

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

SEP 07 2004

GARY M. BLAIR, Executive Officer
By *Carrie L. Wance*
CARRIE L. WANCE, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF

CALIFORNIA,

Plaintiff,

vs.

MICHAEL JACKSON, et al.

Defendant.

Case No.: 1133603

Order for Release of Redacted Documents

[Report Re Prosecution's Failure to Produce
Discovery and Request for Sanctions]

The redacted form of the Defendant's Report Re Prosecution's Failure to Produce
Discovery and Request for Sanctions attached to this order shall be released and placed in the
public file. The unredacted originals shall be maintained conditionally under seal pending the
hearing on September 16, 2004.

DATED: September 7, 2004

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

COPY

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MICHAEL JOSEPH JACKSON
17

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF SANTA BARBARA
20 SANTA MARIA DIVISION

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA,

23 Plaintiff,

24 vs.

25 MICHAEL JOSEPH JACKSON

26 Defendant.
27
28

CASE NO. 1133603

REPORT RE PROSECUTION'S
FAILURE TO PRODUCE
DISCOVERY AND REQUEST FOR
SANCTIONS

FILED UNDER SEAL

~~Hearing~~
~~Requested: August 16, 2004~~

1 Defendant Michael J. Jackson ("Mr. Jackson") through his counsel, hereby
2 reports to this Court the recent production of discovery pertaining, among other
3 things, to ongoing and pending motions to suppress. Sanctions are appropriate for
4 the prosecution's failure to provide discovery concerning the search of Brad Miller's
5 office and Neverland Ranch.

6 This report and request for sanctions is based upon this notice, the attached
7 memorandum of points and authorities, exhibits, the file and record and any other
8 information presented prior to a ruling hereon.

9
10 DATED: August 13, 2004

Respectfully submitted,

11 Thomas A. Mesereau, Jr.

12 Susan Yu

COLLINS, MESEREAU, REDDOCK & YU

13 Steve Cochran

14 Stacey McKee Knight

KATTEN MUCHIN ZAVIS ROSENMAN

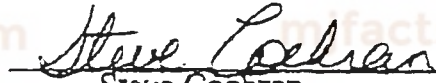
15 Robert M. Sanger

SANGER & SWYSEN

16 Brian Oxman

17 OXMAN & JAROSCAK

18
19
20 By:



Steve Cochran

Attorneys for Defendant

21 MICHAEL JOSEPH JACKSON
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1 I. INTRODUCTION

2 Again, the casual refrain by the prosecution that the defense "has everything"
3 is demonstrably false. Feigning ignorance and only after examination in court on the
4 issue, the prosecution just produced an "Operations Plan" prepared in November
5 2003 for the searches of Mr. Jackson's ranch and the office of Bradley Miller.

6 These documents contain previously undisclosed information relevant to Mr.
7 Jackson's motions to suppress evidence. Defense counsel have already commenced
8 their examination of officers concerning the search of Mr. Miller's office. The
9 prosecution held onto this document until 1 ½ business days before defense counsel
10 present witnesses on the government's knowledge prior to the search and the
11 execution of the search warrants.

12 The prosecution's last minute production deprives the defense of adequate
13 time to review the material and thwarts Mr. Jackson's ability to present his defense.
14 The failure to timely produce discovery is an affront to this Court's directive to
15 deliver information, especially in view of the prosecution's promise that the defense
16 "has everything."^{1/}

17 Defense counsel must now recall witnesses who have previously testified to
18 inquire about the information contained in the "Operations Plan." The prosecution's
19 blatant discovery abuse unnecessarily extends the hearing, thus wasting this Court's
20 time and resources. Sanctions are in order for the willful failure to produce
21 discovery.

22

23

24

25 ^{1/} To this date, and despite the continuous efforts of defense counsel to assist, the
26 prosecution has still not provided a complete set of search warrants, affidavits and
27 returns as ordered by this Court. In addition, the prosecution has not provided numerous
28 items of physical evidence for inspection and copying nor have they provided access to
all documents, police reports or property inventories. Incredibly, only today (the last
court day before the continued hearing), the prosecution disclosed for the first time, the
identity of the "confidential reliable informant" referenced to in the search warrant
affidavit.

1 II. THE PERTINENT FACTS

2 A. The Operations Plan

3 On August 12, 2004, the prosecution produced a November 14, 2003
4 "Operations Plan" (Bates No. 003499-003509) prepared by the Santa Barbara
5 County Sheriff's Department for the November 18, 2003 search of Mr. Jackson's
6 ranch. The "Operations Plan" also references a briefing concerning the search of Mr.
7 Miller's office. At the end of the document is a "Time Line" that contains a
8 chronology of events and witness interviews that took place prior to the search. This
9 information bears directly on the propriety of the warrants and the ensuing searches.

