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FILED
SUPERIOR COURT METROPOLITAN DIVISION
COUNTY OF KERN
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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN**
9 **METROPOLITAN DIVISION**

10
11 THE PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: BF106161A
12)
Plaintiff,) IN LIMINE OPPOSITION #9
13)
vs.) OPPOSITION TO MOTION IN
14) LIMINE TO LIMIT PHOTOGRAPHIC
VINCENT EDWARD BROTHERS,) EVIDENCE AND CRIME SCENE
15) VIDEO
Defendant.)
16) **Date: January 8, 2007**
17) **Time: 8:30 a.m.**
18) **Dept: 8**

18 **PROCEDURAL POSTURE**

19 Defendant seeks to exclude a video of the crime scene, taken on the day the bodies
20 were discovered, July 8, 2003, as well as all crime scene and autopsy photos. The People
21 respond the video as well as the photos are relevant to issues such as premeditation and
22 deliberation, specific intent to kill, malice aforethought and motive. In addition the crime
23 scene video is not unduly inflammatory and will be of assistance to the jury regarding the
24

1 location of various items of evidentiary value. Therefore the People submit defendant's
2 motion should be denied.

3 I.

4 **PHOTOS OF THE VICTIMS IN LIFE ARE RELEVANT**
5 **DURING THE GUILT PHASE OF THE CASE AT BAR**

6 Ordinarily, the People would agree that photos of the victims are not admissible
7 during the guilt phase of a capital case. However in the case at bar, the People intend to
8 offer not only a photograph, but a portion of a video that was taken after the entire Harper
9 family attended church services on Sunday, July 6, 2003, the date the People contend the
10 murders occurred. This photograph (see attached People's exhibit 1) depicts Joanie
11 Harper, wearing a denim dress, holding 6-week-old Marshall Harper, wearing a onesie, at
12 the conclusion of church services. The video depicts not only Joanie Harper holding the
13 baby, but also depicts Marques Harper and Earnestine Harper. These two pieces of
14 evidence are important because the prosecution's theory of the case is that the Harpers
15 were murdered some time between leaving church at approximately noon on the 6th of July,
16 and 6:00 p.m. on July 6th, the time they were supposed to be back at church for evening
17 services. The clothing they were wearing is extremely important as the baby, Marshall, was
18 found deceased, clothed in the same onesie he is seen wearing in the photo taken at
19 church. Moreover the denim dress Joanie Harper is wearing can be seen in the scene
20 photos hanging from a hanger in the bedroom of her residence. This evidence suggests
21 she was going to put that dress back on when she went back to evening services. The
22 dress Earnestine Harper is wearing in the video is the same one she has on when she was
23 murdered. Finally, the clothing Marques was wearing, shorts and a plaid shirt, can be seen
24 folded neatly over a chair in the bedroom. This arrangement of the clothing suggests that

1 the entire Harper family, following their habit and custom, were going to put the same
2 clothes back on when they went back to church Sunday evening. This evidence also raises
3 a strong inference that the killer knew the routine of the Harper family, in that they regularly
4 attended church in the morning, came home to take a nap in the afternoon, and then went
5 back to church for evening services. Thus the video depicting 4 of the 5 victims at church is
6 extremely relevant to disputed issues in the case. Defendant's attempt to stipulate that the
7 victims were alive on July 6, 2003 and thus preempt the introduction of the photo and video,
8 does not give credence to the fact time of death is in dispute.

9 Support for the People's position can be found in People v. Harris (2005) 37 Cal.4th
10 1, 34-35. In that case a 40 second silent videotape of the murder victim taken two weeks
11 before her death reveals numerous pieces of jewelry that she never took off. On appeal the
12 court held the video was properly admitted to help demonstrate theft of jewelry as part of the
13 murder. The Supreme Court held that while courts should be cautious in the guilt phase
14 about admitting photographs of murder victims while alive, the possibility that a photograph
15 may generate sympathy does not compel its exclusion if it is otherwise relevant. Id. at 331.

16 II.

17 THE AUTOPSY PHOTOS AND CRIME SCENE 18 VIDEO ARE NOT UNDULY GRUESOME AND 19 THEIR RELEVANCE TO ISSUES IN DISPUTE 20 OUTWEIGH ANY PREJUDICIAL EFFECT

21 The California Supreme Court has repeatedly held that the "admission of photos of
22 victims lies within the discretion of the trial court unless their probative value is clearly
23 outweighed by their prejudicial effect." People v. Cruz (1980) 26 Cal.3d 233, 253; People v.
24 Murphy (1972) 8 Cal.3d 349, 363; People v. Milan (1973) 9 Cal.3d 185, 194.

1 Furthermore, "a trial court's refusal to exclude otherwise admissible photographs
2 under section 352 will not be disturbed on appeal unless the prejudicial effect clearly
3 outweighs the photos' probative value." People v. Ramos (1982) 30 Cal.3d 553, 576.

