

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 23 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

FINDINGS AND ORDER RE: SEALING OF
SEARCH WARRANT MATERIALS

A search warrant (#884686) was issued by Judge Adams, at the request of the District Attorney, on November 17, 2003, to search the Neverland Ranch home of Defendant Michael Jackson, and certain other premises. The warrants were executed on November 18, 2003, and returns were filed with the court on December 4, 2003. Pursuant to Penal Code § 1534,

"The documents and records of the court relating to the warrant need not be open to the public until the execution and return of the warrant or the expiration of the 10-day period after issuance. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record." The statute has been interpreted to exclude material that is deemed privileged or confidential. *People v. Hobbs* (1994) 7 C4th 948, 971.

California Rule of Court 243.1 permits court records to be sealed upon findings that, "(1)

1 There exists an overriding interest that overcomes the right of public access to the record; (2)
2 The overriding interest supports sealing the record; (3) A substantial probability exists that
3 the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing
4 is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest.”

5 In the present case, the judge issuing the search warrants determined that the
6 warrants, the supporting affidavits, and the returns should be sealed for a 45-day period, a
7 time within which an arraignment was expected to be scheduled.

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9 On December 24, 2003, with the sealing order set to expire during a holiday period,
10 the District Attorney and Defense Counsel stipulated that their ongoing investigations would
11 be irreparably harmed if the confidential information contained in the search warrant materials
12 were made public. They agreed that these investigations and the interest in a fair trial were
13 overriding interests that overcame the right of public access to the materials, and that a
14 substantial probability existed that these overriding interests would be prejudiced if the
15 materials were not sealed, and that no less restrictive means existed to avoid such prejudice.
16 The stipulation was presented to Presiding Judge Anderson who made similar findings and
17 extended the sealing order to “at a minimum, the arraignment in this matter.”

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19 On January 7, 2004, the law firm of Gibson, Dunn & Crutcher, acting on behalf of
20 interested parties in the media, filed a motion to unseal the search warrant materials. This
21 court granted an order shortening time to permit the motion to be heard at the time of the
22 arraignment. As perhaps some measure of the very considerable public interest that attaches
23 to the present proceedings, the motion was filed on behalf of NBC, CBS, Fox News, CNN, and
24 the New York Times and was joined later by the Associated Press.

25 The motion objects to the absence of more specific detailed findings, the inability to
26 access an original sealing order, and it highlights the concern that any order be as narrowly

1 tailored as possible to provide the greatest public disclosure. The prior orders contemplated
2 that a decision would be made at arraignment. This largely moots the issues with regard to
3 the prior orders, as the question must now be freshly considered on its merits in the light of
4 events subsequent to those orders, the present circumstances, as well as the nature of the
5 material itself. The court's present order will supersede all prior orders.

6 The court has made a thorough examination of the all the sealed search warrant
7 materials. The affidavit submitted in support of the request for the warrant is 82 pages in
8 length and is supplemented by two tape recordings, transcripts of which were prepared. It
9 was immediately obvious to the court, and would be obvious as well to any person examining
10 the affidavit, that the statements and other evidence reported there are of a confidential
11 character. The affidavit contains reports of the statements of a minor about events of a
12 sexual nature. It contains the related reports of his family. A portion of these reports result
13 from statements made in counseling. The affidavit quotes from earlier investigations of a
14 minor with whom the defendant made a civil settlement approximately ten years ago. Very
15 significant privacy interests are thus involved in a release of the material. The particular need
16 for protection of minor victims of sex crimes from trauma and embarrassment, public
17 humiliation, demoralization, and psychological damage has been expressly recognized by the
18 United States Supreme Court in Globe Newspaper Company v. Superior Court 457 U.S. 596
19 (1982). The court there struck down a Massachusetts statute, which mandated that the public
20 not be admitted when the testimony of minor victims of sex crimes was to be given, but
21 agreed that the public interest could be made to yield to the interest in protecting minors on a
22 case by case basis.¹ The court in Oziel v. Superior Court (1990) 223 CA3d 1284, at 1297,
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¹ This is an interest that is recognized and protected in California statutes. See for example,
Evidence Code § 765 and Penal Code § 868.7.

1 observed that a factor to consider in sealing search warrant materials is the "privacy interests
2 of the individuals named in the warrants and supporting affidavits." Thus, even if there were
3 no significant actual public curiosity about the particular case under consideration there would
4 be an overriding and compelling need to take measures providing as full a measure as
5 possible of protection for the privacy interests of the minors involved.

