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FRESNO SUPERIOR COURT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
CENTRAL DIVISION

PEOPLE OF THE STATE OF)	No. F04901785-6	Dept. 53
CALIFORNIA,)		
)		
Plaintiff,)		
)	ORDER REGARDING MOTION TO	
v.)	UNSEAL SEARCH WARRANT RECORDS	
)		
MARCUS DELON WESSON,)		
)		
Defendant.)		

The matter came before the Court for hearing on May 20, 2004. *The Fresno Bee*, the moving party, was represented by attorney Mr. Bruce Owdom, the Plaintiff by attorney Ms. Lisa Gamoian, and the Defendant by attorneys Mr. Peter Jones and Mr. Rafael Torres. The Court has reviewed the records of this case including, but not limited to the Motion of the Interested Party, *The Fresno Bee*, hereinafter referred to as "The Bee", responses to the motion by the Defendant and the People, the preliminary hearing transcript, the warrant affidavits, the sealing orders, and the four sets of warrants. The Court has also considered the arguments of counsel for all parties with regard to this motion.

1 It should be noted that this case has generated a
2 substantial amount of public interest. There has been extensive
3 media coverage from the time of the alleged events to the very
4 date of this hearing from national, state, and local agencies.
5 The Court is aware that there have been numerous news broadcasts,
6 talk shows, and articles about this matter. The many requests for
7 media coverage have added to the management issues the court must
8 consider.

9 Relative to its motion, the Bee requests the Court to
10 reconsider and vacate its orders sealing search warrant documents
11 entered in this case and require that all future sealing motions
12 be docketed in the public record; any sealing made without a
13 motion be conditioned on a motion being filed and a hearing
14 conducted consistent with the Rules of Court; and any sealing
15 order be narrowly tailored and supported by findings consistent
16 with the Rules of Court. This Court has considered each of the
17 issues presented by the moving party and makes the following
18 findings and order:

19 I.

20 A request for sealing of a warrant is reviewed on a
21 case-by-case basis by a judicial officer only upon request by the
22 agency that has served the warrant. Such requests are very
23 limited and subject to review once a judicial process has been
24 started. There has been no statutory or case law offered that
25 provides for a notice of sealing of a warrant that is to be filed
26 with the court. It appears to this Court that notice to the
27 public at such an early stage could greatly hinder investigations
28 and/or cause interference in such investigations.

Though there is no current provision for a formal hearing prior to the sealing of a search warrant before it is filed with the court, the law and rules related to court documents provide a fair and timely procedure for review. The filing of the sealed warrants in this case is a good example. They became part of the court record with the public order indicating the need that the warrants be sealed pending further review. The procedure allows all interested parties to address the issue, which was done. The Court finds the current procedure is fair to all concerned and declines to order the procedure suggested by the moving party.

II.

The Court previously found that *The Bee* has standing to bring a motion to unseal the warrants as the case has been filed and various hearings have been held or set. Allowing interested parties to file such motions after formal proceedings have been instituted, allows all parties to the action as well as interested parties to have a full hearing as to when such documents, or any part of them, should be unsealed and made public.

III.

The Bee cites Penal Code section 1534 as providing that search warrant affidavits shall be open to the public ten days after execution or return. The Bee further requests that the court take Judicial Notice of a failed legislative act, AB2986, arguing that the failure of this law confirms that Penal Code section 1534 provides that search warrant documents are open to the public after execution and return or expiration of ten days after issuance.

1 Judicial notice may be taken only as authorized by law.
2 (Evidence Code section 450.) The Court declines to take judicial
3 notice of AB2986. (Cf. Evidence Code section 452.) Based on
4 existing information, any attempt by this court to analyze the
5 failure of AB2986 would be an exercise in speculation.

6 Generally, records cannot be filed under seal without a
7 court order. Penal Code section 1534(a) provides as follows:

8 A search warrant shall be executed and
9 returned within ten days after date of issuance.
10 A warrant executed within the ten-day period
11 shall be deemed to have been timely executed and
12 no further showing of timeliness need be made.
13 After the expiration of ten days, the warrant,
14 unless executed, is void. The documents and
15 records of the court relating to the warrant
16 need not be open to the public until the
17 execution and return of the warrant or the
18 expiration of the ten-day period after issuance.
19 Thereafter, if the warrant has been executed,
20 the documents and records shall be open to the
21 public as a judicial record.

