

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

No. C094735

KELLY CLARK, DIANE WOOTON, and KIONA MILLIRONS,
Petitioners,

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent,

SACRAMENTO COUNTY DISTRICT ATTORNEY'S OFFICE,
SACRAMENTO POLICE DEPARTMENT – *a political subdivision of the
City of Sacramento,* and CITY OF SACRAMENTO,

Real Parties in Interest.

On Petition for Writ of Mandate from the from the Superior Court of the
State of California for the County of Sacramento
Honorable Shelleyanne Chang, Sacramento Superior Court Judge
Superior Court Case No. 34-2020-80003417-CU-WM-GDS

**JOINT PRELIMINARY OPPOSITION TO
PETITION FOR WRIT OF MANDATE**

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**State of California
Court of Appeal
Third Appellate District**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

California Rules of Court, rules 8.208, 8.490(i), 8.494(c), or 8.298(d)

Court of Appeal Case Caption:

KELLY CLARK, DIANE WOOTON, and KIONA MILLIRONS,

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,

Court of Appeal Case Number: C094735

Please check here if applicable. As defined in the California Rules of Court:

There are no interested entities or persons to list in this Certificate

Name of Interested Entity or Person (Alphabetical order, please)	Nature of Interest
1.	
2.	
3.	

Please attach additional sheets with Entity or Person information, if necessary.

/s/ Leslie Z. Walker
LESLIE Z. WALKER

September 13, 2021

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Sacramento Police Department and
City of Sacramento

**State of California
Court of Appeal
Third Appellate District**

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Please attach additional sheets with Entity or Person information, if necessary.

/s/ Kelsey D. Johnson
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I. INTRODUCTION

This case involves a request for records pursuant to the California Public Records Act (“CPRA,” Government Code section 6250 et seq.) submitted by Everytown Law on March 3, 2020, to the City of Sacramento Police Department and the Sacramento County District Attorney’s Office (collectively, “Respondents”). The request sought documents related to the criminal prosecution of Ronal Seay. In response to the request, both agencies asserted the responsive records were exempt from disclosure because they are investigatory records (Government Code section 6254 (f)). Objecting to this conclusion, Petitioners filed a petition for writ of mandate. After reviewing materials submitted by Respondents, in camera, setting forth the trial strategy and the relationship between the requested documents and the strategy, the trial court denied the petition, finding the records were in fact exempt from disclosure as investigatory records. Petitioners now seek a Petition for Writ of Mandate reversing the trial court’s decision. The trial court correctly denied the petition and by way of this preliminary opposition, Respondents request the Court deny the petition.

II. FACTUAL BACKGROUND

The request at issue asks for ten categories of documents related to the December 11, 2018, murder of Amber Clark. (Petitioner’s Appendix (“PA”), vol. I, pp. 11-12.) The City of Sacramento responded to the request

stating that the documents either did not exist or were exempt from disclosure pursuant to Government Code sections 6254 (f), (k), 6255 (a), and Evidence Code section 1040. (PA, vol. I, p. 13.) Sacramento County District Attorney's responded that the documents were exempt pursuant to Government Code section 6254 (f), because they related to the criminal prosecution of Ronald Seay, the person accused of killing Amber Clark. (PA, vol. I, p. 12.) Petitioners filed a petition for writ of mandate challenging these exemptions.

After initial briefing on the matter, on April 8, 2021 the trial court issued a tentative ruling ordering Respondents to file supplemental briefs addressing "each category of documents and identifying how, based on the specific facts at issue in this case and the current posture of the prosecution's case of Ronald Seay, disclosure would endanger a witness or the successful completion of the investigation" and "if applicable, how disclosure of the requested information would be against the public interest." (PA, vol. IV, pp. 882-883.) Recognizing that the request for more particularized information would likely call for attorney work product, and the discretion vested in the trial court to review documents under seal, the court ordered the supplemental briefing to be filed under seal. (PA, vol. IV, pp. 882-883.) No party requested oral argument; the tentative ruling was therefore affirmed on April 9, 2021. Almost four weeks later, Petitioners objected to the ruling

filing an ex-parte motion for reconsideration of the April 9, 2021 order. The Court rejected the untimely motion for reconsideration. (PA, vol. IV, 909.)

