

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAR 03 2005

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

13 Plaintiff,)

14 v.)

16 MICHAEL JOE JACKSON,

17 Defendant.)

No. 1133603

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
QUASH SUBPOENAS D.T. TO
HOLTHOUSE, CARLIN & VAN
TRIGHT AND TO BERNSTEIN,
FOX, WHITMAN & CO.

DATE: TBA
TIME: 9:30 a.m.
DEPT: SM 8

21 The People issued subpoenas duces tecum to Holthouse, Carlin & Van Tright, LLP,
22 and to Bernstein, Fox, Whitman & Co., accountants, seeking certain records of defendant's
23 income, expenditures and financial status during 2004.

24 Defendant moves to quash each subpoena on the ground that "1. [It] fails to establish
25 good cause for production of the subpoenaed documents"; "2. [It] constitutes an invasion of
26 Mr. Jackson's right of privacy pursuant to the [United] States Constitution and Article 1,
27 Section one of the California Constitution"; "3. [It] seeks information that can only be lawfully
28 obtained through the statutory discovery process outlined in Penal Code section 1054 *et seq.*"

1 and "4. The subpoena is overbroad and seeks information that would compromise trade secrets,
2 would interfere with contracts and would interfere with prospective advantage."

3 Response:

4 1. The Suppoena Reflects Good Cause For
5 Production Of The Subpoenaed Documents

6 Defendant notes that the subpoenas in question were issued "to obtain documents to
7 prove motive on behalf of defendant for the charge offenses and to corroborate the victims of
8 the charged offenses." Defendant argues that "The court ruled, on January 28, 2005, that the
9 District Attorney cannot use detailed financial evidence to show motive. (Declaration of Robert
10 M. Sanger. The law is very clear in that regard. Therefore there is not good cause to subpoena
11 these materials." (Motion 6:7-21.)

12 As relates to "financial evidence," our copy of the Court's omnibus "Criminal
13 Minute Order" dated January 28, 2005 reflects only the following:

14 Attorneys Auchincloss and Sanger addressed the Court re: Plaintiff's
15 Motion in Limine for Admission of Expert Testimony on Defendant's
16 Finances and Application for Order that the Defense Response to the
17 District Attorney's Motion in Limine for Admission of Expert Testimony
18 on Defendant's Finances, Dated January 21, 2005 be Withdrawn. **The**
19 **Court finds that general testimony as it relates to this particular**
20 **situation may be admissible**, but the Court shall reserve ruling at this
21 time. The Court further orders that a 402 hearing shall be held if such
22 witnesses are called."

(Emphasis added.)

22 2. The Subpoenas Do Not Threaten Defendant's
23 Privacy Under The United States Constitution
24 Or The California Constitution

25 Defendant argues that the subpoenas seek information protected by "his right of
26 privacy pursuant to the United States Constitution and Article 1, Section 1, of the California
27 Constitution." (Motion 7:21-22.)

28 Defendant has cited no authority for that argument. The contrary appears to be the

1 case.

2 Presumably, defendant's reference to his right of privacy under the United States
3 Constitution is to the Fourth Amendment to the Constitution.

4 In opposition to a much earlier effort by defendant to traverse search warrants for
5 bank and credit records, plaintiff noted that

6 Prior to enactment of Proposition 8 in 1983, a California defendant
7 could assert a reasonable expectation of privacy in bank records, just as
8 in telephone records, and enforce that expectation as a right under
9 California's Constitution. Post-Proposition 8, our courts are governed by
10 the binding authority of the United States Supreme Court in matters
11 touching on the Fourth Amendment.

12 With respect to bank records (and, by extension, credit-card
13 transaction records), an individual was held not to have reasonable
14 expectation of privacy in them in *United States v. Miller* (1976) 425 U.S.
15 435 [96 S.Ct. 1619, 48 L.Ed.2d 71]. *Miller* held that business records
16 held by a bank are the bank's records, not its customers' records. In
17 *People v. Meyer* (1985) 183 Cal.App.3d 1150, 1163, the Court of Appeal
18 noted, "The [*Miller*] court reasoned that the bank customer has no
19 legitimate expectation of privacy in those records since they are not
20 confidential communications but negotiable instruments to be used in
21 commercial transactions voluntarily conveyed to the banks and exposed
22 to their employees in the ordinary course of business. The court
23 concluded that the Fourth Amendment does not prohibit the obtaining of
24 information revealed to a third party and conveyed by him by government
25 authorities."