10 This "Operations Plan" was not previously produced, despite months of
11 discovery, a motion to compel and briefing about the validity of searches. Without
12 elaboration, the cover letter to the inexcusably late discovery claims that the
13 prosecution was only advised that the document exists on August 10, 2004. ^{2/} That
14 letter and the Operations Plan are attached hereto as Exhibit A.

15 B. The Motions To Suppress

16 1. Motion to Suppress, Part 1

17 On June 21, 2004, defense counsel moved to traverse affidavits, to quash
18 warrants and to suppress evidence seized in the search of Bradley Miller's Beverly
19 Hills office. The hearing was calendared for July 9, 2004. That day, defense counsel
20 requested a continuance of the hearing, in part, because of the prosecution's failure
21 to produce correspondence among Mr. Dickerman, Mr. Geragos and Mr. Miller.
22 This correspondence related directly to the government's knowledge that Mr. Miller
23 was the private investigator of Mr. Jackson's prior counsel.

24 The Court continued the Motion to Suppress, Part 1 to July 27, 2004. Defense
25 counsel examined five witnesses at this hearing: Detective Paul Zelis, Sergeant Steve
26

27 ^{2/} Defense counsel made their initial demand for discovery on January 30, 2004.
28 The "Operations Plan" is responsive to the routine categories itemized in the defense
discovery request. (See demand for discovery, attached hereto as Exhibit B.)

1 Robel, Detective Rod Fomey, Sergeant William Caldwell and D.A. Investigator
2 David Tonello. Each of these witnesses played an the integral role in obtaining
3 and/or executing the warrants. Defense counsel examined the witnesses about
4 briefings that occurred prior to the search.

5 The contents of the "Operations Plan" bear directly on this examination. It
6 appears to be a document distributed to the officers involved in the November 18,
7 2003 searches. It sets forth an agenda for their briefing as well as an outline of facts
8 the searching offices were asked to assume. The prosecution's failure to produce this
9 material prejudiced defense counsel's ability to elicit testimony about these very
10 issues.

11 2. Motion to Suppress, Part 2

12 On June 29, 2004, defense counsel filed their Motion to Traverse Affidavits, to
13 Quash Warrants and to Suppress Evidence under Penal Code § 1538.5. This motion
14 challenges and seeks to quash the remaining search warrants. The hearing was
15 noticed for August 16, 2004, thus giving the prosecution nearly six weeks notice.
16 Defense counsel has subpoenaed multiple witnesses to testify concerning the legality
17 of the search. The officers' knowledge and instructions prior to the search is central
18 to, among other things, the factual basis of the affidavits for the warrants, and
19 whether the government exceeded the limitations of the warrants.

20 The prosecution waited until the eve of the hearing to produce these pivotal
21 documents. Defense counsel is now forced to scramble around at the last minute to
22 digest the newly discovered information and compare that information to the
23 voluminous reports and other discovery.

24 III. THE PROSECUTION SHOULD BE SANCTIONED

25 There is no credible explanation for the prosecution's failure to produce the
26 November 14, 2003 "Operations Plan" until August 12, 2004. The prosecution has
27 found the time and effort necessary to prepare for grand jury proceedings, conduct
28 ongoing witness interviews and monitor forensic examination of seized items at the

1 expense of providing timely discovery. The effect of the prosecution's unwillingness
2 to meet its discovery obligations should no longer be borne by Mr. Jackson. ^{3/}

3 The prosecution's blatant disregard of its discovery obligations has disrupted
4 these judicial proceedings. This Court has scheduled multiple courts days for the
5 hearings on Mr. Jackson's Motions to Suppress, Parts 1 and 2. The defense is now
6 required to recall witnesses already examined, thus forcing counsel, the Court and its
7 staff to expend additional time and resources to complete this hearing.

8 The prosecution's conduct warrants appropriate sanctions, including but not
9 limited to:

10 1) a finding that the Operation Plan was subject to earlier production and
11 the prosecution wrongly withheld the material;

12 2) a finding that the prosecution misrepresented to the Court that defense
13 "has everything;"

14 3) an order allowing defense counsel to reopen the scope of exam for
15 previously-called witnesses on the motion to suppress part 1;

16 4) monetary sanctions for disruption of proceedings and the affront to this
17 Court's order re discovery;

18 5) any other appropriate relief.

