

FILED

SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAR 01 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 AND
DECLARATION OF THOMAS SNEDDON

A series of further search warrants have been issued by this court related to the above-entitled case. These warrants are numbers 4896 through 4902 and 4912 through 4915. The warrants were issued between January 22nd and February 2, 2004. Some returns were filed with the court on February 5, 2004. 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)

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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
3 that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed
4 sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding
5 interest.”
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7 The court has previously (January 23, 2004) made findings with respect to prior
8 search warrant affidavits, warrants and returns in this case. The court concluded that
9 substantial portions of those materials should remain under seal because of their confidential
10 character. The affidavits issued subsequently incorporate the earlier affidavits and
11 summarize them. The same considerations that convinced the court that the earlier
12 materials should remain under seal apply as well to the subsequently issued warrants and
13 the court readopts the findings earlier made in those respects. That is, the same concerns
14 for the privacy interests of the minors involved, and for the integrity of the jury pool in the
15 high publicity environment that attaches itself to a celebrity defendant, continue to weigh
16 against public disclosure of this material at the present time.
17
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19 In addition, the District Attorney has articulated a significant concern for the impact
20 upon ongoing investigation that could be compromised if the material presently under seal
21 were made public. A description of those concerns was presented to the court under seal by
22 the District Attorney and the Declaration on that subject and designated portions of the ex-
23 parte application shall remain under seal until such time as the investigation will no longer be
24 prejudiced.
25

26 As on the prior order, Rule 243.1 requires the court to consider as well how a sealing
27 order might be narrowly tailored to accommodate the maximum public disclosure. Redaction
28 or partial release, cautionary jury instructions, and limitations on the time for sealing are all

1 options deserving of consideration. Upon review of the materials, the court finds that,
2 except for release of some general introductory material, no redaction of the affidavits is
3 possible that would protect the interests at stake. It does appear, however, that some
4 general portions of the warrants, affidavits and returns may be disclosed. The court has
5 engaged in a redaction of identifying references and is concurrently ordering that the records
6 as edited by made public.
7

8 Cautionary jury instructions and admonitions are not possible where the jury is yet to
9 be chosen. It bears noting that California Supreme Court in *NBC Subsidiary (KNBC-TV), Inc.*
10 *v. Superior Court* (1999) 20 C4th, 1178 appears to have concluded that exposure of jurors to
11 prejudicial information as a justification for a closure order, rather than an admonition, was
12 unconvincing where the information was already public knowledge. 20 C4th 1178, at 1222,
13 footnote 47. This would seem to make all the more important early efforts to avoid
14 permitting prejudicial information become public.
15

16 It remains impossible at present to predict at what future date an unsealing of some
17 or all of the materials may become feasible. The court will remain alert to that possibility.
18 In the meanwhile, the court finds that there are no reasonable alternatives to a sealing of
19 the records and that no more narrow tailoring of the order, other than as set forth below, is
20 possible. A failure to seal the records would result in substantial prejudice to the overriding
21 interests in the privacy of the minors involved and in the maintenance of a jury pool
22 unprejudiced by the disclosures that would result, and would adversely impact other ongoing
23 investigation.
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26 Except as edited by the court, the previously sealed search warrant affidavit shall
27 remain sealed until further order of the court. The search warrants themselves and the
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1 returns filed, following redaction by the court, shall become public records in their redacted
2 form.

3 DATED: MAR 01 2004

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

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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 MARCH 01, I served a copy of the attached FINDINGS AND ORDER RE: SEALING OF SEARCH WARRANT MATERIALS AND DECLARATION OF THOMAS SNEDDON addressed as follows:

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

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(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 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 1ST day of MARCH, 2004, at Santa Maria, California.


CARRIE L. WAGNER