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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 14 2004

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA BARBARA

10 SANTA MARIA DIVISION

* Unsealed
pursuant to
6/16/05 court's
order

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

No. 1133603

12 Plaintiff,

PLAINTIFF'S NOTICE OF
MOTION AND *SANCHEZ*
MOTION FOR ORDER
DIRECTING DEFENDANT TO
LODGE INCULPATORY
EVIDENCE WITH THE COURT;
DECLARATION OF GERALD
McC. FRANKLIN;
MEMORANDUM OF POINTS
AND AUTHORITIES

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

16 DATE: October 14, 2004
17 TIME: 8:30 a.m.
DEPT: TBA (Melville)

18 UNDER SEAL

19 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, STEVE
20 COCHRAN, and ROBERT SANGER, HIS ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on October 14, 2004, at 8:30 a.m. or as soon thereafter
22 as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move the
23 Court for its order directing defendant's counsel to lodge with the Court all inculpatory physical
24 evidence presently in their possession and which may come into their possession.
25

26 This motion will be based on this notice, the accompanying Memorandum of Points
27
28

1 and Authorities, such argument as may be presented at the hearing, and the records and
2 pleadings on file in this matter.  

3 DATED: October 1, 2004

4 Respectfully submitted,

5 THOMAS W. SNEDDON, JR.
6 District Attorney

7 By: 
8 Gerald McC. Franklin, Senior Deputy

9 Attorneys for Plaintiff



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1 DECLARATION OF GERALD McC. FRANKLIN

2
3 I, Gerald McC. Franklin, say:

4 1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy
5 of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the
6 People, Plaintiff in this action.

7 2. This motion for an order of the Court directing defense counsel to lodge with the
8 court all inculpatory physical evidence relevant to the pending charges is based in part on the
9 decisional law that holds it is the duty of counsel to do so even without being asked, on the fact
10 that the predecessor of the current lead counsel for the defense retained passports in his
11 possession long after it should have been turned over to the court, and on information making
12 me certain that other items of inculpatory evidence currently rest in the custody of present
13 defense counsel but have not been tendered to the court.

14 3. I am certain the defense has possession of relevant and potentially inculpatory
15 evidence which they have not tendered to the court. For instance, the defense offered a partial
16 transcript of the Bradley Miller's tape-recorded interview of the Doe family in evidence as
17 Exhibit 52 at the hearing on September 16, 2004 of their motion to suppress the evidence seized
18 from Mr. Miller's office. The tape cassette seized in the search of Mr. Miller's office, from
19 which the transcript was derived, was logged as "Item 818" on the Sheriff's Property Form dated
20 November 18, 2003. A CD of the entire contents of that tape cassette was discovered to the
21 defense on August 31, 2004. But the partial transcript tendered by the defense purports to have
22 been "Prepared August 11, 2004," and the last three pages of that transcript (pages 18 through
23 20) contain the concluding portion of the interview not heard on the original tape seized from
24 Mr. Miller's office. The conclusion that the defense obtained a more complete version of the
25 interview some time ago and kept that fact to themselves is inescapable.

26 4. I am informed that substantial personal property of the Doe family was removed
27 from their apartment in East Los Angeles by Bradley Miller and taken to a storage facility, and
28 that when their property was returned to them, some of it (including letters from Defendant to

1 John Doc and other memorabilia) was missing. I believe, and thereon allege, that the missing
2 property was retained by Defendant or his employees and that it is still in the custody of
3 Defendant's representatives.

4 5. I am informed by the evidence received in the grand jury proceeding that
5 surveillance of the Doc family was undertaken on behalf of Defendant in early 2003, including
6 the monitoring of telephone conversations and videotaping member of the Doc family and their
7 places of residence. I believe from that evidence that photographs, audio tape recordings and
8 videotape recordings were made and may still exist in the custody of Defendant's
9 representatives.

10 I declare under penalty of perjury under the laws of California that the foregoing is
11 true and correct, except as to matters stated upon my information and belief, and as to such
12 matters I believe it to be true. I execute this declaration at Santa Barbara, California on October
13 1, 2004.

