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18 **MICHAEL JOSEPH JACKSON**

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

21 THE PEOPLE OF THE STATE OF CALIFORNIA,

22 Plaintiffs,

23 vs.

24 MICHAEL JOSEPH JACKSON,

25 Defendant.

) Case No. 1133603

) MR. JACKSON'S OPPOSITION TO THE
) DISTRICT ATTORNEY'S DISCOVERY
) MOTION

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville
) Date: November 5, 2004
) Time: 8:30 am
) Dept: SM 8

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 I.

28 **PENAL CODE SECTION 1054.7 REQUIRES COUNSEL FOR MR. JACKSON TO
TURN OVER DISCOVERY 30 DAYS PRIOR TO TRIAL**

MR. JACKSON'S OPPOSITION TO THE DISTRICT ATTORNEY'S DISCOVERY MOTION

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA
OCT 29 2004
GARY M. SLANT, Executive Officer
CARRIE L. WILSON, Deputy Clerk

1 California's reciprocal discovery scheme imposes an obligation upon defense counsel to
2 provide the prosecution with discovery 30 days before trial. "The disclosures required under this
3 chapter shall be made at least 30 days prior to trial, unless good cause is shown why a disclosure
4 should be denied, restricted or deferred." (Penal Code Section 1054.7.) The statutes do not
5 require the defendant to provide this information to the prosecution prior to 30 days before trial.

6 In *Sandefffer v. Superior Court* (1993) 18 Cal.App.4th 672, 678-679, cited by the
7 prosecution (Motion for Discovery, page 6), the Court of Appeal actually held that the trial judge
8 lacked the authority to order disclosure of expert witness information before defense counsel had
9 decided whether to call the witness. There is dicta in *Sandefffer* that a trial court may compel
10 disclosure of witness information by defense counsel more than 30 days before the date set for
11 trial if the defense has decided to call the witness, however, the court acknowledged that "the
12 determination whether to call a witness is peculiarly within the discretion of counsel." (*Sandefffer*,
13 *supra*, 18 Cal.App.4th 672, 678.) The court issued the writ of mandate directing the superior
14 court to vacate the order requiring the defendant to turn over expert witness information.
15 (*Sandefffer, supra*, 18 Cal.App.4th 672, 678.)

16 The prosecution once again cites the case of *People v. Superior Court (Mouchaourab)*
17 (2000) 78 Cal.App.4th 403, 426.¹ The Court of Appeal stated that California's reciprocal
18 discovery statute, Penal Code 1054, applies to "all phases of a criminal case" and provides the
19 sole discovery remedies available. *Mouchaourab* involved five separate cases in which
20 defendants, who had been indicted by grand juries, requested and received orders for disclosure
21 of records and transcripts related to the grand jury proceedings, seeking information that would
22 provide grounds for motions to dismiss the indictments. The court held that discovery of
23 nontestimonial portions of the record of grand jury proceedings was not barred by Penal Code
24 Section 1054(e) because sections 995, 939.7 and 939.6 expressly provided authority for such
25 discovery. (*Mouchaourab, supra*, (2000) 78 Cal.App.4th 403, 437.) The portion of the
26

27 ¹ This case was cited by Mr. Auchincloss at the hearing on August 8, 2004 for the
28 opposite proposition of the holding.

1 *Mouchaourab* holding that is relevant to the present case is that Penal Code Section 1054 does
2 not require discovery outside of the procedure outlined in that statute (i.e. making disclosures at
3 least 30 days prior to trial) unless discovery is authorized by "other express statutory provisions."
4 Here, the prosecution has not presented "other express statutory authority" authorizing an order
5 that counsel for Mr. Jackson disclose discovery more than 30 days before trial.

6 As it did when previously cited by the prosecution, *Mouchaourab* supports the defense
7 opposition to the prosecution's motion.

8 II.

9 **COUNSEL FOR MR. JACKSON HAS NOT DETERMINED WHO WILL BE CALLED**
10 **AT TRIAL AS WITNESSES AND WHAT WILL BE PRESENTED AS EVIDENCE AT**
11 **TRIAL**

12 Penal Code Section 1054.3 requires defense counsel to provide the prosecution with
13 information regarding the names and addresses of witnesses, relevant information related to those
14 witnesses which the defendant intends to offer in evidence at the trial, and any real evidence the
15 defendant intends to offer at the trial. At present, counsel for Mr. Jackson has not determined
16 who will be called as defense witnesses at trial and what evidence will be offered by the defense
17 at trial. Therefore, defense counsel for Mr. Jackson does not have discovery to provide the
18 District Attorney with at the present time.

19 The prosecution states that, "[t]o date, the prosecution has provided the defense with
20 12,425 pages of documents and reports, 193 CD ROMS, 112 audio cassettes, 78 video cassettes
21 and over 200 photographs." (Motion for Discover, page 5.) The prosecution fails to mention,
22 however, that the majority of these materials have been provided to defense counsel during the
23 past two months. Much of this discovery dates back 10 years to the 1993-1994 investigation of
24 Mr. Jackson. Other discovery dates back months to earlier phases of the present investigation.
25 Despite repeated assurances by the District Attorney, in open court, that the defense is being
26 provided with discovery as soon as it is received by the government, the defense continues to
27 receive discovery that dates back months if not years.

1 Defense counsel has not had an opportunity to adequately evaluate all of this material.
2 Without knowing the details of the thousands of pages of documents and hundreds of
3 photographs, videos and audiotapes that make up the government's investigation, counsel for
4 Mr. Jackson are not yet able to determine who will be called as defense witnesses and what
5 information will be presented as evidence at trial. Furthermore, the District Attorney has stated
6 that they have not finished providing defense counsel with discovery. Until defense counsel has
7 been provided with all discovery we are not in a position to determine who we intend to call at
8 trial.

9 III.

10 CONCLUSION

11 Counsel for Mr. Jackson have complied with and will continue to comply with Penal
12 Code Sections 1054.3 and 1054.7. The District Attorney has not made a showing that justifies
13 the issuance of an order compelling counsel for Mr. Jackson to disclose discovery more than 30
14 days before trial. (Penal Code Section 1054.7.)

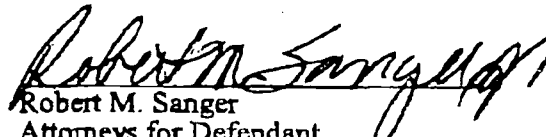
15 Dated: October 29, 2004

16 COLLINS, MESEREAU, REDDOCK & YU
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Susan C. Yu

18 SANGER & SWYSEN
19 Robert M. Sanger

20 OXMAN & JAROSCAK
21 Brian Oxman

22 By:


23 Robert M. Sanger
24 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 October 29, 2004, I served the foregoing document MR JACKSONS OPPOSITION TO THE DISTRICT ATTORNEYS DISCOVERY MOTION AND REDACTED VERSION 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
1105 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 568-2398.

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 October 29, 2004, at Santa Barbara, California.


Bebetta J. Tryon