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Attorneys for Movant
DAVID MORSE

ENDORSED
FILED
ALAMEDA COUNTY

APR 16 2010

CLERK OF THE SUPERIOR COURT
By A. SALTA
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

IN RE SEARCH WARRANT ISSUED
DECEMBER 12, 2009

**DECLARATION OF GEOFFREY KING
IN SUPPORT OF MOTION TO QUASH
SEARCH WARRANT AND RETURN
PROPERTY**

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1. I am an attorney licensed to practice law in the state of California. I am currently a staff attorney for First Amendment Project (“FAP”). In that capacity, I am one of the attorneys of record in this matter for Movant David Morse.

3. On January 19, 2010, I traveled to the Wiley W. Manuel Courthouse at 661 Washington Street in Oakland, California and retrieved from the Clerk of the Court the search warrant issued December 12, 2009 for Morse's Sony Digital Camera, Model MVC-CD500, serial number 36459 and two 210 MB Memorex CD-R discs. A true and correct copy of the search warrant is attached hereto as Exhibit A.

5. Also on January 19, 2010, I retrieved from the Clerk of the Court the Statement of Probable Cause for the aforementioned search warrant, a true and correct copy of which is attached hereto as Exhibit C.


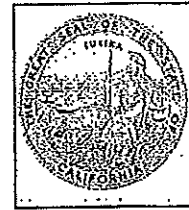
By: 
Geoffrey King

Exhibit A



SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA



SEARCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA TO:

WARRANT NO. 2009-2775

Any peace officer in Alameda County

The affidavit below, sworn to and subscribed before me, has established probable cause to believe that certain articles and property consisting of:

Place(s) to be searched:

- 1) Sony Digital Camera, model MVC-CD500, serial number 36459. Recovered from MORSE, David Bryan. (E98-1-1)
- 2) Two Memorex CD-R discs, 210 mb each. Recovered from MORSE, David Bryan. (E98-2-2)
- 3) Canon Powershot Digital Camera, model S5IS, serial number 6726216778, black in color. Recovered from LITMAN-CLEPER, Julia (E98-3-1)
- 4) Nikon CoolPix P50 Digital Camera, model P50, serial number 35429241, black in color. Recovered from JAMES, Carwil R. (E98-4-1)
- 5) Crucial Micro SD Media card, black in color. Recovered from backpack possessed by JAMES, Carwil R. (E98-5-1)
- 6) Samsung Flip Cell Phone, model SGH-A237, serial number RPMS 306307T, black in color. Unknown owner. Located on service road West of University House. (E116-1-1)

Property to be seized:

Photographs, videos, text messages, email addresses, telephone numbers, names and/or nicknames associated with telephone numbers, voicemail messages, "Phone Book" or "Contacts", dates, times, and telephone numbers of the recent call activity, any and or all electronically stored data.

Night service: [If initialed by judge } for good cause, night service is authorized: _____

Disposition of property: Any item seized during the lawful service of this Search Warrant shall be disposed in accordance with law by the University of California Police Department upon adjudication of the case. The officers serving this search warrant are also hereby authorized, without necessity of further court order, to return seized items to any known victims(s) if such items have been photographically documented.

12/12/09 2:40p
Date and Time warrant issued

Judge of the Superior Court

EXHIBIT B

FILED
ALAMEDA COUNTY

DEC 14 2009

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

◆ AFFIDAVIT ◆

Affiant's name and agency:

Detective Nicole Miller #32, University of California Police Department, Berkeley

Incorporation: The facts in support of this warrant are contained in the Statement of Probable Cause which is incorporated by reference. Incorporated by reference and attached hereto are Exhibit 1A, describing the places(s) to be searched; and Exhibit 1B, describing the evidence to be seized.

Evidence type: (Penal Code § 1524)

- ☐ Stolen or embezzled property.
- ☒ Property or things used as a means of committing a felony.
- ☐ Property or things in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing its being discovered.
- ☒ Property or things that are evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- ☐ Property or things consisting of evidence that tends to show that sexual exploitation of a child, in violation of Penal Code § 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Penal Code § 311.11 has occurred or is occurring.
- ☐ **Videotaping Order:** In order that the execution of this warrant, the condition of the premises and materials, and the relationships of each to others be fully documented, it is directed that a videotape record be made.
- ☐ **Night Service:** [If checked] Authorization for night service is requested based on information contained in the Statement of Probable Cause, filed herewith.

Declaration: I declare under penalty of perjury that the information within my personal knowledge contained in this affidavit, including all incorporated documents, is true.

Saturday, December 12, 2009

Date

[Signature] #32
Det. Nicole Miller #32, Affiant

EXHIBIT C

STATEMENT OF PROBABLE CAUSE

Affiant Introduction

My name is Nicole A. Miller and I am employed as a police officer for the University of California Police Department (UCPD) in Berkeley, California. I have been employed by the department for eight years and a police officer since February of 2007. I am currently assigned to the Criminal Investigation Bureau as a detective. During my employment with UCPD I have had the opportunity to work numerous demonstrations and protests.

