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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 12 2004

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

REDACTED VERSION

27 THE PEOPLE OF THE STATE OF
28 CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

Case No. 1133603
REPLY TO THE DISTRICT ATTORNEY'S
OPPOSITION TO MR. JACKSON'S
MOTION TO SUPPRESS EVIDENCE
OBTAINED BY SEARCH WARRANT
NUMBER 5135
~~UNDER SEAL~~
Honorable Rodney S. Melville
Date: October 14, 2004
Time: 5:30 am
Dept: SM 8

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 MR. JACKSON HAS A LEGITIMATE EXPECTATION OF PRIVACY IN HIS
4 PERSONAL, BUSINESS, AND LEGAL PAPERS IN THE OFFICE OF HIS PERSONAL
5 ASSISTANT

6 Mr. Jackson has demonstrated a legitimate expectation of privacy with regard to his
7 personal papers seized from the office of his personal assistant, [REDACTED]. The Fourth
8 Amendment protects people, not places. (*Katz v. United States* (1967) 389 U.S. 347.) Mr.
9 Jackson has a privacy interest in his own personal, business and legal documents. The fact that
10 he has a personal assistant to manage his affairs does not strip him of his possessory interest in
11 his documents.

12 The District Attorney attempts to characterize this as a search of [REDACTED] residence.
13 (Opposition, page 2.) This ignores the facts set forth in [REDACTED] declaration showing that
14 her residence is her office and that she administers Mr. Jackson's affairs out of that office. While
15 Mr. Jackson may not have an expectation of absolute privacy in [REDACTED] entire residence,
16 he has legitimate expectation of privacy in the office where his personal, business and legal
17 papers are stored.

18 In *Mancusi v. DeForte* (1968) 392 U.S. 364, 369, the Supreme Court recognized the
19 realities of how offices are run in holding that shared access to a document does not prevent one
20 from claiming Fourth Amendment protection in that document. *United States v. Taketa* (9th Cir.
21 1991) 923 F.2d 665, cited by the District Attorney, is distinguishable. *Taketa* held that one DEA
22 employee had insufficient ownership rights in materials found in the office of another DEA
23 employee to establish a reasonable expectation of privacy. This is nothing like the present case,
24 where [REDACTED] works for Mr. Jackson as his personal assistant and has the responsibility of
25 administering his affairs.

26 Courts have specifically held that a legitimate expectation of privacy exists as to business
27 and professional calendars, maintained by secretaries and personal assistants. (*United States v.*

1 *Mancini* (1st Cir. 1993) 8 F. 3d 104, 108, fn. 8.) In *Mancini*, the court rejected the government's
2 contention that an employee can have an expectation of privacy only in his or her own work area
3 and held that a mayor had an objectively reasonable expectation of privacy in his appointment
4 book that was seized from an archive room.

5 The District Attorney also cites *Henzel v. United States* (5th Cir. 1961) 296 F.2d 650, 653
6 and *United States v. Britt* (5th Cir. 1975) 508 F.2d 1052, 1054, to argue that the search of [REDACTED]
7 [REDACTED] office is comparable to the search of a corporation. (Opposition, pages 4-5.) This is
8 neither the prosecution, nor the search of a corporation. Corporations do not have the same
9 constitutional rights under the Fourth, Fifth and Fourteenth Amendments as an individual citizen
10 who is accused of a crime. This is a case where an individual, not a corporation, has been
11 charged and later indicted for alleged crimes. The government is now belatedly trying to find
12 personal papers to incriminate him. This has nothing to do with corporate documents. This has
13 to do with Mr. Jackson's personal papers.

14 In *United States v. Britt, supra*, 508 F.2d 1052, a case involving the seizure of corporate
15 property, the court noted that the searches were directed at the corporation, rather than at the
16 person who was challenging the search. Here, Mr. Jackson is the target of the investigation and
17 the property to be seized was his personal property. Mr. Jackson has demonstrated a reasonable
18 expectation of privacy under the Fourth Amendment for the purposes of challenging the search of
19 his personal assistant's office.

