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INTERO

Jobs demanded return of iPhone

Apple met with police to seek investigation

BY RYAN THOMAS RIDDLE
Daily Post Staff Writer

Apple CEO Steve Jobs took matters into his own hands to retrieve a next-generation iPhone prototype, documents released yesterday revealed.

San Mateo County Superior

Court Judge Clifford Cretan yesterday ordered unsealed a 10-page sworn statement with details written by San Mateo Sheriff's Detective Matthew Broad to obtain a warrant to search the car and home of Gizmodo.com editor Jason Chen.

COP TELLS STORY

Read how the case unfolded in the detective's own words. We reprint his sworn statement inside. **SEE PAGE 8.**

Broad's affidavit reveals that Jobs personally contacted Gizmodo editor Brian Lam to request the prototype's return on April 19, the day the site published a story about the phone [See APPLE, page 51]

Omission called 'disturbing'



CHEN

BY JAMIE MORROW
Daily Post Staff Writer

The word "journalist" is never used in the affidavit seeking a warrant to search Gizmodo editor Jason Chen's home.

Neither is "news" or "newsroom." Chen is never identified as an editor, and

Gizmodo is referred to as an "Internet-based magazine."

This omission is crucial because San Mateo County Superior Court Judge Clifford Cretan, who approved the search warrant, may have lacked key information needed to determine whether state and federal

shield laws that protect journalists and newsrooms should have made police seek a subpoena instead of being able to raid Chen's home and car, according to First Amendment expert Peter Scheer.

"What is most disturbing..." [See JOURNO, page 51]



APPLE CEO STEVE JOBS speaks at an event at Apple in Cupertino in this April 8 file photo. AP photo.

THE UPDATE

-162.79

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10,620.16	2,346.85 - 47.51	71.61 - 2.79
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NEW SCHOOL CHIEF: The Mountain View Whisman district school board will vote Thursday on a contract to hire Craig Goldman. [See THE UPDATE, page 4]

Pair found dead at dry cleaners

Police: Shooting may be murder-suicide

BY RYAN THOMAS RIDDLE
Daily Post Staff Writer

A man and a woman were found shot dead inside a Mountain View dry cleaning shop yesterday in what police said was possibly a murder-suicide.

Police wouldn't identify the two, but a family friend told the Post it was the owners of the dry cleaners — and that

the man was very upset the day before. Superior Court records show that the owners of the shop are Cho Chang and In Ku Lee.

An employee walked into Vogue Cleaners at 595 Escuela Ave. at 6:45 a.m. and discovered the bodies. She promptly called police but authorities [See SHOOTING, page 48]



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NEWS

APPLE

[From page 1]

and photographs of it, but Lam refused to do so, unless the company provided "confirmation that it is real, from Apple, officially," according to an e-mail message that was included in the affidavit.

The next day, on April 20, Broad met with two-high ranking Apple executives and the company's lawyer, George Riley.

Apple representatives said the phone was much more valuable than the \$5,000 paid by Gizmodo to obtain it. Riley told Broad that Gizmodo's actions were "immensely damaging to Apple," because people would hold off buying iPhones until the new one was released.

At 7 p.m. on April 23, Cretan signed a warrant authorizing Broad to search Chen's Fremont home and seize his computers and other equipment, which police did that same evening — breaking down a door in the process.

But authorities said yesterday that it wasn't pressure from Apple that spurred the investigation.

"Apple didn't push anybody around. Apple provided the information to us," said San Mateo Chief Deputy District Attorney Steve Wagstaffe. "As we do with any group, any corporation, we could say, 'That's interesting, go away.' Apple is no different from any other victim we deal with."

While Apple is a member of the board of the high-tech crimes unit Broad belongs to known as REACT, the company insists it didn't use its influence to pressure law enforcement.

"We reported what we believe was a crime, and the DA of San Mateo County is taking it from there," said Katie Cotton, Apple spokeswoman.

Peter Scheer, executive director of San Rafael-based First Amendment Coalition, said police may have felt pressured without Apple doing anything wrong.

"They were no doubt consulting with

Apple, and Apple was no doubt very interested in seeing an investigation proceed in high gear," said Scheer. His group was one of many that sought to have the affidavit unsealed.

"It's fair to ask the question, did [investigators] use a warrant rather than a subpoena because they believed they were under enormous pressure," said Scheer. "And if so, was that pressure from Apple?"

According to the statement, the saga began March 25 when Apple engineer Robert "Gray" Powell left the iPhone prototype in the bar area of Redwood City's Gourmet Haus Staudt restaurant. Brian Hogan, 21, found the phone and began a bidding war with several tech publications for the exclusive.

Hogan's roommate, Katherine Martinson, contacted investigators to absolve herself of any wrongdoing. She said Hogan tried to reboot the phone by plugging it into his computer and hers without her permission. She also told investigators Hogan later showed her a box of \$5,000 in a stack of \$100 bills.

Moreover, she said Hogan knew the phone belonged to Powell and refused to return it to him or Apple. Gizmodo offered Hogan an additional \$3,500 if Apple formally announced the device by July, according to the affidavit.

Now, Chen is under investigation for theft, receiving stolen property and damaging property, according to the affidavit. The affidavit also suggests Hogan and a third roommate, Thomas Warner, also may face criminal charges, and alleges the two panicked and attempted to hide evidence when they caught wind of the criminal investigation.

Nobody, including Chen, has been charged with any crime.

The investigation prompted a debate over whether Chen should have been protected from the search by California's shield laws.

and bring that information back to the court before Cretan. At that point, Chief Deputy District Attorney Steve Wagstaffe said, Chen's attorney will have the opportunity to contest the special master's findings before the judge.

