

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 12 2004

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MICHAEL JACKSON,

Defendant.

) Case No.: 1133603

) Order for Release of Redacted Documents

) [Opposition to the Prosecution's Sanchez
) Motion]

The redacted form of the Defendant's Opposition to the Prosecution's *Sanchez* Motion attached to this order shall be released and placed in the public file. The court finds that there is more material in the motion that can be released than that contained in the proposed redacted version. The unredacted originals shall be maintained conditionally under seal pending the hearing on October 14, 2004.

DATED: October 12, 2004

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

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MICHAEL JOSEPH JACKSON
15

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

18 THE PEOPLE OF THE STATE OF)
19 CALIFORNIA,)

20 Plaintiffs,)

21 vs.)

22 MICHAEL JOSEPH JACKSON,)

23 Defendant.)
24)
25)
26)

Case No. 1133603

MR. JACKSON'S OPPOSITION TO THE
PROSECUTION'S *SANCHEZ* MOTION;
DECLARATION OF ROBERT M. SANGER

UNDER SEAL

Honorable Rodney S. Mciville
Date: October 14, 2004
Time: 8:30 am
Dept: SM 8

27
28
MR. JACKSON'S OPPOSITION TO THE PROSECUTION'S *SANCHEZ* MOTION

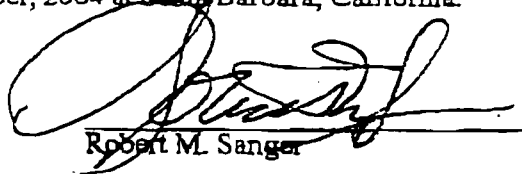
REDACTED
COPY

DECLARATION OF ROBERT M. SANGER

I, Robert Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.
2. The defense came into possession of a copy of a recorded interview of Jane Doe and her children conducted by Bradley Miller. We had believed our copy was identical to the copy in possession of the government from the search of Mr. Miller's office, which was labeled as Sheriff's evidence Item 818. For the first time, in the prosecution's "*Sanchez*" motion, it has been brought to our attention that the prosecution's copy of Item 818 purportedly ends earlier than the copy of the same interview which we were provided. We do not know why that is - - whether the prosecution miscopied the tape or if the copy found in Mr. Miller's office (Item 818) was shorter than the version of the same interview provided to defense counsel.
3. I spoke to Deputy District Attorneys Franklin and Auchincloss on the telephone and said deputies informed the undersigned that they had not intended for the motion to be so broad as to request discovery from Mr. Jackson personally, however, no modification or withdrawal has been served.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 8th day of October, 2004 at Santa Barbara, California.


Robert M. Sanger

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 MR. JACKSON AGREES TO PROVIDE THE DISTRICT ATTORNEY WITH THE
4 TAPE OF THE DOE FAMILY INTERVIEW THAT IS IN THE POSSESSION OF
5 DEFENSE COUNSEL

6 Mr. Jackson does not concede the validity of the so-called *Sanchez* motion filed by the
7 prosecution for the reasons set forth below. However, Mr. Jackson, through his counsel, agrees
8 to provide the prosecution with a copy of a tape of the interview of Jane Doe and her children,
9 from which the defense prepared the transcript that was used in court. Sheriff's Item 818, a copy
10 of the interview of February 16, 2003, with Jane Doe and her three children, was one of the items
11 seized from Bradley Miller's office. Prior counsel, Mark Geragos, attempted to have the tape
12 suppressed and returned on the basis of attorney-client privilege as to the contents of the tape
13 itself. The Court ruled that the tape was not privileged in the sense argued by Mr. Geragos and
14 the tape was released to the prosecution. However, the defendant, by successor counsel, argued
15 that the seizure of that item was unlawful on several additional grounds, including invasion of the
16 defense camp, and moved to suppress it and all of the evidence seized at the November 18, 2003
17 search of Mr. Miller's office.

18 The defense came into possession of another copy we had believed to be identical to the
19 copy of the interview in the possession of the government from Mr. Miller's office, labeled by
20 the Sheriff as Item 818. For the first time, in the prosecution's *Sanchez* motion, it has been
21 brought to our attention that the prosecution's copy of Item 818 purportedly ends earlier than the
22 copy of the same interview which we were provided. We do not know why that is the case. We
23 do not know whether the prosecution miscopied the tape or if the copy found in Mr. Miller's
24 office (Item 818) was shorter than the version of the same interview provided to defense counsel.
25 Nevertheless, the defense will provide the prosecution with a copy of the tape that is in
26 possession of defense counsel on the grounds that the defense offered a transcript of same in the
27 court proceedings.