22 Thus, under Penal Code section 1534(a), the documents and records
23 related to a search warrant need not be opened to the public until
24 execution and return of the search warrant or the expiration of
25 ten days after its issuance

26 However, the court has inherent power to prevent
27 disclosure of even judicial records when there are "compelling
28 countervailing reasons." (*Oziel v. Superior Court (CBS, Inc.)*
29 (1990) 223 Cal.App.3d 1284, 1295; also see *People v. Hobbs* (1994)
30 7 Cal.4th 948 and *PSC Geotherman Services Co. v. Superior Court*
31 (1994) 25 Cal.App.4th 1697.) The court has the power to seal
32 material seized pursuant to a search warrant and, upon a claim of
33 privilege, to conduct an in camera review of the allegedly
34 privileged materials. (Cf. rules 243.1 et seq. of the California

1 Rules of Court.)

2 Furthermore, the phrase "documents and records of the
3 court relating to the warrant" found in section 1534(a) does not
4 include items seized pursuant to the warrant. (*Oziel v. Superior*
5 *Court (CBS, Inc.)* (1990) 223 Cal.App.3d 1284, 1299.) Unlike the
6 affidavit, return or other documents and records of the court
7 relating to the warrant, property seized under color of a search
8 warrant is not a judicial record; and the public does not have the
9 right to disclosure before it is offered as an exhibit or admitted
10 into evidence or before the defendant had been afforded a hearing
11 on the issues of suppression or return of the property.

12 Though *The Bee* relies primarily on *Press-Enterprise II*
13 and rule 243.1 to support its position that an adequate showing
14 must be made before court records are sealed, rule 243.1 contains
15 guidelines similar to the case law discussed herein, and that is
16 based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999)
17 20 Cal.4th 1178. The rules do not apply to records that courts
18 must keep confidential by law. Examples of such confidential
19 records that public access is restricted by law are records of the
20 family conciliation court, Family Code section 1818(b), in forma
21 pauperis applications rule 985(h) and search warrant affidavits
22 sealed under *People v. Hobbs* (1994) 7 Cal.4th 948.

23 As noted by *The Bee*, if no confidential informant (or no
24 confidential "official information") is involved, the warrants in
25 this case may not fall under *Hobbs* and the statutory exceptions to
26 rule 243.1. However, such information does exist in this case.

27 IV.

28 The orders sealing these warrants relied on the

1 provisions of rule 243.1. While the findings in the orders did
2 not specifically provide facts from the warrants, there is
3 sufficient reference to the documents the Court considered to
4 sustain the sealing of the warrants until further order of court.

5 This Court has made an additional review of all warrants
6 and declarations attached in light of the case record to date.
7 The warrant affidavits contain information obtained by officers at
8 the crime scene, including initial officer observations, physical
9 evidence, and interviews of witnesses. They also contain
10 information from the ongoing investigation that is very sensitive
11 in terms of its source and/or its relationship to the overall
12 determination of what happened in this incident. Addendum
13 affidavits contain similar information. The information is
14 interwoven as to make it difficult to redact parts for
15 publication. In fact, it appears that such redaction would have a
16 prejudicial affect by causing more speculation as to the balance
17 of the contents.

18 After a review of all documents, the Court finds that
19 granting the unsealing motion would not serve the interests of
20 justice. Compelling countervailing reasons override the right of
21 public access and support continued sealing of the warrant
22 information at this time. A substantial probability exists that
23 prejudice will result if the warrants are not sealed in their
24 entirety.

25 The sealing is narrowly limited to the search warrants.
26 Relevant information from the warrants will be available as the
27 case is heard. The Court further finds that no less restrictive
28 means exist to achieve the overriding interest.

1 In addition, there appears to be informant information
2 that is protected pursuant to the *Hobbs* case cited above. This
3 information would also be difficult to extract without adding to
4 speculation about the balance of the contents of the warrants.

5 The right of each party to a fair trial is one of the
6 concerns around which the issue of disclosure revolves. The
7 unsealing of the warrants at this time would greatly jeopardize
8 this basic right guaranteed by our State and United States
9 Constitutions.

10 Therefore, the motion to unseal the warrants in whole or
11 in redacted parts is denied.

12 Dated this 27th day of May 2004.

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15 R. L. PUTNAM
16 JUDGE OF THE SUPERIOR COURT
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