

APR 17 2008

By: J. PARULESKI, Deputy

1 BONNIE M. DUMANIS
District Attorney
2 LAURA M. GUNN
Deputy District Attorney, SBN 165559
3 330 West Broadway
4 San Diego, CA 92101
Tel. (619) 531-4300
5 Fax: (619) 515-8825
laurie.gunn@sdcca.org

6 Attorneys for Plaintiff
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10
11 THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

12 v.

13
14 CYNTHIA ARLENE SOMMER,

Defendant.

No. SCD195202
DA ABQ622

**PEOPLE'S MOTION TO DISMISS
(Penal Code §1385[a])**

Date: April 17, 2008
Time: 1:30 p.m.
Dept: 58

15
16 Comes now the plaintiff, the People of the State of California, by and through their attorneys,
17 BONNIE M. DUMANIS, District Attorney, LAURA M. GUNN, Deputy District Attorney, and
18 respectfully submits the following PEOPLE'S MOTION TO DISMISS (Penal Code section 1385[a]).

19 **STATEMENT OF THE CASE**

20 The defendant was tried and convicted by jury of first-degree murder with special circumstances
21 that the murder of Todd Sommer was intentional and was carried out by the defendant for financial gain
22 within the meaning of Penal Code section 190.2(a)(1), and that the defendant intentionally killed Todd
23 Sommer by the administration of poison, within the meaning of Penal Code section 190.2(a)(19) on
24 January 30, 2007.

25 The People proceeded to trial based on laboratory testing and expert opinion evidence that victim
26 Todd Sommer died of arsenic poisoning. The Defense, through their experts, raised questions regarding
27 the arsenic evidence. The People had no advance notice of this defense evidence because none of these
28 experts had written reports that could have been provided in pretrial discovery.

29 Extensive post-trial litigation followed the conviction. The defendant's trial experts, together
with new experts then for the first time provided detailed reports regarding the quality of the arsenic

1 evidence that had been presented at trial.

2 On November 30, 2007, the Honorable Peter C. Deddeh granted the defendant's motion for a
3 new trial based on ineffective assistance of counsel. The case was transferred to the Honorable John S.
4 Einhorn and a trial date was set for May 14, 2008.

5 In fairness to the defendant and in the course of preparing for the retrial, the People carefully
6 evaluated the newly submitted reports by the defense. In doing so the People consulted with additional
7 experts who had not previously consulted or testified on the case.

8 In early March, the People retained Dr. Michael Kosnett and Dr. Jean-Philippe Weber. Dr.
9 Kosnett, a medical toxicologist, is a renowned expert in the field of arsenic and has published
10 extensively in the area of arsenic poisoning. Dr. Weber is the recently retired director of the Quebec
11 Toxicology Center. He developed a proficiency testing program for arsenic that is now used by
12 approximately 180 labs all over the world. The Quebec Toxicology Center is considered the "gold
13 standard" for metals testing worldwide, according to Dr. Kosnett. The People felt that the case would
14 benefit from the fresh insight of neutral experts who had no connection with the previous litigation.

15 On March 20, 2008 investigators went to the autopsy suite at Balboa Naval Hospital to check for
16 arsenic contaminants based on Dr. Weber's statements. They learned for the first time that there were
17 several samples of Todd's tissues still there, stored in paraffin cassette blocks. These blocks are used to
18 make slides for use at autopsy and afterward. The People contacted Dr. Weber and Dr. Kosnett
19 regarding the validity and/or utility of testing these tissues. Both Dr. Weber and Dr. Kosnett indicated
20 that the paraffin would likely not cause a problem with retesting.

21 On Friday April 4, 2008 the People received an estimate for testing the tissues that were
22 preserved in paraffin and decided to request that the samples be tested at the Quebec Toxicology Center.

23 On Monday April 7, 2008 the paraffin samples were collected by NCIS agent Rick Rendon and
24 sent via Federal Express to the Quebec Toxicology Center.

25 On the afternoon of April 16th, 2008 the People received an email from the Quebec Toxicology
26 Center indicating that there was no arsenic in any of the paraffin samples. The People confirmed with
27 the Quebec Toxicology Center this morning that further testing would be of limited or no utility.

28 Dr. Kosnett has informed the People verbally that he cannot say to a reasonable medical certainty
29 that Todd Sommer died of arsenic poisoning.

Dr. Weber has prepared a report indicating that the Armed Forces Institute of Pathology's
(AFIP's) "determinations were carried out appropriately and that the results are in all likelihood valid."

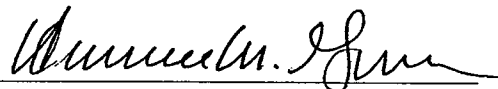
1 However, he found the tissue distributions to be “very puzzling” and “physiologically improbable.” He
2 opines that some kind of contamination occurred that might be responsible for the discrepancy. The
3 People received this report on April 16, 2008.

4 In light of the newly discovered evidence, the People have now concluded that this case can no
5 longer be proven beyond a reasonable doubt and respectfully request that the Court dismiss this action
6 without prejudice.

7 **Dated:** April 17, 2008

8 Respectfully submitted,

9 BONNIE M. DUMANIS
10 District Attorney

11 By: 
12 LAURA M. GUNN
13 Deputy District Attorney

14 Attorneys for Plaintiff
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29