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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

NOV 6 1 2004

GARY M. SLAIR, Executive Officer

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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

SUPPLEMENT TO PEOPLE'S
REPLY TO DEFENDANT'S
MOTION TO COMPEL
DISCOVERY
(Pen. Code, § 1054 et seq.)

DATE: November 4, 2004

TIME: 8:30 a.m.

DEPT: SM 2 (Melville)

~~UNDER SEAL~~

20 INTRODUCTION

21 Pursuant to the court's order, counsel for both parties met and conferred on October
22 27, 2004 to discuss unresolved issues pertaining to the discovery of items identified in a letter
23 dated July 22, 2004 from counsel for defendant, Thomas Mesereau, Jr. to District Attorney
24 Thomas W. Sneddon, Jr. (see: Defendant's Motion to Compel Discovery). Approximately one
25 and a half hours were dedicated to the resolution of issues dealing with each item requested by
26 defendant. The People have conceded to the discovery of many requested items and will
27 provide additional discovery when and if these items exist or become available. In addition,
28

1 the People agreed to provide discovery of several items in spite of the fact such items are not
2 within the scope of *Brady v. Maryland* (1963) 373 U.S. 83 or Penal Section 1054 et seq.

3 Specifically the People agreed to discover items concerning item 52ff –
4 communication tapes – to the extent that this request is limited to any 9/11 tape(s) material to
5 the investigation. At present, no such communication tapes exist.

6 Concerning item 45 – chain of custody evidence – the People agreed that both sides
7 understand that the Santa Barbara Sheriff's Department is the location for all seized or
8 evidence items contained discovered reports and provided that if we become aware of items or
9 evidence to be used in court or that are exculpatory in nature and are permanently located
10 elsewhere, the location and custodian information will be provided to the defense.

11 Shortly before the preparation of this Supplement, we received Defendant's "Status
12 Report Re Discovery." The People do not necessarily agree with Defendant's summary of
13 what was discussed in our meeting on October 26th.

14 That said, substantial progress has been made regarding the defense request for
15 prosecution discovery. However, a number of the items requested by defendant are not
16 discoverable under the law.

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18 I

19 "(A)LL COURT-ORDERED DISCOVERY IS GOVERNED
20 EXCLUSIVELY BY -- AND IS BARRED EXCEPT
21 AS PROVIDED BY -- THE DISCOVERY CHAPTER
22 NEWLY ENACTED BY PROPOSITION 115."
23 (In re Littlefield (1993) 5 Cal. 4th 122, 129)

24 Criminal discovery in California historically has been a "judicially created doctrine
25 evolving in the absence of guiding legislation." (*Pitchess v. Superior Court* (1974) 11 Cal.3d
26 531, 535.) But with the adoption of the Crime Victims Justice Reform Act, criminal discovery
27 is now governed by constitutional and statutory enactment.

28 Penal Code section 1054.5, subdivision (a), now states: "No order requiring
discovery shall be made in criminal cases except as provided in this chapter. This chapter shall

1 be the only means by which the defendant may compel the disclosure or production of
2 information from prosecuting attorneys, law enforcement agencies which investigated or
3 prepared the case against the defendant, or any other persons or agencies which the prosecuting
4 attorney or investigating agency may have employed to assist them in performing their duties.”
5 (Similarly, see Pen. Code, § 1054, subd. (e); *In re Littlefield* (1993) 5 Cal.4th 122, 129.)

6 II

7 **PENAL CODE SECTION 1054.1 DESCRIBES THE**
8 **EXCLUSIVE STATUTORY DUTIES OF THE**
9 **PROSECUTION CONCERNING DISCOVERY TO**
10 **THE DEFENSE**

11 Apart from *Brady* material, Penal Code Section 1054.1 provides the exclusive list of
12 items the prosecution must discover to the defense:

13 The prosecuting attorney shall disclose to the defendant or his or her
14 attorney all of the following materials and information, if it is in the
15 possession of the prosecuting attorney or if the prosecuting attorney knows
16 it to be in the possession of the investigating agencies:

17 (a) The names and addresses of persons the prosecutor intends to call as
18 witnesses at trial.

19 (b) Statements of all defendants.

20 (c) All relevant real evidence seized or obtained as a part of the
21 investigation of the offenses charged.

22 (d) The existence of a felony conviction of any material witness whose credibility
23 is likely to be critical to the outcome of the trial.

