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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 20 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

11 ~~PROPOSED REDACTION~~

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.

No. 1133603

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
RECUSE THE DISTRICT
ATTORNEY'S OFFICE
(Pen. Code, § 1424)

DATE: November 4, 2004

TIME: 8:30 a.m.

DEPT: SM 2 (Mcville)

~~FILED UNDER SEAL~~

19
20 Defendant moves to recuse the District Attorney's Office as the prosecuting agency
21 in this matter, and "in the alternative," "District Attorney Thomas Sneddon and Deputy District
22 Attorneys Ronald Zonen, Gordon Auchincloss and Gerald McC. Franklin," on the ground that
23 "the prosecutors have an actual conflict of interest with the prosecution of defendant . . . that is
24 so grave it is unlikely that Mr. Jackson will receive a fair trial . . ." (Motion 2:5-13.)

25 The asserted "conflict of interest" is not the sort of circumstance that has prompted
26 other efforts to recuse an elected prosecutor, such as acceptance of financial assistance from
27 corporate victim in investigating theft of trade secrets resulting in prosecution of a competitor
28 (*People v. Eubanks* (1996) 14 Cal.4th 580; and see *Hambarian v. Superior Court* (2002) 27

1 Cal.4th 826), or because of a prosecutor's wife's acquaintance with murder victim (*People v.*
2 *Breaux* (1991) 1 Cal.4th 281), or because of prior representation of defendant by defense
3 lawyer who then became prosecutor (*People v. Lepe* (1985) 164 Cal.App.3d 685), or where the
4 prosecutor witnessed accused felon shoot bailiff in attempted escape from courtroom (*People*
5 *v. Conner* (1983) 34 Cal.3d 141). In those instances, there was a basis in objective fact for the
6 claimed conflict, and the question in each case was whether the predicate facts were such as
7 would likely have skewed the judgment of the prosecutor in undertaking a prosecution to begin
8 with or which might reasonably have prevented the conflicted prosecutor from fairly pursuing
9 the case to its conclusion.

10 In this case, defendant can't point to a factual circumstance extrinsic to the
11 prosecutor, in relation to which the probability of a motivating "conflict" can be assessed.
12 Instead, the claimed source of the "conflict" is the District Attorney's supposed disqualifying
13 state of mind itself; i.e., a "blind[ing] . . . zeal to convict Michael Jackson" (Motion 3:3-4), a
14 "personal animosity toward Mr. Jackson" (*id.* 3:22-23), a "personal bias" against the defendant
15 (*id.*, 4:13), an "intense personal dislike for Mr. Jackson" (*id.*, 8:15), and an "emotional
16 investment in prosecuting Mr. Jackson" (*id.* 27:14-15), amounting to a "vendetta" (*id.*, 27:19;
17 32:22).¹ According to defense counsel, the grand jury proceedings were initiated by a
18 prosecutor who saw a "career opportunity to indict a famous celebrity" (995 Motion 106:18-
19 19, n. 4). The charges found by the grand jury are characterized by the defense as "flimsy,"
20 "ridiculous," "bogus" "outrageous," "false," "malicious" and a "fiction" (Defendant's. Reply
21 Br. Re Reduction of Bail 3:14-16; 5:3).

22 Partisan rhetoric like that says much about the bias of its authors, but it affords the
23 court no objective basis from which to determine whether a crippling "zeal," "animosity," and
24 "dislike" on the part of the prosecutor may reasonably be inferred.

25 ////

26
27 ¹ "vendetta . . . n -s [It, lit., revenge, fr. L *vindicta*, fr. *vindicare* to avenge – more at VINDICATE] 1:
28 BLOOD FEUD . . . 2: a prolonged feud marked by bitter hostility . . ." (Webster's 3d New Internat.
Dict. (1981) p. 2539.)

1 Argument

2 DEFENDANT HAS NOT DEMONSTRATED ANY
3 SUFFICIENT GROUND FOR RECUSING THE
4 DISTRICT ATTORNEY'S OFFICE OR ANY OF
5 ITS DEPUTIES

6 A. The Governing Standards

7 Defendant insists that the District Attorney's conduct itself, before, during and after
8 the grand jury proceedings, sufficiently evidences a disqualifying partiality: "Every action Mr.
9 Sneddon has taken has exposed his personal bias against Mr. Jackson." (Motion 4:13-14.).
10 The specifications of that charge are arrayed under three headings: "Conduct By The District
11 Attorney Before The Charges Were Filed"; "The Conduct Of The District Attorney Before The
12 Grand Jury"; and "The Former Sheriff Grants A Televised Interview Concerning The 1994
Investigation." They will be addressed, briefly, in that order.

