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1 WILLIAM J. KOPENY
Attorney at Law
2 1201 Dove St., Ste. 600
Newport Beach, CA 92660

3 (714) 933-3593

4 Attorney for Defendant
5 RANDY STEVEN KRAFT

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

10 PEOPLE OF THE STATE OF CALIFORNIA,)
11 Plaintiff,) Case No. C-52776
12 vs.) DEFENDANT'S MOTION FOR
13 RANDY STEVEN KRAFT,) THE JURY TO VIEW THE
14 Defendant.) SCENE OF THE DISCOVERY
OF THE BODY OF VICTIM
HALL; ARGUMENT.
15) [Penal Code Section 1119]

16 Motion for Jury View

17 Defendant, RANDY STEVEN KRAFT, moves this Court for an
18 order that the jury view the scene of the discovery of the body
19 of victim HALL.

20 This motion is made so that the jury will be able to see,
21 for themselves the remote nature of the area where Mr. Hall's body
22 was discovered, and to compare it to the area where the bodies of
23 the other victims were discovered. Defendant believes the area
24 cannot adequately be depicted either by description or
25 photographs, and that the nature and remote location of the area
26 where the body was discovered, bears directly on an issue which
27 is at the heart of this case -- the People's claim that each of
28

In this case, the photographs of the Hall body at the scene fail to adequately "acquaint the jury" with the nature of the area, or the remote nature of its location. Nor, do the photographs show the area itself. Defendant contends that the

"Further, where the motion is made for the purpose of allowing the jury to assess the accuracy of a disputed identification, the trial court may deny it if there are other means of acquainting the jury with the physical conditions under which the identification was made. (People v. Burciago (1978) 81 Cal.App.3d 151. . . .)"

"The granting or denial of a jury view rests within the sound discretion of the trial court. * * *

showing it to the jury to be essential to his defense. Moreover, this Court's denial of defendant's motion to sever counts has created a substantial risk of prejudice to defendant from the joint trial of all 16 murder counts. Defendant believes the only possibility of reducing or ameliorating a portion of that prejudice, will flow from permitting defendant to introduce evidence designed to establish the significant differences among the counts. The jury view requested here, has among its purposes, the purpose of allowing the jury to consider the dissimilarity of the Hall location and remoteness from the places all other victims bodies were found. In People v. Keltie (1983) 148 Cal.App.3d 773, the court said:

1 only means available to the jury to see and understand the
2 dissimilarity and relative remoteness of the Hall location,
3 compared to the location of the other victims, is to order the
4 requested jury view. Defendant believes that it would be an abuse
5 of discretion to deny his request to permit the jury to view the
6 scene of the Hall body.²

7 CONCLUSION

8 Defendant urges this Court to conclude that the purpose
9 of the requested jury view is to give the jury relevant evidence
10 of the place the murderer of Hall chose to leave his body,
11 compared to the place the murderer of the other victims chose to
12 leave their bodies. Further, the Court is urged to conclude that
13 neither photos nor testimony can adequately depict the remote
14 nature or rugged terrain of the remote area where Hall's body was
15 discovered.

16
17 March 5, 1989

18
19 Respectfully submitted,
20 JAMES G. MERWIN,
21 C. THOMAS McDONALD,
22 WILLIAM J. KOPENY

23 *William J. Kopeny*
24 By William J. Kopeny
25 Attorneys for Defendant
26 RANDY STEVEN KRAFT

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28 2. Notwithstanding defendant's personal right to accompany
the jury on the sojourn to the site of the Hall body, defendant
is willing to personally waive this right in order to eliminate
any additional security or other obstacles his presence may
present.

1 the murders defendant is charged with committing is so similar to
2 each of the others, that it is reasonable for the jury to conclude
3 that the same person killed all sixteen persons.
4 This motion is addressed to the sound judicial discretion
5 of the trial court pursuant to Penal Code Section 1119, which
6 discretion must not be arbitrarily exercised or abused.
7 This motion is based upon the evidence received to date
8 relating to the discovery of the Hall and other alleged victims,
9 and upon the arguments of counsel and any proof or offers of proof
10 made at the time this motion is heard.

Argument in Support of Motion

For
Jury View of the Scene

Of the
Discovery of the Body of Victim Hall

15 Penal Code Section 1119 provides authority for the jury
16 to view the scene of a crime or any other place or thing that is
17 outside the courtroom, where the trial judge is of the opinion
18 that such a view will aid the jury in its task. It reads in
19 relevant part:

20 "When, in the opinion of the court, it is
21 proper that the jury should view the place in
22 which the offense is charged to have been
23 committed, or in which any other material fact
24 occurred, or any personal property which has been
25 referred to in the evidence and cannot
26 conveniently be brought into the courtroom, it
27 may order the jury to be conducted... to the
28

1 place, or to such property, which must be shown
2 to them..." P.C. Sec. 1119, [Stats. 1957.]

3 In the present case, the Court clearly has authority to
4 grant defendant's motion to have the jury transported to the scene
5 of the discovery of victim Hall. (See e.g. People v. O'Brien
6 (1976) 61 Cal.App.3d 766, 779, [jury view upheld even though
7 certain conditions had changed since the time of the crime, since
8 those conditions did not affect the purpose of the jury view])

9 The exercise of that authority is discretionary, (People
10 v. McFadden, 2 Cal.App.2d 228, People v. Gibson (1957) 152
11 Cal.App.2d 149), however, the discretion is not absolute, but
12 subject to rules for an abuse of discretion. People v. Gibson,
13 supra, People v. Cooks (1983) 141 Cal.App.3d 224, 323)

14 In the present case, defendant urges the Court to consider
15 the importance of the jury understanding the remote nature and
16 physical characteristics of the place Hall's body was found.

17 The defense is attempting to raise a reasonable doubt
18 about the People's claim that the crimes alleged in the
19 information are all so similar that the identity of their
20 perpetrator can be inferred from their modus operandi. It is
21 critical to the defense to be able to attempt to convince the jury
22 that these crimes are not so alike as to bear a signature like
23 similarity. The remote nature of the Hall location and the
24 difficulty of removing the body to that spot, is so distinctively
25 different than any of the other victims', that defendant considers

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27
28 1. Including Roger DeVal, who's body was found in an area
where it could have been dumped from a road way, unlike that of
Hall's.