods SERI currently uses for obtaining DNA profiles from extracted DNA.

41. Given that analysis of only a small portion of the duct tape yielded human DNA, broader sampling with improved methods and more sensitive DNA testing may reveal probative results.

There is not a single attempt to explain how DNA testing would be successful on a decomposed sample; there is not a single explanation for why Hudlow’s result would not be repeated. More importantly, and not to be too indelicate, but there is no attempt to explain how a sample covered in the adipocere of the victim that soaked in the ocean for months would be able to yield another non-mixed profile. The defense also fails to explain why they have waited since 2013 to test another sample from Laci’s body when they could have tested this sample back then with the hairs. (JNE Exh. 9.)

The defendant should not be allowed to test this tape for obvious reasons.¹³⁸

(5) *Black Tarps*.....112

There are two tarps in question here – one found on April 15th and the other found on May 11th. One was collected by EBRPD the *day after* (RT 17569 and see Off. Phillips notes above) and one was collected a *month after* Laci’s body was found. (Def. motion Exh. 5.) Both were located by the same woman while walking her dogs. (Bates (first tarp) 17094, 20033; (second tarp) 30631, 21186.) The woman had previously emailed the Modesto Police Department on February 13, 2003 offering her advice and the service of her search sniffer dogs in this case. (Bates 13018.) Because she was unhappy with how the EBRPD had handled the first black tarp she located while walking her dogs, she decided to collect the second tarp, which she believed to be evidence, herself and carried it around in her vehicle for two days before turning it in to the Vallejo Police Department. (Bates 30631-30632; 21186.) Detective Frazer from EBRPD and Off. Phillips

¹³⁸ The defense has added a “metal bar” to the discussion about this tape sample. The bar was part of the Target bag recoveries and need not be further addressed.

1 were questioned by attorney Geragos at trial about the first black tarp found the day after Laci's
2 remains were recovered. (RT 17567-17579; 19545-19546.) The defense doesn't even attempt to
3 try and make a case why these two tarps are even remotely connected to this case any more than
4 the second pair of panties that Officer Phillips collected was.

5 (6) The evidence sought to be tested meets either of the following conditions:

6 a. The evidence was not tested previously.

7 As noted, most of the items have not been previously tested.

8 b. The evidence was tested previously, but the requested DNA test would provide results that are
9 reasonably more discriminating and probative of the identity of the perpetrator or accomplice or
10 have a reasonable probability of contradicting prior test results.

11 This section controls only the tape found on Laci's pants since the People have
12 demonstrated that the items in the orange van have no connection with this case. The required
13 proof has not been submitted by the defense as articulated above.

14 (7) The testing requested employs a method generally accepted within the relevant scientific
15 community.

16 The defendant's expert has generally identified the requested DNA testing methods that
17 might be used. However, his answers are vague and phrased in terms of possibilities, such as "may
18 reveal" (declaration paragraph #39), "may have" (p.#43), "possible" (p. #46), "optimize potential"
19 (p. #48).

20 (8) The motion is not made solely for the purpose of delay.

21 The People cannot state one way or the other regarding this subsection.

22 **VII.**

23 **DISCOVERY**

24 Lastly, the defense asks the court to order discovery, which the court may grant but is not
25 required to grant.

26 Pen. Code, § 1405(c) allows for:

27 "(1) Copies of DNA lab reports, with underlying notes, prepared in connection
28 with the laboratory testing of biological evidence from the case, including
presumptive tests for the presence of biological material, serological tests, and
analyses of trace evidence.

1 (2) Copies of evidence logs, chain of custody logs and reports, including, but not
2 limited to, documentation of current location of biological evidence, and evidence
destruction logs and reports.

3 (3) If the evidence has been lost or destroyed, a custodian of record shall submit a
4 report to the prosecutor and the convicted person or convicted person's counsel
5 that sets forth the efforts that were made in an attempt to locate the evidence. If the
6 last known or documented location of the evidence prior to its loss or destruction
7 was in an area controlled by a law enforcement agency, the report shall include the
8 results of a physical search of this area. If there is a record of confirmation of
destruction of the evidence, the report shall include a copy of the record of
confirmation of destruction in lieu of the results of a physical search of the area."
Pen. Code, § 1405

9 As the People have demonstrated, there is no valid reason for DNA testing of any of the
10 requested items. The defendant has failed to meet both his pleading and his merit burden. There
11 is no valid new evidence, and this is his third attempt to obtain DNA testing post-conviction. The
12 defendant's attempts to cobble a theory together has demonstrated time and again that the
13 evidence was known at the time of trial, was, in some instances, tactically disregarded by the
14 defense and then, when presented to the jury, was rejected. Defendant's resulting theory is based
15 entirely upon conjecture and speculation.

16 As this court has seen by now, these items were provided before trial and used by the trial
17 attorney throughout the trial. They were used by appellate counsel and by the original habeas
18 counsel. Since newly retained counsel has also filed a Penal Code 1054.9 motion, it would be a
19 better use of resources to address this specific issue during that matter as part of the
20 "reconstructing the case file." Or, if the court agrees with the People that the defense has failed to
21 carry his heavy burden, the court may deny the request.

22 Items not associated with this case were not preserved and the defense has been aware of
23 this since trial, especially items related to the Medina burglary where Geragos argued to the jury
24 in his opening statement – "Modesto PD had destroyed that safe. So there's -- all that evidence is
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1 gone. There is no safe.” (RT 8649:6-7.)¹³⁹

2 **CONCLUSION**

3 This court should deny each and every request to test DNA in this case for all of the reasons
4 set out above. The defendant has not met his burden. Addressing the requests in groups as stated
5 above:

6 **“Orange” van:** (1) “Cloth from mattress” (2) “A piece of partially burned mattress
7 cloth” (3) “Cloth from Van Fuel Tank” (4) “Metal fuel container in the center on a
8 mattress.”

9 This van has never been connected to anything related to this case; it is barely
10 connected even if the court follows the speculative interpretation of a prisoner’s
11 unverified phone call. This van was eliminated by most of the other defense claims.

12 There has been no showing by competent admissible evidence how testing of these
13 items would change the outcome of this case.

14 **Floating debris:** (5) “Target bag” (6) “Duct Tape” recovered from the “Target
15 bag,” (7) Four packages of debris collected from “Target bag” (8) “50-inch long
16 tape or twine, about 6 inches wide” recovered from the neck of Conner Peterson
17 (10) “Duct tape from bay,” (11) “Black Tarp” day after (12) “Black Tarp” month
18 after.

19 Many of these items were testified to by Pin Kyo and eliminated as being
20 connected to Laci’s remains. They were too new, too clean, had no barnacles or
21 adipocere. All of the collected duct tape debris had the wrong thread count to
22 match the duct tape adhering to Laci’s remains. There has been no showing by
23 competent admissible evidence how testing of these items would change the
24 outcome of this case.

25 ¹³⁹ The safe was “damaged” and “forced open.” (RT 10336:18-24.) The destruction of the safe was
26 documented at Bates page 26041, where Det. Grogan wrote: On Tuesday, 7-29-2003 at 1600 hours, I spoke
27 with Detective Sebron Banks who informed me he had authorized the destruction of the safe due to the
28 fact the safe was heavily damaged during the burglary and the victim's, Rudolfo and Susan Medina, did
not wish the safe to be returned to them. Detective Banks said he had talked with the victims about whether
they wanted the safe returned prior to its destruction and he had released the jewelry items and marked the
safe for destruction as part of his disposition of the case.” The CSO who processed the Medina burglary
scene was also given envelopes by Ms. Medina; the CSO wrote in his report...I advised the victims I was
destroying the chemically treated envelopes.” (Bates 20385.)

1 Item #8 is the twine from around Conner's neck/body. There was extensive
2 testimony from Dr. Peterson, the pathologist, about Laci's and Conner's remains.
3 Conner was never born but was expelled from Laci after she had been
4 decomposing in the Bay for several months. There was no way for anyone to
5 intentionally place this twine around Conner's neck. It was, as opined by the
6 doctor, "*simply debris that had become associated with the body.*" (RT 17445.)
7 There has been no showing by competent admissible evidence how testing of this
8 item would change the outcome of this case.