13 Penal Code section 1424 provides, in relevant part, that a motion to recuse a district
14 attorney "may not be granted unless the evidence show that a conflict of interest exists that
15 would render it unlikely that the defendant would receive a fair trial." The recent decisions
16 interpreting that language hold, essentially, that it means what it says: "The statute . . .
17 articulates a two-part test: '(i) is there a conflict of interest?; and (ii) is the conflict so severe as
18 to disqualify the district attorney from acting?'" (*Hambarian v. Superior Court, supra*, 27
19 Cal.4th 826, at 833, quoting *People v. Eubanks, supra*, 14 Cal.4th at p. 594.) "Under [the
20 second] prong, 'the potential for prejudice to the defendant – the likelihood that the defendant
21 will not receive a fair trial – must be real, not merely apparent, and must rise to the level of a
22 likelihood of unfairness.' (*Eubanks, supra*, 14 Cal.4th at p. 592.)" (*Id.*, p. 834; emphasis the
23 court's.)

24 B. "Conduct By The District Attorney Before The Charges Were Filed"

25 1. The "Attempt To Prosecute Mr. Jackson In 1993"

26 In 1993, grand juries in both Los Angeles County and Santa Barbara County were
27 convened to look into allegations that Michael Jackson had sexually molested [REDACTED].
28 Defendant notes that those grand juries "did not indict Mr. Jackson," but fails to acknowledge

1 that they were not asked to indict anyone: they were investigative grand juries. Defendant
2 notes that "civil litigation involving the same allegations was settled," but fails to acknowledge
3 the terms of the settlement – a payment by Defendant widely reported to be in excess of \$20
4 million – or that young [REDACTED] thereafter refused to make himself available as a witness in
5 any criminal proceeding against Michael Jackson.

6 Defendant argues that the 1993 investigation of his inappropriate conduct with a
7 young boy by two counties was the commencement of a "vendetta" on the part of the Santa
8 Barbara District Attorney that "spans a decade." He states, without supporting evidence, that
9 when the 1993 investigation terminated without criminal prosecution, "Mr. Sneddon drew
10 sharp criticism. Mr. Sneddon did not hide his anger that he was not able to charge Mr.
11 Jackson. This failure fuels Mr. Sneddon's zealotry in this matter." (Motion 27:19-28.)

12 As Defendant well knows, there was good reason to commence the investigation in
13 1993, and that substantial evidence of his misconduct was uncovered by that investigation.
14 Defendant may wish to reconsider the wisdom of pressing his argument that the inability of the
15 Los Angeles and Santa Barbara prosecutors to bring him to book in 1994 for his misconduct
16 with [REDACTED] was the supposed lack of convincing evidence thereof, as distinct from
17 the effect Defendant's substantial payment to [REDACTED] had on the youngster's willingness to
18 further participate in the investigation. Plainly, the evidence gathered in the course of that
19 investigation, and the circumstances of Defendant's settlement of [REDACTED] civil suit
20 against him, is relevant to the Court's assessment of the probity of the District Attorney's
21 conduct, then and now.

22 2. The Commencement Of The Investigation In 2003

23 Defendant offers a truncated history of the investigation by the Los Angeles District
24 Attorney and the Santa Barbara Sheriff into his conduct with [REDACTED], commencing in
25 February, 2003 and reopened by the Sheriff in June of that year.

26 His point is obscure. If it is that the initial investigations did not result in criminal
27 charges, so what? It was the further investigation that followed [REDACTED] disclosures to
28 a forensic psychologist that resulted in Defendant's indictment.

1 Defendant is not well positioned to argue that the 2003 investigations are evidence
2 of the District Attorney's "vendetta" and disqualifying "overzealousness," or that the resulting
3 case is "weak." A grand jury indicted Defendant earlier this year, not only on multiple counts
4 of sexually molesting young [REDACTED], but on the charge that he conspired with others to
5 commit the crimes of child abduction, false imprisonment and extortion. This Court has found
6 the relevant and admissible evidence put before the grand jury was sufficient to support its
7 indictment. That evidence would not have come to light but for the Santa Barbara Sheriff's
8 focused and persistent investigation.

