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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

NOV 03 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)	Case No.: 1133603
CALIFORNIA,)	Order for Release of Redacted Documents
)	[Response to Prosecution's "Supplement to
Plaintiff,)	People's Reply to Defendant's Motion to
vs.)	Compel Discovery"]
)	
MICHAEL JACKSON, et al.)	
)	
Defendant.)	

The redacted form of the Defendant's Response to Prosecution's "Supplement to People's Reply to Defendant's Motion to Compel Discovery" attached to this order shall be released and placed in the public file. The unredacted originals shall be maintained conditionally under seal pending the hearing following the November 4, 2004 hearing.

DATED: November 3, 2004

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

1 Thomas A. Mesereau, Jr. (SBN 91182)
Susan C. Yu (SBN 195640)
2 COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 Century Park East, 7TH Floor
3 Los Angeles, California 90067
Tel: (310) 284-3120
4 Fax: (310) 284-3133

5 Robert M. Sanger (SBN 58214)
SANGER & SWYSEN
6 233 E. Carrillo St., Suite C
Santa Barbara, CA 93101
7 Tel: (805) 962-4887
Fax: (805) 963-7311

8 Brian Oxman (SBN 072172)
9 OXMAN & JAROSCAK
14126 East Rosecrans
10 Santa Fe Springs, California 90670
Tel: (562) 921-5058
11 Fax: (562) 921-2298

12 Attorneys for Defendant
MICHAEL JOE JACKSON

REDACTED
COPY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SANTA BARBARA, SANTA MARIA DIVISION

16 THE PEOPLE OF THE STATE OF) CASE NO. 1133603
17 CALIFORNIA,)
18 Plaintiff,) RESPONSE TO PROSECUTION'S
19 vs.) "SUPPLEMENT TO PEOPLE'S REPLY TO
20 MICHAEL JOE JACKSON) DEFENDANT'S MOTION TO COMPEL
21 Defendant.) DISCOVERY"
22)
23) HEARING
24) DATE: NOVEMBER 5, 2004
25) TIME: 8:30 A.M.
26) Place: Dept. SM-2

24) FILED UNDER SEAL & BY FAX

1 I.

2 SUMMARY OF RESPONSE

3 The Prosecution's "Supplement to People's Reply to Defendant's Motion to Compel
4 Discovery" ("Supplement") – which is a response to Mr. Jackson's Status Report re
5 Discovery -- is eloquent, not for what it says, but for what it does not say.

6 1. The prosecution says: "Apart from *Brady* material, Penal Code Section 1054.1
7 provides the exclusive list of items the prosecution must discover to the defense."
8 (Supplement, page 3, lines 11-12) (emphasis added in bold). This statement is misleading
9 because it unnecessarily suggests that Section 1054.1 preempts *Brady*. It does not. The
10 prosecution's constitutional duty under *Brady* to volunteer exculpatory information to the
11 defense is independent of, and to be differentiated from, the statutory duty under Section
12 1054.1. People v. Bohannon, 96 Cal.Rptr.2d 488, 492, 82 Cal.App.4th 798, 804 (2000).

13 2. The prosecution says the defense discovery request numbers 1, 9, 12, 13, 35,
14 37, 40, 41, 42, 52c, 52 f, 52u, 52v, 52w, 52x, 52z, 52cc, 52dd, and 52gg are outside the
15 ambit of Section 1054.1 and that numbers 28, 40, 42, 52i, 52o, 52p and 52q are "so
16 overbroad, vague or abstruse it is difficult if not impossible to determine if the item is
17 discoverable under the law." (Supplement, page 4, lines 3-28 through page 6, lines 1-17.)
18 This is not an accurate report of the parties' meet and confer.

19 2a. Based on this Court's October 14, 2004 tentative ruling, the
20 prosecution represented that it would not produce documents responsive to numbers 9, 12
21 and 13. The defense respectfully disagrees because the communications or among the
22 Sheriff and District Attorney may very well contain exculpatory statements by witnesses
23 in this case, including the Doe family and the two individuals referenced in Defense
24 Request No. 13 (i.e., Larry Feldman and Dr. Stanley Katz, who testified at the Grand Jury).
25 The communications sought by the defense includes statements by these witnesses which
26 are critical to the defense. Accordingly, the defense respectfully requests that the Court

1 reconsider its tentative ruling and order the prosecution to produce all communications
2 concerning this investigation, as set forth above.¹

3 2b. During the meet and confer, the prosecution pointed out that 1, 28, 30,
4 31, 40, 41, 42, 45, 52h, 52i, 52o, 52p, 52q and 52ff were vague and ambiguous. As such,
5 the defense agreed to modify numbers 1, 28, 30, 31, 40, 41, 42, 45, 52h, 52i, 52o, 52p, 52q
6 and 52ff and resubmit the request.

7 2c. As to request number 35, the prosecution stated that it would produce
8 the documents if it had them. Again, the prosecution has a duty to search for and disclose
9 exculpatory evidence if the evidence is possessed by a person or agency that has been
10 used by them or the investigating agency to assist them or the investigating agency in its
11 work. People v. Superior Court, 96 Cal.Rptr.2d 264, 271, 80 Cal.App.4th 1305, 1315
12 (2000).