9 ***Laci's remains:***(9) "15.5-inch Length of Duct Tape," labeled "Item 1-5,"
10 recovered from Laci Peterson's pants at the time of autopsy.

11 An excised portion of that tape was DNA tested in 2003 and shown to have human
12 DNA present, but "the DNA was not of an acceptable quality to generate a profile"
13 at that time. As stated above, the defendant has failed to explain how this item
14 could be successfully tested. Two items of the statute control here:

15 (1) The evidence to be tested is available and in a condition that would permit the
16 DNA testing requested in the motion.

17 (6)(B) The evidence was tested previously, but the requested DNA test would
18 provide results that are reasonably more discriminating and probative of the
19 identity of the perpetrator or accomplice or have a reasonable probability of
20 contradicting prior test results.

21 As explained above, the defense has failed to address the decomposition that has
22 existed since 2003. And he has failed to show how this test would give a different
23 result that the time he tested hair from this same tape, There has been no showing
24 by competent admissible evidence how testing of this item would change the
25 outcome of this case.

26 ***Medina Burglary:*** (13) Work glove or swabbed evidence (14) Hammer or swabbed
27 evidence collected from the hammer.

28 The defendant's own proffer shows that there are no known items to test. The
defense has known since 2002/2003 that the evidence in this unrelated case was

1 not kept. That is why Geragos argued it to the jury. However, even if it did exist,
2 the defendant does not explain or provide any concrete examples that show how
3 there is a reasonable chance, or reasonable possibility, that favorable DNA testing
4 results would lead to a more favorable verdict or sentence. This was an unrelated
5 case and the trial jury rejected this theory so the defendant cannot as a matter of
6 law get a do-over.

7 For all the above reasons, the People ask this court to deny all of the defendant's requests
8 for DNA testing.

9 Dated: April 22, 2024.

Respectfully Submitted,

10 JEFF LAUGERO
11 District Attorney
12 County of Stanislaus



13 DAVID P. HARRIS
14 Special Prosecutor

1 ADDENDUM

2
3 **EXHIBIT/ DOCUMENT OBJECTIONS**

4 The People object to the defendant’s attachments to his motion. It is his burden to prove
5 the admissibility of each item; the People do not concede that any item is admissible unless we
6 affirmatively so state. The below objections are made to assist the court in excluding the proffered
7 items:

8 **1 Declaration of Bryan Spitulski**

9 Paragraph 10 – (Statement of neighbor) Hearsay; (Neighborhood) lack of foundation,
10 speculation and improper opinion.

11 P.14 (Investigation) Lack of foundation, speculation, hearsay, improper opinion.

12 P. 22 (Other People’s knowledge) Speculation, lack of personal knowledge;

13 P.23 (Det. Shipley’s statements) Hearsay;

14 P.25 (Borden’s statements) Hearsay, lack of personal knowledge, ;

15 P.28 (Anxiety) Irrelevant, conclusion and speculation.

16 P.35 (Told by attorneys) Hearsay;

17 P39. (Ballistic) Speculation, lack of foundation, improper conclusion, lay opinion and
18 irrelevance;

19 P40. (MPD case) Speculation, lack of personal knowledge, lack of foundation

20 P44. (Opinion) Improper opinion, lack of personal knowledge, lack of foundation,
21 speculation, conclusion and irrelevant;

22 P45. (Opinion) Improper opinion, lack of foundation, speculation, conclusion and
23 irrelevant.

24 **2 Declaration of George Michael Gudgell**

25 P. 1, 2, 3 (background) Irrelevant;

26 P5. (Reporting) Hearsay, lack of foundation, speculation, improper opinion and
27 improper conclusion;

28 P6. (Thoughts) Hearsay, improper opinion, lack of personal knowledge, lack of
foundation, improper legal conclusion [ignores Supreme precedent on this case],
irrelevant;

- 1 P.8 (Character) Improper foundation, lack of personal knowledge, conclusory,
2 improper lay opinion, irrelevant;
- 3 P.9 (Opinion) Hearsay, speculation, improper foundation, conclusory, improper lay
4 opinion, irrelevant;
- 5 P.10 (Others said) Hearsay, lack of personal knowledge, irrelevant; (Promise to
6 conceal witnesses) Violates the People's Due Process Right;
- 7 P.11 (Paragraph) Hearsay, irrelevant, lack of personal knowledge, speculation, lack of
8 foundation, conclusion, improper lay opinion;
- 9 P.12 (Burglars) Hearsay, lack of foundation, lack of personal knowledge, speculation,
10 conclusion, improper lay opinion;
- 11 P.13 (two or more) Hearsay, lack of foundation, lack of personal knowledge,
12 speculation, conclusion, improper lay opinion;
- 13 P.14 (opinion) Hearsay, lack of foundation, lack of personal knowledge, speculation,
14 conclusion, improper lay opinion;
- 15 P.15 (initial statement of Jackson) Hearsay, lack of foundation, lack of personal
16 knowledge, speculation, improper lay opinion, irrelevant; (interview with Jackson)
17 Hearsay, lack of personal knowledge, violates trial judge's ruling regarding E.C. section
18 795;
- 19 P.16 (interview) Hearsay, lack of personal knowledge;
- 20 P.17 (interview) Hearsay, lack of personal knowledge, improper impeachment;
- 21 P.18 (interview) Hearsay, lack of personal knowledge, speculation;
- 22 P.19 (reading reports) Hearsay, lack of foundation, lack of personal knowledge,
23 improper lay opinion, speculation;
- 24 P.20 (reported by colleagues) Hearsay, lack of foundation, lack of personal
25 knowledge, improper lay opinion, speculation;
- 26 P.21 (on the street) Speculation, improper lay opinion, irrelevant;
- 27 P.22 (Pearce) Hearsay – Pearce is dead, so no foundation can be laid; (opinion)
28 Speculation, improper lay opinion, irrelevant; (Screenshot) Hearsay, lack of foundation;
- P.23 (opinion) Speculation, improper lay opinion, irrelevant;
- P.24 (property) Hearsay, speculation, lack of personal knowledge, lack of foundation,
improper lay opinion, irrelevant;
- P.25 (plausible scenario) Hearsay, speculation, lack of personal knowledge, lack of
foundation, improper lay opinion, irrelevant;
- P.26 (Statement) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

1 (interview of Koen and van) Hearsay, speculation, lack of personal knowledge, lack of
2 foundation, improper lay opinion, irrelevant;

3 P.27 (his investigation) Hearsay, speculation, lack of personal knowledge, lack of
4 foundation, improper lay opinion, irrelevant;

5 P.28 (interview Stough) Hearsay, lack of personal knowledge, lack of foundation,
6 irrelevant;

7 P.29 (Stough cont.) Hearsay, lack of personal knowledge, lack of foundation,
8 irrelevant;

9 P.30 (Todd) Hearsay, double-hearsay, speculation, lack of personal knowledge, lack of
10 foundation, improper lay opinion, irrelevant; (Sources) Violation of Due Process,
11 Hearsay;

12 P.31 (Opinion) Hearsay, speculation, lack of personal knowledge, lack of foundation,
13 improper lay opinion, irrelevant;

14 P.32 (his investigation) Hearsay, double hearsay, speculation, lack of personal
15 knowledge, lack of foundation, improper lay opinion, irrelevant;

16 P.33 (Chapman statement) Hearsay – this person per the defense is dead, so no
17 foundation can be laid; (D.M.) Violation of Due Process, Hearsay [one of the persons the
18 defense will not disclose]; Hearsay, double hearsay, speculation, lack of personal
19 knowledge, lack of foundation, improper lay opinion, irrelevant;

20 P.35 (interview) Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
21 Violation of Due Process [one of the persons the defense will not disclose];

22 P.36 (Ralph) Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
23 speculation, conjecture;

24 P.37 (conjecture) Hearsay, double-hearsay, lack of personal knowledge, lack of
25 foundation, irrelevant, speculation, conjecture [This issue has also previously been
26 litigated];

27 P.38 (orange van) Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
28 speculation, conjecture;

P.39 (interview) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

P.40 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation,
irrelevant;

P.41 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation,
irrelevant, speculation, conjecture, improper lay opinion;

P. 42 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation,
irrelevant, speculation, conjecture, improper lay opinion;

