SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

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

On September 29, 2004 Defendant Michael Jackson filed a motion to suppress evidence seized from the office of his personal assistant. The Court, having heard testimony from 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 it in part for the following reasons:

The search of the office in question took place on September 15, 2004 pursuant to a search warrant issued by this court. The search was conducted to find evidence in support of a prosecution upon an indictment for charges including Penal Code § 288(a), child molestation, Penal Code § 222, administration of intoxicants to a minor, and Penal Code § 182(a), conspiracy. When officers arrived to execute the warrant they found the office located in a detached garage, and came upon a number of file cabinets and computers. They seized copies of the computer hard drives and a PDA, which were particularly called out in the warrant. They also came upon filed material that was

marked "Mesereau." These files especially raised concern that attorney client privilege material might be present. The executing officers accordingly sealed the items until this issue was resolved.

The defense has moved to suppress all items seized on several independent bases, several of which were considered in prior motions to suppress items. It is asserted that to have executed a search warrant upon this office was an improper "invasion of the defense camp" by the prosecution, and violated Constitutional guarantees for the effective assistance of counsel, that the affidavit for the computer material was overbroad, and the execution of the warrant was carried out in such a way as to constitute a general search.

The prosecution in response has questioned whether Mr. Jackson could be said to have any reasonable expectation of privacy in the office of his personal assistant. There certainly are capacities in which his assistant might hold documents where there would be no such expectation. It is doubtful that any expectation of privacy for Mr. Jackson would exist for material kept openly in the home of his assistant, or in her office to the extent that she was working in any capacity other than as his personal assistant, e.g. as an employee of the corporate entity, MJJ Productions, Inc. *United States v. Britt* (5th Cir., 1975) 508 F.2d 1052, 1054-5. However, the assistant has declared that all of her work as a personal assistant for Mr. Jackson is maintained in the office area searched, that she participates in confidential communications between Mr. Jackson and his attorneys and preserves confidential files for him. This is sufficient to create a reasonable expectation of privacy on Mr. Jackson's part as to these materials.

There is no particular need to dwell upon issues already discussed in previous decisions in this case. The prosecution was not obliged to seek these materials by

subpoena or through pretrial discovery even though those mechanisms might have sufficed. While there is a greater intrusion in the use of a search warrant it is also a mechanism for obtaining materials, e.g. deleted computer records, that would likely not otherwise be produced. There is a concern for invasion of the defense camp when the case has been pending for a number of months and records of correspondence with counsel are kept by the client. But the search warrant was not intended to reach any such materials and careful efforts have been made to avoid disclosure of attorney client matters. The affidavit in support of the warrant established probable cause to believe that materials relating to the defendant's whereabouts and activities in the time period of concern could be found in this location. The court is satisfied that the search warrant was intended, and served, to gather evidence and not to disadvantage the conduct of the defense.

A further contention is that the search of computer records was overbroad. Federal authorities in particular seem clear that so long as the warrant is sufficiently specific as to the evidence sought it will generally be necessary to seize and then search the entire computer for that evidence. *U.S. v. Wong* (9th Cir., 2003) 334 F.3d 831. While specific issues of privilege or work product protection may exist as to individual items on the computers in question, no reason appears to suppress the evidence seized from any defect of overbreadth in the warrant or supporting affidavit generally.

Finally, there is the question of plain view. Materials were seized that were not within the description of items sought by the warrant. There is a concern that a search may become general if the mere possibility of relevance is sufficient to justify examination of otherwise unavailable contents. The plain view doctrine permits the

examination by a police officer, otherwise lawfully in position to observe an item, if initial inspection shows probable cause to believe that the item would aid in securing a conviction on a criminal offense. Penal Code § 1524(a)(4) specifically authorizes seizure pursuant to warrant of "any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony." 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."[1]

The court has conducted an examination of the items seized and agrees that not all of the items can be regarded as described in the warrant or as plain view. Errors in this regard, however, do not suffice to suggest that there has been outrageous government conduct or a general search. The total quantity of items seized, and especially the number of items improperly seized, was quite small, and upon the first appearance of any attorney-client privilege material was carefully kept from the prosecution or law enforcement review until examination or authorization by the court.

The items in issue are given inventory numbers 1801 through 1827. At the hearing on November 5, 2004 the prosecution and defense further examined the items seized and came to consensus as to some. Items 1801-1805 are computer hard drives and a PDA. It was agreed that a special master would be appointed to examine both these computers and those previously seized from the Office of Bradley Miller. Attorney Stan Roden has since been appointed special master and the records have been delivered to a

[1] 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

computer expert to assist in the recovery and examination of these records. Once claims of attorney-client privilege are resolved the remaining materials will be available for inspection by the prosecution.

The defense conceded that items 1810(d-i), 1811(b,c,f), 1812-1817, 1819-1822, except for 1822(a), and 1823-1827 either fell within the warrant description or constituted material that could be seized in plain view. It was agreed that 1809 could be returned. What remained in dispute then were items 1806 –1808, 1810(a-c, j-k), 1811(a,d,e), 1818, and 1822(a).

The court has examined these records. Items 1806 and 1808 are found to be items in plain view related to phone records. Item 1807 is not a plain view item as the records involved are too old to be helpful or relevant. Items 1810 and 1811, pendaflex files that had been labeled "Mesereau," contained for the most part only newspaper, magazine and internet pages and clippings that do not fall within the description of materials within the warrant and do no fall within the plain view doctrine. Of the subparts in dispute in 1810 only 1810(g) and 1810(k) fall within the plain view doctrine. Of the subparts in dispute in 1811, items 1811(d) and (e) do not qualify as plain view. 1810(a), 1811(a), 1818, include attorney-client material. 1822(a), while including attorney-drafted communications involves correspondence without outside parties and is does not qualify for the attorney client privilege.

Item 1807, the general contents of 1810 including subparts 1810(b,c, and j), the general contents of 1811 including subparts 1811(d and e) are therefore suppressed. The court will complete its sorting of the materials in 1810(a), 1811(a) and 1818 by the time

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valid search warrant leaves only probable cause (as opposed to mere reasonable suspicion) to believe the item has evidentiary value as an issue.

of the next following court hearing. The court will advise the parties when the computer records have been examined through the special master process. The balance of the motion is denied.

Dated: December 23, 2004

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

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 DECEMBER 30, 2004, I served a copy of the attached DECISION ON MOTION PURSUANT TO PENAL CODE § 1538.5 addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
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X FAX

By faxing true copies thereof to the receiving fax numbers of: (310) 861-1007 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon) . 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.

___ 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 30TH day of DECEMBER , 2004, at Santa Maria, California.

CARRIE L. WAGNER