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14 **MICHAEL JOSEPH JACKSON**

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

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA,

19 Plaintiffs,

20 vs.

21 MICHAEL JOSEPH JACKSON,

22 Defendant.

) Case No. 1133603

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF MOTION
) FOR A MISTRIAL FOR *DOYLE* ERROR

) Honorable Rodney S. Melville
) Date: TBA
) Time: 8:30 am
) Dept: SM 8

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28 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A
MISTRIAL

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 04 2005

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

ORIGINAL

1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
2 MISTRIAL

3 I.

4 DOYLE ERROR WAS COMMITTED WHEN THE PROSECUTOR INVITED DUROSS
5 O'BRYAN TO COMMENT ON MR. JACKSON NOT PROVIDING MATERIALS TO
6 THE GOVERNMENT

7 We move for a mistrial, or if denied, other relief on the grounds that the prosecutor
8 committed error in violation of the Supreme Court's holding in *Doyle v. Ohio* (1976) 426 U.S.
9 610. Duross O'Bryan stated in response to prosecution questioning that he asked for additional
10 financial material and that it was not provided.

11 Mr. O'Bryan started his evaluation of Mr. Jackson's finances in 2004. Mr. Jackson:

- 12 1. Was arrested in November of 2003;
- 13 2. Asserted his right to remain silent at the time of his arrest;
- 14 3. Was charged, arraigned, indicted and again arraigned between December of 2003 and
15 April of 2004; and
- 16 4. Has been represented by counsel as of November 2003.

17 Therefore, any comment on Mr. Jackson's silence is unconstitutional and reversible error.
18 It violates Mr. Jackson's rights to: (1) post arrest silence; (2) the right to remain silent upon
19 invocation of that right; (3) the right to post indictment silence; and (4) the right to silence after
20 retaining counsel.

21 This violates Mr. Jackson's Fifth, Sixth and Fourteenth Amendment rights to due process,
22 a fair trial, effective assistance of counsel and his right against self-incrimination. It also violates
23 his rights under the California case law, statutes and Constitution. *Doyle* error requires reversal
24 unless the error was found to be harmless beyond a reasonable doubt. (*People v. Lindsey* (1988)
25 205 Cal.App.3d 112, 117.)

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1 II.

2 IF THIS MOTION IS DENIED, MR. JACKSON REQUESTS A CURATIVE JURY

3 INSTRUCTION

4 A curative instruction does not restore Mr. Jackson's rights. If, however, the Court
5 denies the mistrial motion, Mr. Jackson requests the following curative instruction:

6 "Members of the jury, the prosecution asked a question to which a witness
7 indicated that he asked for information regarding Mr. Jackson's finances which
8 was not provided. I later ordered this stricken from the record.

9 "Please remember that you are not to consider any statements that have been
10 stricken.

11 "You are also instructed that a person who has been arrested or charged in a
12 criminal case cannot be compelled to provide evidence against himself.

13 "First, there is no evidence that Mr. Jackson was ever asked to provide financial
14 evidence to the witness.

15 "Second, it would be absolutely impermissible for the government or its witnesses
16 to ask Mr. Jackson for such financial evidence.

17 "Third, it is absolutely impermissible for the prosecution or its witnesses to imply
18 that Mr. Jackson failed to provide financial evidence even if he had been asked.

19 "Fourth, you are not permitted to allow the implication that Mr. Jackson was or
20 was not asked or that he did or did not provide such evidence to enter into your
21 deliberations in any way. The prosecution has the burden of proof beyond a
22 reasonable doubt and no person accused in this country has any obligation to
23 lighten that burden of proof. It will be your job, at the conclusion of the case, to
24 determine whether or not the prosecution has been able to meet that burden based
25 on the evidence and the law."

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MISTRIAL

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III.

CONCLUSION

Therefore, the Court should grant a mistrial and, if denied, read the proposed instruction and grant whatever further relief the Court may deem just and proper.

Dated: May 4, 2005

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