

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

SEP 13 2004

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* Unsealed pursuant
to 6/16/05 court
order

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

27 THE PEOPLE OF THE STATE OF
28 CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

Case No. 1133603

SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION TO TRAVERSE AFFIDAVITS, TO
QUASH WARRANTS AND TO SUPPRESS
EVIDENCE UNDER PENAL CODE §1538.5

~~UNDER SEAL~~

Honorable Rodney Melville

Date: September 16, 2004

Time: 10:00 am.

Dept: SM 8

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO TRAVERSE AFFIDAVITS, TO QUASH
WARRANTS AND TO SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5

1 INTRODUCTION

2 Pursuant to the Court's request, Mr. Jackson is filing this supplemental brief containing
3 argument for suppressing items 312, 318, 331, 333-A, 334-A, 348, 352, and 368. Furthermore,
4 Mr. Jackson objects the tentative ruling authorizing the seizure of items 308, 322, 325, 326, 328,
5 329, 332, 333, 333-A, 334, 334-A, 335, 337, 341, 342, 343, 344, 345, 346, 347, 349, 362, 367,
6 369, 505, 508, 509, 510, 511, 512, 603, 604, 605, 606, 607, 608, 609, 644, 645, and 1009.

7 The searches and seizures pursuant to the warrants, as well as all warrantless searches
8 were in violation of the Fourth and Fourteenth Amendments to the United States Constitution
9 and Article I, Section 13 of the California Constitution.

10 ARGUMENT

11 I

12 THE ITEMS THAT THE COURT REQUESTED ARGUMENT ON MUST BE
13 SUPPRESSED

14 A warrantless search is presumptively unreasonable under the Fourth Amendment to the
15 United States Constitution. (*Groh v. Ramirez* (2004) 124 S.Ct. 1284, 1290.) The burden is on the
16 prosecution to prove that probable cause existed to seize the property in question.

17 The Fourth Amendment to the United States Constitution, Article 1, Section 13 of the
18 California Constitution, and California Penal Code Sections 1525 and 1529 require that a search
19 warrant describe the items to be seized with "particularity." This requirement precludes both a
20 "general search" and the seizure of one thing under a warrant describing a different thing.
21 (*Marron v. United States* (1927) 275 U.S. 192; *Stanford v. Texas* (1965) 379 U.S. 476.)

22 To the extent that the District Attorney may attempt to justify the seizure of some of these
23 items based on the plain view doctrine, the burden is on the prosecution to show that the plain
24 view doctrine is applicable to each particular seizure. (*People v. Murray* (1978) 77 Cal.App. 3d
25 305.) In addition to the item being in plain view, the officer must have probable cause to believe
26 that the item is subject to seizure, rather than mere suspicion. (*Arizona v. Hicks* (1987) 480 U.S.

27 Items 312, 318 and 331 are legal documents that are not contraband or evidence of a
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1 crime, and are wholly irrelevant to the present case. These items were found in an envelope
2 labeled personal and confidential and are obviously privileged. Items seized that pertain to Mr.
3 Jackson's involvement in unrelated civil litigation cannot possibly be evidence of a crime.

4 Item 333-A, a piece of paper with written names must be suppressed because it is outside
5 the scope of the warrant, and is not contraband or evidence of a crime. To the extent that these
6 materials were seized based on a particular name being mentioned in the search warrant affidavit
7 or on the list of "Name Individuals," presented to law enforcement, the fact that the name was on
8 a list does not make the materials evidence of a crime. This only demonstrates that the
9 government intended to seize items that referenced certain names, yet failed to provide the list of
10 names with the application for the search warrant. This seizure cannot be justified after the fact
11 under the plain view exception. If the government believed that there was probable cause to
12 seize items containing indicia of certain individuals then they were obligated to spell that out for
13 the Court.

14 Items 334-A, a receipt for CD music, customs declaration for Grace, and note from Kate
15 Browning are not contraband or evidence of a crime. To the extent that these materials were
16 seized based on the name "Grace" being referenced in the affidavit or on the list of "Name
17 Individuals" presented to law enforcement, the fact that the name was mentioned in the affidavit
18 or on a list does not make the materials evidence of a crime. This seizure cannot be justified
19 after the fact under the plain view exception.

20 Item 348, an inoperable digital camera is not contraband or evidence of a crime. The
21 government did not have probable cause to seize the camera or to look at the images contained
22 on the camera.

23 Items 352, a nanny application, Visa bill from September/October 2003 and an envelope
24 addressed to actress Marlo Thomas, are not contraband or evidence of a crime. To the extent that
25 these materials were seized due to a reference to "Grace," as argued below, a mere reference to a
26 name on a list provided to law enforcement does not establish any valid exception the Fourth
27 Amendment.

1 The Visa bill is for a period of time that is not relevant to the investigation of this case. It
2 is not evidence of a crime and is not contraband. Thus, it must be suppressed.

3 The seizure of an envelope addressed to a famous actress demonstrates the overbroad
4 nature of the search. It is clear that certain items were seized because they referenced celebrities
5 (i.e. the Pee Wee Herman holiday card), despite the fact that the materials had nothing to do with
6 alleged criminal activity. The Marlo Thomas envelope falls in that category.

7 Item 368, videotapes clearly marked as "MJJ Rehearsal and Poppers" found in Mr.
8 Jackson's safe must be suppressed. The title "MJJ Rehearsal" does not provide any indication
9 that the tapes could possibly contain contraband or evidence of a crime. The fact that the tapes
10 were found in a safe does not provide law enforcement with probable cause to view the tapes or
11 to seize them. Mr. Jackson is a musician and it is not surprising that he would keep a videotape
12 of material for a music video in a safe.

