

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

APR 11 2005

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

1 **COLLINS, MESEREAU, REDDOCK & YU**
Thomas A. Mesereau, Jr., State Bar Number 091182
2 Susan C. Yu, State Bar Number 195640
1875 Century Park East, 7th Floor
3 Los Angeles, CA 90067
Tel.: (310) 284-3120, Fax: (310) 284-3133

4 **SANGER & SWYSEN**
5 Robert M. Sanger, State Bar Number 058214
233 East Carrillo Street, Suite C
6 Santa Barbara, CA 93101
Tel.: (805) 962-4887, Fax: (805) 963-7311

7 **OXMAN & JAROSCAK**
8 Brian Oxman, State Bar Number 072172
14126 East Rosecrans
9 Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298

10 Attorneys for Defendant
11 **MICHAEL JOSEPH JACKSON**

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

15 THE PEOPLE OF THE STATE OF)
16 CALIFORNIA,)

17 Plaintiffs,)

18 vs.)

19 MICHAEL JOSEPH JACKSON,)

20 Defendant.)
21)
22)
23)
24)
25)
26)
27)
28)

Case No. 1133603

MR. JACKSON'S RESPONSE TO DISTRICT
ATTORNEY'S MEMORANDUM RE:
COMMENT ON JANET ARVIZO'S
ASSERTION OF HER PRIVILEGE UNDER
THE FIFTH AMENDMENT

DATE: TBA
TIME: TBA
DEPT: SM-8

MR. JACKSON'S RESPONSE TO DISTRICT ATTORNEY'S MEMORANDUM RE: COMMENT ON JANET
ARVIZO'S ASSERTION OF HER PRIVILEGE UNDER THE FIFTH AMENDMENT

1 under the defense theory, the Arvizo children are an integral part of Mrs. Arvizo's schemes to
2 obtain unearned funds.

3 Mrs. Arvizo's welfare fraud occurred during the time periods relevant to this case. At the
4 same time she was being supported by her then boyfriend and now husband, Jay Jackson, and
5 receiving food, clothing and lodging from Michael Jackson, she was declaring, under penalty of
6 perjury, that she and her children were impoverished. Mrs. Arvizo now claims that she was held
7 captive during February and March of 2003. The jury should be allowed to hear that she was
8 able to apply for and received welfare payments during that exact time period.

9 Furthermore, Mrs. Arvizo's welfare fraud is relevant to her credibility because it
10 demonstrates that she has no qualms about lying under oath. The prosecution would like the jury
11 to believe that Mrs. Arvizo only lied under oath to protect herself from an abusive husband (RT
12 94:7-10), however, her repeated lies, under penalty of perjury, on her welfare applications, belie
13 this claim. The evidence will show that she lies whenever it suits her purposes, under oath, or
14 not. The jury should be able to consider Mrs. Arvizo's tendency to lie under oath when
15 evaluating her credibility.

16 The government has apparently shifted their strategy, yet again, with regard to Janet
17 Arvizo's criminal conduct. Initially, during the grand jury proceeding and pre-trial hearings, the
18 prosecution presented Mrs. Arvizo as an unsophisticated innocent victim. They went as far as to
19 impugn the integrity of defense counsel in claiming that these sorts of charges were part of an
20 unsubstantiated smear campaign. Later, when presented with irrefutable proof, in the form of
21 subpoenaed welfare applications, that Mrs. Arvizo committed perjury and fraud, the District
22 Attorney attempted to minimize the fraud by claiming that it was a small amount of money and
23 that Mrs. Arvizo was willing to acknowledge that she was in the wrong. In his opening
24 statement¹, Mr. Sneddon informed the jury that Janet Arvizo was going to testify that she

25
26 ¹ If defense counsel is prohibited from commenting on Janet Arvizo's assertion of a Fifth
27 Amendment privilege, defense counsel is still obligated to point out to the jury, during closing
28 argument, that Mrs. Arvizo's testimony did not match Mr. Sneddon's proffer, in his opening
statement, that the amount of money was not large and that she has accepted responsibility for

1 committed welfare fraud. Mr. Sneddon stated:

2 It's true also that she obtained welfare funds when she wasn't entitled to them.
3 She's going to tell you that, and she's going to admit that. It's not a large amount
4 of money. But she did it. And it was wrong. And she knows it was wrong.
(RT 94:11-15.)

5 Now, the government has informed defense counsel that Janet Arvizo will assert a Fifth
6 Amendment privilege not to incriminate herself with regard to her welfare frauds.² The jury
7 should be allowed to decide whether, as claimed by Mr. Sneddon, the amount of money is
8 insignificant and Mrs. Arvizo is now contrite, or, as the defense will demonstrate, Mrs. Arvizo's
9 welfare fraud is part of her modus operandi and demonstrates that she is not a credible witness.
10 This is a proper issue for the jury to evaluate and it should not be hidden from them.

11 The government is attempting to conceal the truth about Janet Arvizo from the jury. The
12 government's strategic decision to not grant immunity to Janet Arvizo is an attempt to
13 deliberately distort the fact finding process. (See *Government of the Virgin Islands v. Smith*
14 (1980) 615 F.2d 964.) The prosecution has long been aware that Janet Arvizo committed welfare
15 fraud. Despite this knowledge, there is no evidence the government intends to prosecute her for
16 her crimes. The idea that she all of a sudden intends to take the Fifth suggests a strategic
17 decision on the part of the government.³ The government has no strong interest in withholding a
18 grant of use immunity. As demonstrated above, this information is a vital part of Mr. Jackson's
19 defense. Any restriction on defense counsel's ability to confront and cross-examine Mrs. Arvizo
20 on these relevant and important matter will deprive Mr. Jackson of his rights under the federal
21 and state constitutions.

22
23
24 her conduct.

25 ² The Carl Capozzola referred to by the government in their memorandum is not
26 associated with the defense of *People v. Michael Joseph Jackson*.

27 ³ This is yet another example of the District Attorney acting in the role of Mrs. Arvizo's
28 attorney, rather than as a representative of the taxpayers that she defrauded.

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

II.

CONCLUSION

The Court should reject the prosecution's request.

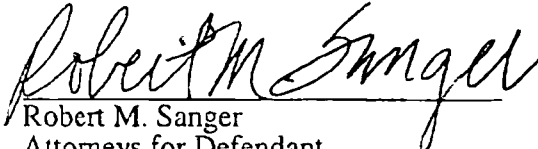
Dated: April 11, 2005

COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr.
Susan C. Yu

SANGER & SWYSEN
Robert M. Sanger

OXMAN & JAROSCAK
Brian Oxman

By:



Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On April 11, 2005, I served the foregoing document MR JACKSONS RESPONSE TO DA MEMORANDUM RE COMMENT ON JANET ARVIZOS ASSERTION OF HER PRIVILEGE UNDER THE FIFTH AMENDMENT on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
District Attorney
312 East Cook Street
Santa Maria, CA 93454

 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

 BY FACSIMILE -I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties [SEE ABOVE]

 X BY HAND - I caused the document to be hand delivered to the interested parties at the address above.

 X STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed April 11, 2005 at Santa Maria, California.

STEPHEN K DUNKLE