13 2d. As to request number 37, the prosecution agreed to produce
14 responsive documents, other than statements by fans of Mr. Jackson or by those favoring
15 the prosecution.

16 2e. As to request numbers 52e, the prosecution refused to produce
17 documents within Pitches discovery, and the defense stated that it will bring a Pitchess
18 Motion.

19 2f. Finally, the prosecution stated that it will not produce items in
20 numbers 52u, 52v, 52w, 52x, 52z, 52cc, 52dd, and 52gg because they are not *Brady*
21 material. The defense disagrees. The documents sought in these requests may contain
22 and may very well lead to other admissible exculpatory evidence. Even though evidence
23 might not itself be admissible, evidence can be *Brady* evidence if it is reasonably likely to
24 lead to admissible evidence. See United States v. Sudikoff, 36 F.Supp.2d 1196, 1200 (C.D.

25 _____
26 ¹ Again, this case presents a unique situation in which Mr. Sneddon directly
27 interviewed witnesses, including Mrs. Doe, her attorney Mr. Feldman and others. In this
28 context, the prosecution cannot claim that Mr. Sneddon's interview notes are protected as
work product.

1 Cal. 1999) ("In United States v. Kennedy, the Ninth Circuit stated the following standard
2 in the context of appellate review: 'To be material under Brady, undisclosed information
3 or evidence acquired through that information must be admissible.' 890 F.2d 1056, 1059
4 (9th Cir. 1989). Thus, even in the context of appellate review, which imposes a strict
5 standard of materiality, the Kennedy court held that suppression of inadmissible evidence
6 could create a due process violation if the suppressed inadmissible evidence would have
7 led to admissible evidence. If such inadmissible evidence can give rise to a due process
8 violation even in the appellate review context, it must surely be disclosed under the more
9 lenient pretrial standard. Thus, the Court holds that it would be incorrect to conclude
10 that only admissible evidence is discoverable under Brady.")

11 3. The prosecution says it will not provide the defense with the address of the
12 alleged victim and his family. (Supplement, page 8, lines 7-9.) This implies that the
13 prosecution will not do what it agreed to do at the meet and confer.

14 Specifically, as discussed more fully in the defense Status Report, Mr. Sneddon
15 stipulated that the prosecution will, on behalf of Mrs. Doe, accept the trial subpoena,
16 serve it on Mrs. Doe and file the proof of service with the court. It is now unclear whether
17 the prosecution is withdrawing the stipulation. The defense requests the prosecution to
18 confirm this stipulation in open court. If the prosecution is unwilling to do what it agreed
19 to do, the defense requests an order compelling the prosecution to disclose Mrs. Doe and
20 her family's address.

21 The Doe family is the crux of the prosecution's false charges against Mr. Jackson.
22 Mr. Doe is the prosecution's confidential informant. The real victim in this case is Mr.
23 Jackson, not the Doe family.

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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[REDACTED]

The Court and the public have thus far seen and heard only one side of the story, i.e., that of the prosecution's. The prosecution said whatever it wanted to say before this Court imposed a gag order, inflaming the public and poisoning the jury pool. It is utterly unfair to now say that the address of the Doe family, who must be present at trial, will not be disclosed. There is no "good cause." There is no evidence (competent or otherwise) of the "threats or possible danger to the safety" of the Doe family.

Mr. Jackson has the constitutional right to confront these witnesses at trial. Absent stipulation, the prosecution must be ordered to accept any pre-trial subpoena on behalf of Mr. Doe (the informant, whose address the defense is entitled to know); and the trial subpoenas on behalf of Mrs. Doe and her three Doe children.

4. Finally, the Supplement inaccurately states the parties' discussion re Sanchez during the meet and confer.

First, Mr. Sanger never raised the two tapes "pursuant to Sanchez." Rather, he advised the prosecution that the defense will provide them with copies of these tapes, consistent with his statement in open court. The defense delivered these tapes to the prosecution on October 27, 2004, following the October 26, 2004 meet and confer.

Second, the two tapes have nothing to do with Sanchez because they are exculpatory, not inculpatory. Mr. Auchincloss, however, refused to acknowledge this fact and attempted to grill both Mr. Sanger and Mr. Mesereau on the law of Sanchez. Mr. Auchincloss refused to stop. He repeatedly said the Sanchez motion was not denied and continued with his grilling. The defense refused to subject itself to his deposition and

1 interrogation. Mr. Mesereau terminated the call after thanking everyone for their
2 participation.

3 5. The prosecution says it received no discovery from the defense. That is not
4 true. The prosecution has received thousands of pages of the JC Penny documents, as well
5 as other subpoenaed records the defense obtained months ago.

6 The defense is still conducting investigation and attempting to gather documents.
7 The biggest obstacle in conducting a proper and timely investigation for document
8 production and trial preparation is the prosecution's delay in producing discovery. The
9 defense was provided with approximately 15,000 pages of documents plus 30 more
10 cassette tapes and 40 CDs/DVDs within only the last three weeks.