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MR. JACKSON'S OPPOSITION TO THE PROSECUTION'S *SANCHEZ* MOTION

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2 II.

3 **SANCHEZ DID NOT OVERRULE THE FIFTH, SIXTH AND FOURTEENTH**
4 **AMENDMENTS TO THE UNITED STATES CONSTITUTION**

5 The prosecution is attempting to circumvent Mr. Jackson's rights under the Fifth, Sixth
6 and Fourteenth Amendments to the United States Constitution and California's law by asserting
7 that *Sanchez* requires a defendant and his counsel to assist the prosecution in their efforts to
8 convict him. Contrary to the prosecution's analysis, *People v. Sanchez* (1994) 24 Cal.App.4th
9 1012 did nothing to alter the rights of the accused under the United States Constitution.
10 Furthermore, under California's reciprocal discovery statutes, Mr. Jackson and his counsel are
11 not required to turn materials over to the prosecution that we do not intend to use at trial, and, if
12 required to turn them over at all, that obligation accrues 30 days prior to the trial pursuant to
13 Penal Code Section 1054.7.

14 *People v. Sanchez*, supra, 24 Cal.App. 4th 1012 does not authorize a discovery motion,
15 such as the motion filed by the prosecution. *Sanchez* reiterates the law on murder weapons and
16 other "smoking gun" evidence, such as inculpatory writings, that have come into the hands of
17 defense attorneys through third parties. *Sanchez* held that when "a defendant, without being
18 compelled to do so, creates inculpatory writings and the government obtains them without
19 compelling the defendant to authenticate or vouch for those writings, the Fifth Amendment is not
20 violated." This holding is not applicable to the case at bar.

21 In *Sanchez*, family members of the defendant discovered inculpatory writings in the
22 defendant's bedroom, including notes that expressed the defendant's desire to kill the victim and
23 a "murder checklist." (*Sanchez*, supra, 24 Cal.App. 4th 1017-1018.) Counsel for the defendant in
24 *Sanchez* received the writings from a public defender investigator who received the writings from
25 an attorney who received the writings from defendant's family members. *Sanchez* is nothing like
26 the case at bar.

27 The prosecution's attempt to use the dragnet of the conspiracy count to expand the
28

1 holding of *Sanchez* is unconvincing. There are no materials in this case, in the possession of Mr.
2 Jackson or his counsel, that bear any resemblance to the real evidence in *Sanchez*, or the cases
3 cited by *Sanchez*. Those cases involve real evidence of murder. In *People v. Lee* (1970) 3
4 Cal.App. 3d 514, the defendant's wife gave his bloody boots (the attempted murder weapons) to
5 a public defender investigator who gave them to defendant's public defender who gave them to
6 the judge. In *People v. Meredith* (1981) 29 Cal.3d 682, the defense attorney had his investigator
7 retrieve a murder victim's wallet from a trash can, after being informed by one of the defendants
8 of the location of the wallet, and then turned the wallet over to the police after examining it. In
9 *People v. Superior Court (Fairbank)* (1987) 192 Cal.App. 3d 32, the prosecutor learned from an
10 intercepted jailhouse letter that the defense attorney was in possession of the murder weapons.

11 The prosecution has not demonstrated that materials exist that are the equivalent of
12 bloody boots, a homicide victim's wallet or a "murder checklist." Instead, the District Attorney
13 has submitted a wish list of materials and requests for production of documents that it hopes
14 would be helpful to its case. The prosecution invites the Court to expand the holding of *Sanchez*
15 to cover these items without a showing that they even exist, let alone that they are in the
16 possession of Mr. Jackson's counsel. There is no case law to support such an interpretation of
17 *Sanchez*. Furthermore, if such an expansive reading of *Sanchez* were permitted, it would be
18 unconstitutional.

19 III.

20 THE ITEMS REQUESTED WHICH PERTAIN TO [REDACTED]
21 [REDACTED] ARE COVERED BY THE
22 ATTORNEY-CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT.

