

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 18 2005

GARY M. BLAIR, Executive Officer
BY Carrie L. Wagner
CARRIE L. WAGNER, 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,

Defendant.

Case No.: 1133603

Order for Release of Redacted Documents

[Plaintiff's Opposition to Defendant's Motion
to Recuse the District Attorney and One or
More of His Deputies]

The redacted form of the Plaintiff's Opposition to Defendant's Motion to Recuse the District Attorney and One or More of His Deputies attached to this order shall be released and placed in the public file. The court finds that there is more material in the motion that should be redacted than that contained in the proposed redacted version. The unredacted originals shall be maintained conditionally under seal pending the next motion hearing, date to be announced.

Dated: February 18, 2005

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

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 GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
5 1112 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
FAX: (805) 568-2398
7

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

11 ~~PROPOSED~~ REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

No. 1133603

13 Plaintiff,)

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
RECUSE THE DISTRICT
ATTORNEY AND ONE OR
14 MORE OF HIS DEPUTIES

15 v.

16 MICHAEL JOE JACKSON,

17 Defendant.)

DATE: February 22, 2005
TIME: 8:30 a.m.
DEPT: SM (Melville)

18
19 FILED UNDER SEAL
20

21 A. Introduction:

22 Defendant moves to recuse the entire District Attorney's office or, "in the
23 alternative," the District Attorney and Deputy District Attorneys Zonen, Auchincloss and
24 Franklin. Defendant acknowledges that his earlier effort to recuse the office was denied on
25 November 4, 2004, but asserts that "circumstances have changed. First, the District Attorney,
26 through his deputy Gordon Auchincloss, has announced that he intends to testify at trial.
27 Second, the matters previously raised are now further illustrated by the conduct of Mr.
28 Auchincloss. Third, the cumulative effect of the other matters, plus this matter, require the

1 remedy of recusal.” (Motion 2:11-15.)

2 B. Summary of Response

3 1. The District Attorney does not intend to testify in this case, and Deputy District
4 Attorney Gordon Auchincloss made no “announcement” to the contrary;

5 2. Nothing about the content or tone of Deputy District Attorney Auchincloss’
6 “Reply to Opposition to the District Attorney’s Motion In Limine Re: Section 402 Issues”
7 “demonstrate that Mr. Sneddon’s deputies should also be recused” (Motion 16:23-24).

8 Argument

9 1

10 THE DISTRICT ATTORNEY DOES NOT INTEND TO
11 TESTIFY AS A WITNESS IN THIS CASE

12 The District Attorney has neither stated, “announced” or “threatened” to testify as a
13 witness in this case. (Please see the attached Declaration of Thomas W. Sneddon, Jr.)

14 A. Contact with [REDACTED]

15 The assertion that Mr. Sneddon was a potential witness with respect to his brief
16 conversation with [REDACTED] was made in the previous, unsuccessful motion to recuse him.
17 There is no need for Mr. Sneddon to testify concerning that meeting. This was, and continues
18 to be, a non-issue.

19 B. Contact with Mark Geragos

20 Defendant correctly asserts that Mr. Sneddon had a conversation with Mark
21 Geragos, defendant’s former lead counsel, before the felony complaint was filed in this case.
22 He does not suggest how that conversation might be the gist of relevant testimony by Mr.
23 Sneddon at the trial of this matter. None is apparent. (Again, please see Mr. Sneddon’s
24 declaration, attached.)

25 C. Telephone Conversation [REDACTED]

26 Defendant notes that there may have been a conversation between Mr. Sneddon and
27 [REDACTED] the attorney for [REDACTED], the former husband of [REDACTED]
28 Defendant argues that “Mr. Sneddon offered testimony to rebut the testimony of [REDACTED]

1 before the grand jury.” (Motion 13:11-12.) Defendant continues, “At trial, the Court will not
2 allow him to testify under the guise of cross-examining [REDACTED]” That observation
3 appears to answer the argument that any telephone conversation Mr. Sneddon may have had
4 with [REDACTED] makes Mr. Sneddon a necessary “witness” at defendant’s trial.

5 II

6 THE DISTRICT ATTORNEY'S KNOWLEDGE OF THE
7 EVIDENCE COLLECTED IN AN EARLIER INVESTIGATION,
8 AS IT RELATES TO HIS "MOTIVE" TO PROSECUTE THIS
9 CASE, DOESN'T REQUIRE HIM TO TESTIFY IF DEFENDANT
10 MAKES HIS "MOTIVE" RELEVANT

11 Defendant notes, correctly enough, that Deputy District Attorney Auchincloss [REDACTED]
12 [REDACTED]

13 [REDACTED] (Motion 16-17.) Defendant reads that
14 as a “newly announced intention to serve a dual role as advocate and witness” (*Id.*, 13:19-
15 20.)

