

MAR 11 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

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MICHAEL JOE JACKSON,
Defendant.

Case No.: 1133603

FINDINGS AND ORDER RE: CLAIMS OF
WORK PRODUCT PRIVILEGE

On February 13, 2004, the Court heard argument directed to whether work product protection were applicable to certain videotapes and audiotapes seized pursuant to a search warrant from Bradley Miller's office. The Court held an in camera conference with defense counsel to ascertain whether the materials at issue could be described in a way that would avoid the need to view the materials. The description provided did not resolve the question, and The Court announced in open court its intention to examine the tapes in camera to resolve the issue. The Court has now completed its examination and finds and orders as follows:

1. Absolute protection exists for attorney analysis, impressions, legal

1 research and theories. Such material is referred to as "core work-product." C.C.P.

2 § 2018. The doctrine is applicable to search warrant proceedings. People v.

3 Superior Court (Laff) (2001) 25 Cal.4th, 703. Material that is generated by an

4 attorney, or the agents of attorney, but is not core work-product will generally be

5 regarded as entitled to qualified protection, except to the extent it is "mere

6 evidence." There is no statutory definition of work product entitled to qualified

7 protection, but case law distinguishes between derivative (or interpretative) and

8 non-derivative work. Nacht & Lewis v. Superior Court (1996) 47 CA4th, 214.

9 Absolute work product protection will not generally apply to statements recorded

10 from witnesses or to other videotaped material except to the extent that the line of

11 questioning or the form in which the material is compiled or edited might reveal

12 legal theories. Nacht, at 217-8; see also Kadelbach v. Amara (1973) 31 CA3d 814,

13 at 823.

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18 2. None of the tapes at issue in this proceeding qualify for absolute work
19 product protection. Nothing in the tapes describes legal theories or reveals the
20 notes or impressions of any attorney, or the agent of any attorney. In point of fact,
21 some of the material is unrelated to the present case, and one tape is a copy of a
22 publicly-aired television broadcast.

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24 3. The Court has considered whether the tapes are entitled to protection as
25 qualified work product since they were, for the most part, compiled or created at
26 the direction of defense counsel by an investigator hired for that purpose. The
27 protection does not apply to evidence that is non-derivative. The Court has
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1 determined, with one exception, that the tapes at issue are "mere evidence," of a
2 non-derivative character, and the work-product protection is inapplicable. Where
3 qualified work product protection applies, The Court determines if the party seeking
4 disclosure would be prejudiced or an injustice would result should disclosure be
5 denied. C.C.P. § 2018(b). To the extent the qualified protection does apply, The
6 Court finds that on the facts the prejudice to the investigative process inherent in
7 denying access to materials otherwise properly seized pursuant to search warrant
8 outweighs the intrusion upon the evidence gathering activities
9 of a defense investigator, and that no injustice or prejudice to the defense would
10 result from the release of the seized materials. The content of the videotapes is
11 largely innocuous and is unrevealing of defense strategy. Videotaped depictions of
12 locations or circumstances that may since have changed constitute primary source
13 material, which generally is regarded as unprotected.
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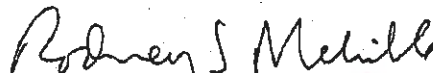
18 4. The Court does find, however, that the balance weighs against release of
19 the audiotape marked as No. 818. The tape records an interview conducted by a
20 defense investigator for Attorney Geragos in early 2003. While the questions asked
21 are of a general enough nature so as not to qualify for absolute protection, some
22 prejudice to the defense would exist in identifying areas of general interest to it and
23 in having its own investigative work turned over to the prosecution. The persons
24 interviewed are equally available to the prosecution. The Court finds nothing on
25 the tape that threatens a miscarriage of justice if not revealed. The defense
26 observes that, generally, evidence that might impeach prosecution witnesses is not
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1 discoverable. While this is not a standard applicable to seizures pursuant to a
2 search warrant, it is a factor to consider in evaluating the question of prejudice.

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4 5. Accordingly, inventory items numbered 811 through 817, 819 and 820,
5 having been found not subject to work-product protection (or attorney-client
6 privilege), shall be released to the Sheriff. The Court shall retain inventory item
7 818 under seal until such time as an appropriate arrangement for its return is
8 made.

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10 6. Inasmuch as the essential elements of the unredacted version of the
11 Defendant's Response to Plaintiff's Memorandum Regarding Defendant's Claim of
12 Attorney-Client and Attorney Work Product Privileges are necessarily disclosed in
13 making this ruling, that Response is order unsealed. The Motion to Seal the
14 People's Reply is denied.
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17 Dated: March 11, 2004



18 RODNEY S. MELVILLE
19 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 11, I served a copy of the attached FINDINGS AND ORDER RE: CLAIMS OF WORK PRODUCT PRIVILEGE 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 11TH day of MARCH, 2004, at Santa Maria, California.

Carrie L. Wagner
CARRIE L. WAGNER