9 Defendant characterizes his prosecution as evidence of the District Attorney's
10 "overzealousness." The People respectfully reply that it is evidence that the District Attorney
11 is doing the job he was elected to do. Just as the Santa Barbara District Attorney was duty-
12 bound not to commence a criminal prosecution in 1994 without testimonial evidence to support
13 it, he was duty-bound to charge Michael Jackson in 2003 when the evidence warranted it.

14 3. The District Attorney Acted As An Investigator

15 Defendant devotes a full page to a description of the District Attorney's own, minor
16 contribution to the investigation (Motion 6:20 – 7:22) and later characterizes it as "an
17 unprecedented move" that "exposed" a disqualifying "zeal" on the District Attorney's part (*id.*,
18 28:1-10).

19 The very triviality of that argument is its own best answer.

20 Defendant notes, off-handedly, that "Recusal may . . . be proper where the District
21 Attorney is a witness." (Motion 27:11-12.) He doesn't expand on that ground of recusal,
22 presumably because he knows the District Attorney will not be a witness at the trial of this
23 matter. The "chain of custody" of the property Mr. Sneddon received from [REDACTED] can be
24 established by other witnesses in the unlikely event that becomes an issue.

25 In any event, the fact that a prosecutor may be obliged to testify is not necessarily a
26 ground for recusal, particularly where his evidence concerns a peripheral issue. (See *People v.*
27 *Superior Court (Hollenbeck)* (1978) 84 Cal.App.3d 491 [order recusing San Luis Obispo
28 D.A.'s Office reversed where one former and three present deputy district attorneys were

possible witnesses in pretrial proceedings challenging electronic surveillance of defendants]; *People ex rel. Younger v. Superior Court* (1978) 86 Cal.App.3d 180 [order recusing San Bernardino D.A.'s Office reversed where one deputy district attorney out of 95 employed in three widespread offices was witness to photographic lineups]; *People v. Municipal Court (Henry)* (1979) 98 Cal.App.3d 690 [order recusing Sacramento D.A.'s Office reversed where one present and one former deputy were victims of incidents similar to vehicle vandalism charged]; *Love v. Superior Court* (1980) 111 Cal.App.3d 367, 372 ["The general rule is that an entire office should not be recused merely because one or more of its members might be called as witnesses for the defense"]; *Trujillo v. Superior Court* (1983) 148 Cal.App.3d 368 [trial court did not abuse its discretion in refusing to recuse entire office of the district attorney because a deputy district attorney who was assaulted by felon attempting to flee the courtroom likely would testify to the event in the later prosecution of the felon for attempted escape and assault with a deadly weapon.]; *People v. McPartland* (1988) 198 Cal.App.3d 569 [reversing recusal of Monterey County D.A.'s Office because trial court applied the incorrect standard for recusal where police officer temporarily employed as D.A. investigator and his involvement in early stages of investigation of marijuana offenses. Case remanded; "the trial court is in the best position to evaluate the evidence utilizing the proper legal standard if defendants' recusal motion is renewed" – 198 Cal.App.3d at p. 575]; *People v. Merritt* (1993) 19 Cal.App.4th 1573 [recusal of L.A. County D.A.'s Office because D.A. investigator had withheld exculpatory evidence reversed, with directions to trial court to make orders precluding involvement in the prosecution of the investigator and the deputies with whom he had discussed the case]; *People v. Snow* (2003) 30 Cal.4th 43, 86-87 [recusal not required although two deputy district attorneys testified at trial].)

4. The District Attorney's Demeanor At A Press Conference

Defendant complains that the District Attorney was not sufficiently solemn at the press conference announcing the filing of felony charges against him and later apologized for an inappropriate choice of words, all of which, Defendant argues, is further evidence of the prosecutor's crippling bias. (Motion 7:23 – 8:8.)

1 Defendant may have a point there. Everyone knows that a sense of humor and a
2 willingness to admit error are defining characteristics of the zealot.

3 C. "The Conduct Of The District Attorney Before The Grand Jury"

4 Under the heading "The Conduct Of The District Attorney Before The Grand Jury,"
5 Defendant offers a lengthy reprise of his argument in support of his earlier motion to set aside
6 the indictment. (Motion 8:9 – 24:2. Compare 995 Motion, pp. 102-120.)