16 Mr. Auchincloss’ comment cannot fairly be read to “announce” any such thing.

17 In “Plaintiff’s Motion In Limine Re: Evidence Code § 402 Issues,” authored by
18 Deputy District Attorney Auchincloss and filed January 17, 2005, Mr. Auchincloss noted
19 defense counsel’s repeated references “concerning the prosecutor’s alleged motive for
20 prosecuting the defendant.” He cautioned:

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

[REDACTED]

(Plaintiff's Motion 6:7-17; emphasis in the original.)

Defendant doesn't quarrel with the logic of that argument, nor could he. And please note, nowhere in that argument is it suggested that Mr. Sneddon would testify concerning the evidentiary particulars of the earlier investigation. Mr. Sneddon's testimony would not be necessary to introduce the materials that were in the prosecution's hands at the time of the indictment. Indeed, in Plaintiff's Reply to Defendant's Opposition re: Evidence Code § 402 Issues," filed January 24, 2005, Mr. Auchincloss characterized defendant's own announced intention to call Mr. Sneddon as a witness as "clearly improper." (Reply 4:20-22.)

In pretending that the prosecution has "announced" that Mr. Sneddon will testify, and in suggesting that any such testimony would be inadmissible, and in characterizing Mr. Auchincloss' response as "extortion" (Motion 10:7-8), defendant tugs firmly at the bootstraps of his recusal motion.

Defendant argues that "Mr. Sneddon's proffered testimony" is "inadmissible" as, among other things, "hearsay." "There is no exception to the rules of evidence for a situation where the motives of an overzealous prosecutor are at issue." (Motion 10:18-20.)

Defendant has failed to reflect on the admissibility of out-of-court statements and other evidence for the non-hearsay purpose of proving the hearer's reaction to it and the motivation for his subsequent conduct, where motive is an issue.

Defendant insists he "not only wants to 'go there,' we are entitled to 'go there' under the law." (Motion 15:26-27.) There will be time enough to reargue the legal merits and tactical wisdom of that view when defendant offers argument or evidence concerning the prosecutor's "motive." This recusal motion is not the occasion for that argument.

////
////
////
////

1 III

2 NOTHING IN DEPUTY DISTRICT ATTORNEY AUCHINCLOSS'
3 MOTIONS OR RESPONSES REQUIRE THAT HE OR ANYONE
4 IN THE DISTRICT ATTORNEY'S OFFICE BE RECUSED

5 Defendant's characterization of Mr. Auchincloss' argument as "extortion:" was
6 offered by defendant in an earlier submission of his. Mr. Auchincloss responded to that
7 overstatement, observing, "defendant confuses the rules of evidence with the crime of
8 extortion. Defendant has apparently failed to fully consider the ramifications of how making
9 an issue of Tom Sneddon's motive in this case would make Mr. Sneddon's complete
10 knowledge about defendant relevant. This is not extortion. It is the law and defendant would
11 be wise to consider it."

12 Defendant severely mischaracterizes Deputy District Attorney Auchincloss'
13 arguments and responses as evidence of a disqualifying animus. It is nothing of the sort. If
14 anything, it exhibits rather more patience with defense counsels' demagoguery than it deserves.

15 CONCLUSION

16 Defendant's newest motion to recuse the prosecutor's office has no more merit
17 than his earlier motion to that end. It offers nothing new that is of substance. It simply affords
18 the defense one more excuse for slandering the prosecution. It should be denied as the
19 previous effort was denied: without argument and the opportunity for yet another public airing
20 of defendant's inappropriate attack on the motives of the prosecutor.

21 DATED: February 11, 2005

22 Respectfully submitted,

23 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

24
25 By: 151
26 Gerald McC. Franklin, Senior Deputy
27 Attorneys for Plaintiff
28

Declaration of Thomas W. Sneddon, Jr.

1
2
3 1. I am the District Attorney for the County of Santa Barbara and one of the
4 attorneys representing the People in the case of *The People of the State of California vs.*
5 *Michael Joe Jackson*.

6 2. No one associated with the prosecution of the above-entitled action has stated
7 that I intend to be a witness called by the prosecution. I have no intention of testifying.
8 Consistent with their practices throughout this case, the defense has manipulated statements
9 and conversations to fit their current motions. My name does not appear on our witness list. It
10 does on theirs. It was in response to their listing me on their witness list, that comments about
11 the scope of my testimony were addressed in the motions.

12 3. In November of 2003, I received several calls from Mr. Geragos in his capacity
13 as the attorney representing defendant Jackson in the subject matter that resulted in his eventual
14 Indictment. In one of those conversations Mr. Geragos requested an opportunity to discuss the
15 case with me before the decision was made to file charges. I represented to him in fairness to
16 Mr. Jackson I would give him that opportunity before charges were filed.