14
15 
16 GERALD McC. FRANKLIN

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A. The Sanchez Decision

3 In *People v. Sanchez* (1994) 24 Cal.App.4th 1012, the Court of Appeal decided "this
4 novel question: if a defendant's lawyer delivers inculpatory writings to the trial court, under seal,
5 may the trial court furnish those writings to the prosecutor without violating either the
6 defendant's privilege against self-incrimination or the reciprocal discovery statutes (Pen. Code,
7 §§ 1054-1054.7)? Our answer is yes." (*Id.*, p. 1015; fn. omitted.)

8 The Court of Appeal based its conclusion on several premises which are relevant to
9 this motion:

10 In *People v. Lee* (1970) 3 Cal.App.3d 514, 526, the court stated it
11 was "an abuse of a lawyer's professional responsibility knowingly to
12 take possession of and secrete the instrumentalities of a crime." Its
13 discussion made clear the responsibility extended to other physical
14 evidence. (*Ibid.*) Defense counsel could withhold the physical evidence
15 for a reasonable time to examine it but then "should, as an officer of the
16 court, on his own motion turn the same over to the prosecution." (*Ibid.*)

17 Our Supreme Court extended this responsibility in *People v.*
18 *Meredith* (1981) 29 Cal.3d 682. In *Meredith* the victim was robbed and
19 murdered. One of the defendants (Scott) told his lawyer he took "the
20 victim's wallet, divided the money with Meredith, attempted to burn the
21 wallet, and finally put it in the trash can." (*Id.* at p. 686.) The lawyer
22 had his investigator retrieve the wallet from the trash can. "Counsel
23 examined the wallet and then turned it over to the police." (*Ibid.*) The
24 admissibility of the wallet was not in dispute but the testimony of the
25 investigator who retrieved it was contested. Defendant (Scott) claimed
26 the attorney-client privilege prevented the prosecution from calling the
27 investigator and eliciting the *location* of the retrieved wallet.

28 Justice Tobriner, writing for a unanimous court, held "that whenever
defense counsel removes or alters evidence, the statutory privilege does
not bar revelation of the original location or condition of the evidence
...." (29 Cal.3d at p. 695.)

Justice Tobriner also referred to an attorney's responsibility when
given evidence not by his client but third parties. He stated, "Two
decisions, *People v. Lee* (1970) 3 Cal.App.3d 514 and *Morrell v. State*

1 (Alaska 1978) 575 P.2d 1200, held that an attorney must not only turn
2 over evidence given him by *third parties*, but also testify as to the source
3 of that evidence. Both decisions emphasized that the attorney-client
4 privilege was inapplicable because the third party was not acting as an
5 agent of the attorney or the client.” (29 Cal.3d at p. 693, fn. 5, original
6 italics.)

7 In *People v. Superior Court (Fairbank)* (1987) 192 Cal.App.3d 32
8 the prosecutor learned from defendant’s intercepted jail letter to another
9 inmate that defendant’s lawyer had possession of the murder weapons.
10 When the trial court refused to order defense counsel to deliver them to
11 the prosecutor, the prosecutor petitioned for a writ of mandate. In
12 issuing the writ the court stated, “If counsel . . . chooses to . . . possess
13 . . . physical evidence pertaining to the crime, counsel must immediately
14 inform the court of the action.” (*Id.* at pp. 39-40.) The court also noted
15 this “legal obligation[] should be self-executing and no motion by the
16 prosecution or order by the court should be required to enforce [it].”
17 (*Id.* at p. 39.)

18 B. The Implications Of Sanchez

19 Quite plainly, the rule reiterated in *Sanchez* is independent of the limited discovery
20 obligation imposed on a defendant by Penal Code section 1054.3. (The *Sanchez* court noted that
21 the prosecutor’s motion in that case was not “a ‘discovery’ motion to which the reciprocal
22 discovery statutes applied.” 24 Cal.App.4th 1012, at p. 1026.) The *Sanchez* rule applies both to
23 physical evidence that is inculpatory *per se* (e.g., contraband, and instrumentalities or fruits of a
24 crime such as weapons, holdup notes, pay-owe sheets, stolen jewelry, etc.) and to tangible
25 evidence that is inculpatory in the circumstances of the pending case (e.g, documentary evidence
26 of a “vacation” trip to Brazil, planned for the Doe family by defendant or his associates in early
27 2003), and to intangible evidence (e.g., the location of the victim’s wallet when it was seized by
28 a defense investigator – *People v. Meredith*, discussed in *Sanchez*).