7 As this Court noted in its decision denying that motion, the transcript of the grand
8 jury proceedings does reveal a certain lack of cordiality on the part of the District Attorney to
9 [REDACTED], the lawyer for [REDACTED], [REDACTED] ex-husband, and, to a lesser
10 extent, [REDACTED] himself – owing in part, the Court ventured, "to strong pre-existing
11 sentiments on prior issues of custody and to genuine disagreements over the appropriateness of
12 public statements made by the attorney." (Decision on Motion 4:27 – 5:1.)

13 One may assume that the lawyers on both sides will be mindful of the standard of
14 decorum appropriate at trial, and that this Court will remind them of that standard should they
15 be tempted to veer. The point here is that the District Attorney's apparent impatience with two
16 distinctly hostile witnesses of the 40 who were examined by one or another of the prosecutors
17 in the grand jury proceeding is not evidence of a conflict sufficient to disqualify him as one of
18 defendant's prosecutors at trial.

19 D. The Former Sheriff's Recent Interview

20 Defendant alleges that "the District Attorney has pennitted one of its former agents
21 to violate the protective order in this matter and leak information under seal in an attempt to
22 influence the public and jury pool." (Motion 4:10-12; his emphasis.) He later reiterates that
23 quite baseless accusation in bold type: "The District Attorney Has Allowed The Former Sheriff
24 To Leak Information Known Only To The Sheriff's Department Simply By Claiming He Is No
25 Longer The Prosecution's Agent." (*Id.*, 30:11-13.)

26 Defendant's allegation that the District Attorney "permitted" and "allowed" Mr.
27 Thomas to leak information implies that the District Attorney could have prevented him from
28 doing so. Indeed, he argues "Mr. Sneddon is aware of these leaks, and could put a stop to

1 them. He has done nothing, but reap the benefits from them.” (Motion 30:15-17.) “Mr.
2 Sneddon and the District Attorneys’ office has set idly by [sic] while Mr. Thomas leaks only
3 information favorable to the prosecution’s case. . . . If Mr. Sneddon were acting as a
4 prosecutor for the public and not his own personal motives, he would have taken action to
5 preserve Mr. Jackson’s right to a fair trial.” (*Id.*, 31:3-7.)

6 Defendant knows better. The retired sheriff is neither the “agent” of the District
7 Attorney nor subject to his authority or that of the current sheriff. (See the County Counsel’s
8 response to Defendant’s request for an order sanctioning the Sheriff and District Attorney,
9 filed September 8th.) Mr. Thomas is currently employed as a consultant by a national news-
10 gathering agency, presumably because of his background and his knowledge of the earlier
11 investigation. He is not a potential witness in this matter and so is not bound by the Court’s
12 protective order. If there were an “action” either the Court or the District Attorney could take
13 to restrict Mr. Thomas’s exercise of his First Amendment rights, that action would have been
14 taken in response to the Defendant’s earlier application for an OSC re Contempt against the
15 current sheriff and the District Attorney in early September – an effort that was summarily
16 rejected by the Court. Under the Constitution, Mr. Thomas is as free to speak his mind as
17 Defendant’s many friends and supporters are to speak theirs.

18 What the retired Sheriff of Santa Barbara County chooses to relate to a newscaster’s
19 audience is not a ground for recusing the elected District Attorney of the county.

20 F. There Has Been No Sufficient Showing That The Entire
21 Office Of The Santa Barbara District Attorney Should
22 Be Recused, Even If The District Attorney Himself
23 Must Be Recused

24 “[R]ecusal of an entire prosecutorial office is a serious step,
25 imposing a substantial burden on the People, and the Legislature and
26 courts may reasonably insist upon a showing that such a step is necessary
27 to assure a fair trial.” (*People v. Hamilton* (1989) 48 Cal.3d 1142, 1156.)
28 It is a disfavored remedy that should not be applied unless justified by a
substantial reason related to the proper administration of justice. (*People*
v. Hernandez (1991) 235 Cal.App.3d 675, 679; *People v. Merritt*

1 [(1993)] 19 Cal.App.4th [1573] at p. 1578.) The showing of conflict of
2 interest to justify so drastic a remedy must be especially persuasive.
3 (*People v. Hernandez, supra*, 235 Cal.App.2d at p. 678.)