4 In People v. Jackson (1980) 28 Cal.3d 284, a capital case, the defense contended
5 the trial court erred in admitting a color photograph of the victim's face, disclosing multiple
6 bruises. In rejecting this argument the Supreme Court noted that the jury was instructed on
7 the alternative theories of premeditated murder and felony murder. They held that "the
8 photograph in question bore on the issue of defendant's requisite state of mind toward [the
9 victim], i.e. did he possess malice?" Id. at 303.

10 In People v. Ruiz (1988) 44 Cal.3d 589, the trial court, over defense objection,
11 admitted photos of the victim's bodies, observing that such demonstrative evidence "avoids
12 the problem of recollection and verbal articulation and description of physical objects." Id. at
13 613. The Supreme Court in rejecting the defense contention that the trial court erred, stated
14 "many of the photos were relevant to the issues of identity, nature of wounds and means of
15 concealing the bodies." Id.

16 In People v. Roldan (2005) 35 Cal.4th 646, 712-713 the court upheld the admissibility
17 of autopsy photos admitted to show the extent and position of injuries to the victim. In
18 People v. Stewart (2004) 33 Cal.4th 25, 479-481 the court found the introduction of 32 crime
19 scene photographs were "unpleasant" but given the crime "quite unexceptional." In
20 People v. Pollock (2004) 32 Cal.4th 1153, 1169-1171 the trial court admitted photographs of
21 murder victims' bodies and a crime scene videotape on the grounds they would assist
22 witness testimony and "[a]lthough the depictions of the victims' bodies are disturbing, as
23 such evidence always is, none of the exhibits is unduly gruesome or inflammatory." Id. at
24 11171. Finally in People v. McDermott (2002) 28 Cal. 4th 946, 997-998 the court upheld the

1 trial court's ruling admitting an 18 minute crime scene videotape including depictions of the
2 victim's injuries at the crime scene. The court state "the portion showing the victim's body is
3 not particularly gruesome: there is very little blood shown on or near the body. Although the
4 images are unpleasant, the image is not shocking". Id.

5 Turning to the case at bar, the manner in which the victims were killed, by close
6 range gunshot wounds, is crucial evidence that this was not a random homicide committed
7 by someone unknown to the victim. Therefore this evidence is relevant to the issue of
8 identity. In addition the wounds were strategically placed in order to inflict fatal injuries to
9 each of the victims. This type of evidence is extremely relevant to issues such as motive,
10 intent to kill and premeditation and deliberation. Typically the autopsy photos are admissible
11 as illustrative of the pathologist's testimony. This has never been as true as it is in the case
12 at bar since the examining pathologist, Dr. Armand Dollinger, passed away just two weeks
13 before the preliminary hearing. Therefore, the testifying pathologist, Dr. Debra Hanks will
14 require the autopsy photos to help explain why her opinions as to cause and manner of
15 death are consistent with Dr. Dollinger's. In this case the People have carefully selected a
16 few of the approximately 130 autopsy photos that illustrate Dr. Hanks' testimony.

17 The crime scene photos and video are highly relevant to numerous issues in the
18 case. For example the photos of the hallway where Earnestine Harper confronted her
19 attacker, suggests she was standing upright when she was shot. However the photos of the
20 bedroom where the remaining four victims were shot suggests all but Marques Harper were
21 asleep when they were killed. In addition the lack of blood spatter as will be testified to by
22 criminalist Greg Laskowski and FBI behavioral analyst Mark Safarik, supports the
23 conclusion the victims were asleep when they were murdered.
24

1 Based on the foregoing arguments, the People urge this Court to exercise its
2 discretion and permit use of all the aforementioned photographs. Clearly the probative
3 value of these photographs outweigh any prejudicial effect. None of the photographs can be
4 characterized as unduly gruesome although some of them may be more unpleasant to view
5 than others. However, as Justice Gardner, writing for the Fourth Appellate District in
6 People v. Long (1974) 38 Cal.App.3d 680, 689 noted, "[M]urder is seldom pretty, and
7 pictures, testimony and physical evidence in such a case are always unpleasant."

8 DATED: December 28, 2006.

9 Respectfully submitted,

10 EDWARD R. JAGELS
11 DISTRICT ATTORNEY

12 By 

13 Lisa S. Green
14 Deputy District Attorney
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PROOF OF PERSONAL SERVICE

The undersigned declares under penalty of perjury as follows:

I am an employee of the Kern County District Attorney's Office and not a party to the above-entitled action. My business address is Kern County District Attorney's Office, Kern County Justice Building, 1215 Truxtun Avenue, Bakersfield, California 93301. On the date listed below, I personally served the attached document, OPPOSITION TO MOTION IN LIMINE TO LIMIT PHOTOGRAPHIC EVIDENCE AND CRIME SCENE VIDEO, on the defendant, VINCENT EDWARD BROTHERS, through the office of the attorney(s) for the defendant(s) listed below:

Michael Gardina
Attorney at Law
1315 L Street
Bakersfield, CA

J. Anthony Bryan
Attorney at Law
1508 18th Street #208
Bakersfield, CA

Executed at Bakersfield, California, on _____.

ACKNOWLEDGEMENT OF RECEIPT

Received By:

Date:



EXHIBIT "1"

C11031