20 II.

21 THE SEARCH WAS OVERBROAD

22 The government has been conducting their investigation for well over a year, yet law
23 enforcement is still coming to the Magistrate claiming that they do not have evidence that is essential
24 to their prosecution, including material's documenting Mr. Jackson's whereabouts during the relevant
25 dates. It has been almost a year since the government conducted a raid on Mr. Jackson's residence,
26 his lawyer's private investigator's office and other locations. It has been almost a year since District
27 Attorney Sneddon held an international press conference to boast that he was prosecuting Mr.

1 Jackson. It has been almost a year since Mr. Jackson was arrested. It has been over 9 months since
2 a formal complaint was filed with this Court accusing Mr. Jackson of crimes for which the
3 prosecution still does not have evidence. It has been over 6 months since the District Attorney went
4 to the grand jury purporting to have evidence of the alleged crimes.

5 A general, exploratory search, conducted at this late date, has to be looked at with the
6 requisite suspicion of a detached and neutral magistrate. Once a motion has been made challenging
7 the search, as it has here, the Superior Court Judge must look closely at the government's
8 justification for seeking the warrant and for seizing items not covered by the warrant. Where, as
9 here, the government makes no specific arguments to justify the seizures of items from outside the
10 scope of the warrant, the Court should suppress all of the items not covered by the warrant.

11 The District Attorney has the burden of justifying the seizure of items that fall outside the
12 scope of the search warrant. If something is seized outside of the property listed then it is a
13 warrantless search. A warrantless search is presumptively unreasonable under the Fourth
14 Amendment to the United States Constitution. (*Groh v. Ramirez* (2004) 124 S.Ct. 1284, 1296.) It
15 is the District Attorney's burden to justify any such seizures.

16 The Fourth Amendment requires that law enforcement articulate the items to be seized with
17 particularity and that the officers limit their search to the things described in the warrant. Mr.
18 Jackson provided the Court with a non-exhaustive list of 36 items or groups of items that fall outside
19 the scope of the search warrant. The District Attorney failed to specifically offer justifications for
20 the seizure any of these items in its opposition papers.

21 The District Attorney asserts that the materials seized from [REDACTED] office "'tended to
22 show the activities or whereabouts of Michael Jackson during February and March, 2003' or the
23 folders in which they were maintained suggested the contents would be relevant, or the document
24 appeared to have other relevance to the ongoing investigation when they came into the plain view
25 of the searching officer." (Opposition, page 6.) The prosecution basically concedes that the officers
26 simply grabbed whatever they thought might be relevant. That is the essence of a general search.

27 "[A]ppeared to have other relevance" is not the standard of probable cause necessary to
28

1 justify a search outside the scope of a warrant. The right to seize evidence outside of the
2 particularized description of property listed in the warrant requires that it either plainly be contraband
3 or evidence of a crime. To be evidence of a crime, there must exist probable cause to make the
4 warrantless seizure and not merely an after-the-fact belief in relevance. Here, the search warrant
5 narrowly defined what could be seized. Despite the limitations of the search warrant, the officers
6 engaged in a general search for what they deemed relevant.

7 The United States Supreme Court has held that this type of search is unconstitutional. In *Lo-*
8 *Ji Sales, Inc. v. New York* (1979) 442 U.S. 319, 326, the Court held that "a warrant authorized by a
9 neutral and detached judicial officer is a more reliable safeguard against improper searches than the
10 hurried judgment of a law enforcement officer engaged in the often competitive enterprise of
11 ferreting out a crime." In *Lo-Ji Sales, Inc.*, the United States Supreme Court held that the
12 determination of probable cause must be made by the magistrate in advance of the search. The
13 Fourth Amendment is not satisfied by a determination made during the search. Hence, the Court
14 rejected the idea of allowing a magistrate to accompany officers to the premises to make a
15 determination of what could be seized.