1 P. 43 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation,
2 irrelevant, speculation, conjecture, improper lay opinion, conjecture;

3 P.44 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation,
4 irrelevant, speculation, conjecture, improper lay opinion, conjecture;

5 P. 45 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation,
6 irrelevant;

7 P. 46 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation,
8 irrelevant, speculation, conjecture, improper lay opinion, violates the People's Due
9 Process [an anonymous source];

10 P. 47 (interview cont.) Irrelevant;

11 P. 48 (van interview) Hearsay, lack of personal knowledge, lack of foundation,
12 irrelevant, speculation, conjecture, improper lay opinion;

13 P. 49 (van interview cont.) Hearsay, double hearsay, lack of personal knowledge, lack
14 of foundation, irrelevant, speculation, conjecture, improper lay opinion;

15 P. 50 (later learned) Hearsay, lack of personal knowledge, lack of foundation,
16 irrelevant, speculation, conjecture, improper lay opinion [stated that the involved party is
17 now deceased];

18 P. 51 (reviewing report) Hearsay, lack of personal knowledge, lack of foundation,
19 irrelevant, speculation, conjecture, improper lay opinion;

20 P.52 (interview) Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
21 speculation, conjecture, improper lay opinion, improper character opinion;

22 P. 53 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation;

23 P. 54 (interview cont.) Hearsay, lack of personal knowledge, lack of foundation,
24 irrelevant;

25 P. 55 (opinion) Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
26 speculation, conjecture, improper lay opinion;

27 P. 56 (opinion cont.) Hearsay, lack of personal knowledge, lack of foundation,
28 irrelevant, speculation, conjecture, improper lay opinion;

P.57 (dog scent) Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
speculation, conjecture, improper lay opinion;

P.58 (dog scent cont.) Hearsay, lack of foundation, irrelevant, speculation, conjecture,
improper lay opinion;

P. 59 (dog scent cont.) Hearsay, lack of personal knowledge, lack of foundation,
irrelevant, speculation, conjecture, improper lay opinion;

1 P. 60 (dog scent cont.) Hearsay, lack of foundation, irrelevant, speculation, conjecture,
2 improper lay opinion;

3 P. 61 (option) Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
4 speculation, conjecture, improper lay opinion;

5 P.62 (conclusion) (dog scent cont.) Hearsay, lack of foundation, irrelevant,
6 speculation, conjecture, improper lay opinion, argumentative;

7 P. 63 (sighting claims) Hearsay, lack of foundation, irrelevant, speculation, conjecture,
8 improper lay opinion, argumentative;

9 P. 64 (Garcia claim) Hearsay, lack of foundation, irrelevant, speculation, conjecture,
10 improper lay opinion, argumentative, improper character evidence;

11 P.65 (Pouches) Hearsay, lack of foundation, speculation, conjecture, improper lay
12 opinion;

13 P. 66 (Brazil) Hearsay, lack of foundation, speculation, conjecture, improper lay
14 opinion;

15 P. 67 (Pedrioli) Hearsay, lack of foundation, speculation, conjecture, improper lay
16 opinion [according to the defense this person is deceased];

17 P.68 (trial) Irrelevant;

18 P. 69 (trial cont.) Hearsay, speculation, conjecture, improper lay opinion, Due Process
19 violation for failing to disclose sources;

20 P. 70 (trial cont.) Hearsay, speculation, conjecture, improper lay opinion, Due Process
21 violation for failing to disclose sources;

22 **3 Declaration of Susan Medina**

23 This witness testified at trial and her testimony is in the record.

24 P.3 (neighbor) statement Hearsay;

25 P.11 This is inconsistent with this witness' trial testimony and she cannot be
26 impeached after the fact;

27 P.15 (recall) Lack of Foundation, speculation;

28 P.17 (Detective) Hearsay;

P. 21 Irrelevant;

P. 22 Irrelevant, speculation;

P.23 Irrelevant, speculation and argumentative.

P. 26 (Det. statement) Hearsay;

P. 27 Irrelevant;

1 P. 28 Irrelevant, speculation;

2 P. 29 Improper lay opinion, lack of foundation, speculation, irrelevant;

3 Attachment C – Improper re-creation (the photo states the mailbox has been
4 relocated), lack of foundation, Evid. Code section 352;

5 **4 Declaration of Scott Peterson**

6 P. 4 Hearsay, speculation, legal conclusion;

7 P.5 Hearsay, speculation, legal conclusion;

8 P.6 Hearsay, speculation, legal conclusion, lack of foundation [also the defendant’s
9 statement that [he] “cooperated fully with the police when I discovered Laci was
10 missing” is false due to his denial of the affair with Amber Frey based on his admission
11 to Det. Grogan during a captured phone call (RT 17805-17806; Ex #270A transcript page
12 2)];

13 P.7 Hearsay, speculation, legal conclusion;

14 P. 8 (Jacobson surveillance) Hearsay, legal conclusion, argumentative;

15 P.9 Hearsay, speculation, legal conclusion, improper lay opinion, irrelevant;

16 P. 10 Hearsay, speculation, lack of foundation, legal conclusion, argumentative;

17 P. 12 Hearsay, speculation, legal conclusion, improper lay opinion, irrelevant;

18 P. 14 Hearsay, speculation, lack of foundation, legal conclusion, argumentative,
19 irrelevant;

20 P. 19 Hearsay, legal conclusion, argumentative, the trial court’s order speaks for itself;

21 P. 20 Hearsay, speculation, legal conclusion, argumentative, irrelevant;

22 P. 21 Legal conclusion, argumentative, irrelevant;

23 **5 Declaration of Paige McGrail**

24 This is one of the defense attorneys, who lacks personal knowledge of most of the matters stated
25 in her declaration:

26 P. 2 Hearsay, speculation, lack of foundation, legal conclusion, argumentative,
27 irrelevant;

28 P. 4 (Ralston report [There is no provided declaration from Ralston]) Hearsay,
speculation, lack of foundation, legal conclusion, argumentative, irrelevant;

P. 5 Hearsay, lack of foundation, legal conclusion, argumentative, irrelevant [As
stated elsewhere in this motion and Ralston’s report there was no live captured video
since they lacked the necessary cables];

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P. 7 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 8 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P.9 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 10 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 11 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 12 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 13 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 14 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 15 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 16 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 17 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 18 Hearsay, lack of personal knowledge, lack of foundation, argumentative, irrelevant;

P. 19 Lack of personal knowledge, lack of foundation, argumentative [*a thorough review of the MPD witness reports and tips that were in the discovery provided to Mr. Peterson at the time of trial is inconsistent with the claims of missing materials;*

P. 20 (Chilles tip [There is no provided declaration from Chilles]) Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;

P. 21 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;

P. 23 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;

P. 24 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;

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- P. 25 Irrelevant;
- P. 26 (Kim V. tip [There is no provided declaration from Kim V.]) Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 29 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 30 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 31 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 33 Irrelevant;
- P. 34 (Sharon P. tip [There is no provided declaration from Sharon P.] Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 37 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 38 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 39 Irrelevant;
- P. 40 (Pouches' tip [There is no provided declaration from Pouches]) Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 41 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 44 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 45 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 46 (Lilian V. tap [There is no provided declaration from Lilian V.]) Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 48 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 49 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;
- P. 50 Hearsay, lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;

1 P. 52 (Barbara B. tip) Hearsay, lack of foundation, speculation, conjecture, improper
2 lay opinion, irrelevant [the motion lists this person as deceased];

3 P. 55 (Dean T. tip [There is no declaration from Dean T.]) Hearsay, lack of foundation,
4 speculation, conjecture, improper lay opinion, irrelevant;

5 P. 56 Hearsay, lack of personal knowledge, lack of foundation, speculation, conjecture,
6 improper lay opinion, irrelevant;

7 P. 58 (John H. tip [There is no declaration from John H.]) Hearsay, lack of foundation,
8 speculation, conjecture, improper lay opinion, irrelevant;

9 P. 61 (Linda S. tip) Hearsay, lack of foundation, speculation, conjecture, improper lay
10 opinion, irrelevant [the motion lists this person as deceased];

11 P. 64 (Niniv T. tip [There is no declaration from Niniv T.]) Hearsay, lack of foundation,
12 speculation, conjecture, improper lay opinion, irrelevant;