26 Plaintiff's research has not uncovered a decision discussing records of
27 a defendant's own use of his legitimately-obtained credit card, but it is
28 unlikely a different rule would apply to them.

29 In his opening statement, lead defense counsel told the jury that evidence would
30 "prove" that defendant's relationship with various individuals alleged to be his co-conspirators
31 would reveal that defendant was duped and taken advantage of by some or all of them, and that
32 he had no sufficient knowledge of what they were doing in his name and upon his ostensible
33 authority as to warrant a belief that he, too, was a conspirator.

1 The evidence of defendant's "varied and complex business relationships with
2 numerous individuals and entities" (Motion 8:1-2) may show that, to the contrary, defendant
3 was intimately involved in his dealings with them. It will certainly tend to disclose the state of
4 his finances at the time "Living with Michael Jackson" aired in the United States, and to
5 support the testimony of witnesses who have testified or stated that the effect of that broadcast
6 would have an important impact on his future financial well-being.

7 3. Plaintiff Is Not Limited By The Discovery Provisions
8 Of The Penal Code In Its Effort To Obtain Records
9 In The Possession Of Third Parties

10 Defendant argues that Plaintiff's subpoenas are discovery tools, and that the
11 provisions of Penal Code section 1054 et seq. limit the means of obtaining discovery in a
12 criminal case so as to exclude the use of a subpoena duces tecum for records in the possession
13 of a third party. "The express terms of the statutes state that the prosecutor cannot use the
14 subpoena process to obtain discovery." (Motion 8:18-19.)

15 The "express terms of the statutes" say no such thing. Defendant may chose to infer
16 that section 1054, subdivision (e)'s provision that "no discovery shall occur in criminal cases
17 except as provided by this chapter, other express statutory provisions, or as mandated by the
18 Constitution of the United States" may be so construed. But decisional law contradicts that
19 assumption. (See *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1314 ["The
20 statutory scheme does not apply to discovery from third parties"; defendant's use of subpoena
21 duces tecum upheld]; *Teal v. Superior Court (People)* (2004) 117 Cal.App.4th 488, 491 [same,
22 citing *Barrett*].)

23 4. To The Extent The Subpoenaed Documents May
24 Reveal "Trade Secrets," Defendant Will Be
25 Adequately Protected By The Court's Review
26 Of Evidence The People May Seek To Admit
27 Concerning The State Of Defendant's Finances

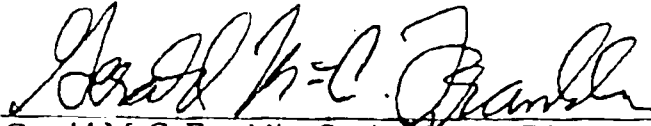
28 It seems unlikely that evidence in the possession of defendant's accountants and

1 business managers (including contracts) constitute "trade secrets," but assuming some of those
 2 documents would come within the Civil Code section 3426.1, subdivision (d)'s definition of
 3 "trade secret," there will be time enough for defendant to seek an appropriate protective order
 4 concerning the prosecutor's use of such documents. Defendant will, of course, be made aware
 5 of all documents obtained in obedience to the subpoenas duces tecum.

6 DATED: March 2, 2005

7 Respectfully submitted,

8 THOMAS W. SNEDDON, JR.
9 District Attorney

10
 11 By: 
 12 Gerald McC. Franklin, Senior Deputy District Attorney

13 Attorneys for Plaintiff

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 March 2, 2005, I served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO QUASH SUBPOENAS D.T. TO HOLTHOUSE, CARLIN & VAN TRIGHT AND TO BERNSTEIN, FOX, WHITMAN & CO." 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, and by transmitting a facsimile copy thereof to Attorney Mesereau at his confidential fax number in Santa Maria at the addresses shown on the attached Service List.

On the same date, I served Nasatir, Hirsch, Podberesky & Genego, Lawyers, and Michael Nasatir, Esq., counsel for Bernstein, Fox, Whitman & Co. and Holtman, Carlin & Van Tright, LLP, by transmitting a true copy thereof to Mr. Nasatir at the fax number shown on the Service List.

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

Executed at Santa Barbara, California on this 2nd day of April, 2005.


Gerald McC. Franklin

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