24 (e) Any exculpatory evidence.

25 (f) Relevant written or recorded statements of witnesses or reports of the
26 statements of witnesses whom the prosecutor intends to call at the trial, including
27 any reports or statements of experts made in conjunction with the case, including the
28

1 results of physical or mental examinations, scientific tests, experiments, or
2 comparisons which the prosecutor intends to offer in evidence at the trial.

3 In his discovery request, the majority of items defendant requests are well outside the
4 ambit of Penal Code Section 1054.1. Examples of such items are:

5 "1. Please provide us with all clues that were called in, e-mailed and or sent via
6 mail, in the matter involving Michael Jackson;

7 "9. All inter or intra departmental communications referencing Mr.
8 Jackson's arrest, investigation and or inquiry;

9 "12. Please provide us with all e-mail communications (relevant to
10 the Michael Jackson investigation) involving law enforcement,
11 their agents and sworn and or civilian witnesses. This request
12 pertains to all known investigations and or inquires, regardless of
time;

13 "13. Please provide us with all notes, records, reports, phone
14 conversations, statements (whether telephonic, in person, verbal,
15 written, signed or unsigned,) recordings (audio, video and/or
16 transcripts), involving District Attorney Tom Sneddon's contacts
17 with, but not limited to, Diane Diamond, Gloria Allred, Larry
18 Feldman, Dr. Stanley Katz and Carole Lieberman. This request is
19 limited to issues concerning Michael Jackson's arrest, past and
20 present investigations and or inquires conducted and or directed by
Mr. Sneddon on behalf of the Santa Barbara District Attorney's
Office and or by the current and former Sheriff of Santa Barbara
County;

21 "35. All notes made by prospective witnesses relating to matters to
22 be covered in their testimony at the trial;

23 "37. The contents of all statements made to the prosecution in
24 interviews, testimony or by any person who claims to have
information regarding the above-entitled action;

25 "40. A current summary and itemization of the course of
26 instruction or other training given to persons who are expected to
27 testify as experts on any issue connected to this case, including, but
28 not limited to a course summary, a list of all prior similar cases in
which the "expert" has conducted an investigation and/or has

testified, and a list of instructors and their qualifications;

"41. Any and all writings or publications used in any way by the experts in forming opinions, or in obtaining a basis for forming an opinion, including teaching manuals, journals, treatises, textbooks, bulletins and other records of classes in the expert's field of expertise, or otherwise;

"42. A list of all suspects, witnesses and defense counsel to whom the expert has spoken, who have provide information used in any way by the expert as a basis for forming any opinion;

"52 c. Pitchess discovery;

"52 f. Manuals re criminal investigations (rules-procedures);

"52 u. Prior crime reports involving suspects or witnesses;

"52 v. Press releases;

"52 w. Press appearances by investigators/personnel & their agents;

"52 x. Newspaper articles;

"52 z. Intra departmental correspondence from all involved;

"52 cc. Names of prosecutors who reviewed reports;

"52 dd. Prosecutors charge evaluation sheets;

"52 gg. Correspondence to other agencies;

In addition to items that are outside the scope of discovery, the following items are so overbroad, vague or abstruse it is difficult if not impossible to determine if the item is discoverable under the law:

"28. All statements taken from or made by any persons, including witnesses in relation to this case, taped, written or unwritten, signed or unsigned, including any oral conversations, and all notes,

memoranda, or recordings or documentation thereof with any member of any law enforcement agency, their agents, employees, representatives or investigators, or any person in any way relevant to the allegations charge herein whether or not the prosecution intends to call them at any hearings or trial;

"40. A current summary and itemization of the course of instruction or other training given to persons who are expected to testify as experts on any issue connected to this case, including, but not limited to a course summary, a list of all prior similar cases in which the "expert" has conducted an investigation and/or has testified, and a list of instructors and their qualifications;

"42. A list of all suspects, witnesses and defense counsel to whom the expert has spoken, who have provide information used in any way by the expert as a basis for forming any opinion;

"52 i. Control logs, dockets;

"52 o. Notifications;

"52 p. Teletypes (DMV checks, record checks, criminal checks, date-times);

"52. q. Disclosure statements

III

THE DEFENDANT IS ENTITLED TO "REASONABLY ACCESSIBLE" MORAL TURPITUDE CRIMES OF MATERIAL WITNESSES – NOTHING MORE

Although the prosecution has no general duty to seek out, obtain, and disclose all evidence that might be beneficial to the defense, it does have a duty, pursuant to Penal Code section 1054.1 when presented with an informal request from the defendant for standard reciprocal discovery to inquire of and to disclose the existence of felony convictions of all material prosecution witnesses, whose credibility is likely to be critical to the outcome of the trial, when the record of conviction is "reasonably accessible" to the prosecution. (*People v Little* (1997) 59 Cal App 4th 426.)