13 P. 66 (prepared or reviewed transcripts) Hearsay, lack of foundation, irrelevant;

14 P. 67 (this relates to press releases attached to declaration – they will be addressed
15 below);

16 P. 68 (reviewed Servas memo) Hearsay, double-hearsay, lack of foundation,
17 speculation, conjecture, improper lay opinion, irrelevant;

18 P. 69 (reviewed Grogan report) Hearsay, lack of personal knowledge, lack of
19 foundation, speculation, conjecture, improper lay opinion, irrelevant;

20 P. 70 (reviewed Valentin report, attached as an exhibit which will be addressed below
21 as well) Hearsay, lack of personal knowledge, lack of foundation, speculation,
22 conjecture, improper lay opinion, irrelevant;

23 P. 71 (Vivian Mitchell tip [There is no declaration from Mitchell]) Hearsay, lack of
24 foundation, speculation, conjecture, improper lay opinion, irrelevant;

25 P. 72 (Pedrioli tip [There is no declaration from Pedrioli]) Hearsay, double-hearsay,
26 lack of foundation, speculation, conjecture, improper lay opinion, irrelevant;

27 P. 73 (Brazil tip [There is no declaration from Brazil]) Hearsay, lack of foundation,
28 speculation, conjecture, improper lay opinion, irrelevant;

P. 74 (Review of Det. Owen's Prop 115 of Diane Campos at preliminary hearing)
defense has attached as an exhibit which will be addressed below;

P. 75 (Leora Garcia tip [There is no declaration from Garcia]) Hearsay, lack of
foundation, speculation, conjecture, improper lay opinion, irrelevant;

P. 76 (Det. Stough report of Todd statement) Hearsay, double-hearsay, lack of
foundation, speculation, conjecture, irrelevant;

1 P. 77 (Polygraph examiners report) Hearsay, lack of foundation, speculation,
2 conjecture, improper lay opinion, irrelevant, excluded by Judge Steffen as part of prior
3 Discovery 1054.9 Order;

4 P. 78 (Reviewed report of Albert U.) Hearsay, lack of foundation, speculation,
5 conjecture, improper lay opinion, irrelevant;

6 P. 79 (Reviewed report of Gail. P. tip) Hearsay, lack of personal knowledge, lack of
7 foundation, speculation, conjecture, improper lay opinion, irrelevant;

8 P. 80 (opinion) Hearsay, lack of foundation, speculation, conjecture, improper lay
9 opinion, irrelevant, violates Due Process [references D.M. who the defense has refused
10 to identify];

11 P. 81 (Chiavetta tip) Hearsay, lack of foundation, speculation, conjecture, improper lay
12 opinion, irrelevant;

13 P. 82 (reviewed report Dr. Boyd) Hearsay, double-hearsay, lack of foundation,
14 speculation, conjecture, irrelevant;

15 P. 83 (GPS charting and created maps) Hearsay, lack of personal knowledge, improper
16 foundation, improper lay opinion, improper experiment, irrelevant;

17 P. 84 (search dog) Hearsay, lack of foundation, speculation, conjecture, irrelevant;

18 P. 85 (Coast Guard note) Hearsay, lack of foundation, speculation, conjecture,
19 improper lay opinion, irrelevant;

20 P. 86 (Ireland note) Hearsay, lack of foundation, speculation, conjecture, improper lay
21 opinion, irrelevant;

22 P. 87 (Galvan note) Hearsay, lack of foundation, speculation, conjecture, improper lay
23 opinion, irrelevant;

24 P. 88 (Cloward note) Hearsay, lack of foundation, speculation, conjecture, improper
25 lay opinion, irrelevant;

26 P. 89 (Skultety note) Hearsay, lack of foundation, speculation, conjecture, improper lay
27 opinion, irrelevant;

28 P. 90 (Hendee note) Hearsay, lack of foundation, speculation, conjecture, improper lay
opinion, irrelevant;

P. 91 (Owen note) Hearsay, lack of foundation, speculation, conjecture, improper lay
opinion, irrelevant;

P. 92 (Armendariz note) Hearsay, lack of foundation, speculation, conjecture, improper
lay opinion, irrelevant;

P. 93 (Hende note bates 2234) Hearsay, lack of foundation, speculation, conjecture,
improper lay opinion, irrelevant;

1 P. 94 (Cloward note bates 2700) Hearsay, lack of foundation, speculation, conjecture,
2 improper lay opinion, irrelevant;

3 P. 95 (read reports of GPS/canine) Hearsay, lack of personal knowledge, lack of
4 foundation, speculation, conjecture, improper lay opinion, irrelevant;

5 P96 (read Grogan search report) Hearsay, lack of foundation, speculation, conjecture,
6 improper lay opinion, irrelevant;

7 P. 97 (read Cloward Bates 2419) Hearsay, lack of foundation, speculation, conjecture,
8 improper lay opinion, irrelevant;

9 P. 98 (read Owen report red staining report) Hearsay, lack of foundation, speculation,
10 conjecture, improper lay opinion, irrelevant;

11 P. 99 (read Owen Buoy paint report) Hearsay, lack of foundation, speculation,
12 conjecture, improper lay opinion, irrelevant;

13 P. 100 (DOJ report) Hearsay, lack of foundation, speculation, conjecture, improper lay
14 opinion, irrelevant;

15 P. 101 (Demille note) Hearsay, lack of foundation, speculation, conjecture, improper lay
16 opinion, irrelevant;

17 P. 102 (Owen /Chang report) Hearsay, lack of foundation, speculation, conjecture,
18 improper lay opinion, irrelevant;

19 P. 103 (Cheng email) This witness, Dr. Cheng, testified and as submitted a declaration
20 for the defense. The reader statements of the attorney are still Hearsay, lack of
21 foundation, irrelevant;

22 P, 108 (boat loops) Lack of Foundation, improper experiment, speculation, conclusion,
23 irrelevant;

24 P. 110 (tarps report) Hearsay, lack of foundation, speculation, conjecture, improper lay
25 opinion, irrelevant;

26 P. 111 (Lovel report) Hearsay, lack of foundation, speculation, conjecture, improper lay
27 opinion, irrelevant;

28 Exh. A (Ralston report) Hearsay, lack of foundation, improper lay opinion,
irrelevant;

Exh. B (Ermoian/Maldonado interview) Hearsay, lack of foundation, irrelevant;

Exh. C (Ermoian/Frietas interview) Hearsay, lack of foundation, irrelevant;

Exh. D (Ermoian/Wolf interview) Hearsay, lack of foundation, irrelevant;

Exh. E (Ermoian/Mitchell, V&B interview) Hearsay, lack of foundation,
irrelevant;

1 Exh. F (Ermoian/Garcia interview) Hearsay, lack of foundation, irrelevant;

2 Exh. H (Grogan/Harshman interview) Hearsay, lack of foundation, irrelevant;

3 Exh. I (Press Releases) Hearsay, lack of foundation, irrelevant;

4 Exh. J (police report bates 2926) Hearsay, lack of foundation, irrelevant;

5 Exh. K (Partial Prelim Transcript) The defense is proffering the statements of
6 various witnesses that were "Prop 115'd" by the defense during the prelim. The People
7 object as Hearsay, irrelevant;

8 Exh. L (Police reports) Hearsay, lack of foundation, lack of personal knowledge,
9 irrelevant;

10 Exh. M (Police report/email) Hearsay, lack of foundation, lack of personal
11 knowledge, irrelevant;

11 **6 Declaration of Homer Maldonado**

12 P. 12 (wife said) Hearsay; (Later) speculation, conjecture, irrelevant;

13 P. 21 (Det. Said) Hearsay;

14 P. 24 (Ermoian report) Hearsay;

15 P. 27 (others said)

16 P. 28 (report) Hearsay, relevance;

17 P. 29 (Dalton) Hearsay, irrelevant;

18 P. 34 Hearsay, irrelevant;

19 P. 35 Improper opinion, speculation, conjecture, irrelevant;

20 P. 36 Improper opinion, speculation, conjecture, irrelevant;

21 Exh. E. Argumentative, improper opinion;

22 Exh. H Hearsay, lack of foundation, irrelevant;

23 Exh. J Hearsay, lack of foundation, lack of personal knowledge, irrelevant;

24 Exh. K Hearsay, lack of foundation, lack of personal knowledge, irrelevant;

25 Exh. L (Ermoian report) Hearsay, irrelevant;

26 Exh. M (newspaper) Hearsay, lack of foundation, lack of personal knowledge,
27 irrelevant;

28 Exh. N (Ermoian report follow-up) Hearsay, irrelevant;

Exh. P (police report) Hearsay, irrelevant;

