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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA
SEP 10 2004
GARY M. BLAIR, Executive Officer
By Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SANTA MARIA DIVISION

* unsealed pursuant to 6/16/05 court order

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. MICHAEL JOE JACKSON, Defendant.	No. 1133603 PLAINTIFF'S REPLY TO DEFENDANT'S SUPPLEMENTAL BRIEF TO TRAVERSE AFFIDAVITS, QUASH WARRANTS AND SUPPRESS EVIDENCE DATE: September 17, 2004 TIME: 8:30 a.m. DEPT: SM 2 (Melville) ~~FILED UNDER SEAL~~

I

INTRODUCTION

With respect to the law governing application of the "plain view doctrine," defendant asserts in his "Supplemental Brief In Support of Motion to Traverse," etc. ["Supp. Br."], "the burden is on the prosecution to show that the plain view doctrine is applicable to each particular seizure. (*People v. Murray* (1978) 77 Cal.App.3d 305.) In addition to the item being in plain view, the officer must have probable cause to believe that the item is subject to seizure, rather than mere suspicion. (*Arizona v. Hicks* (1987) 480 U.S. [321]." (Supp. Br. 2:22-26.)

With respect to the seized Items, defendant argues that a given item either is "wholly irrelevant," or "outside the scope of the warrant," and/or "is not contraband or evidence of a crime." (See, e.g., Supp. Br. 2:27 – 3:3.)

A. <u>There Is A Stipulation That The Evidence In Question Was In The "Plain View" Of Officers Who The Court Determines Were Properly In The Place Being Searched</u>

Early in the afternoon of the proceedings on August 20th, defense counsel entered into a written stipulation with respect to certain listed property, pursuant to which (as Mr. Sanger explained) it was agreed that the listed items were "all seized and to the extent they were not described in the search warrant, we will concede the issue, the first part of the plain view issue, that is that the officers were lawfully in a place to seize them, and could see them, and then it will be up to the People, as I think I said, to establish whether or not they could be properly seized outside the warrant." (Uncertified RT 83:28 - 84:8.)

In the circumstances, the only burden on the People to show that "the plain view doctrine is applicable to each particular seizure" in this case is to satisfy the Court, from its own review of the description and photograph of a given Item, that the relevance of that item to further the investigation then under way would have been "immediately apparent" to a reasonable officer, given the information furnished the officers in this case prior to the execution of the warrant.

B. <u>The Incriminating Nature Of Evidence Seizable Under The "Plain View Doctrine"</u>

With respect to Items 312, 318, 322, 328, 331, 332, 333-A, 341, 334-A, 348, 349, 352, 362, 368 and 369, defendant recites, as to each, that the item is "not evidence of a crime and is not contraband" (or a variation of that phrase) as though that observation obviated the need for further analysis. (See Supp. Br. 2:27 through 4:20.)

Correctly understood, the "plain view doctrine" does not limit an otherwise appropriate seizure merely to property that is "evidence of a crime" in the narrow sense of that phrase (e.g., to hold-up notes, weapons, etc.). In *Warden v. Hayden* (1967) 387 U.S. 294, 307,

the court noted the distinction between "mere evidence" from "contraband" or the "fruits [and] instrumentalities" of crime in holding that either kind of evidence may be seized if there is "a nexus – automatically provided in the case of fruits, instrumentalities or contraband – between the item to be seized and criminal behavior." "[I]n the case of 'mere evidence,' probable cause must be examined in terms of cause to believe that the evidence sought will aid in a particular apprehension or conviction. In doing so, consideration of police purposes will be required. [Citation.]" (398 U.S. 294, at p. 307.) In that case, the high court noted that "the clothes found in the washing machine matched the description of those worn by the robber and the police therefore could reasonably believe that the items would aid in the identification of the culprit." (*Ibid.*)

Most of the seized items in this case are "mere evidence," in that they are not contraband or self-evidently the fruits or instrumentalities of crime. In our "Supplemental Response In Opposition To Defense Motion To Suppress," filed September 3rd, we have attempted to describe all the items of property the seizure of which is contested and as to which the Court has not indicated its intention to deny suppression. We have provided a photograph of each, and have argued the investigatory value of each would have been apparent to the well-informed officer who seized it.