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27 ^{3/} Although the defense has only had a few hours to analyze the Operations Plan,
28 it appears to disclose evidence that the prosecution has not yet provided other reports
about matters stated therein.

1 **IV. CONCLUSION**

2 The prosecution inexcusably held back the November 14, 2003 Operations
3 Plan. A remedy more than nothing is necessary to prevent further abuse.

4 Dated: August 13, 2004 Respectfully submitted,

5 Thomas A. Mesereau, Jr.
6 Susan C. Yu
7 COLLINS, MESEREAU, REDDOCK & YU

8 Steve Cochran
9 Stacey McKee Knight
10 KATTEN MUCHIN ZAVIS ROSENMAN

11 Robert M. Sanger
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13 Brian Oxman
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15 By: Steve Cochran
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17 Attorneys for Defendant
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Assistant District Attorney

CHRISTIE STANLEY
Assistant District Attorney

ERIC A. HANSON
Chief Trial Deputy

COUNTY OF SANTA BARBARA
DISTRICT ATTORNEY

August 12, 2004


Robert Singer, Esq.
Singer & Swyson, Lawyers
233 East Carrillo Street, Suite C
Santa Barbara, CA 93001

Re: Discovery Compliance

Dear Bob:

On Tuesday, August 10, 2004, we were advised of the fact that there was an operational plan written in conjunction with the search warrant on Neverland Ranch in November of 2003. Accordingly, please find attached to this letter discovery of that operational plan as pages 003499 through 003509.

Very truly yours,


Thomas W. Sneddon, Jr.
District Attorney

Robert Singer, Esq. is in receipt of the discovery items listed above

Date: 8/12/04

ROBERT M. SANGER

By: Genevieve I. Jones
Genevieve I. Jones.

TWS:jm
Attachments

cc: Steve Cochran, Esq.
Thomas A. McCann, Jr., Esq.
R. Brian Ormerod, Esq.
Susan C. Yu, Esq.

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Santa Maria, CA 93454
(805) 346-7540
FAX (805) 346-7588

[PAGES 003499 – 003509 REDACTED]

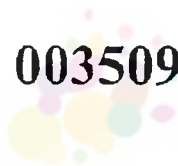




EXHIBIT B

January 30, 2004

By fax and mail

Gerald Franklin
Deputy District Attorney
1105 Santa Barbara St.
Santa Barbara, CA 93101

Re: People v. Michael Joe Jackson
Case Number 1133603

Dear Mr. Franklin:

Please accept this informal discovery request pursuant to Penal Code § 1054.5(b). On behalf of Mr. Jackson, we request the following disclosures:

1. The names and current addresses and telephone numbers of all witnesses you intend to call to testify at trial and of all percipient witnesses and potential witnesses, whether or not the prosecution intends to call such witnesses to testify against Mr. Jackson at trial. Penal Code sections 1054.1(a), 1054.1(e); Brady v. Maryland (1963) 373 U.S. 93. See also, In re Littlefield (1993) 5 Cal.4th 122;

2. All statements or utterances by Mr. Jackson, oral or written, however recorded or preserved, whether or not signed or acknowledged by the defendant including, but not limited to, all audio and video tapes. Penal Code section 1054.1(b), 1054.1(e); Brady v. Maryland, supra;

3. The content of any statements made in Mr. Jackson's presence while being interrogated by law enforcement that were intended or might reasonably be expected to have the effect of encouraging Mr. Jackson to give a statement about the offense to the police. People v. Haydel (1974) 12 Cal.3d 190; Napue v. Illinois (1959) 360 U.S. 264;

Gerald Franklin
Deputy District Attorney

January 30, 2004
Page 2

4. All physical evidence obtained in the investigation of the case against Mr. Jackson. Penal Code section 1054.1(c), 1054.1(e);

5. Any record of criminal arrests or convictions of Mr. Jackson. Penal Code section 1054.1(d)-(e);

6. Any exculpatory evidence, information, documents, and other materials in the possession of, or that have come to the attention of, the District Attorney or of any police department involved in the investigation of the case against Mr. Jackson. Penal Code sections 1054.1(e), 1054(e). *Giglio v. U.S.* (1972) 405 U.S. 150, 92 S. Ct. 763; *Brady v. Maryland*, *supra*;

7. The identity and whereabouts of any material informants. Penal Code section 1054.1(c), 1054(e). *People v. Hobbs* (1994) 7 Cal.4th 978;