Much of the evidence obtained by search warrant in this case would come within
Sanchez’s rule had it been overlooked by the searching officers and then delivered to defense
counsel by defendant himself or one of his employees. For instance, the letters and cards from

1 John Doe to defendant (Item 315), the photograph of John Doe (Item 323), John Doe's school
2 books (Item 646), telephone recording equipment (Item 1009), Neverland Valley Ranch's visitor
3 logs for 2001 through 2003, and so forth.

4 Some personal property belonging to the Doe family "disappeared" in the course of
5 the removal of their belongings from their apartment in East Los Angeles and its storage at
6 Dino's Storage, before the balance of the property was returned to the family at the insistence of
7 William Dickerman, their lawyer. If, as defendant presently argues, that acquisition was
8 overseen by someone in the employ of Attorney Mark Geragos, there is reason to believe it
9 currently is in the custody of the lawyers who took his place.

10 There is reason to believe that physical evidence resulting from the surveillance of
11 members of the Doe family – photographs, videotapes, motion pictures – and from the unlawful
12 monitoring and recording of telephone conversations without the knowledge or, at least, the
13 consent of all the parties to the conversations – may be in the possession of defense counsel or
14 their agents. The testimony received by the grand jury in this matter established that several
15 people were involved in that surveillance, and that they often made themselves conspicuous for
16 the intimidating effect their interest would have on the subjects of their activity.

17 C. The Court Should Determine Whether Given Evidence
18 Is Inculpatory Or Exculpatory When Considered In
19 Light Of Count One Of The Indictment

20 Whether a given item of property is inculpatory or exculpatory may depend on the
21 inference the viewer is asked to draw from it when considered in the light of other evidence. In
22 turn, the accuracy of that judgment may depend on the particular bias of the viewer.

23 In our respectful submission, we believe the Court is best positioned to make that
24 judgment, and to that end it should direct defense counsel to lodge with the Court any evidence
25 under the control of the Defendant that comes fairly within the following parameters:

26 – All video and audio recordings of each and every member of the Doe family,
27 including but not limited to:

28 – – The recording of the LADCFS interview on February 20, 2003, made on behalf

1 of Michael Jackson;

2 -- All surreptitiously recorded telephone conversations involving members of the
3 Doe family or persons named as coconspirators in the indictment;

4 -- Recordings of the Bradley Miller interview of the Doe family, including all
5 unedited and edited versions of this recording;

6 -- All agreements or contracts executed by any member of the Doe family, including that
7 agreement obtained on or about February 19, 2003 by Bradley Miller on behalf of Michael
8 Jackson;

9 -- All photographs and video or audio recordings of surveillance of any location where the
10 Doe family or members thereof were or are believed have resided or reside;

11 -- All video or audio recordings of named coconspirators, relating to the Doe family or any
12 of its members;

13 -- All writings of known coconspirators relating to the Doe family and of its members;

14 -- All writings and audio or video recordings of the defendant that inculpates the
15 defendant;

16 -- Any and all documentation or real evidence regarding the "Brazil Trip" planned for the
17 Does;

18 -- All written or recorded statements made by every employee of Michael Jackson that
19 tends to incriminate Michael Jackson with respect to the allegations set forth in the indictment;

20 -- All correspondence written to any member of the Doe family by Michael Jackson,
21 including those letters to John Doe which were placed in storage with other property by
22 employees of Michael Jackson in early 2003 and never returned to the Doe family;

23 -- Any correspondence written by any member of the Doe family to Michael Jackson;

24 -- The stuffed animal given to John Doe by Michael Jackson, taken from the Doe's
25 property by employees of Michael Jackson when that property was stored by them, and not
26 returned to the Doe family;

27 -- Checks, receipts and all other records for moving and storage of the Doe Family's
28 property on behalf of Michael Jackson or any named or unnamed co-conspirator including Mark

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