C. The Degree Of "Suspicion" That An Item In Plain View Would Further The Ongoing Investigation

Neither does it appear to be the case a searching officer who has lawfully intruded upon the privacy of a suspect by executing a search warrant for his residence needs "probable cause" to seize that which comes into his "plain view," as Defendant argues. In *People v. Bradford* (1997) 15 Cal.4th 1229, our Supreme Court noted,

> The plain-view doctrine permits, in the course of a search authorized by a search warrant, the seizure of an item not listed in the warrant, if the police lawfully are in a position from which they view the item, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object. (*Horton v. California* (1990) 496 U.S. 128, 135-137 [110 S.Ct. 2301, 2307-2308];

> *Texas v. Brown* (1983) 460 U.S. 730, 739 [103 S.Ct. 1535, 1541-1542, 75 L.Ed.2d 502] (plur. opn.); see *Minnesota v. Dickerson* (1993) 508 U.S. 366, 374-375 [113 S.Ct. 2130, 2136-2137, 124 L.Ed.2d 334].) In such circumstances, the warrantless seizure of evidence of crime in plain view is not prohibited by the Fourth Amendment, even if the discovery of the evidence is *not* inadvertent. (*Horton v. California, supra*, 496 U.S. 128, 130 [110 S.Ct. 2301, 2304].) Where an officer has a valid warrant to search for one item but merely a suspicion, not amounting to probable cause, concerning a second item, that second item is not immunized from seizure if found during a lawful search for the first item. (*Id.*, at pp. 138-139 [110 S.Ct. at pp. 2308-2309].) This rule was stated by the high court in *Horton* in the context of a search conducted pursuant to a warrant, notwithstanding the circumstance that in other cases applying the plain view doctrine in various contexts, the determination that the incriminating nature of an item was "immediately apparent" was based upon whether the officers had probable cause to believe that the item was either evidence of a crime or contraband. (E.g., *Minnesota v. Dickerson, supra*, 508 U.S. 366, 375 [113 S.Ct. 2130, 2136-2137]; *Arizona v. Hicks*, *supra*, 480 U.S. 321, 326-327 [107 S.Ct. 1149, 1153-1154].)
>
> In the present case, the testimony of the officers involved in the search indicated their belief that they could search for items not listed in the warrant. This testimony, read in context and considered in light of the information in their possession concerning not only the Campbell and Stewart matters but the other incidents, simply reflected their entirely appropriate understanding that such items lawfully might be seized if reasonably believed to be related to criminal activity.

(*People v. Bradford*, *supra*, 15 Cal.4th at pp. 1293-1294; emphasis the court's.)

Defendant argues that there was "no probable cause for listening to the tape" (Item 367) located in a tape cassette player found in a locked safe in the master bathroom(!). "In order to listen to the tape, the government was required to have probable cause to believe it was contraband or evidence of a crime." Because the cassette was labeled "Earth Song," "there was not probable cause to believe that the cassette tape contained anything other than a song. While the fact that the cassette tape was located in a locked safe might be arguably

1 suspicious in a different case, there is nothing unusual about a musician such as Mr. Jackson
2 storing recorded music in a locked safe." (Supp. Br. 5:16 – 6:3.)

3 This particular musician's residence and ancillary buildings, situated within fenced
4 and well-guarded grounds, were awash in audio and video tapes. The fact that defendant
5 elected to safeguard a single audio tape and three videotapes (one labeled "Larry – Security
6 Tape") in a safe located in his bathroom indicated he attached particular importance to the
7 items. "Privacy" is a relative concept. Property of a sexually explicit nature was located in
8 unsecured locations in his private rooms. Considered in that context, what Mr. Jackson chose
9 to lock away and keep private from even his trusted staff gave those items "unusual"
10 significance to officers searching for evidence corroborating reports of defendant's sexual
11 misconduct with children and his monitoring of telephone conversations. Seizure of the tape
12 cassette was reasonable. And because its significance, if any, lay in its contents, listening to
13 the tape was no less reasonable.

14 D. The Other "Plain View" Items Were Properly Seized

15 The Court has had an opportunity to inspect Items 325, 326, 328, 502, 505, 508,
16 509, 510 and 511. The People will rely on the Court's judgment whether the evidentiary
17 significance of those items justified their seizure and inspection.

18 DATED: September 10, 2004

19 Respectfully submitted,

20 THOMAS W. SNEDDON, JR.
21 District Attorney

22 By:
23 Gerald McC. Franklin, Senior Deputy

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PROOF OF SERVICE

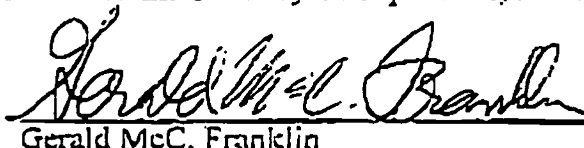
STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On September 10, 2004, I served the within PLAINTIFF'S REPLY TO DEFENDANT'S SUPPLEMENTAL BRIEF TO TRAVERSE AFFIDAVITS, QUASH WARRANTS AND SUPPRESS EVIDENCE on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorneys Mesereau and Cochran, and by causing a true copy thereof to be mailed to each of them (Mr. Sanger excepted), first class postage prepaid, at the addresses shown on the attached Service List.

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

Executed at Santa Barbara, California on this 10th day of September, 2004.



Gerald McC. Franklin

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