

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JUN 08 2004

GARY M. BLAIR, Executive Officer

BY Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
5 1105 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
FAX: (805) 568-2398

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

NOTICE OF MOTION AND
MOTION FOR LEAVE TO
AMEND THE SENTENCING
ALLEGATION RELATING TO
COUNTS 2, 3, 4 & 5 TO
CORRECT THE DESIGNATION
OF THE PERTINENT SECTION
OF THE PENAL CODE;
MEMORANDUM OF POINTS
AND AUTHORITIES

DATE: June 25, 2004
TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

16 TO: THE CLERK OF THE COURT, AND TO MICHAEL JOE JACKSON, AND
17 TO THOMAS A. MESEREAU, JR., STEVE COCHRAN, AND ROBERT SANGER, HIS
18 ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that on June 25, 2004, the People will move the Court for
20 leave to amend the "sentencing allegation" that "Counts Two through Five are serious felonies"
21 to allege that the pertinent Penal Code section is "1192.7(c)(6)," rather than "1197.7(c)(6)."

22 ////

23 ////

mjfacts.com

mjfacts.com

mjfacts.com

Dated: June 8, 2004.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THOMAS W. SNEDDON, JR.
District Attorney

By: *Gerald McC. Frankin*
Gerald McC. Frankin, Senior Deputy

Attorneys for Plaintiff

mjfacts.com

mjfacts.com

mjfacts.com

mjfacts.com

mjfacts.com

mjfacts.com

mjfacts.com

mjfacts.com

mjfacts.com

mjfacts.com

mjfacts.com

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 WITH LEAVE OF COURT, AN INDICTMENT MAY BE
3 AMENDED AT ANY TIME TO CORRECT "ANY DEFECT
4 OR DEFICIENCY" IN THE PLEADING

5 Penal Code section 1009 declares, in pertinent part, that "The court in which an
6 action is pending may order or permit an amendment of an indictment . . . for any defect or
7 insufficiency, at any stage of the proceedings"

8 "Under the case law interpreting section 1009, the test applied is whether or not the
9 amendment changes the offense charged to one not shown by the evidence taken at the
10 preliminary examination." (*People v. Graham* (1974) 38 Cal.App.3d 251, 255. And see
11 *People v. Finnegan* (1961) 192 Cal.App.2d 151, 155 , permitting amendment of an indictment
12 to allege a prior felony conviction because "A prior conviction is not a part of the offense
13 charged, but serves only to aid ascertainment of the proper term of punishment.")

14 An amendment to correct the allegation of the particular Penal Code section that
15 defines "serious felony" as including a violation of Penal Code section 288, subdivision (a) is
16 merely technical. A sentencing allegation simply informs the defendant of a consequence of a
17 conviction on one or more of the substantive counts of the accusatory pleading. In this case,
18 the substantive charges set out in Counts Two through Five of the indictment are correctly
19 alleged. The factual point of the sentencing allegation in this case – viz., to inform defendant
20 that that a violation of section 288, subdivision (a), as alleged in Counts Two through Five, is a
21 "serious felony" – is correct, so far as it goes. In the circumstances, the fact that there is no
22 "section 1197.7, subdivision (c)(6)" in the Penal Code is probably irrelevant.

23 Given that the defendant in this case pled "not guilty" rather than "guilty" to the
24 substantive charges, a misidentification of the particular Penal Code provision that enhances
25 the punishment for a conviction of a violation of Penal Code section 288, subdivision (a) could
26 not possibly have prejudiced him, and a correction of that typographical error is, essentially, a
27 matter of housekeeping.

28 In *Patterson v. Municipal Court* (1971) 17 Cal.App.3d 84, the Court of Appeal

1 noted that "An amendment to designate the proper code section is permissible and
2 nonprejudicial if the accused is plainly informed of the nature of her offenses and the acts
3 constituting the offenses. [Citations.]" (*Id.*, at p. 88.)

4 In *Patterson, supra*, the complaint itself was amended to substitute "Welfare and
5 Institutions Code section 11482" for "Penal Code section 488" as the statute offended by the
6 conduct of Ms. Patterson in fraudulently obtaining public aid.

7 If the designation in the accusatory pleading of the statute defining a substantive
8 offense may be so amended where, in the circumstances, no prejudice to the defendant results,
9 so, too, may the purely cautionary advisements in that pleading of a "sentencing allegation" be
10 amended where, as here, the original allegation was not relied upon by the defendant to his
11 prejudice.

12 The People respectfully request leave to amend, by interlineation, so much of the
13 "Sentencing Allegations" of the pending indictment as allege that "Counts Two through Five
14 ~~are serious felonies within the meaning of Penal Code section 1197.7, subdivision (c)(6)" to~~
15 read "Counts Two through Five are serious felonies within the meaning of Penal Code section
16 1192.7(c)(6)."

17 DATED: June 8, 2004

18 Respectfully submitted,

19 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
20 County of Santa Barbara

21 By: 

22 Gerald McC. Franklin, Senior Deputy

23 Attorneys for Plaintiff
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr., Esq.
Susan Yu, Esq.
1875 Century Park East, 7th Floor
Los Angeles, CA 90067
FAX: (818) 906-2364
Attorney for Defendant Michael Jackson

KATTEN, MUCHIN, ZAVIS & ROSENMAN, Lawyers
Steve Cochran, Esq.
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
FAX: (310) 712-8455
Co-counsel for Defendant

SANGER & SWYSEN, Lawyers
Robert M. Sanger, Esq.
233 E. Carrillo Street, Suite C
Santa Barbara, CA 93001
FAX: (805) 963-7311
Co-counsel for Defendant