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2 County of Santa Barbara

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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 24 2004

GARY M. BLAIR, Executive Officer

By *Carrie L. Wagner*

CARRIE L. WAGNER, Deputy Clerk

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA BARBARA**
15 **SANTA MARIA DIVISION**

16 THE PEOPLE OF THE STATE OF CALIFORNIA,

17 Plaintiff,

18 vs.

19 MICHAEL JOE JACKSON,

20 Defendant.

No. 1133603

RESPONSE TO
DEFENDANT'S MOTION TO
COMPEL DISCOVERY;
DECLARATION OF
GORDON AUCHINCLOSS

Date: May 28, 2004

Time: 8:30 AM

Dept.: 9 (Melville)

21 **INTRODUCTION**

22 The scope of the investigation in this case is extraordinary and there is little doubt
23 that investigation will continue through trial. To date, the People have provided
24 defendant with over 1000 pages of Sheriff's Reports including documentary evidence and
25 over 50 audio and video tapes. Sheriff's reports are generated when any particular aspect
26 of the investigation is completed. Because reports are not prepared contemporaneously
27 with each portion of the investigation and because each report must then be drafted, word
28 processed, reviewed, redrafted into its final form, provided to the prosecution and then

1 copied and numbered for discovery, some lag time between investigation and the final
2 report is inevitable. Audio and video recordings of interviews are generally forwarded to
3 the prosecution only when the report accompanying any recording is completed.

4 The People have promptly provided discovery to defendant as soon as it becomes
5 available and are in complete compliance with its obligations under *Brady v. Maryland*
6 (1963) 373 U.S. 667 and the rules for discovery in criminal cases pursuant to Penal Code
7 § 1054 et seq.

8 9 **THE PEOPLES RESPONSE**

10 Penal Code § 1054 provides in pertinent part:

11 This chapter shall be interpreted to give effect to all of the
12 following purposes.....

13 (b) To save court time by requiring that discovery be
14 conducted informally between and among the parties before
15 judicial enforcement is requested.

16 The first notice provided to the People that the informal discovery process had
17 reached a critical impasse requiring the courts intervention came in the form of
18 defendant's motion to compel discovery. The People promptly contacted the defense to
19 assure them that the People are complying with the letter and the spirit of Penal Code
20 §1054 et seq. and its obligations under *Brady*. At the People's prompting, a conference
21 call involving Senior Deputy District Attorneys Gordon Auchincloss and Gerald Franklin
22 for the People and Thomas A. Mesereau, Jr., Susan C. Yu, Steve Cochran and Robert
23 Sanger for the defense was held on Friday, May 21, 2004 in the hope that any remaining
24 discovery issues could be resolved informally.

25 During this call, the People directly addressed each concern expressed by the
26 defense and corrected the misperception that the prosecution is "controlling" discovery.
27 An update on the status of new reports and audio tapes was provided and the defense was
28 notified of reports which would be ready for pickup the following week.

1 Regarding defendant's request for the viewing of physical evidence in possession
2 of the Santa Barbara Sheriff's Department, the People informed the defense that these
3 materials are available for inspection now and the investigating agency has been notified
4 to arrange a meeting with the defense at the earliest convenience of all concerned. The
5 People would not agree with the unusual defense request that the Sheriff's Department
6 relinquish unsupervised custody and control of physical evidence to the defense and their
7 investigators during its viewing.

8 During the conference call, the defense could not provide the People with a single
9 discovery issue the People have been unresponsive to. The People repeatedly assured the
10 defense that they would assiduously observe all obligations concerning discovery and
11 make further good faith attempts to resolve any future discovery issues between the
12 parties. The People suggested the defense take their discovery motion off-calendar until
13 such time that a concrete issue arises that cannot be resolved informally. The defense
14 responded by saying that the defendant's interests would best be served by having the
15 court monitor discovery. Whether that is true or not, the very purpose of Penal Code
16 §1054 is ignored when a party fails to observe its obligation to make every effort to
17 resolve discovery issues informally.

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CONCLUSION

10 The People take their obligations under Penal Code §1054 and *Brady* very
11 seriously and are in full compliance with these rules. The defendant's motion is
12 premature and disregards the obligation of the defense to endeavor to resolve discovery
13 issues informally.

14 Notwithstanding this failing, should the court wish to make an order for general
15 compliance under Penal Code §1054.1 the People will offer no opposition. However, it
16 should be noted that, to date, the People have requested discovery from the defense
17 pursuant to Penal Code §1054.3 and received none. As such, it is just and appropriate
18 that any order for discovery issued by the court be reciprocal.

1 DATED: May 24, 2004

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Respectfully submitted,

THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

BY:



GORDON AUCHINCLOSS
Senior Deputy District Attorney

1 DECLARATION OF GORDON AUCHINCLOSS

2
3 I, Gordon Auchincloss do hereby declare:

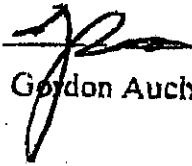
4 I am a Senior Deputy District Attorney for the County of Santa Barbara. I am one
5 of the attorneys assigned to the prosecution of *The People of the State of California v.*
6 *Michael Joe Jackson*, Santa Barbara Superior Court Case No. 1133603.

7 On May 18, 2004 I called the office of one of the attorneys for defendant Steve
8 Cochran and left messages for him to return my call. Mr. Cochran returned my call on
9 May 19, 2004 and I discussed with him the issue of discovery in this case. Mr. Cochran
10 informed me that he would like to include his colleagues in the discussion and a
11 conference call was arranged for May 21, 2004 at 11:00 AM.

12 On May 21, 2004 at 11:00 AM I participated in a conference call involving,
13 Thomas A. Mesereau, Jr., Susan C. Yu, Steve Cochran and Robert Sanger for the defense
14 and Gerald Franklin for the People. I explained the reason why discovery has been
15 produced in several installments and I gave a timetable for known future discovery. I
16 further explained that the defense may view the physical property in this case whenever
17 they can arrange to do so. I did not agree with Mr. Sanger's request that the defense be
18 given unsupervised custody of physical evidence during its viewing. I repeatedly assured
19 the defense that the prosecution will continue to honor its obligations under *Brady* and
20 Penal Code §1054 et seq. and that I would personally work with the defense to resolve
21 any discovery issues that may arise.

22 Finally, I asked the defense to provide me with any and all concerns they presently
23 have regarding discovery so that I could help resolve them without the necessity of
24 judicial intervention. No further complaints or concerns were forthcoming. I suggested
25 that the defense take their motion off-calendar until such time that judicial intervention
26 becomes a necessity. The defense posited that it was in their client's best interests to have
27 the court monitor discovery now.
28

1
2 I declare under penalty of perjury that the foregoing is true and correct.
3 Executed this 24th day of May, 2004, at Santa Barbara, California.
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7 _____
8 Gordon Auchincloss
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PROOF OF SERVICE

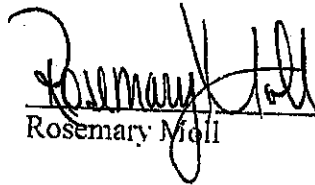
STATE OF CALIFORNIA)
) SS
COUNTY OF SANTA BARBARA)

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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On May 24, 2004, I served the within PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCOVERY on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, by faxing a true copy to counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

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

Executed at Santa Barbara, California on this 24th day of May, 2004.



Rosemary Moll

SERVICE LIST

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