6 The most glaringly obvious fact about the present case is the significant media and
7 public interest that it is generating. Michael Jackson is a figure recognized around the world
8 and the events surrounding execution of the search warrant, his arrest, and even the file-
9 stamping of the felony complaint have received widespread publicity. There will inevitably be
10 even greater interest in the details of the claimed offenses. This presents a significant
11 challenge to the court with responsibility for insuring that the trial is fair both for the defense
12 and the prosecution. Widespread dissemination of evidence, which may or may not be
13 admissible at trial, can only complicate the process of selecting an unbiased jury. The
14 combination of sensitive information involving minors with the notoriety of a celebrity
15 defendant produces circumstances where without protective measures by the court both the
16 privacy interests of the minors and the public interest on all sides of the issue for a fair trial
17 are imminently threatened with substantial prejudice. This immediate threat is precisely the
18 concern identified by our Supreme Court in NBC Subsidiary (KNBC-TV), Inc. v. Superior Court
19 (1999) 20 C4th, 1178, as that rare circumstance which justifies the closing of a hearing or the
20 sealing of a record. The court in Allegrezza v. Superior Court (1975) 47 CA3d 948, at 951,
21 held: ". . . the public generally has no right to pretrial disclosure of questionable evidence, a
22 disclosure of which might well deny to the accused the fair and impartial trial which is his
23 due."
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1 Rule 243.1 requires the court to consider as well how a sealing order might be
2 narrowly tailored to accommodate the maximum public disclosure. Redaction or partial
3 release, cautionary jury instructions, and limitations on the time for sealing are all options
4 deserving of consideration.

5 Upon review of the materials, the court finds that except for release of some general
6 introductory material, no redaction of the affidavit is possible that would protect either the
7 privacy interests at stake or the overriding concerns for prejudice to the jury pool. Any
8 disclosure in advance of admission of the evidence in a court proceeding burdens the privacy
9 of the minors whose statements are made public, and in the intense environment surrounding
10 the present case immediately threatens the integrity of the jury pool.

11 It does appear that there are some opportunities for partial release of documents
12 besides the affidavit in support of the warrant. The search warrants themselves appear to be
13 capable of redaction, as do some portions of the returns. The court will engage in a redaction
14 of identifying references and will order that these records be made public as early as that can
15 be accomplished.

16 Cautionary jury instructions and admonitions are not possible where the jury is yet to
17 be chosen. It bears noting that the Court in NBC Subsidiary appears to have concluded that
18 exposure of jurors to prejudicial information as a justification for a closure order, rather than
19 an admonition, was unconvincing where the information was already public knowledge, 20
20 C4th 1178, at 1222, footnote 47. This would seem to make all the more important early
21 efforts to avoid permitting prejudicial information become public.

22 The prior sealing orders concerning this material were time limited. It is not possible
23 at present to predict at what future date an unsealing of at least some further portion of the
24 materials may become possible. The court will remain alert to that possibility.
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In the meanwhile, the court finds that there are no reasonable alternatives to a sealing of the records and that no more narrow tailoring of the order, other than as set forth below, is possible. A failure to seal the records would result in substantial prejudice to the overriding interests in the privacy of the minors involved and in the maintenance of a jury pool unprejudiced by the disclosures that would result.

Except for the general portions to be released by the court, the previously sealed search warrant affidavit shall remain sealed until further order of the court. The search warrants themselves and the returns filed, following redaction by the court, shall become public records in their redacted form.

DATED: January 23, 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 JANUARY 23, 20 04, I served a copy of the attached FINDINGS AND ORDER RE: SEALING OF SEARCH WARRANT MATERIALS addressed as follows:

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

GERAGOS & GERAGOS
c/o MARK GERAGOS, ESQ.
350 S. GRAND AVENUE, 39TH FLOOR
LOS ANGELES, CA 90071-3480

GIBSON, DUNN & CRUTCHER
c/o THEODORE J. BOUTROUS, ESQ.
333 SOUTH GRAND AVENUE
LOS ANGELES, CA 90071

FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 213-625-1600 (MARK GERAGOS, ESQ.); 213-229-7520 (GIBSON, DUNN & CRUTCHER). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(l), 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 their clerk therein or the person having charge thereof.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, subpost 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 23RD day of JANUARY, 20 04, at Santa Maria, California.

Carrie L. Wagner

CARRIE L. WAGNER