Case Background

On 12/11/09 at 2306 hours, several University of California Police Department (UCPD) Officers responded to the report of a large group of people, approximately 75-100, walking westbound on Hearst Avenue, near Euclid Avenue in Berkeley, CA. It was reported that some members of the group were wearing ski masks and throwing trash cans at businesses and passing cars. At 2313 hours UCPD dispatch reported that the group was headed to University House, the home of the University of California at Berkeley, Chancellor. UCPD dispatch also reported at 2313 hours, that the group was attempting to break into the Chancellor's house.

UCPD Officers responded to the Chancellor's house with emergency lights and sirens and observed a large group of people around the driveway of the house and around the front door of the house. Some members of the crowd began to disperse as officers arrived. Officers could see that members of the crowd were holding items in their hands that were burning. Some members of the group threw burning items at marked patrol cars arriving in the area, at the Chancellor's house and into the foliage surrounding the house. Officers also reported seeing flashes of light similar to those of a camera flash in the area of the house.

Officer Wyckoff #48 detained and arrested MORSE, David (WM-41) as he was running down the front steps on the south side of the Chancellor's house. At the time of his arrest MORSE had a camera in his hand that was seized as evidence. MORSE also had two CD-R discs in his possession that were seized as evidence.

Officers Syto #41 and Wong #88 located BOWIN, Zachery (WM-21-S), ALLEN, Donnell (MB-41-O) and MILLER, Angela (FW-20-S) hiding in the creek directly southeast of the Chancellor's house. BOWIN, ALLEN and MILLER were detained and arrested. While searching the creek area southeast of the Chancellor's house Officer Odyniec #79 located a subject who attempted to flee. Officer Odyniec #79 pursued and detained the subject who was identified as JAMES, Carwil R. (MB-24-O). During a search subject to arrest a camera and Micro SD media card were located in the backpack that JAMES had in his possession.

Sgt. Tucker #13 and Officer Choo #71 located, detained and arrested, LITMAN-CLEPER, Julia (FW-20-S) and THATCHER, Laura (FW-21-S) near the garage of the Chancellor's house. While searching LITMAN-CLEPER subject to arrest Officer Choo #71 located a camera on LITMAN-CLEPER's person. Officer Choo #71 seized the camera as potential evidence.

Officer Garlick #50 detained, and later arrested, an individual on Hearst Avenue, directly north of the Chancellor's house. The individual was wearing a dark colored bandana that covered the lower portion of his face. Officer Garlick #50 identified the subject as FRIESEN, John (MW-25-O) who had been arrested earlier for trespassing at Wheeler Hall. FRIESEN spontaneously stated to Officer Garlick #50 that he had been "walking with a group of people. They were chanting "whose streets, our streets".

Upon further investigation of the Chancellor's house substantial damage was discovered. Numerous light leading up to the home had been broken and glass from the fixtures was scattered on the ground. Several large terra-cotta planters had been broken. Pieces of the planters as well as the shrubs planted in them were scattered around the front yard and up the stairs to the entry of the house. A large garbage can was lying in of the front door to the house and recyclables and garbage were strewn around the front porch. The remains of a hand made torch were located directly outside the front door to the residence. The window to the east of the front door was shattered by a piece of terra-cotta planter. The window was hit with enough force to break the window frame.

There was a footprint to the window west of the front door but no further damage. The next window to the west was hit with an unknown object with enough force to cause glass to spray five feet into the room.

The Chancellor's wife stated that she heard chanting that sounded close to the house. She then heard several loud bangs on the south side of the house and feared that the group was attempting to enter the house. The chanting and disturbance frightened the Chancellor's wife and she retreated upstairs to a safe location. She woke the Chancellor and he called for police assistance. Both the Chancellor and his wife were visibly shaken by the incident.


Based on my training and experience I know that individuals that take part in demonstrations and protest regularly take photographs and videos of their events. The photographs and videos are often later posted to internet websites or used to promote future events. Photographs, videos and other documents are often stored or saved on to digital media such as Compact Discs (CDs), Digital Versatile Discs (DVDs), digital media cards, hard drives and smart phones.

I also know that cell phones are used to communicate event locations and rally points. These communications can be in the form of voice and text messages. It is also common practice for individuals that use cell phones to keep contact information for their associates in "Phone Book" and or "Contacts" lists.

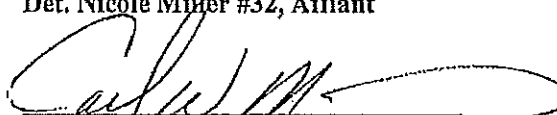
I request that the court authorize the search of cameras, CDs, DVDs, media cards and any other digital media located during the above mention incident. I further request that the court authorize the ability to bypass all electronic security features such as password protection and encryption on cellular phones. I believe that the items seized during the above mentioned arrests will provide further evidence of the criminal acts that were committed. I also believe that the items seized will provide investigative leads relevant to this criminal investigation.

Declaration: I declare under penalty of perjury that the information within my personal knowledge contained in this statement of probable cause is true.

12/12/09 1840
Date and Time

 #32
Det. Nicole Miller #32, Affiant

12-12-09, 6:39 p
Date and Time


Judge of the Superior Court