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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

DEC 15 2004

GARY M. BLAIR, Executive Officer
By *Carrie L. Wagner*
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13
14 Plaintiff,
15
16 v.
17 MICHAEL JOE JACKSON,
18 Defendant.

No. 1133603
REDACTED VERSION

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTIONS TO
DISMISS FOR "VINDICTIVE
PROSECUTION" AND
"OUTRAGEOUS GOVERNMENT
CONDUCT," AND TO SUPPRESS
EVIDENCE FOR THOSE
REASONS; MEMORANDUM OF
POINTS AND AUTHORITIES

DATE: December 20, 2004
TIME: 10:00 a.m.
DEPT: TBA (Melville)

~~UNDER SEAL~~

21
22 A. Introduction

23 Defendant has moved separately for an order dismissing the pending prosecution on
24 the ground of "vindictive prosecution" (his "Twiggs Motion") and for an order dismissing the
25 prosecution on the ground of "outrageous government conduct," and to suppress evidence
26 obtained by warranted search as a sanction for that "outrageous" conduct (his "Suppression
27 Motion"). This is Plaintiff's response to those two motions to dismiss. (Defendant also has
28 separately moved to continue trial of this case. Plaintiff will separately respond to that motion.)

1 B. Argument

2
3 DEFENDANT'S MOTION TO DISMISS FOR
4 "VINDICTIVE PROSECUTION" IS MERITLESS

5 Defendant argues: "The doctrine of vindictive prosecution precludes the
6 government from responding to a defendant's exercise of his or her rights by changing the
7 manner of the prosecution in a fashion which punishes defendant." (*Twiggs* Motion 4:8-10.)
8 The "change" he complains about appears to be the People's decision to convene a grand jury
9 rather than commence the prosecution with a preliminary examination, and to seek an
10 indictment on a count of conspiracy in addition to the nine counts alleged in the felony
11 complaint. (*Id.*, 4:5-7.) By the "exercise of his . . . rights," defendant appears to refer to his
12 "asserting his innocence and hiring counsel to defend against the false charges" (*Twiggs*
13 Motion 3:6-7), and to his "vigorous[] defense" of the charges outlined in the felony complaint
14 in a "series of hearings" before his indictment "that included discussion about the schedule for
15 a preliminary hearing." (*Id.*, 4:1-2.)

16 Initiation of a felony prosecution by indictment rather than by information is
17 hallowed by history and legal tradition. The tactical decision to proceed in that fashion in this
18 case "outraged" only defendant and his counsel. Of course the defendant asserted his
19 innocence, hired competent counsel and commenced a vigorous defense. That fact gives
20 defendant no cause to complain that counsel for the People, for their part, have engaged in a
21 vigorous prosecution of him.

22 Defendant relies primarily on *Twiggs v. Superior Court* (1983) 34 Cal.3d 360 and
23 *United States v. Goodwin* (1982) 457 U.S. 368 [73 L.Ed.2d 74] to support his claim that his
24 prosecution is merely "vindictive."

25 An important and oft-cited limitation on the *Twiggs* doctrine – quite overlooked by
26 defendant – was discussed in *People v. Johnson* (1991) 233 Cal.App.3d 425:

27 California decisions have refrained from presuming vindictiveness
28 in a prosecutor's pretrial charging determinations. (*People v. Hudson*

1 [(1989)] 210 Cal.App.3d [784] at p. 788; see *People v. Farrow* (1982)
2 133 Cal.App.3d 147, 152 ; see also *Twiggs v. Superior Court* (1983) 34
3 Cal.3d 360, 368-373 [considerations favoring application of
4 presumption only in posttrial contexts apply when, after mistrial occurs
5 and defendant asserts right to jury retrial by rejecting plea bargain,
6 prosecutor amends information to charge five additional prior felony
7 convictions].) Such a presumption would be unworkable in the pretrial
8 context; since section 1009 allows the prosecution to amend the charges
9 against a defendant at any time to include offenses shown by evidence at
10 the preliminary hearing, and since a defendant can assert innumerable
11 pretrial rights, a defendant could assert that retaliation was the motive
12 for any amendment in the charges. (34 Cal.3d at pp. 372-373.)
13 Moreover, as the United States Supreme Court has observed, “[t]here is
14 good reason to be cautious before adopting an inflexible presumption of
15 prosecutorial vindictiveness in a pretrial setting. In the course of
16 preparing a case for trial, the prosecutor may uncover additional
17 information that suggests a basis for further prosecution or he simply
18 may come to realize that information possessed by the State has a
19 broader significance.” (*United States v. Goodwin* [(1982)] 457 U.S.
20 [368] at p. 381 [73 L.Ed.2d [74] at p. 85].)

21 (233 Cal.App.4th at p. 447-448.)