Respondents submitted supplemental information, including declarations from prosecutors Rod Norgaard and Allison Dunham, along with declarations from attorneys Kelsey D. Johnson and Leslie Z. Walker. After considering these, and oral argument, the trial court properly denied the Petition for Writ of Mandate. The trial court's ruling was correct and should not be overturned by this Court. (PA, vol. IV, 912-919.)

III. ARGUMENT

A. **Petitioners Failed to Timely Challenge the Trial Court's April 9, 2021 Order Requesting Supplemental Briefing and Therefore Are Barred From Raising it On Appeal.**

Petitioners devote a large portion of the Petition for Writ of Mandate to challenging the trial court's in camera review of the supplemental briefs. (Petition for Writ of Mandate and Supporting Memorandum of Points and Authorities, pp. 9-36.) Petitioner's however have waived this claim by failing to timely object to the April 9, 2021 ruling. "Ordinarily the failure to preserve a point below constitutes a waiver of the point." (*Sommer v. Gabor* (1995) 40 Cal.App.4th 1455, 1468.) As recognized by the trial court, Petitioners failed to timely challenge the trial court's order requesting supplemental briefing in camera. (PA, vol. IV, p. 909.) The objection is therefore waived, and the Petition for Writ of Mandate should be denied.

B. The Trial Court Properly Exercised Its Discretion to Review The Supplemental Briefing In Camera.

Government Code section 6259 provides, “the court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.” “In camera review is not required as a matter of law, but is left to the sound discretion of the trial court. (*Coronado Police Officers Ass’n v. Carroll* (2003) 106 Cal.App.4th 1001, 1013.) The trial court carefully exercised this discretion its April 9, 2021 order to direct Respondents to provide the court with additional information, without causing revelation of trial strategy and information that would otherwise be protected by the attorney work product privilege. (PA, vol. IV, p. 883, [“The Court is sensitive to the fact that the prosecution of Ronald Seay is ongoing and does not want any attorney work product to become part of the public record so.”]) The legal theories of the case are not discoverable “in any circumstances.” (Code Civ. Proc., 2018.030(a).) The trial court therefore properly considered the supplemental materials in camera to preserve both the attorney-work product privilege and the exemption for investigatory records in Government Code section 6254(f).

III. CONCLUSION

For the reasons set forth above, Respondents request the Court deny the Petition for Writ of Mandate. Should the Court grant review of this case,

Respondents will submit additional briefing in support of the trial court's ruling.

DATED: September 13, 2021 SUSANA ALCALA WOOD,
City Attorney

By: /s/ Leslie Z. Walker
LESLIE Z. WALKER
Senior Deputy City Attorney

Attorneys for
SACRAMENTO POLICE DEPARTMENT
and CITY OF SACRAMENTO

DATED: September 13, 2021 LISA A TRAVIS,
County Counsel

By: /s/ Kelsey D. Johnson
KELSEY D. JOHNSON
Deputy County Counsel

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SACRAMENTO COUNTY DISTRICT
ATTORNEY'S OFFICE

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1))

The text of this Preliminary Opposition to Petition for Writ of Mandate contains 928 words as calculated by the Microsoft Word for Windows 2016 software which was used to generate this brief.

Dated: September 13, 2021

/S/ Leslie Z. Walker
Leslie Z. Walker
Senior Deputy City Attorney

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PROOF OF SERVICE

Re: KELLY CLARK, DIANE WOOTON, and KIONA MILLIRONS, vs.
THE SUPERIOR COURT OF SACRAMENTO COUNTY

**Court of Appeal, Third Appellate District, Case No. C094735
Sacramento County Superior Court Case No. 34-2020-80003417**

I hereby declare that I am a citizen of the United States, am over 18 years of age, and am not a party in the above-entitled action, I am employed in the County of Sacramento and my business address is 915 I Street, Fourth Floor, Sacramento, CA 95814-2604.

On September 13, 2021, I served the attached document described as **PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE** on the parties in the above-named case.

By Electronic Service. Based on a court order or an agreement of the parties to accept electronic service, I served a copy of the above-mentioned document via the TrueFiling system.

Courtesy copy
provided via hand
delivery through the
Drop Box at the
courthouse

Hon. Shelleyanne Chang
Sacramento County Superior Court
720 Ninth Street, Dept. 21
Sacramento, CA 95814

I, SUZANNE MACDONALD, declare under penalty of perjury that the foregoing is true and correct.

Executed on September 13, 2021, at Sacramento, California.

/S/JAMIE GIFFORD
JAMIE GIFFORD

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