1 **7 Declaration of Helen Maldonado**

2 P.6 (talking with Kathy) Hearsay, irrelevant;

3 P. 9 (husband said) Hearsay, irrelevant;

4 P. 10 (told husband) Hearsay, irrelevant;

5 P. 11 (husband said) Hearsay, irrelevant;

6 P. 12 (Homer) Hearsay, irrelevant;

7 P. 13 (heard Homer) Hearsay, irrelevant;

8 P. 14 (Cloward said) Hearsay, irrelevant;

9 P. 16 (heard Homer) Hearsay, irrelevant;

10 P, 17 (Homer told) Hearsay, irrelevant;

11 P. 18 Hearsay, irrelevant;

12 Exh. B Hearsay, lack of foundation, lack of personal knowledge, irrelevant;

13 Exh. C (Ermoian report) Hearsay, lack of foundation, lack of personal
14 knowledge, irrelevant;

15 **8 Declaration of Tony Freitas**

16 P. 6 (reviewed report) Hearsay, lack of foundation, irrelevant;

17 Exh. A Hearsay, lack of foundation, lack of personal knowledge, irrelevant;

18 Exh. C (Ermoian report) Hearsay, lack of foundation, lack of personal
19 knowledge, irrelevant;

20 Exh. E. (Grogan report) Hearsay, lack of foundation, lack of personal knowledge,
21 irrelevant;

22 Exh. G Hearsay, irrelevant;

23 **9 Declaration of Gary Ermoian**

24 This was one of the defense investigators before, during and after the trial. His declaration is
25 almost all Hearsay:

26 P. 8 Hearsay, speculation, lack of personal knowledge, lack of foundation, improper
27 lay opinion, conjecture, argumentative, irrelevant;

28 P. 9 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
improper lay opinion, argumentative, irrelevant;

- 1 P. 10 Hearsay, lack of foundation, irrelevant;
- 2 P. 11 Hearsay, irrelevant;
- 3 P. 12 (tips) Hearsay, conjecture, speculation, lack of personal knowledge, lack of
4 foundation, improper lay opinion, argumentative, irrelevant;
- 5 P. 13 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
6 improper lay opinion, argumentative, irrelevant;
- 7 P. 14 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- 8 P. 16 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
9 improper lay opinion, argumentative, irrelevant;
- 10 P. 17 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
11 improper lay opinion, irrelevant;
- 12 P. 18 Hearsay, lack of foundation, irrelevant;
- 13 P. 19 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
14 improper lay opinion, irrelevant;
- 15 P. 20 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
16 improper lay opinion, irrelevant;
- 17 P. 21 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- 18 P. 22 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
19 improper lay opinion, irrelevant;
- 20 P. 25 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
21 improper lay opinion, argumentative, irrelevant;
- 22 P. 27 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- 23 P. 28 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- 24 P. 29 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- 25 P. 30 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- 26 P. 31 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
27 improper lay opinion, argumentative, irrelevant;
- 28 P. 32 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- P. 33 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- P. 34 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- P. 36 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- P. 37 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

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P. 38 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, argumentative, irrelevant;

P. 39 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper character evidence, improper lay opinion, argumentative, irrelevant;

P. 40 Conjecture, speculation, argumentative, irrelevant;

P. 41 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

P. 42 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

P. 43 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

P. 44 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

P. 45 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, irrelevant;

P. 46 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, irrelevant;

P. 47 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, irrelevant;

P. 48 Hearsay, lack of personal knowledge, irrelevant;

P. 49 Hearsay, lack of personal knowledge, irrelevant;

P. 50 (Cordova [There is no declaration from Cordova]) Hearsay, lack of personal knowledge, irrelevant;

P. 51 Hearsay, lack of personal knowledge, irrelevant;

P. 52 Hearsay, lack of personal knowledge, irrelevant;

P. 53 Hearsay, lack of personal knowledge, irrelevant;

P. 54 Hearsay, lack of personal knowledge, improper opinion, irrelevant;

P. 55 Hearsay, lack of personal knowledge, irrelevant;

P. 56 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, irrelevant;

P. 57 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, irrelevant;

P. 58 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper opinion evidence, irrelevant;

P. 59 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, improper opinion, irrelevant;

1 P. 60 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
2 argumentative, improper lay opinion evidence, irrelevant;

3 P. 62 Hearsay, lack of foundation, speculation, argumentative, irrelevant;

4 Exh. A report – Hearsay;

5 Exh. B report and attachments – Hearsay;

6 Exh. C report – Hearsay;

7 Exh. D report – Hearsay;

8 Exh. E report – Hearsay;

9 Exh. F email – Hearsay;

10 Exh. I report – Hearsay;

11 Exh. J report – Hearsay;

12 Exh. K report – Hearsay;

13 Exh. M report – Hearsay;

14 Exh. N report – Hearsay;

15 Ex O – missing

16 Exh. P report and attachment – Hearsay;

17 Exh. Q report – Hearsay;

18 Exh. R report – Hearsay;

19 Exh. S report – Hearsay;

20 Exh. T report – Hearsay;

21 Exh. U report – Hearsay;

22 Exh. V report – Hearsay;

23 Exh. W report – Hearsay;

24 Exh. X report – Hearsay;

25 Exh. Y report – Hearsay;

26 **10 Declaration of Frank Aguilar**

27 This declaration was signed in 2012 and for a different proceeding. The claim that declaration
28 was used for has been litigated with a determination against the defendant – he is collaterally
estopped from using the same materials. There is no showing that this person is alive or still

1 competent to make such a declaration.

2 P.4 (was told) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

3 P.5 (Martha's health) Hearsay, lack of foundation, conjecture, speculation, improper
4 lay opinion evidence, irrelevant;

5 P.7 (prior interview) Hearsay, vague, compound, lack of personal knowledge, lack of
6 foundation, conjecture, speculation, argumentative, improper lay opinion evidence,
7 irrelevant;

8 **11 Declaration of William Mitchell**

9 This declaration was signed in 2009 and for a different proceeding. The claim that declaration
10 was used for has been litigated with a determination against the defendant – he is collaterally
11 estopped from using the same materials. There is no showing that this person is alive,
12 considering he stated he was 90 years old in 2009, or still competent to make such a declaration.

13 P. 2 Irrelevant;

14 P. 5 (Wife said) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

15 P. 7 (wife knew) Hearsay, lack of personal knowledge, lack of foundation,
16 speculation, irrelevant;

17 P. 8 (wife told) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

18 P. 9 (newspaper) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
19 (Maldonados opinion) Hearsay, lack of personal knowledge, lack of foundation,
20 speculation, improper lay opinion, irrelevant;

21 P. 11 (neighbor) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

22 P. 12 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

23 **12 Declaration of Diane Campos**

24 This declaration was signed in 2013 and for a different proceeding. The legal claim that
25 declaration was used for has been litigated with a determination against the defendant – he is
26 collaterally estopped from using the same materials. There is no showing that this person is alive
27 or still competent to make such a declaration.

