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

15 THE PEOPLE OF THE STATE OF
16 CALIFORNIA,

17 Plaintiffs,

18 vs.

19 MICHAEL JOSEPH JACKSON,

20 Defendant.
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) Case No. 1133603
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)

) MR. JACKSON'S OPPOSITION TO THE
) DISTRICT ATTORNEY'S REQUEST THAT
) DEFENSE COUNSEL BE PROHIBITED
) FROM CROSS-EXAMINATION OF
) CHRISTOPHER CARTER REGARDING HIS
) PENDING FELONY CHARGES

) DATE: TBA
) TIME: TBA
) DEPT: SM-8
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BE PROHIBITED FROM CROSS-EXAMINATION OF CHRISTOPHER CARTER REGARDING HIS PENDING
FELONY CHARGES**

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

APR 20 2005

GARY M. BLAIR, Executive Officer

By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

ORIGINAL

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 I.

4 THE SIXTH AMENDMENT GUARANTEES MR. JACKSON THE RIGHT TO
5 CONFRONT AND CROSS-EXAMINE THE WITNESSES AGAINST HIM

6 The Sixth Amendment right to confrontation and cross-examination is the heart of a
7 criminal trial. The importance of this right was recently re-affirmed by the United States
8 Supreme Court in *Crawford v. Washington* (2004) 541 U.S. 36. If Mr. Jackson is not permitted
9 to confront the witnesses against him with regard to matters that are highly relevant to credibility
10 then his Sixth Amendment rights become meaningless.

11 Christopher Carter is presently in state and federal custody, facing years in prison for
12 bank robbery, among other charges. Mr. Carter is under tremendous pressure to act in his own
13 self-interest. It is entirely proper for defense counsel to cross-examine him with regard to these
14 circumstances.

15 In *Giglio v. United States* (1972) 405 U.S. 150, the United States Supreme Court
16 recognized that pending criminal charges against a prosecution witness are relevant to credibility.
17 In holding that information regarding leniency towards such a witness must be disclosed to
18 defense counsel. California courts have specifically held that a defendant is entitled to cross-
19 examine based on pending charges, regardless of whether or not a deal with the government is in
20 place. The pendency of criminal charges is material to a witness' motivation in testifying even
21 where no express promises of leniency or immunity have been made. (*People v. Coyer* (1983)
22 142 Cal.App. 3d 839, 842.) The prosecution has not established a justification for depriving Mr.
23 Jackson of his right to confront and cross-examine the witnesses against him.

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1 II.

2 PEOPLE V. HECKER (1990) 21 Cal.App. 3d 1238 AND PEOPLE V. MINCEY (1992) 2
3 Cal.4th 408 ARE DISTINGUISHABLE FROM THE PRESENT CASE BECAUSE
4 NEITHER CASE INVOLVES A DEFENDANT'S SIXTH AND FOURTEENTH
5 AMENDMENT RIGHTS TO CONFRONT AND CROSS-EXAMINE HIS ACCUSERS

6 The government wants to put Mr. Jackson in prison and intends to introduce Mr. Carter's
7 testimony to help do so. It is a fundamental constitutional right that a defendant be allowed to
8 confront his accusers. The inability of Mr. Jackson's counsel to effectively confront and cross-
9 examine Mr. Jackson's accusers clearly implicates Mr. Jackson's rights under the Sixth
10 Amendment. This is not a situation where a criminal defendant is asking to introduce the
11 testimony of a witness, who will take the Fifth, on his own behalf. The government is seeking to
12 deprive Mr. Jackson of his right to confront and cross-examine a witness against him and this
13 Court should reject this unconstitutional request.

14 Unlike the present case, *Hecker* and *Mincey* did not involve situations that implicated the
15 Sixth Amendment rights of the accused. In *Hecker*, the Court of Appeal found that striking the
16 entire testimony of a defense witness who invoked his Fifth Amendment rights, with regards to a
17 particular issue, constituted harmless error. In *Mincey*, the California Supreme Court held that
18 the trial court was not required to compel a defense witness from taking the Fifth in front of the
19 jury. Analogies to situations in which the Sixth Amendment is not implicated are unpersuasive.
20 The prosecution's request that the court "make it crystal-clear to defense counsel that the fact of
21 Mr. Carter's recent arrest and the pendency of felony charges against him is 'out of bounds' and
22 that attempted impeachment of the witness by any reference to such matters, however oblique,
23 will be dealt with sternly," should be rejected out of hand.

24 III.

25 PEOPLE V. HECKER SUPPORTS ALLOWING THE JURY TO DRAW A NEGATIVE
26 INFERENCE FROM MR. CARTER INVOKING HIS FIFTH AMENDMENT RIGHTS

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28 MR. JACKSON'S OPPOSITION TO THE DISTRICT ATTORNEY'S REQUEST THAT DEFENSE COUNSEL
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1 "While it has generally been held inappropriate to allow a jury to draw negative
2 inferences from a witness's appropriate invocation of the privilege against self-incrimination
3 [CITATIONS OMITTED] a different balancing of interests may be appropriate where a
4 party is willing to run the risk of such a negative inference for the purposes of
5 impeachment in order to place before the jury other critical testimony." (*People v. Hecker*
6 (1990) 21 Cal.App. 3d 1238, 1248.)

7 IV.

8 CONCLUSION

9 The Court should not restrict Mr. Jackson's ability to confront and cross-examine the
10 witnesses against him.

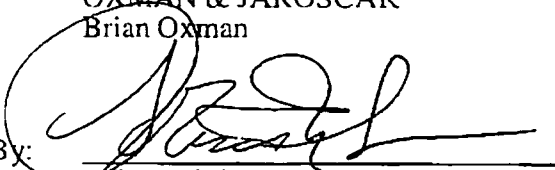
11 Dated: April 20, 2005

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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 20, 2005, I served the foregoing document MR JACKSONS OPPOSITION TO THE DISTRICT ATTORNEYS REQUEST THAT DEFENSE COUNSEL BE PROHIBITED FROM CROSS EXAMINATION OF CHRISTOPHER CARTER REGARDING HIS PENDING FELONY CHARGES on the interested parties in this action by depositing a true copy thereof as follows:

District Attorney of the County of Santa
Barbara
Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
312 East Cook Street
Santa Maria, CA 93454
Fax - 805-568-2398

 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.

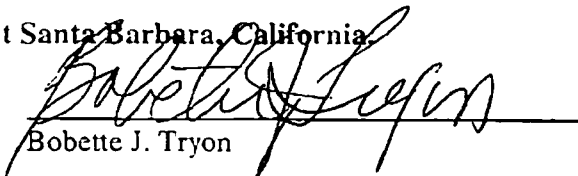
 BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at the above-referenced numbers.

 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.

 FEDERAL - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed April 20, 2005, at Santa Barbara, California



Bobette J. Tryon