FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

OCT 14 2004

GARY M. BLAIR, Executive Officer
By Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF SANTA BARBARA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. MICHAEL JOE JACKSON, Defendant.	Case No.: 1133603 DECISION ON MOTION PURSUANT TO PENAL CODE § 1538.5 (PART 2)

On June 29, 2004, Defendant Michael Jackson filed a Motion to Traverse Search Warrant Affidavits, to Quash the Warrants and to Suppress Evidence seized from searches conducted at Neverland Ranch, the office of private investigator Bradley Miller, and at other locations. The Court, having heard testimony from a number of witnesses, having read the papers submitted by the parties, and having heard the oral argument of counsel, now denies the motion in part and grants the motion in part for the following reasons:

The Court has separately ruled on some aspects of this motion. The claims that there were violations of attorney-client privilege, attorney work-product protection, and/or an invasion of the defense camp by virtue of the issuance of a warrant with regard to defense investigator Bradley Miller are addressed in the Order on what has been referred as to the Penal Code § 1538.5 motion, Part 1. Specific claims of work product protection

were earlier considered in both public and in camera court sessions and by the courts review of the materials in issue, culminating in orders, dated March 11, 2004 and April 9, 2004.

The present motion made the claim that there were material misrepresentations made in the initial search warrant affidavit that would have significantly affected both the issuance of the warrant and its scope, and which, pursuant to the principles set forth in *Franks v. Delaware* 438 U.S. 154 (1978) should result in the warrant being quashed. The Court, on August 16, 2004, concluded the defense had not met its burden of showing the need for an evidentiary hearing. As the court announced in open session, the motion did not persuade that there had been any deliberate falsification of evidence. At most, some relevant information was omitted that might have produced a somewhat more balanced view on a few points. But the omissions would not have affected the ultimate determination that probable cause existed for the search, and would not have materially changed the scope of the search. There was probable cause to believe that Mr. Jackson had committed criminal offenses based on the statements of the minors involved. There was probable cause to believe that corroborating evidence would likely still be found at his Neverland home. This conclusion would be unaffected by whether or not he was a pedophile, or alcohol was harmful to the minor, or urine testing had been compromised. Further, the evidence sought appropriately included documents and other items that might be found in either hard copy or computerized form. Because the omissions were not material to the issuance of the warrant, there was no need to inquire into the accuracy of these facts through testimony.

Significant issues remained to be decided, however, and were the subject of evidentiary hearings and oral argument held through September 17, 2004. These issues

concern the scope of the warrants themselves and the scope of the resulting searches. At the beginning of the inquiry is the question of whether or not Mr. Jackson had a reasonable expectation of privacy as to the areas and items searched.[1] Suppression of the product of an illegal search can be urged only by one whose rights were violated by the search itself, not by one aggrieved solely by introduction of the damaging evidence. There can be no serious question of Mr. Jackson's expectations with regard to the search of his Neverland home. And, at least to the extent that there is a claim that attorney-client privileged or attorney work-product protected materials belonging to Mr. Jackson were in the office of investigator Bradley Miller, there is no issue as to that search either. Later search warrants authorized the search of records pertaining to Mr. Jackson in the files of credit card and telephone companies. As to these searches, Mr. Jackson lacks a reasonable expectation of privacy. This is an area in which federal law is paramount. *In re Lance W.* (1985) 37 C.3d 873. In *United States v. Miller* 425 US. 435 (1976) the Supreme Court held that business records kept by banks and financial institutions are the institution's records, not the customer's private papers. Credit card records, like the bank records in *Miller*, are not confidential communications but negotiable instruments to be used in commercial transactions. Similar principles have been held to apply to phone company records of outgoing telephone calls. *Smith v. Maryland* 442 U.S. 735 (1979). A user assumes the risk that a third party will make disclosures to the police upon request. These cases hold that even warrantless search and seizure of such items does not violate the federal Constitution. See also *People v. Slaton* (1990) 222 CA3d 1041. Mr. Jackson could not hold an objectively reasonable belief that the records of financial institutions and telephone companies with whom he dealt would not be reviewed by governmental authorities.

---

[1] The Supreme Court has cautioned that the term "standing," notwithstanding its "vampiric persistence" should be avoided in analyzing Fourth Amendment claims. *People v. Ayala* (2000) 23 C4th 225, at 254.