23 DOCTRINE

24 Mr. Jackson objects to being asked to turn over items that are protected by the attorney-
25 client privilege and work product doctrine. The burden falls on the District Attorney to show, by
26 competent evidence or offers of proof, that the evidence he seeks is not protected by any
27 privilege. (*United States v. Zolin* (1989) 491 U.S. 554, 109 S.Ct. 2619 (party seeking disclosure
28

1 must show factual basis for good faith and reasonable belief that evidence is not privileged).
2 This is not a case where crime or fraud by an attorney has been alleged, let alone demonstrated by
3 competent evidence.

4 The District Attorney in an almost offhand fashion includes [REDACTED]
5 [REDACTED] as a "named or unnamed co-conspirator" in its list of items to be compelled.
6 (*Sanchez* Motion, pages 8-9.) There is no mention of [REDACTED] in the argument portion of
7 the prosecution's moving papers. Moreover, there is no factual showing whatsoever in the
8 prosecutor's declaration to support such a reference. This is a serious allegation [REDACTED]
9 [REDACTED] made in a careless and offhand manner which must be characterized
10 as another instance of overreaching by the prosecution.

11 The prosecution has not met its burden of establishing any facts or a factual basis
12 to create an exception to the attorney-client privilege or work product doctrine. Here, the
13 invasion of the defense camp and the intrusion of the attorney-client privilege are already being
14 litigated regarding the search of Bradley Miller's offices. The careless and offhand reference to
15 [REDACTED] only exacerbates the prosecution's actions.

16 IV.

17 **THE PROSECUTION'S REQUEST FOR PRODUCTION OF MATERIALS IN**
18 **POSSESSION OF DEFENDANT IS WITHOUT AUTHORITY AND IS PROHIBITED**
19 **BY THE CONSTITUTION**

20 The prosecution's moving papers request that Mr. Jackson personally produce materials
21 to the prosecution.¹ This request is not authorized by California law and is prohibited by the
22 Fifth and Fourteenth Amendments to the United States Constitution. If such requests were
23 permitted, our constitutional system would be replaced by a system in which prosecutors could
24 send interrogatories to citizens, asking if the citizens had committed crimes, and if so, requesting

25
26 ¹ The undersigned spoke to Deputy District Attorneys Franklin and Auchincloss on the
27 telephone and said deputies informed the undersigned that they had not intended for the motion
28 to be so broad as to request discovery from Mr. Jackson personally. However, in the absence of
the prosecution moving to withdraw the motion, Mr. Jackson is obligated to respond and does so
here.

1 that they provide the prosecution with evidence demonstrating guilt.

2 As argued above, even if the District Attorney's requests apply only to defense counsel,
3 they still violate Mr. Jackson's constitutional rights and attempt to impermissibly lessen the
4 burden of proof upon the prosecution.

5
6 V.

7 CONCLUSION

8 Mr. Jackson, through his counsel, agrees to provide the prosecution with a copy of
9 defense counsel's tape of the interview with Jane Doe and her children, a transcript of which was
10 introduced into evidence. Mr. Jackson objects to the prosecution's request for disclosure of
11 materials that are subject to Mr. Jackson's rights under the Fifth, Sixth and Fourteenth
12 Amendments to the United States Constitution, the attorney-client privilege, and the work
13 product doctrine.

14 Dated: October 8, 2004

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

17 KATTEN MUCHIN ZAVIS ROSENMAN
18 Steve Cochran
Stacey McKee Knight

19 SANGER & SWYSEN
Robert M. Sanger

20 OXMAN & JAROSCAK
21 Brian Oxman

22
23 By: 

24 Robert M. Sanger
25 Attorneys for Defendant
26 MICHAEL JOSEPH JACKSON
27
28

MR. JACKSON'S OPPOSITION TO THE PROSECUTION'S SANCHEZ MOTION

PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On OCTOBER 12, 20 04, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (OPPOSITION TO THE PROSECUTION'S SANCHEZ MOTION) addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
1105 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

X FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 310-861-1007 (THOMAS A. MESEREAU, JR). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

 MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

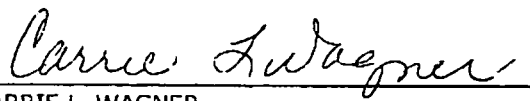
 PERSONAL SERVICE

By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

 EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 12TH day of OCTOBER, 20 04, at Santa Maria, California.


CARRIE L. WAGNER