17 4. During this time period, Mr. Geragos was involved in making appearances in the
18 *Scott Peterson* case so the decision was made to have a meeting in early December. On the
19 date set for meeting, Mr. Geragos was in a criminal proceeding in Pasadena, so I agreed to
20 drive to Pasadena and meet him during the lunch break in the proceedings. We met and had a
21 lot of general conversations that had little to do with the merits of the case or his request. He
22 talked in generalities and asked for more time because of his busy schedule. I agreed and it was
23 left for him to contact me when and if he was ready to discuss his client's case. Given the
24 serious nature of the charges in this case, I felt it was my responsibility to extend every
25 opportunity for Mr. Jackson's attorney to present any information related to the charges that
26 would bear upon the charging decision and I told Mr. Geragos that.

27 5. Eventually December 19, 2003, was set for the filing of the criminal complaint.

1 set for my office on December 18th. Around noon, Mr. Geragos arrived for the meeting. He
2 was accompanied by a Mr. Kopp, who was introduced as an attorney associated with Mr.
3 Geragos's firm.

4 6. There was no interview. After exchanging pleasantries, Mr. Geragos did most of
5 the talking. He related to me the information set forth in the SBSO report referenced in the
6 defense motion. The meeting lasted approximately one-half hour. At the conclusion of the
7 meeting I told him I would share the information with the case detectives and get back to him.

8 7. I immediately went to the Sheriff's Department and briefed them on the
9 information provided to me by Mr. Geragos. [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] This ended the exchanges and the decision was made to proceed with the
19 filing of formal charges.

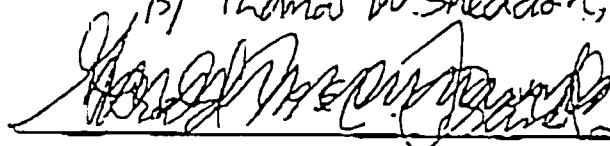
20 8. My conversation with Mr. Geragos was an extension of the same courtesies that I
21 have extended to countless attorneys during my career as a DDA, Chief Trial Deputy and as
22 District Attorney, including on occasion current counsel for Mr. Jackson, Robert Sanger. I
23 have never considered these conversations as interviews or in any way somehow admissible as
24 evidence. Such conversations would be considered as rank hearsay as to any criminal
25 defendant and not covered by any exception to the Hearsay Rule that I am familiar with.
26 Moreover, I consider such conversations as covered by the 'Rule of Tanner,' Evidence Code
27 section 1153 and Penal Code section 1192.4, as specifically not admissible.

28 9. [REDACTED]

1
2
3
4
5 10.
6
7
8

9 In any event, since his statements are inadmissible, any
10 differences in our recollections are of no legal consequence.

11 I declare under penalty of perjury that the foregoing is true and correct, except as to
12 matters stated upon information and belief, and as to such matters I believe it to be true. I
13 execute this Declaration at Santa Barbara, California, February 10, 2005.

14
15 *15/ Thomas W. Sneddon, Jr.*


16 Thomas W. Sneddon, Jr.
17 District Attorney
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

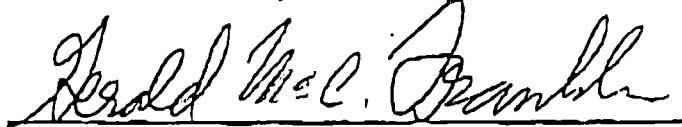
STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA } SS

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 February 11, 2005, I served the within REDACTED VERSION OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO RECUSE THE DISTRICT ATTORNEY AND ONE OR MORE OF HIS DEPUTIES on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau at his confidential Fax number in Santa Maria and by causing a true copy thereof to be mailed to Mr. Mesereau, 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 11th day of February, 2005.


Gerald McC. Franklin

SERVICE LIST

1
2 THOMAS A. MESEREAU, JR., ESQ.
3 Collins, Mesereau, Reddock & Yu, LLP
4 1875 Century Park East, No. 700
5 Los Angeles, CA 90067
6 FAX: [Confidential]
7 Attorney for Defendant Michael Jackson

8 ROBERT SANGER, ESQ.
9 Sanger & Swysen, Lawyers
10 233 E. Carrillo Street, Suite C
11 Santa Barbara, CA 93001
12 FAX: (805) 963-7311
13 Co-counsel for Defendant

14 BRIAN OXMAN, ESQ.
15 Oxman & Jaroscak, Lawyers
16 14126 E. Rosccrans Blvd.,
17 Santa Fe Springs, CA 90670
18 Co-counsel for Defendant
19
20
21
22
23
24
25
26
27
28

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 FEBRUARY 18, 2005, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO RECUSE THE DISTRICT ATTORNEY AND ONE OR MORE OF HIS DEPUTIES) addressed as follows:

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

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

X FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 456-0699 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon), Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(1), 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 the person having charge thereof or by hand delivery to the above mentioned parties.

___ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post 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 18TH day of FEBRUARY, 2005, at Santa Maria, California.


CARRIE L. WAGNER