1 However, defendant is not entitled to prior criminal histories of all witnesses. Penal
2 Code section 1054.1 requires that the prosecutor disclose to the defendant "[t]he existence of a
3 felony conviction of any material witness *whose credibility is likely to be critical to the*
4 *outcome of the trial.*" (Emphasis added.) This statute codified part of the holding in *Hill v.*
5 *Superior Court* (1974) 10 Cal.3d 812, in which the court held the prosecutor may be ordered to
6 produce criminal histories for only those key witnesses whose testimony would be disputed.
7 (*Id.* at p. 820, overruling *Engstrom v. Superior Court* (1971) 20 Cal.App.3d 240.) The statute
8 goes further, however, by limiting the prosecutor's disclosure obligation to evidence of felony
9 convictions. The rap sheets themselves, which might contain many other matters, need not be
10 disclosed. (*People v. Roberts* (1992) 2 Cal.4th 271, 308; *People v. Santos* (1995) 30
11 Cal.App.4th 169, 176-177.)

12 Notwithstanding these limitations, the People will provide information to the
13 defense concerning all reasonably accessible reports and convictions regarding moral turpitude
14 crimes committed by key witnesses. This information will be provided as soon as the People
15 ascertain which witnesses will be called at trial.

16 IV

17 THE DEFENDANT IS ENTITLED TO THE 18 NAMES AND ADDRESSES OF PROSECUTION 19 WITNESSES – NOTHING MORE

20 Item 30 of defendant's letter requests "The following information for each witness
21 the prosecution intends to call; date of birth, place of birth and physical descriptions; all aliases,
22 aka's or pseudonyms; occupation and employment address.....

23 The discovery provisions of the Penal Code, as enacted as a part of Proposition 115,
24 provide only for discovery of "[t]he names and addresses of persons the prosecutor intends to
25 call as witnesses at trial." (Pen. Code, § 1054.1, subd. (a).) This rule is subject to several
26 limitations. First, defense counsel is specifically prohibited from providing victims' or
27 witnesses' addresses or telephone numbers to his client, unless permitted by the court on good
28 cause. (Pen. Code, § 1054.2.) Second, the home addresses of police officer witnesses are

1 protected from disclosure. (See Pen. Code, §§ 146e, 1328.5.) Finally, Penal Code section
2 1054.7 permits the prosecutor to deny, restrict or defer disclosure upon a showing of good
3 cause. “‘Good cause’ is limited to *threats or possible danger to the safety of a victim or*
4 *witness*, possible loss or destruction of evidence, or possible compromise of other
5 investigations by law enforcement.” (*Ibid.*, emphasis added.) Section 1054.7 further permits
6 the showing of good cause to be made in camera.

7 Pursuant to the provisions of 1054 et seq. the People will provide defendant with the
8 name and address of each witnesses that will be called at trial *with the exception* of the victim
9 and the victim’s family.

10 V
11 **EXPERT WITNESSES**

12 Concerning expert witnesses, Penal Code Section 1054.1 provides for the
13 prosecution to disclose the name and address of such witnesses; statements and reports made in
14 connection with the case and results of physical or mental examinations, scientific tests,
15 experiments, or comparisons that the prosecutor intends to introduce at trial.

16 Defendant has requested:

17 “40. A current summary and itemization of the course of
18 instruction or other training given to persons who are expected to
19 testify as experts on any issue connected to this case, including, but
20 not limited to a course summary, a list of all prior similar cases in
21 which the “expert” has conducted an investigation and/or has
22 testified, and a list of instructors and their qualifications;

23 “41. Any and all writings or publications used in any way by the
24 experts in forming opinions, or in obtaining a basis for forming an
25 opinion, including teaching manuals, journals, treatises, textbooks,
26 bulletins and other records of classes in the expert’s field of
27 expertise, or otherwise;

28 “42. A list of all suspects, witnesses and defense counsel to
whom the expert has spoken, who have provide information used in
any way by the expert as a basis for forming any opinion”

1 Virtually none of the defendant's requests concerning expert witnesses is required by
2 law. The People will provide defendant with expert's names addresses, statements and reports
3 as provided under 1054.1 in addition to a curriculum vitae for such witnesses who are called to
4 testify at trial.

