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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JUN 27 2005

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION
12

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiffs,

16 vs.

17 MICHAEL JOSEPH JACKSON,

18 Defendant.
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20
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) Case No. 1133603

) REPLY TO DISTRICT ATTORNEY'S
) RESPONSE TO MOTION FOR AN ORDER
) THAT PROPERTY BE RETURNED

) Honorable Rodney S. Mcville
) Date: TBD
) Time: TBD
) Dept: SM 2

22 ARGUMENT

23 I.

24 LAW ENFORCEMENT IS NOT ENTITLED TO RETAIN PROPERTY SEIZED
25 PURSUANT TO A SEARCH WARRANT AFTER THE PENDENCY OF A CRIMINAL
26 ACTION HAS EXPIRED

27 The Court has the authority to order that the property be returned and a motion for such
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REPLY TO RESPONSE TO MOTION FOR AN ORDER THAT PROPERTY BE RETURNED

1 an order is the proper procedure. "The trial court is empowered to entertain a motion for return
2 of seized items by [Penal Code] section 1536, as well as by the court's inherent power to control
3 and prevent the abuse of its process." (*Lensonig Corp. v. Superior Court* (1998) 65 Cal.App.4th
4 1537.)

5 Mr. Jackson is entitled to the return of his property. "Continued official retention of legal
6 property with no further criminal action pending violates the owner's due process rights."
7 (*People v. Lamonte* (1997) 53 Cal.App.4th 544, 549.) The District Attorney and the Sheriff's
8 Department are not entitled to retain seized property. The items sought to be returned were
9 seized pursuant to search warrants and subpoenas supported by affidavits establishing probable
10 cause for this case. This case is over. Law enforcement is merely holding the seized materials
11 for the Court and has no independent right of possession. (*People v. Superior Court (Loar)*
12 (1972) 28 Cal.App.3d 600.)

13 The District Attorney claims that certain items "may have relevance in the event of
14 another investigation" as a justification for not releasing seized property. (Response, page 2.)
15 There is no legal authority to support this argument. Law enforcement is not entitled to retain a
16 defendant's possessions after a criminal action has ended based on the possibility of another
17 investigation at some point in the future. In *People v. Superior Court (Loar)* (1972) 28
18 Cal.App.3d 600, the court stated that:

19 The argument presupposes that the chief of police had some claim to or right to
20 possession of the seized material apart from his limited custodial rights under the
21 search warrant. However, an officer seizing and holding property under a search
22 warrant does so on behalf of the court; possession by the officer is in
23 contemplation of the law possession by the court.
(*People v. Superior Court (Loar)* (1972) 28 Cal.App.3d 600, 608.)

24 The only valid reason for law enforcement to retain possession of a defendant's property,
25 following the termination of a criminal action, is if the property is contraband. Lawfully
26 possessed items must be returned. Law enforcement is not entitled to retain items lawfully
27 possessed by as defendant at the time of his arrest upon charges of which he is subsequently
28 exonerated. (See *Espinosa v. Superior Court* (1975) 50 Cal.App.3d 347.) In *Espinosa*, the Court

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1 of Appeal issued a writ of mandate ordering the return of guns seized from a defendant who had
2 been acquitted of assault with a deadly weapon on a peace officer.

3 The District Attorney claims that "[c]ertain property may not belong to Mr. Jackson."
4 (Response, page 2.) However, there is no showing of a legitimate question of ownership with
5 regard to any item that was seized from Mr. Jackson. There is no evidence before the Court that
6 the seized items did not belong to Mr. Jackson. Furthermore, if there were a legitimate dispute as
7 to ownership of anything seized from Mr. Jackson, this would not be the proper forum for a third
8 party to litigate that issue. (*Ensoniq Corp. v. Superior Court* (1998) 65 Cal.App.4th 1537.)

9 With regard to photographs and videotapes taken during the search of Mr. Jackson's
10 residence and person, the Court should consider that those photographs and videotapes were
11 seized pursuant to search warrants stemming from criminal actions that are no longer being
12 investigated or pending. Observations of officers are the fruits of a search. (See i.e., *People v.*
13 *Lovelace* (1981) 116 Cal.App. 3d. 541.) Penal Code Section 1536 gives this Court jurisdiction
14 to return "all property or things taken" subject to the order of the Court.

15 II.

16 **LAW ENFORCEMENT ALREADY HAS INVENTORIES OF EVERYTHING SEIZED**
17 **FROM MR. JACKSON AND THERE IS NO REQUIREMENT THAT MR. JACKSON**
18 **PROVIDE A MORE DETAILED LIST OF THE PROPERTY**

19 The District Attorney asserts that Mr. Jackson should provide the Court and the District
20 Attorney with a particularized list of each specific item that he wants returned and that Mr.
21 Jackson has a list of everything that was "seized or generated." (Response, page 2.) First, Mr.
22 Jackson has already provided an adequate description of the property in the form of the proposed
23 order. Second, the lists of property referenced by the District Attorney are the inventories from
24 the searches prepared by law enforcement. Both sides have the inventories. The District
25 Attorney and the Santa Barbara Sheriff's Department have notice of what was seized and
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1 generated during the searches.¹

2 III.

3 CONCLUSION

4 For the reasons stated above and in the motion, the Court should order the return of the
5 seized and subpoenaed property as set forth in the proposed order.

6 Dated: June 27, 2005

7 Respectfully submitted,

8 COLLINS, MESEREAU, REDDOCK & YU
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10 SANGER & SWYSEN
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12
13 By:



14 Stephen K. Dunkle
15 Attorneys for Defendant
16 MICHAEL JOSEPH JACKSON
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24 ¹ As stated in the declaration of counsel, attached to the motion, counsel for Mr Jackson
25 attempted to meet and confer with the District Attorney regarding a stipulation to return the
26 property. While the District Attorney did not respond to this attempt to meet and confer, it
27 should be noted that the District Attorney was able to file his response to this motion within
28 several hours of the motion being filed. If there were truly a dispute as to which items Mr.
Jackson wanted returned, or as to the ownership of certain items, the District Attorney could have
met and conferred with defense counsel so that the matter could be resolved via stipulation.

PROOF OF SERVICE

I, the undersigned declare:

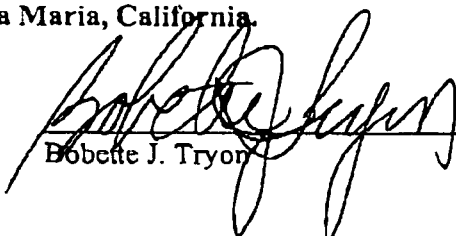
I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 301 East Cook Street, Suite A, Santa Maria, California 93454.

On June 27, 2005, I served the foregoing document: **REPLY TO DISTRICT ATTORNEY RESPONSE TO MOTION FOR AN ORDER THAT PROPERTY BE RETURNED** on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney's Office
1112 Santa Barbara Street
Santa Barbara, Ca 93101
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 number.
- BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.
- STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed June 27, 2005, at Santa Maria, California.


Bobette J. Tryon