28 P. 6 (report) Hearsay, lack of foundation, irrelevant;

P. 7 (report) Hearsay, lack of foundation, irrelevant;

P. 11 (interview) Hearsay, lack of foundation, irrelevant;

1 **13 Declaration of Mehul Anjaria**

2 P. 1-30 (reports attached) Hearsay, lack of foundation, irrelevant, violates People v.
3 Sanchez (2016) 63 Cal.4th 665, 686;

4 P. 31 (hammer and glove) Hearsay, lack of foundation, speculation, improper
5 hypothetical, irrelevant;

6 P. 32 (if) Hearsay, lack of foundation, speculation, improper hypothetical, irrelevant;

7 P. 33 Hearsay, lack of foundation, speculation, improper hypothetical, assumes facts
8 not in evidence, irrelevant;

9 P. 42 (target bag) Hearsay, lack of foundation, speculation, improper hypothetical,
10 irrelevant;

11 P. 43 (debris) Hearsay, lack of foundation, speculation, improper hypothetical,
12 irrelevant;

13 P. 46 (black tarps) Hearsay, lack of foundation, speculation, improper hypothetical,
14 irrelevant;

15 P. 47 (twine) Hearsay, lack of foundation, speculation, improper hypothetical,
16 irrelevant, Sanchez;

17 Exh. B. Hearsay, lack of personal knowledge, lack of foundation, irrelevant.
18 Sanchez ;

19 Exh. C. Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
20 Sanchez ;

21 Exh. D. Hearsay, lack of personal knowledge, lack of foundation, irrelevant,
22 Sanchez ;

23 **14 Declaration of Diane Jackson**

24 This declaration is inadmissible in its entirety, as it relates to her statement regarding her
25 observation in 2002. The trial judge ruled all her post-hypnosis statements were (and are
26 inadmissible) pursuant to Evidence Code section 795. That ruling has not been overruled by a
27 higher court. **The People therefore move to strike this entire declaration.**

28 Exh. A, Violates Evidence Code section 795;

Exh. B. (police report) Hearsay, lack of personal knowledge, lack of foundation,
irrelevant;

Exh. C. (police report) Hearsay, lack of personal knowledge, lack of foundation,
irrelevant;

Exh. D (police report) Hearsay, lack of personal knowledge, lack of foundation,
irrelevant;

1 Exh. E. Violates Evidence Code section 795;

2 Exh. F (Ermoian report) Hearsay, lack of personal knowledge, lack of
3 foundation, irrelevant;

4 Exh. G. Violates Evidence Code section 795, lack of foundation that Siemans
5 vans looked like this in 2002; Lack of personal knowledge, irrelevant;

6 Exh. H. Violates Evidence Code section 795;

7 **15 Declaration of Lt. Xavier Aponte**

8 Admitted at New Trial Motion – it is in evidence.

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10 **16 Declaration of Jason DeWitt (April 2023)**

11 This declaration violates the People’s Due Process rights because there is redacted information
12 that has been withheld from us. The defense has not proven any legal reason for these redactions
13 to be allowed and has not obtained permission from the court to file a redacted document. **The**
14 **People therefore move to strike this entire declaration.**

15 P. 2 (blacked out interview) Hearsay, lack of personal knowledge, lack of foundation,
16 speculation, conjecture, improper lay opinion, irrelevant, violates Due Process
17 [references someone who is talking about others, all of whom the defense has refused to
18 identify];

18 P.3 (blacked out interview) Hearsay, lack of personal knowledge, lack of foundation,
19 speculation, conjecture, improper lay opinion, irrelevant, violates Due Process
20 [references someone who is talking about others, all of whom the defense has refused to
21 identify];

21 P. 4 (blacked out interview) Hearsay, lack of personal knowledge, lack of foundation,
22 speculation, conjecture, improper lay opinion, irrelevant, violates Due Process
23 [references someone who is talking about others, all of whom the defense has refused to
24 identify];

24 P.5 (blacked out interview) Hearsay, lack of personal knowledge, lack of foundation,
25 speculation, conjecture, improper lay opinion, irrelevant, violates Due Process
26 [references someone who is talking about others, all of whom the defense has refused to
27 identify];

26 P. 6 (blacked out interview) Hearsay, lack of personal knowledge, lack of foundation,
27 speculation, conjecture, improper lay opinion, irrelevant, violates Due Process
28 [references someone who is talking about others, all of whom the defense has refused to
identify];

1 P. 7 (tip) Hearsay, lack of personal knowledge, lack of foundation, speculation,
2 conjecture, improper lay opinion, irrelevant;

3 P. 8 (blacked out name) Hearsay, lack of personal knowledge, lack of foundation,
4 irrelevant, violates Due Process [references someone who the defense has refused to
5 identify];

6 P. 9 (blacked out name) Hearsay, lack of personal knowledge, lack of foundation,
7 speculation, conjecture, improper lay opinion, irrelevant, violates Due Process
8 [references someone who the defense has refused to identify], improper character
9 evidence (criminal history is not allowed to attempt to establish identity);

17 Declaration of S.T.

10 This declaration violates the People's Due Process rights ["In a criminal case, the people
11 of the State of California have the right to due process of law and to a speedy and public trial."
12 Cal. Const., art. I, § 29] because the name of the declarant, as well as the signature, is redacted.
13 Additionally, other information in the statement that is redacted appears to relate to other possible
14 witnesses. The People have consistently requested this information advising the court of the
15 defendant's refusal to provide the information, and in fact in the defendant's reply to the Motion
16 to Seal the defense stated there is "no legal basis for the prosecution's request that the Court order
17 Mr. Peterson's counsel to disclose new evidence supporting the relief he is requesting..." (REPLY
18 TO PEOPLE'S POSITION ON MOTION TO SEAL COURT RECORDS, page 15, 12-3.) As the
19 People have cited above this attempt to use anonymous hearsay information as part of his required
20 proof violates the People's rights to notice and the ability to challenge the claims he is making
21 ("For more than a century the central meaning of procedural due process has been clear: 'Parties
22 whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right
23 they must first be notified.' [citations omitted]. It is equally fundamental that the right to notice
24 and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'
25 [citation omitted]" *Fuentes v. Shevin* (1972) 407 U.S. 67, 80, cited to by *Alford v. Superior Court*
26 (2003) 29 Cal.4th 1033, 1044 [130 Cal.Rptr.2d 672, 680, 63 P.3d 228, 235] holding modified by
27 *Facebook, Inc. v. Superior Court of San Diego County* (2020) 10 Cal.5th 329). The defense has
28 not proven any legal reason for these redactions to be allowed and has not obtained permission

1 from the court to file a redacted declaration. **The People therefore move to strike this entire**
2 **declaration.**

3 P. 1 to P. 14 [except P. 3] (blacked out information) Hearsay, lack of personal knowledge,
4 lack of foundation, speculation, conjecture, improper lay opinion, irrelevant, violates
5 Due Process [references someone who the defense has refused to identify];

6 P. 15 This is the affirmation paragraph, and the name has been blacked out which
7 violates Due Process rights of the People.

8 **18 Declaration of K.M.**

9 This declaration violates the People’s Due Process rights ["In a criminal case, the people
10 of the State of California have the right to due process of law and to a speedy and public trial."
11 Cal. Const., art. I, § 29] because the name of the declarant, as well as the signature, is redacted.
12 Additionally, other information in the statement that is redacted appears to relate to other possible
13 witnesses. The People have consistently requested this information advising the court of the
14 defendant’s refusal to provide the information, and in fact in the defendant’s reply to the Motion
15 to Seal the defense stated there is “no legal basis for the prosecution’s request that the Court order
16 Mr. Peterson’s counsel to disclose new evidence supporting the relief he is requesting...” (REPLY
17 TO PEOPLE’S POSITION ON MOTION TO SEAL COURT RECORDS, page 15, 12-3.) As the
18 People have cited above this attempt to use anonymous hearsay information as part of his required
19 proof violates the People’s rights to notice and the ability to challenge the claims he is making
20 ("For more than a century the central meaning of procedural due process has been clear: ‘Parties
21 whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right
22 they must first be notified.’ [citations omitted]. It is equally fundamental that the right to notice
23 and an opportunity to be heard ‘must be granted at a meaningful time and in a meaningful manner.’
24 [citation omitted]" *Fuentes v. Shevin* (1972) 407 U.S. 67, 80, cited to by *Alford v. Superior Court*
25 (2003) 29 Cal.4th 1033, 1044 [130 Cal.Rptr.2d 672, 680, 63 P.3d 228, 235] holding modified by
26 *Facebook, Inc. v. Superior Court of San Diego County* (2020) 10 Cal.5th 329). The defense has
27 not proven any legal reason for these redactions to be allowed and has not obtained permission
28

1 from the court to file a redacted declaration. **The People therefore move to strike this entire**
2 **declaration.**

3 P. 1 to P. 11 [except P. 3] (blacked out information) Hearsay, lack of personal knowledge,
4 lack of foundation, speculation, conjecture, improper lay opinion, irrelevant, violates
5 Due Process [references someone who the defense has refused to identify];

6 P. 12 This is the affirmation paragraph, and the name has been blacked out which
7 violates Due Process rights of the People.