16 Rather than attempt to justify the seizures of items that are outside the scope of the warrant,
17 the District Attorney now asks the Court to make an after-the-fact relevancy determination. Such
18 a determination fails to satisfy the Fourth Amendment. This Court should recognize that the
19 exploratory search of [REDACTED] office cannot be made constitutional by an after-the-fact
20 determination of relevancy. This was an impermissible general search and the Court should suppress
21 all of the seized items.

22 III.

23 **THE SEARCH OF [REDACTED] OFFICE WAS ANOTHER INVASION OF THE**
24 **DEFENSE CAMP**

25 The District Attorney has demonstrated a blatant disregard for Mr. Jackson's right to
26 counsel under the United States Constitution. As discussed above, this investigation has been
27 going on for more than a year, yet the prosecution is still attempting to gather evidence regarding

1 Mr. Jackson's whereabouts on the dates of the alleged events. The government was aware that
2 [REDACTED] maintained Mr. Jackson's personal papers and that the officers conducting the
3 search would likely come into contact with privileged communications. The officers who
4 conducted the search took anything that they hoped would give them insights into the defense
5 case. The inventory of items seized reveals that law enforcement confiscated anything that might
6 contain communications between Mr. Jackson, his attorneys and defense investigators. Such an
7 intrusion into the defense function provides this Court with additional, non-statutory grounds for
8 suppression.

9 IV.

10 THE PROSECUTION SHOULD HAVE, AT THE VERY LEAST, USED A SUBPOENA
11 TO OBTAIN DOCUMENTS RELATED TO MR. JACKSON'S WHEREABOUTS
12 DURING THE RELEVANT TIMES

13 Law enforcement used a search warrant authorizing the seizure of a very narrow class of
14 materials as a pretext to grab everything in [REDACTED] office that they hoped would be helpful
15 to their case. The problem with using a search warrant to obtain these materials is evident when
16 one looks at the inventory of what was seized. The vast majority of the materials seized have
17 nothing to do with Mr. Jackson's activities in the relevant period of time. A subpoena,
18 requesting the materials would have still been objectionable but would not have caused such
19 significant intrusion into Mr. Jackson's rights to privacy, to due process and to communicate
20 confidentially with his counsel under the Fourth, Sixth and Fourteenth Amendments to the
21 United States Constitution. A subpoena would have allowed counsel to litigate the propriety of
22 the request before the damage was done.

23 V.

24 THE PROSECUTION SHOULD HAVE SOUGHT THESE MATERIALS THROUGH
25 PRETRIAL DISCOVERY

26 The District Attorney was obligated to seek these materials through California's
27 reciprocal discovery process. Mr. Jackson is represented by counsel and a simple request to

1 counsel under Penal Code Section 1054 would have provided the District Attorney with
2 evidence which he was entitled.

3 VI.

4 THE SEIZED MATERIALS ARE PROTECTED BY THE ATTORNEY-CLIENT
5 PRIVILEGE

6 The inventory of items seized indicates that, despite the limitations of the warrant, the
7 government conducted its search with the intent to seize anything that even mentioned the names
8 of Mr. Jackson's attorneys. The government does not even attempt to specifically justify the
9 seizures of items such as folders labeled "Mesereau" or documents that are clearly identifiable as
10 correspondence between Mr. Jackson's lawyers and investigators. If the items are not suppressed
11 and returned on other grounds, Mr. Jackson has specifically listed items that are subject to the
12 attorney-client privilege and/or work product doctrine so that the Court may decide whether these
13 items are privileged.

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VII.

CONCLUSION

The Court should suppress all of the materials seized from [REDACTED] office pursuant
in Penal Code Section 1538.5 and non-statutory grounds.

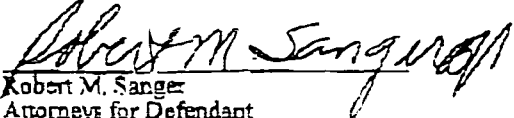
Dated: October 12, 2004

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