'Not journalistically created'

Wagstaffe said Detective Matthew Broad, who obtained the warrant, and Deputy District Attorney Chris Feasel, who reviewed Broad's affidavit before it went before Cretan, understood that "there would be a First Amendment consideration on this, that we were dealing with someone in that field [journalism]."

He said the search was appropriate because what authorities were seeking "was not journalistically created material, but what could be evidence of a crime."

But Scheer says Chen's status as a journalist should have been noted in the documents given to Cretan when the warrant was sought.

"What we have in front of us is a fairly complete record of what they gave the judge," he said of the affidavit. "Clearly this is information that the judge should have had. ... As the record stands now, it appears they omitted one way or another to tell the judge this crucial fact. That may have affected his willingness to unseal the entire record."

SAGA

[From page 15]

Miranda Advertisement to Warner and Warner waived his rights. Warner subsequently directed us to a bush located on the north side of Harding Ave at the intersection of Lancaster Way, Redwood City. In the bush, I located a 512 MB Memorex thumb drive and a 1GB Lexar Media compact flash card. The Lexar 1GB flash card appeared to be the same type that would be utilized by the previously mentioned and seized Canon SLR camera.

Sticker found at gas station

Continuing on 4/22/2010 at approximately 0230 hours, I went to the Chevron Gas Station located at 585 Whipple Avenue in Redwood City. I conducted a search of the premises and located the missing Apple prototype sticker in the parking lot near the entrance to the convenience store.

On 4/22/2010 at approximately 1245 hours, Apple employee Venkat Memula delivered the prototype iPhone to me at the REACT San Mateo office to be retained as evidence in the case.

Continuing on 4/23/2010, I conducted a query on the address 40726 Greystone Terrace in Fremont. The address was where Bruce Sewell of Apple reportedly retrieved the stolen iPhone from Suspect Jason Chen. The address was listed on the database Clear as being occupied by Jason Chen (2/16/1981) via a credit bureau source. The record produced by Clear also listed Chen as the owner of the residence. From my prior experience, I have found the Clear database to be accurate and reliable.

Det. Josh McFall conducted a DMW search for Chen and located DMV CDL ..., The license's record possesses a photograph of a male that appears to be the same male who identified himself as Jason Chen while showing the stolen iPhone on one of the videos that was found on Gizmodo.com.

Homing in on Chen's place

Conclusions: Based upon fact that Witness Bruce Sewell met Jason Chen at 40726 Greystone Terrace in Fremont and Chen returned the stolen iPhone to Sewell at that location, the fact that the Clear database lists Chen as the owner of the residence, the fact that Brian Lam identified Chen's address as the above listed residence, and upon the fact that the DMV photograph associated with Jason Chen appears on Gizmodo.com with the stolen iPhone, I believe Suspect Chen is currently residing at 40726 Greystone Terrace in Fremont, Alameda County, CA.

Based on my training and experience as well as the statements of Witness Katherine Martinson, Bruce Sewell, and upon the fact that digital evidence was posted on the website Gizmodo.com with Jason Chen's image, I believe that evidence of the theft of the iPhone prototype, the vandalism of the iPhone prototype, and the sale of its associated trade secrets will be found in and/or upon the items requested in Appendix A.

Digital evidence sought

Based on my training and experience, I know that computers, cameras, and other digital storage devices would likely have been utilized in this case to create copies of the iPhone prototype and to communicate with co-conspirators regarding the sale, transfer, and publication of the iPhone prototype. I therefore believe evidence in the form of digital images, email communications, instant message communications, internet files associated with searches for Gray Powell and/or iPhone prototypes, contact lists, address books, written notes, documents, telephone call records, text messages, and other information requested in Appendix A will be located in or upon the items sought in this warrant.

Based upon my training and experience, I also know that information stored on digital storage devices can remain on said devices for an indefinite period of time and that even deleted data and/or files can often be recovered with the use of specialized forensic tools.

I therefore pray that a search warrant be issued so the items set forth in Appendix B can be recovered.

I also request that, upon adjudication of the case(s) against all defendant(s) in this action, including the resolution of any and all appeals, and the written concurrence of the District Attorney's Office, the property be disposed of in accordance with the procedures set forth in California Penal Code 1407 to 1422, without the necessity of a further Court Order issued pursuant to California Penal Code 1536.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

(Signature)

Det. Matthew Broad

San Mateo County Sheriff's Office.

Subscribed and sworn to before me this 23 day of April, 2010

(SEAL)

(Signature)

[See SAGA, page 55]

JOURNO

[From page 1]

ing is the absence, at least on the face of all these records, alerting the judge to the fact that the subject of the proposed search is a journalist. The law, both at the state level and at the federal level, makes clear that when police are conducting a search of evidence or possible evidence in possession of a journalist, they must use a subpoena, not a warrant," Scheer told the Post yesterday. Scheer runs the First Amendment Coalition in San Rafael, an organization involved in petitioning Cretan to unseal the affidavit seeking the search.

The district attorney could have originally served Chen with a subpoena for records relating to the iPhone story. Use of a subpoena, unlike a warrant, gives the recipient an opportunity to hire a lawyer, to consider his options, and to assert any defenses or privileges that might be available.

Search agreement reached

That process is very similar to an agreement Chen, his Palo Alto attorney Thomas Nolan and the district attorney's office reached yesterday. Under the agreement, a "special master" — a third-party attorney appointed as an arm of the court — will, along with a forensics expert, review the material, determine what is protected and what is relevant,



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