13 II

14 THE ITEMS TENTATIVELY AUTHORIZED FOR SEIZURE MUST BE SUPPRESSED

15 A. A Mere Reference to the Name of an a Particular Person in the Affidavit or on a
16 List Distributed to Law Enforcement, But Not the Court, Does Not Justify Seizure.

17 Items 322, 328, 332, 341, 349, 362, and 369 were apparently seized because they contain
18 references to Ronald Konitzer, Frank Tyson, Dieter Weizner, Udo Schaar, Dr. Farschian and
19 others. The fact that someone's name is written down on a piece of paper does not constitute
20 evidence of a crime.

21 The government clearly intended to seize any items that made any reference to certain
22 individuals on a list. Prior to the search, law enforcement distributed a list of "Named
23 Individuals" to the officers who conducted the search. Despite the fact that they knew that they
24 clearly intended to seize any items that referenced the individuals on the list, the government
25 failed to provide this list to the judge who signed the warrant. Any post-hoc rationalization that
26 the items were somehow evidence of crime discovered during the search is undercut by the fact
27 that the government knew they would be searching for these items prior to the search, yet failed
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1 to inform the judge of their intentions.

2 **B. Seizing All Computers and Computer Equipment Constituted and Overbroad**
3 **Search**

4 Items 308, 329, 333, 334, 335, 337, 342, 343, 344, 345, 346, 347, 603, 605, 606, 607,
5 608, 609, 644 and 645 must be suppressed because the search warrant was unconstitutionally
6 overbroad in allowing law enforcement to seize all computers and anything computer related.
7 There was no particularity in the warrant as to what the government was searching for or what
8 particular computers they intended to search. As argued elsewhere, the Fourth Amendment does
9 not permit the government to seize all computers and computer related equipment based on an
10 assertion that documents are commonly stored on computers, without some amount of
11 particularity as to what computers are to be searched and what materials are expected to be
12 seized.

13 The absurdity of such an overbroad search is demonstrated by the seizure of items like a
14 computer keyboard, mouse or cables. There is no possibility that these items contained anything
15 that could be described as evidence in this case.

16 **C. Item 367 Does Not Fall Under the "Plain View" Exception.**

17 The government seized item 367, an audiocassette tape, from a locked safe. While the
18 cassette player itself was arguably in plain view once the safe was opened, what was contained
19 on the cassette inside the player was not in plain view. There was not probable cause for
20 listening to the tape.

21 Upon opening the cassette player the officers encountered the cassette, labeled "Earth
22 Song." In order to listen to the tape, the government was required to have probable cause to
23 believe it was contraband or evidence of a crime. In *Arizona v. Hicks* (1987) 480 U.S. 321, the
24 United States Supreme Court held that a police officer's moving of stereo equipment to read the
25 serial numbers constituted an unreasonable search because it was not sustainable under the "plain
26 view" doctrine. Here, the conduct of law enforcement was much more egregious.

27 There was not probable cause to believe that the cassette tape contained anything other
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1 than a song. While the fact that the cassette tape was located in a locked safe might be arguably
2 suspicious in a different case, there is nothing unusual about a musician such as Mr. Jackson
3 storing recorded music in a locked safe. Furthermore, when one listens to the tape, it becomes
4 apparent that in order to hear anything other than music, one must listen for a significant period
5 of time before any conversation is recorded. That conversation is not contraband or evidence of
6 a crime. The seizure of this item cannot be justified and it must be suppressed.

7 **D. The Other "Plain View" Items Must Be Suppressed Because They Are Not**
8 **Contraband or Evidence of a Crime.**

9 There is not valid justification for seizing items 325, 326, 328, 502, 505, 508, 509, 510,
10 and 511. The overbroad nature of the search is demonstrated by the fact that law enforcement
11 seized items beyond the scope of the search warrant that are neither contraband nor evidence of a
12 crime.

13 Item 326, print ads for children's clothing, does not fall under the plain view exception.
14 It is ridiculous to argue that ads for children's clothing, in the possession of a father of three
15 children, is contraband or evidence of a crime.

16 Item 328, paperwork that includes references to Bill Clinton and Nelson Mandela does
17 not cannot be justified under a plain view exception to the Fourth Amendment.

18 Items 505, 508, 509, are commercially available books that are not contraband or
19 evidence of a crime.

20 Items 510, 511 and 512, consisting of clothing and tissue, is not contraband and is not
21 evidence of a crime. Nothing in the search warrant authorized the seizure of adult clothing.
22 There was nothing about the tissue that suggested that it was evidence of a crime or contraband.

23 Item 1009, a black plastic case with equipment, is not contraband or evidence of a crime.
24 The government did not have probable cause to seize this item and it must be suppressed.

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III.

CONCLUSION

For the reasons stated above, the above listed items must be suppressed.

Dated: September 3, 2004

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned declare:

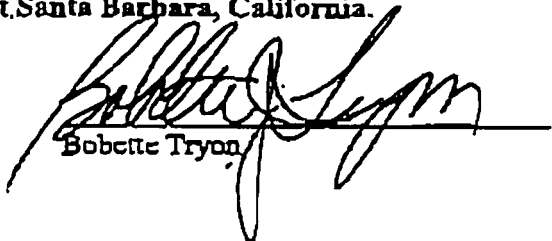
I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On September 3, 2004, I served the foregoing document **SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE UNDER PENAL CODE § 1538.5** on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
Gerald Franklin - By Hand
Ron Zonen
Gordon Auchincloss
District Attorney
1105 Santa Barbara Street
Santa Barbara, CA 93101
568-2398

- BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.
- BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at 568-2398.
- BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.
- STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed September 3, 2004, at Santa Barbara, California.


Bobette Tryon