22 Accord, *In re Bower* (1985) 38 Cal.3d 865, 875, which noted the United States
23 Supreme Court’s observation in *Goodwin, supra*, that “The timing of the prosecutor’s action is
24 important because ‘[a] prosecutor should remain free before trial to exercise the broad
25 discretion entrusted to him to determine the extent of the societal interest in prosecution. An
26 initial decision should not freeze future conduct. [Fn. omitted.] As we made clear in
27 *Bordenkircher v. Hayes* (1978) 434 U.S. 357 [54 L.Ed.2d 605]], the initial charges filed by a
28 prosecutor may not reflect the extent to which an individual is legitimately subject to
prosecution.’ (*Id.*, at p. 382 [73 L.Ed.2d at p. 86].)” See also *People v. Bracey* (1994) 21
Cal.App.4th 1532, 1544 [“California courts have followed the Supreme Court in refusing to
apply a presumption of vindictiveness for prosecutorial action before commencement of trial.
[Citations].”]

1 Defendant's mistaken reading of the "vindictive prosecution" doctrine apparently
2 proceeds from his core belief that the district attorney is treating him "differently [because] he
3 is a celebrity [and] he is wealthy." (Motion 2:20-21.) He notes that an "immense amount of
4 government resources . . . have been devoted to" his case, and that "there has been more
5 investigation on this case than in capital murder cases or complex white collar prosecutions."
6 "The prosecution has, in essence, punished Mr. Jackson for being a celebrity and defending
7 himself." (Motion 3:15-24.)

8 The argument that equates a thorough investigation of a celebrated defendant's
9 reported crimes with "punishment" of him answers itself. Defendant surely is a celebrity. But
10 the argument "I am a celebrity. I am being punished. Therefore, I am being punished because
11 I am a celebrity" is embarrassingly post hoc. When a "celebrity" commits a crime, he should
12 expect to be prosecuted for it – not because he is a celebrity, but because he is believed to have
13 committed a crime.

14 II

15 THE PROSECUTION HAS NOT "ENGAGED IN
16 OUTRAGEOUS GOVERNMENT CONDUCT"

17
18 If there has been a defense motion in this case in which the word "outrageous"
19 wasn't used at least once, it doesn't come to mind. Defendant asks the court to reconsider all
20 of defendant's earlier, failed efforts to have the case against him dismissed "in the context" of
21 this most recent effort. But that "context" is pretty much just his rehearsal of all his old
22 complaints. A meritless argument doesn't gain substance by its repetition.

23 Defendant complains that "the sheer number of search warrants is outrageous for a
24 case of this sort. To date, more than 100 search warrants have been executed." He concludes,
25 "The obvious explanation is that the prosecutor is going after a celebrity." (Suppression
26 Motion 4:11-13.)

27 The great majority of the search warrants in this case were for business records in
28 the custody of third parties, and because they invaded no Fourth Amendment interest of the

1 defendant, they have not been challenged by him. Of the five warrants approved for the search
2 of residence or office premises prior to the grand jury proceeding, only two implicated
3 defendant's own privacy interests. Only three warrants issued subsequent to defendant's
4 indictment implicated his privacy interests and only one of them – notably, not the second
5 warrant recently approved for the search of Neverland Ranch – has been contested.

6 A more reasonable explanation for all the warrants is that the prosecutor is diligently
7 seeking evidence to support the prosecution of an individual who appears to have committed
8 serious – even “outrageous” – crimes and who relied in part on his celebrity in committing
9 those crimes.

10 Defendant's motion to dismiss the prosecution on the ground of “outrageous
11 government conduct,” with its reprise of his “I am a celebrity; therefore I am being prosecuted”
12 argument, is without merit. It should be denied

13
14 III

15 DEFENDANT TACITLY CONCEDES THAT THE
16 WARRANTED SEARCHES OF HIS RESIDENCE
17 AND HIS PERSON WERE SUPPORTED BY A
18 SHOWING OF PROBABLE CAUSE. HIS MOTION
19 TO SUPPRESS THE RESULTING EVIDENCE MUST
20 THEREFORE BE DENIED

21 Two search warrants were served on defendant on December 3, 2004: One (Search
22 Warrant 5192) authorized a limited search of certain structures at Neverland Valley Ranch for
23 particularly-described evidence. The other (Search Warrant 5196) [REDACTED]

24 [REDACTED] Each was executed with the greatest possible respect for defendant's dignity and
25 privacy.¹

26
27 ¹ When SW 5192 was executed, the Neverland Valley Ranch staff was advised that the
28 officers would not enter the main residence until 90 minutes had passed, and that Mr. Jackson
and his family were free to leave the ranch if they were so inclined. The search itself was

1 Defendant complains that the number of search warrants in this case “exceed[] any
2 reasonable limitation[]” and is “outrageous” (Suppression Motion 4:11-17). The most recent
3 warrants had “no purpose other than to shock and intimidate Mr. Jackson and to disorient his
4 legal team.” (*Id.*, 6:8-10).