4 (*Millsap v. Superior Court* (1999) 70 Cal.App.4th 196, 200-201.)

5 Defendant argues that “the size of the office, alone, compels a complete recusal of
6 the office” (Motion 32:16-17), and that “this Court can safely assume that he has considerable
7 influence, if not direct responsibility, for hiring, evaluating, promoting and firing all deputies.
8 Mr. Sneddon has a vendetta against Mr. Jackson that dates back 10 years. It is simply
9 unrealistic to believe his conflict of interest does not extend to every deputy under his reign
10 [rein?]. Mr. Sneddon’s personal conflict has spoiled the District Attorney’s entire office.
11 Therefore, the drastic remedy of recusing the entire District Attorney’s Office under Section
12 1424 is warranted.” (*Id.*, 32:16-26.)

13 There isn’t a scrap of evidence to support that argument. The claim of a “vendetta”
14 is based solely on the fact that the current Santa Barbara District Attorney headed two well-
15 founded investigations of defendant, 10 years apart. Under Santa Barbara County’s civil
16 service system, the Santa Barbara District Attorney neither hires nor fires the lawyers who are
17 employed as his deputies – close to 50, at present count. (For that reason, neither *People v.*
18 *Choi* (2000) 80 Cal.App.4th 476 nor *People v. Lepe* (1985) 164 Cal.App.3d 684 are relevant.
19 In each of those cases, the deputies of the concerned prosecutor served at his pleasure.)
20 Defendant’s ipse dixit that the District Attorney has a “personal animosity” and an “intense
21 personal dislike for Mr. Jackson,” a “personal bias” against him, and an “emotional investment
22 in prosecuting Mr. Jackson” goes well beyond the commonsensical premise that a prosecutor
23 in possession of substantial evidence that (a) a man molested at least one boy 10 years earlier
24 but persuaded him not to cooperate with authorities by paying him an eight-figure sum, and (b)
25 molested another lad 10 years later, likely will not have a warm personal regard for that man.

26 “The very nature of his functions as a prosecutor necessitates that the district
27 attorney be a partisan in the case. Zeal in the prosecution of criminal cases is a praiseworthy
28 and commendable trait in such an officer, and not to be condemned by anyone.” (*Adams v.*

1 State (1947) 202 Miss. 68, 75, 30 So.2d 593, 597.) "In an adversary system, [prosecutors] are
2 necessarily permitted to be zealous in their enforcement of the law. So long as their zeal
3 remains within legal limits . . . the lawful execution of their duty does not establish as a matter
4 of law that they have surrendered their independence and impartiality." (*Hambarian v.*
5 *Superior Court, supra*, 27 Cal.4th 826, at 843; citations and internal quotation marks omitted.)

6 Defendant does not have a constitutional right to a District Attorney who likes him,
7 nor to one who is indifferent about prosecuting him successfully. He has a constitutional right
8 to be prosecuted fairly, by prosecutors who confine their zeal within legal and ethical limits.
9 The Santa Barbara District Attorney and his deputies intend to oblige him in that regard.

10 11 CONCLUSION

12 The pending motion to recuse the Santa Barbara County District Attorney and all of
13 his deputies springs from Defendant's own conceit that the District Attorney anguished for 10
14 years over his inability to prosecute Michael Jackson the Celebrity in 1994 and seeks to end a
15 decade of frustration on the eve of his retirement by prosecuting Mr. Jackson on insufficient
16 evidence.

17 The motion is meritless. It should be denied.

18 DATED: October 20, 2004

19 Respectfully submitted,

20 THOMAS W. SNEDDON, JR.
21 District Attorney

22 By: 15/
23 Gerald McC. Franklin, Senior Deputy
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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

} SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On October 20, 2004, I served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO RECUSE THE DISTRICT ATTORNEY'S OFFICE on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, and on the ATTORNEY GENERAL OF CALIFORNIA, by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau and to Deputy Attorney General Steven D. Matthews, and by causing a true copy thereof to be mailed to Mr. Mesereau and the Attorney General, first class postage prepaid, at the addresses shown on the attached Service List.

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

Executed at Santa Barbara, California on this 20th day of October, 2004.

[Signature]

Gerald McC. Franklin

SERVICE LIST

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