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CALIFORNIA

Scott Peterson's case headed back to San Mateo court over potential juror issue

BY ERIN TRACY

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In an exclusive interview with The Modesto Bee's Garth Stapley on Monday, Sept. 18, 2017, Scott Peterson juror Richelle Nice, dubbed "Strawberry Shortcake" during the blockbuster trial, said she did not lie to get on the jury. Peterson's attorneys
BY JOAN BARNETT LEE

Scott Peterson's case is headed back to San Mateo County Superior Court and his conviction could be overturned if a judge decides prejudicial jury misconduct occurred when a juror failed to disclose during jury selection that she'd been the victim of a crime when she was pregnant.

The California Supreme Court made the ruling Tuesday in response to Peterson's [petition for habeas corpus](#) filed in 2015.

The claim that Peterson's right to a fair and impartial jury was violated was the first of 19 claims in the petition. It denied or found moot the other 18 claims.

The ruling comes less than two months after the [court overturned](#) Peterson's death sentence but upheld his conviction of guilt in response to his automatic appeal.

Unlike the direct appeal, a habeas petition can bring new evidence to show that the conviction was wrong.

Four years before Peterson's 2004 trial in the murders of his pregnant wife Laci Peterson and their unborn son Conner, Juror Richelle Nice was pregnant when her then-boyfriend's ex-girlfriend vandalized his car and kicked in their door. Nice obtained a judge's temporary restraining order to keep the woman away, because Nice was "in fear for her unborn child," according to her application for the order.

Peterson's [habeas appeal](#) claimed Nice wished "in part to punish him for a crime of harming his unborn child – a crime that she personally experienced when (the assailant) threatened her life and the life of her unborn child."

In her response to the petition, supervising deputy attorney general Donna Provenzan said the relevant pretrial question asked about prospective jurors' involvement "in a lawsuit," not a restraining order. To characterize Nice as having "personally experienced the threat of losing a child" and to compare her experience to cold-blooded murder is beyond hyperbole, the attorney wrote.

"For (Peterson) to equate his actions with those of (Nice's assailant, who was convicted of vandalism) borders on the ridiculous; the two events are not remotely similar," Provenzano said in the brief.

Nice declined to comment Wednesday. In an [interview](#) with The Bee in 2017, Nice said she did not lie to get on Peterson's jury as some sort of vengeance for her own experience.

She said her situation, which was not at all like Laci Peterson's, was blown out of proportion by Peterson's attorney.

"(The ex-girlfriend) never threatened to kill me, to kill my unborn child, to beat me up," Nice said. "When I filled out that questionnaire, my situation never came into my mind because it was not similar at all."

Laci Peterson was about 8 months pregnant when she disappeared on Christmas Eve 2002 from her Modesto home. Peterson said he had gone fishing that day in the San Francisco Bay and returned to an empty home.

The remains of Laci and Conner were found a few months later less than a mile apart along the shore of the San Francisco Bay, less than two miles from where Peterson said he fished.

The trial was moved to Redwood City after a judge ruled Peterson could not get a fair trial in Modesto.

Stanislaus County District Attorney Birgit Fladager, who led the prosecution team during the 2004 trial, said she and Chief Deputy District Attorney Dave Harris will handle anything the AG's office doesn't. They have until Nov. 13 to file a response with the court but she said she didn't know how long the entire process would take, citing delays related to COVID-19 and the "many steps in the appellate process (that are) parallel and sometimes overlapping."

Peterson's attorney, Cliff Gardner, also could not be reached for comment but Lara Yeretsian, a Southern California attorney who was part of Peterson's defense team at trial, applauded the court's decision.

"Every defendant is entitled to a neutral and impartial jury," she said. "That this juror hid the fact that she was threatened when she was four and a half months pregnant was extremely important. Had the defense known, it would have tried to get her removed for cause or used a peremptory challenge. Because she was victimized while pregnant she would have related to Laci and been prejudiced against Scott."

Yeretsian said juror misconduct is not uncommon, it's just a matter of catching it. She said Scott Peterson's defense counsel caught several incidents of misconduct, with potential jurors posting in online chat rooms about the case, but there is limited time and resources to discover such behavior.

She said it was clear to her that Nice was "predisposed to convict" when she watched her being interviewed on TV after the verdict and heard her misstate facts of the case.

"It was just screaming at me that this was someone who has an agenda," Yeretsian said. "Had she even been listening to the evidence?"

The Supreme Court on Tuesday also denied 10 other claims in the petition including that Peterson's trial attorney, Mark Geragos, was an ineffective counsel when he failed to fulfill promises to jurors that he would prove Peterson was "stone cold innocent" or to [call expert witnesses](#) who might have debunked prosecution evidence related to fetal development, dog scent and the way bodies move in water.

The court's ruling said the other eight claims in the petition were moot because they were already addressed in its ruling on the automatic appeal.

The ruling consisted of three sentences and gave no reason why it denied other claims.

David Ettinger, an appeals attorney with the firm Horvitz & Levy in Burbank — who is not connected with the case — said, "I think the judge would have to find both if there was misconduct and that it was prejudicial and if a judge did that I think then that the conviction would be overturned and there would be the possibility of a new trial, of course subject to further review of the California Supreme Court."

He said any decision could be appealed.

"Factual findings made by the Superior Court would probably be given deference by the appeals court or Supreme Court who would look at it," Ettinger said.

The matter had not been scheduled for a hearing in San Mateo Superior Court as of Thursday. A representative from the court said it could take several weeks before it is put on calendar.

The matter of Peterson's death sentence being overturned could also still be appealed to the U.S. Supreme Court.