It is contended that the initial search warrant itself was overbroad on its face because it exceeded the probable cause showing contained in the supporting affidavit. The particular instance in which this is urged to be true is the case of Mr. Miller's office computers. Accordingly, that issue is discussed in the Order on Part 1. However, it is contended more generally that in describing all computer systems the requirement for particularity in the things to be seized has been evaded. The affidavit describes documents and pictures that could well exist in computer systems. The nature of computer systems is such that, without sophisticated technology of a sort that will, in most instances, be unavailable while an *in situ* search is being conducted, such documents cannot be found by visual inspection, even when access has been obtained. Moreover, the sheer volume of material that can now be stored on computers makes a search through files for particularly described items a time-consuming task. The necessity for seizure of computers is described at pages 77 and 78 of the initial search warrant affidavit and is persuasive. The point seems well recognized in the case law. *People v. Ulloa* (2002) 101 CA4th 1000, 1006 fn. 5: "the only physical way to search a computer system for evidence is to seize the whole system."

The defense contends that sheriff's officers flagrantly disregarded the limitations of the search warrants with the result that what was achieved amounted to a prohibited general search of a sort that should require all items seized to be suppressed. The Court heard considerable testimony about the manner in which the search was conducted and was able to view significant portions of videotapes of the search. There is no doubt that the search amounted to a large scale invasion of the Neverland Ranch, involving over 50 officers, lasting all through the day and into the evening, disrupting Ranch operations, and effecting a very extensive examination of the property and its contents. But it also appears

that the search was conducted with thoroughgoing professionalism. The employees encountered were treated respectfully and the effort proceeded according to generally well-considered and well-scripted plans. But it is the scope of the search, and not the civility with which it was conducted, that has been placed in issue.

Both the search itself and the resultant seizure of items must be reasonable under Fourth Amendment standards. In terms of accomplishing actual suppression of evidence that might be otherwise be admitted at trial, there must be either some deficiency in the authority by which the evidence was obtained, or particularly flagrant abuses related to the scope of the search. It is necessary then to look first with some particularity at the items seized that have been alleged to fall outside the scope of the warrant. When asked to identify these items the defense produced a list of 117 items. This was reduced to 110[2] as part of a stipulation filed August 20, 2004, which also specified where and by whom these items had been seized. After inspection of this list, comparing the description to the categories authorized in the warrant and allowing for additional items that qualified under the plain view doctrine, the Court, on August 23, 2004, identified 40 items, seizure of which appeared to have been fully authorized. These items were identified in a tentative ruling to the parties. Briefing on the issues was requested. The further briefing resulted in the Prosecution agreeing that 12 items lacked justification (items 319, 330, 331, 501, 502, 503, 504, 506, 507, 513, 610 and 643), and a further eight were in any event immaterial and could be returned (items 1003-1008, 348, 354, and 368).

As to the remaining items, the differences between the parties are in part the result of disagreement as to the scope of the plain view doctrine. The plain view doctrine permits the examination by a police officer, otherwise lawfully in position to observe an item, if

[2] There are ultimately 112 listed items as a result of the additions of items 629a and 517.

initial inspection shows probable cause to believe that the item would aid in securing a conviction on a criminal offense. As noted by Chief Justice Traynor in *People v. Thayer* (1965) 63 C2d 635, at 637: "The asserted rule that mere evidence cannot be seized under a warrant or otherwise is condemned as unsound by virtually all the modern writers."[3]

The Court has reviewed the items of evidence at issue, and considered the arguments of counsel. The search warrant particularly authorized the seizure of computer records, documents relating to the Doe family, and certain other specified categories of material. The Court finds the following 50 seized items to be included within the specific contemplation of the search warrant: 308, 325, 326, 329, 329a, 333, 334, 335, 337, 342, 343, 344, 345, 346, 347, 508, 509, 601, 602, 603, 605, 606, 607, 608, 609, 614, 615, 616, 617, 618, 619, 620, 622, 623, 636, 638, 639, 640, 641, 642, 644, 645, 1001, 1002, 1003, 1004, 1005, 1006, 1007, and 1008. In addition, police were authorized under the plain view doctrine to seize the following 34 items: 322, 328, 332, 334a, 341, 349, 350, 351, 352, 353, 354, 362, 367, 369, 611, 612, 613, 621, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 1009, and 1009a. The following 16 items are properly suppressed as not falling in either of the foregoing categories: 319, 330, 333a, 340, 348, 368, 501, 502, 503, 504, 505, 506, 507, 513, 610, and 643. The following 9 items were removed from the court's consideration by written stipulation of the parties on September 16, 2004: 510, 510a, 511, 512, 514, 515, 516, 517, and 518. The Court lacks at present sufficient information to determine the status of the following 3 items, as to which claims of attorney-client privilege are raised: 312, 318, and 331. The Court has not yet received the

---

[3] The U.S. Supreme Court cited *Thayer* in coming to the same conclusion in *Warden v. Hayden* 387 U.S. 294 (1967). Inadvertent discovery is a common but not a necessary element of a plain view seizure. *Horton v. California* 496 U.S. 128 (1990). Discovery in the course of a search otherwise authorized by a valid search warrant leaves only probable cause (as opposed to mere reasonable suspicion) to believe the item has evidentiary value as an issue.

privilege log ordered on August 23, 2004. The number of items seized which require suppression thus turns out to be only a small fraction of the total of 150 items that were originally seized. As the People noted in oral argument, the total volume of seized material would likely fit in a large car trunk. The scope of the seizure of material thus does not appear on its face to have been unreasonable. Analysis of these items confirms that, with the few exceptions noted, the materials seized were properly taken either under the direct authority of the search warrant and pursuant to the plain view doctrine. To the extent that the reasonableness of the seizures is at all probative of the reasonableness of the scope of the search, the Court finds once again that the search was not general in nature and there was no flagrant disregard of the search warrant's limits.

