

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. 2:14-cr-00106-GEB

Plaintiff,

V.

DONALD J. PEEL,

Defendant.

ORDER DENYING DEFENDANT'S MOTION
TO SUPPRESS EVIDENCE AND MOTION
TO DISMISS INDICTMENT

Defendant moves to suppress evidence and "dismiss the case for violation of [his] due process rights" based upon the alleged seizure of Defendant's "legal materials during transit from state custody to federal custody." (Def.'s Mot. to Suppress 1:16-18, ECF No. 8; Def.'s Mot. to Dismiss 1:16-19, ECF No. 10.) In essence, Defendant argues: "Federal law enforcement took his jail property when he was taken into federal custody, and he has not seen his property since. [Defendant] contends that the property included confidential attorney-client communications which [he] was preparing to send to his attorney." (Def.'s Mot. to Suppress 2:11-14; Def.'s Mot. to Dismiss 2:11-14.) Defendant also contends that the FBI agents who seized his legal materials "had the ability to use [his] confidential legal communications to build a prosecution strategy." (Def.'s Mot. to Dismiss 2:17-20.) No evidence was filed in support of either defense motion.

1 The government opposes both motions, rejoining they
2 "are unsupported by any evidence . . . [and] should be denied."
3 (Gov't Opp'n 1:23-24, ECF No. 13.) The government submitted the
4 declarations of FBI Special Agents ("SAs") Peter Jackson and
5 Denise Farmer in support of its opposition. The SAs aver:

6 On April 2, 2014, [the SAs] met with deputies
7 from the Siskiyou County Sheriff at the
8 Shasta County Jail and took custody of the
9 defendant . . . [The SAs] transported the
defendant from the Shasta County Jail to the
Federal Courthouse in Sacramento. The
Siskiyou County deputies gave [the SAs] the
10 personal belongings of the defendant.

11 Upon arriving at the Federal Courthouse, [SA
12 Jackson] showed the defendant a sign that
13 said the only items that were permitted to be
brought through booking with the U.S.
14 Marshals Service are prescription drugs and
money. [SA Jackson] showed the defendant the
check that was included in his personal
15 belongings, which [he] had removed from the
bag provided by Siskiyou County deputies. [SA
Jackson] confirmed with the defendant he had
no prescription drugs in the bag.

16 Upstairs at the Marshals booking area, [SA
17 Jackson] heard the defendant ask the deputy
about taking legal materials through booking,
18 and [SA Jackson] heard the deputy US Marshal
refuse to accept what [SA Jackson] described
19 to the deputy was a manila envelope with
paperwork the defendant was calling his legal
material. [SA Jackson] informed the defendant
20 that all of the items provided to the FBI by
the Siskiyou County deputies would be booked
21 into the evidence vault at the Sacramento FBI
office with the exception of the defendant's
check, which was provided to the deputy US
22 Marshals in the booking area. [SA Jackson]
informed the defendant that he or his
23 attorney could make arrangements to retrieve
any legal paperwork materials in his personal
24 belongings from the Sacramento FBI office.
[The SAs] took part in booking [the
25 defendant's] belongings into evidence the
26 same day.

27 In the course of booking the [defendant's]
28 belongings, [the SAs] did not observe

1 anything that appeared to be communication
2 between the defendant and any attorney, nor
3 did [they] observe any information that
appeared to reflect a legal strategy or
notes.

4 (Decl. of Special Agent Peter Jackson ("Jackson Decl.") ¶¶ 1-10,
5 ECF No. 13-1 (paragraph numbers omitted); see also Decl. of
6 Special Agent Denise Farmer ("Farmer Decl.") ¶¶ 1-9, ECF No. 13-
7 2.) SA Farmer further declares that on May 16, 2014, she
8 "confirmed with the evidence vault in Sacramento that nobody,
9 including any member of the defense team," has reviewed the "the
10 items that were booked on April 2, 2014." (Farmer Decl. ¶ 10.)

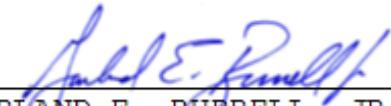
11 Whether couched as a motion to suppress or a motion to
12 dismiss the indictment, Defendant has the burden of proving the
13 requested relief should be granted under the applicable legal
14 standard. See United States v. Ruehle, 583 F.3d 600, 608 (9th
15 Cir. 2009) ("The party asserting the [attorney-client] privilege
16 bears the burden of proving each essential element."); United
17 States v. Haynes, 216 F.3d 789, 796 (9th Cir. 2000) ("[A] claim
18 of outrageous government conduct premised upon deliberate
19 intrusion into the attorney-client relationship will be
20 cognizable where the defendant can point to actual and
21 substantial prejudice." (quoting United States v. Voigt, 89 F.3d
22 1050, 1066 (3d Cir. 1996) (internal quotation marks omitted)).

23 Here, Defendant has not satisfied either legal
24 standard. See Ruehle, 583 F.3d at 607-08 (discussing the elements
25 of the attorney-client privilege); United States v. Stringer,
26 III, 535 F.3d 929, 941-42 (9th Cir. 2008) (stating the elements
27 of an outrageous government conduct claim based upon interference
28 with the defendant's attorney-client relationship). Each motion

1 is based upon mere speculation; "[t]here is not a scintilla of
2 evidence before the court at this time to suggest that the [SAs]
3 misconducted themselves" in handling Defendant's jail property.
4 United States v. Gomez-Barajas, 617 F. Supp. 1163, 1174-75 (S.D.
5 Cal. 1985). Further, the record belies Defendant's unsupported
6 contentions.

7 For the stated reasons, each defense motion is DENIED,
8 but the hearing scheduled for the motion is still scheduled as a
9 status hearing.

10 Dated: May 21, 2014

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13 GARLAND E. BURRELL, JR.
14 Senior United States District Judge
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