8 **19 Declaration of Tom Harshman** (The People have reason to believe this witness is
9 deceased.)

10 This witness states that his "health and memory are declining now, so I asked the attorneys
11 from the Los Angeles Innocence Project if they had any reports I could look at to remind me of
12 some of the details about what I reported seeing to the police." (P.3) This may trigger the provision
13 of Evid. Code, § 702(a), which states: "Subject to Section 801, the testimony of a witness
14 concerning a particular matter is inadmissible unless he has personal knowledge of the matter.
15 Against the objection of a party, such personal knowledge must be shown before the witness may
16 testify concerning the matter."

17 P. 9 (wife and I) Hearsay, vague, compound, lack of personal knowledge, lack of
18 foundation, conjecture, speculation, argumentative, improper lay opinion evidence,
19 irrelevant;

20 P. 10 (reviewed report) Hearsay, lack of personal knowledge, lack of foundation,
21 conjecture, speculation, improper lay opinion evidence, irrelevant;

22 P. 11 Lack of personal knowledge, lack of foundation, conjecture, speculation,
23 argumentative, irrelevant;

24 P. 14 (prior statement) Hearsay, vague, compound, lack of foundation, argumentative,
25 improper lay opinion evidence, irrelevant;

26 P. 17 Hearsay, vague, compound, lack of foundation, conjecture, speculation,
27 argumentative, improper lay opinion evidence, irrelevant;

28 Exh. A. (tip) Hearsay, vague, compound, lack of foundation, conjecture,
speculation, argumentative, irrelevant;

Exh. B. (Holmes) Hearsay, lack of foundation, argumentative, improper lay
opinion evidence, irrelevant;

1 Exh. C. (Command Post) Hearsay, lack of foundation, argumentative, improper
2 lay opinion evidence, irrelevant;

3 Exh. D (NY tip) Hearsay, vague, compound, lack of personal knowledge, lack of
4 foundation, conjecture, speculation, irrelevant;

5 Exh. E. (Grogan) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

6 Exh. F. (tape) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

7 Exh. G. (2018 prior statement) Hearsay, vague, compound, lack of personal
8 knowledge, lack of foundation, conjecture, speculation, argumentative, improper lay
9 opinion evidence, irrelevant;

10 Exh. J. Vague, lack of foundation, irrelevant;

11 **20 Declaration of Dr. Phillippe Jeanty**

12 This declaration was signed in 2009 and for a different proceeding – the first Habeas
13 proceeding. The claim this declaration was used for has been litigated resulting in a determination
14 against the defendant – he is collaterally estopped from using the same materials. Additionally, as
15 stated before, both the prosecution and defense called fetal age experts at trial with the jury’s
16 verdict determining that the defense was wrong – this matter cannot be re-litigated:

17 “To warrant the rejection of the statements given by a witness who has been
18 believed by [the trier of fact], there must exist either a physical impossibility that
19 they are true, or their falsity must be apparent without resorting to inferences or
20 deductions. (*People v. Maciel* (2013) 57 Cal.4th 482, 519, 160 Cal.Rptr.3d 305,
21 304 P.3d 983.)”

22 (*People v. Gerson* (2022) 80 Cal.App.5th 1067, 1079–1080.)

23 This declaration violates the above rule and is irrelevant – **the People move to strike it.**

24 **21 Declaration of Matt Dalton**

25 P. 3 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
26 argumentative, improper lay opinion evidence, irrelevant;

27 P. 4 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
28 irrelevant;

P. 5 (I learned) Hearsay, vague, compound, lack of personal knowledge, lack of
foundation, conjecture, speculation, argumentative, improper lay opinion evidence,
irrelevant;

1 P. 8 Hearsay, vague, compound, lack of personal knowledge, lack of foundation,
2 conjecture, speculation, argumentative, improper lay opinion evidence, irrelevant;

3 **22 Declaration of Dr. Rusty Feagin**

4 This declaration was signed in 2013 and for a different proceeding – the first Habeas
5 proceeding. The claim this declaration was used for has been litigated resulting in a determination
6 against the defendant – he is collaterally estopped from using the same materials. Additionally,
7 the matter of body movements in the bay was addressed in the Supreme Court’s Opinion in
8 subsection E.: “Admission of Expert Testimony Concerning the Trajectory of Conner's Body in
9 the San Francisco Bay." (*People v. Peterson* (2020) 10 Cal.5th 409, 457) and this matter cannot
10 be factually re-litigated. (“To warrant the rejection of the statements given by a witness who has
11 been believed by [the trier of fact], there must exist either a physical impossibility that they are
12 true, or their falsity must be apparent without resorting to inferences or deductions. (*People v.*
13 *Maciel* (2013) 57 Cal.4th 482, 519, 160 Cal.Rptr.3d 305, 304 P.3d 983.)" (*People v. Gerson*
14 (2022) 80 Cal.App.5th 1067, 1079–1080).)

15 This declaration violates the above rule and is irrelevant – **the People move to strike it.**

16 **23 Declaration of Mark Geragos**

17 This declaration was signed in 2015 for a different proceeding – the first Habeas
18 proceeding. The claim this declaration was used for has been litigated, resulting in a determination
19 against the defendant – he is collaterally estopped from using the same materials.

20 Also, many of the statements relate to matters addressed during his direct appeal (venue –
21 P. 3, 4, 5, 6, &7; bay water expert – P. 15, 16, 17 &18, etc.; fetal age – P. 31, 32, 33, 34, 35 & 36;
22 and dog scent – 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63) and cannot be raised here.

23 This declaration violates the above rule and is irrelevant – **the People move to strike it.**

24 **24 Declaration of Grace Wolf**

25 This declaration was signed in 2009 for a different proceeding – the first Habeas
26 proceeding. The claim this declaration was used for has been litigated, resulting in a determination
27
28

1 against the defendant – he is collaterally estopped from using the same materials.

2 However, it is important to note that this witness now states: “I did not see Laci walking
3 on December 24, only on December 23.” (Paragraph 4.)

4
5 **25 Reward Flyer, Def. Trial Exh. NN**

6 This trial exhibit was admitted, not for the truth of the matter (RT 20122, line 8 to 20123,
7 1.7.)

8
9 **26 Medina Insurance Claim Form, Def. Trial Exh. I**

10 This trial exhibit was admitted.

11
12 **27 Todd Plea Hearing**

13 This exhibit appears to be a marked and highlighted copy of a court record from another
14 case and was marked as part of the defendant’s first habeas petition (thus the markings of HCP –
15 000419 appearing at the bottom of the first page). Assuming that the defense has a certified copy
16 or a copy with the reporter’s attestation, the People have no objection.

17
18 **28 Declaration of Carl Jensen**

19 This declaration was signed in 2015 for a different proceeding – the first Habeas
20 proceeding. The claim this declaration was used for has been litigated, resulting in a
21 determination against the defendant – he is collaterally estopped from using the same materials.

22 P. 3 Hearsay, lack personal knowledge, lack of foundation, conjecture, speculation,
 argumentative, improper lay opinion evidence, irrelevant;

23 P.4 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
24 argumentative, improper lay opinion evidence, irrelevant;

25 P. 5 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
26 argumentative, improper lay opinion evidence, irrelevant;

27 **The People move to strike this declaration based on issue preclusion since the Supreme**
28 **Court has ruled against the defendant using this same declaration in his first Petition.**

1
2 **29 Lt. X. Aponte 12/1/2004 Interview**

3 This is a 2004 report from a defense investigator – it is not a declaration, and there is no
4 showing the interviewed witness would affirm any of these statements. The entire report is
5 hearsay, lacks a showing of personal knowledge, lacks foundation, is argumentative, and is
6 irrelevant. The People move to strike this document.

