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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAR 17 2005

GARY M. BLAIR, Executive Officer
BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

) Case No. 1133603
)
) **OBJECTION TO CALLING OF GRAND JURORS AS WITNESSES**
)
)
) Honorable Rodney S. Melville
) Date: March 17, 2005
) Time: 8:30 am
) Dept: SM 8
)
)
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Yesterday, March 16, 2005, the District Attorney informed Mr. Jackson's lawyers that he

OBJECTION TO CALLING OF GRAND JURORS AS WITNESSES

1 intended to call two members of the Santa Barbara County Grand Jury to testify in trial today,
2 March 17, 2005. Mr. Jackson objects on the grounds that it is inappropriate and prejudicial to
3 call grand jurors to testify before the trial jury and that the District Attorney has failed to comply
4 with Penal Code Section 1054 et seq. regarding these particular proposed witnesses.
5 Furthermore, the District Attorney has taken advantage of his inside knowledge and connection
6 to the grand jurors in what were otherwise secret proceedings.

7 II.

8 **IT IS IMPROPER TO CALL GRAND JURORS TO TESTIFY BEFORE A TRIAL JURY**

9 Grand Jurors are empaneled to perform a statutory function which is subject to secrecy.
10 Penal Code Section 924.1 prohibits grand jurors from disclosing testimony or evidence except
11 upon order of the court. Section 924.2 defines the circumstances under which the court could
12 compel a grand juror to testify. It is limited: the court "may require a grand juror to disclose the
13 *testimony* of a witness examined to ascertaining whether *it* is consistent with that given by the
14 witness before the court." (Emphasis added) There is no exception for calling grand jurors to
15 testify about procedures or to bolster the prosecutions case on matters that were not part of the
16 testimony.

17 Furthermore, the record of testimony before the grand jury must be properly preserved.
18 The purpose of Section 924.2 has been superceded by this requirement which has been made
19 more stringent by case law. See *Cummiskey v. Superior Court* 3 Cal.4th 1018. In other words, it
20 is up to the prosecution to make an adequate record before the grand jury. If a matter did not
21 appear on the record, there is no basis for contending that there was "unrecorded" testimony.

22 - Therefore, either testimony is on the record or it is not. If it is, the transcript should
23 prevail. If it is not, the prosecution cannot come in and supplement it without violating the
24 Supreme Court's requirement that an accused be given a complete transcript. Otherwise, the
25 minimal protections afforded by the courts to allow regulation and review of these secret
26 proceedings would be meaningless.

27 III.

28 **OBJECTION TO CALLING OF GRAND JURORS AS WITNESSES**

1 **IT WOULD BE PREJUDICIAL TO THE DEFENDANT TO ALLOW THE**
 2 **PROSECUTION TO CALL GRAND JURORS BEFORE A TRIAL JURY**

3 It would be extremely prejudicial to the defendant to have the Foreperson of the Grand
 4 Jury testify as a witness for the prosecution before the trial jury. The trial jury is supposed to
 5 make its own determination of the facts of the case and not be influenced by the fact that the
 6 defendant has been indicted. Having a fellow citizen come before them who now puts her
 7 credibility on the line for the prosecution is extremely prejudicial. How is the trial jury to
 8 evaluate this evidence?

9 Furthermore, just the impact of having a witness who has returned a true bill of
 10 indictment on all of these charges is extremely prejudicial. Here would sit the foreperson of a
 11 body who already found that Mr. Jackson had committed these offenses. Of course, we know
 12 that there was only a standard of probable cause and that it was a one-sided proceeding in which
 13 the defense was not allowed but the effect on the jury is still unpredictable, at best.

14 Assuming that the jury evaluates this witness, as they must, if she is called. They find her
 15 credible and, perhaps, likeable. There is a natural affinity between these juror and her – they are
 16 asked to evaluate a lot of the same evidence and are reviewing whether the prosecution has
 17 proven its case. How could this jury not be influenced in subtle or not so subtle ways by having
 18 this Foreperson come before them?

19 In addition, if the Forperson testifies to something outside the record, the defense would
 20 be allowed to thoroughly investigate such alleged evidence. This sould mean that we could call
 21 all of the other grand jurors to determine what their recollection is of the unrecorded events.
 22 Under Evidence Code Section 352, undue consumption of time, undue prejudice to the defendant
 23 and undue confusion to the trial jurors, it should be excluded.

24 **IV.**

25 **THE PROSECUTION HAS FAILED TO COMPLY WITH THE WITNESS**
 26 **DISCLOSURE REQUIREMENTS OF PENAL CODE 1054 ET SEQ.**

27 The prosecution provided the name of the Foreperson of the Grand Jury yesterday. They
 28

1 did not provide the address or the phone number. Nor did they provide the statement of the
2 witness except by way of a brief oral statement by the District Attorney that she would be called
3 to say that non one handled the evidence. This is insufficient to comply with either the letter or
4 the spirit of the code.

5 V.

6 THE PROSECUTION HAS BLOCKED THE DISCLOSURE OF THE NAMES AND
7 ADDRESSES OF THE GRAND JURORS MAKING IT IMPOSSIBLE FOR THE
8 DEFENSE TO CONDUCT AN APPROPRIATE INVESTIGATION

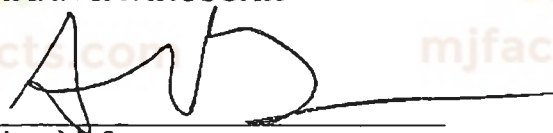
9 The District Attorney objected to the disclosure of the names and any identifying
10 information regarding the Grand Jurors in this case. The court required that the transcripts be
11 redacted to show only numbers and to not disclose their identities in any fashion. As a result,
12 until yesterday, we had no names whatsoever. Now we have the name – but no other information
13 – regarding the foreperson only. To properly investigate these matters (if the prosecutor is going
14 to be allowed to go behind the record or the grand jury proceedings) we would have to interview
15 all other grand jurors. It is obviously unfair to allow the prosecutor to exploit his confidential
16 knowledge of the otherwise secret proceeding to obtain favorable testimony from people of
17 whom the defense has no information..

18
19 CONCLUSION

20 For the reasons stated above, the prosecution should not be allowed to call the Foreperson
21 or any other member of the grand jury to testify before the trial jury in this case.

22 Dated: March 17, 2005

23 COLLINS, MESEREAU, REDDOCK & YU
24 SANGER & SWYSEN
25 OXMAN & JAROSCAK

26 By: 
27 For Robert M. Sanger
28 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

OBJECTION TO CALLING OF GRAND JURORS AS WITNESSES