Apart from the quantity of the materials seized, the defense raises five other points of concern: 1) the areas searched; 2) the round-up of employees; and 3) the failure to include search items in the affidavit, 4) knock-notice, and 5) night-time service. The concern with the areas searched involves the meaning of the search warrant's authorization to search "the buildings described as the arcade building, the main residence, and the security headquarters the locations of which are depicted on the aerial photograph attached at Attachment 'A-1' or (in the case of the security headquarters) in the photograph attached as 'A-2.'" There is no confusion about the identity of the main residence or the arcade building; nor is there confusion about which building houses the security headquarters. However, the arrow that points to the security headquarters on photograph A-2 is misdirected. The security headquarters is in fact located at the other end of that building. The area to which the arrow points is now used as an office for Mr. Jackson and communicates by a stairway to an upstairs video library and apartment. The defense notes that the search warrant affidavit at page 76 justifies search of the security

headquarters building by the statement: "It is believed that the security headquarters contains surveillance monitoring systems." The argument is advanced that once officers realized that the security headquarters at the opposite end of the building, they lacked any reasonable basis for extending their search into Mr. Jackson's locked office and its adjacent areas, and in doing so they exceed the scope of search that had been authorized.

The Court finds that the search appropriately extended into Mr. Jackson's office and adjacent areas for several reasons. A search warrant is a command to search. Sheriff's officers were effectively ordered to search the security headquarters depicted in the photograph referenced in the warrant.[4] While the actual security headquarters at the other end of the building had been identified before the office was entered, it apparently did not include any surveillance monitoring systems. The locked area, to which the arrow pointed, had been identified by persons who had participated in a 1993 search of the Neverland Ranch as the site of the security headquarters. These persons included District Attorney Thomas R. Sneddon and Lt. Russell Birchim. While testimony from long-time Neverland Ranch employees in a position to know, disputed this recollection, there was a sufficient basis for a good-faith belief in the accuracy of the arrow's placement to explain and justify its inclusion in the warrant. Mr. Jackson's office, when entered, included a large number of plasma TV screens, which would have seemed initially at least to validate the view that this was the place that contained surveillance monitoring equipment.

It should be noted as well that although the affidavit described the security headquarters as containing surveillance monitoring equipment, there was no explicit authorization to search or seize such equipment, except to the extent it formed part of a computer system. The purpose of entering the security headquarters appears instead to

---

[4] The term "building' suggests permission to search the entire structure.

be to videotape the layout (as discussed at page 77 of the initial search warrant affidavit), to verify the presence of surveillance monitoring equipment, and to include the area within those that would be searched for the twelve categories of items identified in the warrant. Sheriff's officers appropriately carried out these directives. There is no sense in which the conducting of this portion of the search evidences a flagrant disregard for the limits of the search warrant.

The round-up of employees does not involve, for purposes of the present motion, any question of the use of the statements they may have made as such issues are not properly cognizable under Penal Code § 1538.5. The suggestion seems to be rather that the effort was emblematic of the general nature of the search and an abusive disregard of the limits of the warrant. It seems obvious, however, that it was proper for authorities to gather the employees as they conducted this search. This action was appropriate not only for the protection of the officers and employees, but also to protect against possible destruction of evidence and to identify potential witnesses. While it would perhaps be possible to overreach in such circumstances and coerce statements from persons who would otherwise be unwilling to cooperate, there is no evidence suggesting that this actually occurred. It appears that interviewers were assigned to the employees as they were gathered in the main house, but there is no evidence that involuntary statements were coerced. Sheriff's deputies in fact testified that they regarded employees as free to go about their business once they had been identified and given an opportunity to participate in answering questions. While the issue of possible coercion remains potentially open as a basis for objection to the weight or admissibility of any individual statement that might be introduced at trial, there is no evidence at present demonstrating inappropriate

exercise of police authority in this aspect of the search, and certainly no reason to invalidate the search and suppress the resulting evidence as a result.