8. All written or recorded statements of witnesses who will testify at trial. Penal Code section 1054.1 (e)-(f);

9. All written or recorded statements of percipient witnesses, whether or not they will be called to testify. Penal Code section 1054.1 (e)-(f);

10. Any record of criminal arrests or convictions (whether felonies or misdemeanors) of any witness to be called to testify against Mr. Jackson. Penal Code section 1054.1 (e), 1054(e); *People v. Lang* (1989) 49 Cal.3d 991; *People v. Harris* (1989) 47 Cal.3d 1047. See, *People v. Pinholster* (1992) 1 Cal.4th 865, 938, 939; *People v. Pensinger* (1991) 52 Cal.3d 1210, 1271;

11. All records concerning arrests of any alleged victims, complaints filed against any alleged victims, or information concerning incidents of specific acts of aggression by any alleged victims, as well as the names, addresses, and phone numbers of witnesses to such acts. Penal Code section 1054.1(e); *Engstrom v. Superior Court* (1971) 20 Cal.App.3d 240, 245;

Gerald Franklin
Deputy District Attorney

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Page 3

12. All notes and reports of police officers and investigators concerning offenses charged. This includes field notes, bench notes and reports concerning all aspects of the case, e.g. the alleged crime, Mr. Jackson's arrest, law enforcement activities and observations, and conversations with witnesses. Penal Code section 1054.1(e)-(f);

13. Any evidence to be used in rebuttal of the defense case. *Izazaga v. Superior Court* (1991) 54 Cal.3d 356; *People v. Bunyard* (1988) 45 Cal.3d 1189.

14. The content and timing of communications between Larry Feldman and anyone from the sheriff or district attorney's offices.

15. The content and timing of communications between Dr. Stan Katz and anyone from the sheriff or district attorney's offices.

16. The content and timing of any communications between Tom Sneddon and anyone from the complainant's family.

17. A copy of physical evidence amenable to duplication, e.g., videotapes, audiotapes, etc.

18. Notice of evidence offered under Evidence Code §§ 1101 and 1108.

19. The results of any forensic analysis.

20. The content and timing of any communications between [REDACTED] and anyone from the sheriff or district attorney's offices.

21. The content and timing of any communications between [REDACTED] and anyone from the sheriff or district attorney's offices relating to Mr. Jackson, the complainant and/or any member of the complainant's family.

Gerald Franklin
Deputy District Attorney

January 30, 2004
Page 4

22. The content and timing of any communications between anyone from the Federal Bureau of Investigation and anyone from the sheriff or district attorney's offices.

23. All telephonic records obtained as part of the investigation into the offenses charged.

24. All search warrants and supporting affidavits for phone records sought relating to Mr. Jackson, the complainant, the complainant's family and/or the offenses charged.

Please allow this letter to serve as a reminder that the prosecution has a duty to disclose evidence favorable to the defendant pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution. (*United States v. Bagley* (1985) 473 U.S. 667, 674-78.) The prosecutor's duties of disclosure under the due process clause are wholly independent of any statutory scheme of reciprocal discovery. (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 378.)

This is a request that continues through the completion of trial. Your cooperation and quick response to this request is appreciated.

Sincerely,

Steve Cochran

Steve Cochran

Benjamin Braffman

Benjamin Braffman

Mark J. Geragos

Mark J. Geragos

Robert M. Sanger

Robert M. Sanger

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Katten Muchin Zavis Rosenman (the "business"), 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

() I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

() (By Personal Service) I delivered such envelope by hand to the addressee(s) as indicated above.

(X) By Facsimile Machine, I caused the above-referenced document(s) to be transmitted to the persons listed below:

On August 13, 2004, I served the foregoing documents described as REPORT RE PROSECUTION'S FAILURE TO PRODUCE DISCOVERY AND REQUEST FOR SANCTIONS on the interested parties in this action as follows:

Thomas W. Sneddon, Jr.
District Attorney of Santa Barbara
1105 Santa Barbara Street
Santa Barbara, CA 93101

Fax: 805-568-2398

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

Executed on August 13, 2004, at Los Angeles, California.


Marsha Davis

PROOF OF SERVICE
1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On SEPTEMBER 7, 20 04, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (REPORT RE PROSECUTION'S FAILURE TO PRODUCE DISCOVERY AND REQUEST FOR SANCTIONS) addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
1105 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

X FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 310-861-1007 (THOMAS A. MESEREAU, JR). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

___ MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

___ PERSONAL SERVICE

By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

___ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 7TH day of SEPTEMBER, 20 04, at Santa Maria, California.

Carrie L. Wagner
CARRIE L. WAGNER