5 Defendant admits there is no “per se limit on the number of search warrants that can
6 be served in a particular case” (Suppression Motion 4:14-15), and the supporting affidavits
7 make the “purpose” of the warrants readily apparent.

8 Defendant suggests that the Court’s order that defendant [redacted]
9 [redacted] could and should have been obtained upon “noticed motion” rather than by
10 application for a search warrant (Suppression Motion 9:14-15). But either way, the result
11 would have been the same – an order of court. Proceeding by way of search warrant had the
12 obvious advantage of expediency when time was of the essence, without denying defendant the
13 ability to challenge the reasonableness of the seizure in a motion to suppress [redacted]
14 [redacted]. In addition, resort to a warrant assured defendant a degree of privacy that
15 would not have attended the public hearing of a noticed motion.

16 Defendant conflates two quite distinct investigations of his conduct with young boys
17 over a decade when he complains that the prosecution “invade[d] [defendant’s] home five
18 times² in what should be a garden variety case.” (*Id.*, 5:19-24.) Defendant doesn’t define the

19 conducted in the presence of two of his lawyers and a defense investigator equipped with a
20 video camera. [redacted]

21 [redacted] arrived at the ranch in a
22 single, unmarked car.

23
24 ² Three warrants were served at Neverland Ranch over more than 10 years without Mr.
25 Jackson’s prior knowledge and consent, commencing with the Los Angeles investigation in
26 1990. The video-taped inspection of his home was accomplished without a warrant and with
27 the consent of Mr. Jackson’s lawyers. The warrant authorizing the “intimate inspection and
28 photographing of Mr. Jackson’s body” was executed at Neverland Ranch, rather than
elsewhere, at his request. (The propriety of that procedure was litigated in Mr. Jackson’s
motion for return of the photographs, pursuant to Penal Code sections 1539 and 1540. It was
upheld by the Santa Barbara Superior Court.) The reasonableness of the warranted search of

1 parameters of a "garden variety" child molestation case – presumably, he does not mean the
2 garden in which multi-million-dollar civil settlements once grew.

3 Every molestation investigation is sui generis, and by any standard, the particulars
4 of Mr. Jackson's case take it out of the ordinary.

5 Execution of the search warrants did not violate the Fourth Amendment's
6 prohibition of "unreasonable searches and seizures." If the warrants were defective or if the
7 manner of their execution violated the law, defendant would have moved to suppress the
8 resulting evidence pursuant to Penal Code section 1538.5. He did not.

9 Instead, defendant complains in his omnibus "Motion to Dismiss For Outrageous
10 Government Conduct [and] To Suppress All Evidence Seized Pursuant To Search Warrants
11 5192 and 5196 . . ." that execution of the warrants "this close to trial constitutes outrageous
12 government conduct and an abuse of the search warrant process," and sought information "not
13 critical to the prosecution of the case, and so was "unnecessary" and constituted an "unlawful
14 intrusion."

15 Investigators and prosecutors tend to rely on their own judgment and a magistrate's
16 review of search warrant applications in deciding whether a given search is "necessary." They
17 rarely seek the defendant's opinion whether particular evidence is "critical" to the successful
18 prosecution of the case against him. And if an intrusion to execute a warrant was "unlawful,"
19 defendant's remedy -- his sole remedy -- is a statutory motion to suppress the evidence
20 obtained by the search.

21 Penal Code section 1538.5, subdivision (m) declares, in relevant part:

22 "The proceedings provided for in this section, and Sections 871.5,
23 995, 1238, and 1466 shall constitute the sole and exclusive remedies
24 prior to conviction to test the unreasonableness of a search or seizure
25 where the person making the motion for the return of property or the
26 suppression of evidence is a defendant in a criminal case and the
27 property or thing has been offered or will be offered as evidence against
28 him or her."

Neverland Ranch on November 18, 2003 was later upheld by this Court.

1 That provision means what it says.

2
3 CONCLUSION

4 Defendant's "Twiggs" Motion and his Suppression Motion are without discernable
5 merit. They should be denied.

6
7 DATED: December 14, 2004

8 Respectfully submitted,

9 THOMAS W. SNEDDON, JR.
10 District Attorney

11 By: TS/
12 Gerald McC. Franklin, Senior Deputy

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1114 Santa Barbara Street, Santa Barbara, California 93101.

On December 14, 2004, I served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTIONS TO DISMISS FOR "VINDICTIVE PROSECUTION" AND "OUTRAGEOUS GOVERNMENT CONDUCT," AND TO SUPPRESS EVIDENCE FOR THOSE REASON, Etc., and a REDACTED COPY thereof, on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy there of to Mr. Sanger's Office and by faxing a true copy to Mr. Mesereau, and then by mailing a true copy to Mr. Mesereau at the address shown on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Maria, California on this 14th day of December, 2004.

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