7 **30 Declaration of Jason DeWitt (December 2023)**

8 P.4 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
9 argumentative, improper lay opinion evidence, compound, irrelevant;

10 P. 5 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
11 argumentative, improper lay opinion evidence, compound, vague, irrelevant;

12 P. 7 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
13 argumentative, improper lay opinion evidence, compound, vague, irrelevant;

14 P. 8 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
15 argumentative, improper lay opinion evidence, compound, vague, irrelevant;

16 P. 9 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
17 improper lay opinion evidence, vague, irrelevant;

18 P. 10 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
19 argumentative, improper lay opinion evidence, compound, vague, irrelevant;

20 P. 11 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
21 argumentative, improper lay opinion evidence, compound, vague, irrelevant;

22 P. 12 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

23 P. 13 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
24 argumentative, improper lay opinion evidence, compound, vague, irrelevant;

25 P. 14 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
26 argumentative, improper lay opinion evidence, compound, vague, irrelevant;

27 P. 15 Hearsay, lack of personal knowledge, lack of foundation, vague, irrelevant;

28 P. 16 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
argumentative, improper lay opinion evidence, compound, vague, irrelevant;

P. 17 (D.M. denies that he ever told anyone he was involved in Laci Peterson’s abduction
or murder.) Hearsay, lack of personal knowledge, lack of foundation, conjecture,
speculation, argumentative, improper lay opinion evidence, compound, vague, irrelevant.
Also, since D.M denied any criminal liability the third layer of hearsay is not overcome as

1 a statement against interest, assuming that the defense could meet the other requirements
2 for that exception;

3 P. 18 (Todd would not have been involved – would probably just run away) Hearsay,
4 lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative,
5 improper lay opinion evidence, compound, vague, irrelevant;

6 P. 19 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
7 argumentative, improper lay opinion evidence, improper character evidence, irrelevant;

8 P. 20 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
9 argumentative, improper lay opinion evidence, improper character evidence, irrelevant;

10 P. 21 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
11 argumentative, improper lay opinion evidence, improper character evidence, irrelevant;

12 P. 22 Hearsay, lack of foundation, conjecture, speculation, argumentative, improper lay
13 opinion evidence, irrelevant;

14 P. 23 Hearsay, lack of personal knowledge, lack of foundation, conjecture,
15 speculation, argumentative, irrelevant;

16 P. 24 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
17 argumentative, improper lay opinion evidence, irrelevant;

18 P. 25 Hearsay, irrelevant;

19 P. 26 Hearsay, conjecture, speculation, argumentative, improper lay opinion evidence,
20 irrelevant;

21 P. 27 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
22 argumentative, improper lay opinion evidence, improper character evidence (no human-
23 lie detectors), irrelevant;

24 P. 28 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
25 argumentative, improper lay opinion evidence, improper character evidence, irrelevant.
26 This paragraph also attempts to recount statements from anonymous witnesses the
27 People have moved to strike any information regarding – **this paragraph should be
28 stricken** as well;

P. 29 Hearsay, argumentative, vague, irrelevant;

31 Declaration of Shawn Tenbrink

32 This declaration was signed in 2009 for a different proceeding – the first Habeas
33 proceeding. The claim this declaration was used for has been litigated, resulting in a determination
34 against the defendant – he is collaterally estopped from using the same materials.

1 P. 3 Hearsay, lack personal knowledge, lack of foundation, irrelevant;

2 P.4 Hearsay, lack of personal knowledge, lack of foundation, argumentative,
3 improper lay opinion evidence, irrelevant;

4 P. 5 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
5 argumentative, improper lay opinion evidence, irrelevant;

6 P. 6 Hearsay, lack of personal knowledge;

7 **The People move to strike this declaration based on issue preclusion since the**
8 **Supreme Court has ruled against the defendant using this same declaration in his first**
9 **Petition.**

10 **32 Det. C. Grogan 3/18/2016 Vehicle Fire Investigation Report**

11 This is a series of police reports, investigation reports and DOJ reports. They are all
12 hearsay, lack personal knowledge, lack foundation, irrelevant;

13
14 **33 Declaration of Dr. Ralph Cheng**

15 This declaration was signed in 2012 and for a different proceeding – the first Habeas
16 proceeding. The claim this declaration was used for has been litigated resulting in a determination
17 against the defendant – he is collaterally estopped from using the same materials. Additionally,
18 the matter of body movements in the bay was addressed in the Supreme Court’s Opinion in
19 subsection E.: “Admission of Expert Testimony Concerning the Trajectory of Conner's Body in
20 the San Francisco Bay." (*People v. Peterson* (2020) 10 Cal.5th 409, 457) and this matter cannot
21 be factually re-litigated. (“To warrant the rejection of the statements given by a witness who has
22 been believed by [the trier of fact], there must exist either a physical impossibility that they are
23 true, or their falsity must be apparent without resorting to inferences or deductions.” ’ ’ (*People*
24 *v. Maciel* (2013) 57 Cal.4th 482, 519, 160 Cal.Rptr.3d 305, 304 P.3d 983.)" *People v. Gerson*
25 (2022) 80 Cal.App.5th 1067, 1079–1080.)

26 This declaration violates the above rule and is irrelevant – **the People move to strike it.**

27 Exh. A. Was a trial exhibit.
28

1 **34 Declaration of Paula Mitchell**

2 P. 1 Argumentative, irrelevant, legal conclusion, §352;

3 P. 2 Argumentative, irrelevant, legal conclusion, §352;

4 P. 3 Irrelevant;

5 P.4 Argumentative, irrelevant, legal conclusion, §352;

6 P. 5 Hearsay, lack of personal knowledge, lack of foundation, argumentative,
improper lay opinion evidence, irrelevant, legal conclusion, §352;

7 P, 6 Hearsay, lack of personal knowledge, lack of foundation, argumentative,
8 irrelevant;

9 P. 7 Hearsay, argumentative, irrelevant, legal conclusion, §352;

10 P. 10 Hearsay, lack of personal knowledge, lack of foundation, argumentative,
improper lay opinion evidence, irrelevant, legal conclusion, §352;

11 P. 11 Hearsay, lack of foundation, argumentative, improper lay opinion evidence,
12 irrelevant, legal conclusion, §352;

13 P. 13. Hearsay, irrelevant, legal conclusion, §352;

14 Exh. A. (An attached pleading to another court, which also includes a secondary
15 hearsay declaration) Hearsay, of which this court cannot take Judicial notice, lack
16 of personal knowledge, lack of foundation, argumentative, improper lay opinion
evidence, irrelevant, legal conclusion, §352;

17 Ex B. (emails involving the defense) Hearsay, lack of personal knowledge, lack of
18 foundation, argumentative, irrelevant, legal conclusion, §352;

19 Ex.C. What appears to be an Order from the court.

20 **35 Reporters Transcript San Mateo County Superior Court Case SC055500A**

21 This particular version has numerical problems believed to be due to the transfer from one
22 county to another. The People have submitted the certified record on appeal from the San Mateo
23 County Superior Court with the corresponding Stanislaus County Superior Court transcript to
24 alleviate this issue.

EXHIBITS TO PEOPLE’S OPPOSITION TO MOTION FOR DNA TESTING (DISK 1)

People’s Opposition Exh. 1 – Meeting for August 30, 2023 canceled

People’s Opposition Exh. 2 – Defendant’s email re service of motions and exhibits

People’s Opposition Exh. 3 – Attorney General’s Preliminary Report – Crime in 2002

People’s Opposition Exh. 4 – Certified Record - Defense Investigator Ermoian’s 1993

Conviction for Conspiracy to Submit False Statements – Eastern District of California Case No.

CR-F-92-5152

1 **DECLARATION OF SERVICE**

2 I, the undersigned, say:

3 I was at the time of service of the People’s Opposition to Motion for DNA Testing with
4 copies of lodged exhibits provided to the Court, over the age of eighteen years and not a party to
5 the above-entitled action. I served a copy of the above-entitled document on March 26, 2024, to
6 the following via electronic mail pursuant to CCP 1010.6(a)(6) and a printed copy with CDs via
7 Federal Express to:

8
9 Los Angeles Innocence Project
10 Paula Mitchell
11 1800 Paseo Rancho Castilla
12 Los Angeles, CA 90032

13 Email: Paula.Mitchell@InnocenceLA.org

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

15 Executed this 22nd day of April, 2024, in Modesto, California.

16 
17 _____

18 Declarant

19 San Mateo County Case No. SC055500A
20 Stanislaus County Case No. 1056770
21 First District Court of Appeal Case No. A167615
22 People v. Peterson
23
24
25
26
27
28