5 VI
6 **PITCHESS DISCOVERY**

7 Item 52(c) in defendant's letter requests "Pitchess discovery." Penal Code section
8 1054.6 recognizes that privileged materials are excepted from Penal Code section 1054.1's
9 discovery requirements. Penal Code sections 832.7 and 832.8 declare law enforcement
10 personnel records as confidential and establish Evidence Code sections 1043 and 1045 as the
11 exclusive process to obtain such information.

12 The People recognize that to the extent they are in possession of such information
13 about a declared or intended witness, this procedure may in certain circumstances give way to
14 the dictates of *Brady v. Maryland* (1963) 373 U.S. 83. No such information currently exists.

15 VII
16 **STATUS OF DEFENSE DISCOVERY TO**
17 **THE PROSECUTION**

18 During the discovery meeting with the defense, Mr. Sanger raised the issue of
19 production of a tape recording pursuant to *Sanchez*. (See People's *Sanchez* Motion.) A
20 discussion ensued concerning what if any *Sanchez* evidence would be provided to the
21 prosecution. This colloquy ended suddenly when Mr. Mesereau objected to any further
22 discussion regarding *Sanchez*. The undersigned prosecutor then asked the defense to provide
23 information on defense discovery pursuant to Penal Code Section 1054.3. Mr. Mesereau
24 refused to engage in any further discussion and abruptly discontinued the conference.

25 To date the prosecution still has not received any defense discovery, nor have we been
26 informed when – if ever – defense discovery will be forthcoming. In sum, the defense has
27 refused to engage in any fashion in reciprocal discovery pursuant to Penal Code Section
28 1054.3.

1 **CONCLUSION**

2 Defendant's request for discovery is remarkable in its audacity. Not only because its
3 scope ignores all boundaries imposed by law, but also because of its failure to cite a solitary
4 particle of supporting authority. The People are in full compliance in all of their discovery
5 obligations under the law and will continue to honor those duties in the future as they have in
6 the past – in good faith. The People have no objection to a formalized discovery order that
7 comports with the language of Penal Code Section 1054.1. Beyond that, however, the motion
8 should be denied.

9 DATED: October 29, 2004

10 Respectfully submitted,

11 THOMAS W. SNEDDON, JR., District Attorney

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13 By: Gordon Auchincloss by G.M.C.F.
14 Gordon Auchincloss
15 Senior Deputy District Attorney
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1
2 DECLARATION OF GORDON AUCHINCLOSS
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4 I, Gordon Auchincloss, say:

- 5 1) I am a Senior Deputy District Attorney employed by the County of Santa
6 Barbara. I am one of the prosecutors assigned to the case of The People of the
7 State of California v. Michael Joe Jackson (SBSC# 1133603).
8 2) On October 18, 2004 I spoke with defense counsel, Robert Sanger who told me
9 that the he intended to provide discovery of a tape pursuant to Sanchez at the
10 discovery meet and confer meeting.
11 3) On October 26, 2004, Mr Sanger raised the issue of production of a tape
12 recording pursuant to Sanchez. A discussion ensued concerning what if any
13 Sanchez evidence would be provided to the prosecution. This discussion ended
14 suddenly when Mr. Mesereau objected to any further discussion regarding
15 Sanchez. I then asked the defense to provide information on defense discovery
16 pursuant to Penal Code Section 1054.3. Mr. Mesereau refused to engage in any
17 further discussion and abruptly hung up the phone.

18 I declare under penalty of perjury that the foregoing is true and correct except as to
19 those statements made under information and belief which I believe to be true.

20 Executed this 29th day of October, 2004, at Santa Barbara, California.
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26 Gordon Auchincloss, Declarant
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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; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On October 29, 2004, I served the within SUPPLEMENT TO PEOPLE'S REPLY TO DEFENDANT'S MOTION TO COMPEL DISCOVERY on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by transmitting a true copy thereof to Mr. Sanger and Mr. Mescreau at the facsimile number shown with their addresses on the attached Service List, and then by causing to be mailed a true copy to each of them.

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

Executed at Santa Barbara, California on this 29th day of October, 2004.


Gerald McC. Franklin

SERVICE LIST

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