

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD J. PEEL,

Defendant.

No. 2:14-cr-00106-GEB

**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  
10          defendant from the Shasta County Jail to the  
11          Federal Courthouse in Sacramento. The  
12          Siskiyou County deputies gave [the SAs] the  
13          personal belongings of the defendant.

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

25          Upstairs at the Marshals booking area, [SA  
26          Jackson] heard the defendant ask the deputy  
27          about taking legal materials through booking,  
28          and [SA Jackson] heard the deputy US Marshal  
29          refuse to accept what [SA Jackson] described  
30          to the deputy was a manila envelope with  
31          paperwork the defendant was calling his legal  
32          material. [SA Jackson] informed the defendant  
33          that all of the items provided to the FBI by  
34          the Siskiyou County deputies would be booked  
35          into the evidence vault at the Sacramento FBI  
36          office with the exception of the defendant's  
37          check, which was provided to the deputy US  
38          Marshals in the booking area. [SA Jackson]  
39          informed the defendant that he or his  
40          attorney could make arrangements to retrieve  
41          any legal paperwork materials in his personal  
42          belongings from the Sacramento FBI office.  
43          [The SAs] took part in booking [the  
44          defendant's] belongings into evidence the  
45          same day.

46          In the course of booking the [defendant's]  
47          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.)

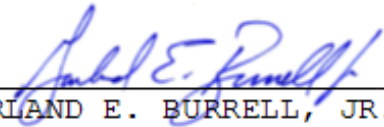
11 Whether couched as a motion to suppress or a motion to  
12 dismiss the indictment, Defendant has the burden of proving the  
13 requested relief should be granted under the applicable legal  
14 standard. See United States v. Ruehle, 583 F.3d 600, 608 (9th  
15 Cir. 2009) ("The party asserting the [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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14 GARIAND E. BURRELL, JR.  
15 Senior United States District Judge  
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