There is finally the concern that in conducting the search officers were informed of lists of names and evidence that were not included in the search warrant affidavit. It is argued that this effectively distorts the warrant procedure, by enabling an exploratory search for items of evidence as to which no probable cause showing could be made, or was even attempted. The argument goes beyond the claim that the items were not subject to the plain view doctrine, and suggests the impropriety of obtaining a warrant on one basis, only to search on another. The argument is a significant one on the facts of the present case because 12 items seized from the main residence (items 322, 326, 328, 332, 334a, 341, 349-353, and 362) and 17 daily entry security logs seized form the security office, and an additional item from Mr. Jackson's office (1010) were authorized under the plain view doctrine because they contained the names of persons of interest, described in the search warrant affidavit, whose activities were related to the alleged crimes under investigation.

To the extent it would have been possible to anticipate that such material would be uncovered in the search it would certainly have been preferable to include such items in the search warrant. The Court has found, however, that there was probable cause to conduct a search for documents and photographs and other evidence material to the investigation. A complete search of the specified areas of the ranch that could contain such material was authorized. The scope of the search itself was thus essentially unaffected by the failure to more fully detail the range of incriminating material that might be encountered. Moreover, there was nothing deceptive about the expressed intention of the affiant seeking to conduct the search. All the material seized related only to the factual events and the persons who were described in the supporting affidavit. The evident

purpose of the list of names and factual description provided to the searching officers was to place them as far as possible in the position of persons who understood what they were looking for and appreciated the possible significance of documents they encountered. It would be poor police practice to proceed with the execution of the search warrant without such information. The law, since *Horton v. California* (1990) 496 U.S. 128, seems to be comfortable with the possibility that an informed investigator executing an otherwise valid search warrant may come upon information that might reasonably have been suspected to be present in the location searched but for which a showing of probable cause of likely presence could not have been made. The plain view doctrine permits the seizure of such evidence.

Knock-notice (pursuant to Penal Code § 1531) was an issue only because it appeared that announcement may not have been given before entering certain interior doors. It is hard to imagine that anyone inside a room at the ranch would have remained unaware of helicopters overhead, dozens of police officers conducting a search, and the rounding up of employees. Moreover, neither Mr. Jackson himself nor his family was at home at the time. But the point is moot in any event since there is no governing authority requiring knock-notice compliance at interior doors. *People v. Mays* (1998) 67 CA4th 969; in accord with *People v. Aguilar* (1996) 48 CA4th 632, 638; *People v. Howard* (1993) 18 CA4th 1544, 1553. "If police were required to announce their presence at every door inside a residence, it would likely increase the risk of violent encounters." *Mays* at p. 976.

The issue of nighttime service is also misconceived. This search warrant was not served after 10:00 p.m. The search began in the early morning. That it continued for some time after 10:00 p.m., despite the enormous law enforcement resources devoted to completing the search, is entirely without significance. *People v. Zepeda* (1980) 102 CA3d

1, at 5 stated: "We hold that a search warrant is not invalidly executed pursuant to section 1533 when its execution is part of one continuous transaction which begins before 10 p.m. and continues after that hour."

In summary, then, there is no basis for suppression of any evidence other those few items, most of which the People have not contested, which do not appear to fall within the plain view doctrine. "The high court has rejected, however, the contention that police action disregarding the authorized scope of a warrant transforms the warrant into an impermissible general warrant, requiring suppression of the entire fruit of the search, rather than merely those items as to which there was no probable cause to support seizure – where the officers have not exceed the scope of the warrant in the *places* searched, but only in seizing items unconnected to the investigation or prosecution of the crime. In such circumstances, when all items unlawfully seized are suppressed, 'there is certainly no requirement that lawfully seized evidence be suppressed as well." *People v. Bradford* (1997) 15 C4th 1229, at 1296.

Accordingly, except as to items 319, 330, 333a, 340, 348, 368, 501, 502, 503, 504, 505, 506, 507, 513, 610, and 643, the motion to suppress is denied.

In addition, items 1003-1008, 348, 354, and 368 shall be returned to defendant as agreed by the People.

The defense shall provide a privilege log as to items 312, 318 and 331 in order to permit the court to determine both the Fourth Amendment and attorney-client privilege claims made.

Dated: OCT 14 2004

Rodney S. Melville
Judge of the Superior Court

PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On OCTOBER 14, 20 04, I served a copy of the attached DECISION ON MOTION PURSUANT TO PENAL CODE § 1538.5 (PART 2) addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
1105 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST. 7TH FLOOR
LOS ANGELES, CA 90067

___ FAX

By faxing true copies thereof to the receiving fax numbers of: __________. Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

___ MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

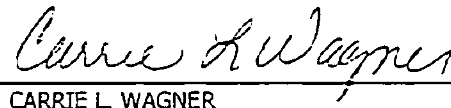
X PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

___ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14TH day of OCTOBER , 20 04 , at Santa Maria, California.



CARRIE L. WAGNER