11 The prosecution repeatedly says it is in "full compliance." They say it again in
12 their Supplement, at page 10, line 4. The truth is they are not in full compliance. The
13 prosecution represented in open court approximately a month ago that they would
14 produce all of the '93 materials promptly. The defense received the bulk of them only
15 within the last week or so. More may be on their way. The jail booking documents
16 arrived after the defense filed its status report on October 29, 2004. It is unclear whether
17 these documents are complete. Further, the defense has yet to receive all of the forensic
18 documents.

19 It is virtually impossible for the defense to review and analyze the prosecution's
20 voluminous documents, tapes, CDs and DVDs in a short period of time and then
21 investigate and gather evidence for production.

22 The prosecution has not yet provided the defense with all of its search warrant
23 affidavits and returns. After filing the Status Report, the defense (by Ms. Yu) sent a letter
24 to the prosecution (to Mr. Sneddon) on October 29, 2004, in accordance with the
25 prosecution's request during the October 26th meet and confer, listing the outstanding
26 search warrants, affidavits and returns. (A copy of that letter is attached hereto as Exhibit
27 A.)

28

1 It is unclear when the prosecution will provide these search warrant materials
2 (particularly the returns, which may yield thousands of pages) to the defense. It is also
3 unclear what other new search warrants have been issued and when the defense will
4 receive them.

5 Trial is now less than three months away. The defense needs to properly
6 investigate and prepare for production and trial. The prosecution cannot be permitted to
7 cause discovery delays, and the defense cannot be forced to go to trial without the benefit
8 of full investigation and preparation.

9 Accordingly, it is respectfully requested that the Court order the prosecution to
10 comply with its discovery obligations.

11
12 DATED: November 2, 2004

Respectfully submitted,

13
14 Thomas A. Mesereau, Jr.
15 Susan C. Yu
16 COLLINS, MESEREAU, REDDOCK & YU

17 Robert M. Sanger
18 SANGER & SWYSEN

19 Brian Oxman
20 OXMAN & JAROSCAK

21 By:


22 Susan C. Yu
23 Attorneys for Mr. MICHAEL J. JACKSON
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25
26
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1 PROOF OF SERVICE

2 I, the undersigned, declare:

3 I am a citizen of the United States of America, am over the age of eighteen (18)
4 years, and not a party to the within action. I am employed at 1875 Century Park East, 7th
5 Floor, Los Angeles, CA 90067. On November 2, 2004, I served the following document:

6 **RESPONSE TO PROSECUTION'S "SUPPLEMENT TO PEOPLE'S REPLY TO
7 DEFENDANT'S MOTION TO COMPEL DISCOVERY"**

8 on the interested parties addressed as follows:

9 Thomas Sneddon, Esq., District Attorney
10 Gerald Franklin, Esq.
11 Ronald Zonen, Esq.
12 Gordon Auchincloss, Esq.
13 District Attorney's Office
14 1105 Santa Barbara Street
15 Santa Barbara, CA 93108
16 FAX: (005) 568-2398

17 BY MAIL: I placed each envelope, containing the foregoing document, with postage
18 fully prepaid, in the United States mail at Los Angeles, California. I am readily familiar
19 with the business practice for collection and processing of mail in this office; that in the
20 ordinary course of business said document would be deposited with the US Postal Service
21 in Los Angeles on that same day.

22 X BY FACSIMILE: I served a copy of the within document on the above-interested
23 parties, by way of a facsimile, at the facsimile numbers listed above.

24 BY MESSENGER/ATTORNEY SERVICE: I caused to personally serve the
25 within document on the above interested parties.

26 X (State) I declare under penalty of perjury under the laws of the State of California
27 that the foregoing is true and correct.

28 (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 on November 2, 2004, at Los Angeles, California.

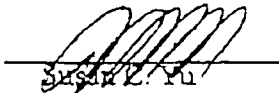
22 
23 _____
24 Susan Z. Yu

EXHIBIT A

CMRY

ADMITTED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

1875 CENTURY PARK EAST, 7th FLOOR
LOS ANGELES, CALIFORNIA 90067

TELEPHONE: (310) 284-3120 FACSIMILE: (310) 284-3133
WEBSITE: WWW.CMRYLAW.COM

October 28, 2004

VIA FACSIMILE (805) 568-2398

Thomas Sneddon, Esq.
District Attorney's Office
1105 Santa Barbara Street
Santa Barbara, CA 93108

Re: People v. Jackson, SBSC Case No. 1133603

Dear Mr. Sneddon:

During the parties' October 28, 2004 meet and confer conference call, I advised you that the defense still has not receive from your office all of the search warrants and the supporting affidavits and returns. You replied that I should send you a letter, listing the items we did not have in our possession. Accordingly, this letter shall list the items we have not received.

1. Below is a list (by search warrant number and corresponding description) of the returns we have not received from your office.
 1. 5048 Assoc. Citibank SD)
 2. 5048A Citicorp Credit Services c/o CT Corporation
 3. 5049 Banana Republic
 4. 5050 Bank One/ First USA Bank
 5. 5052 Chase NA
 6. 5054 Discover Financial Services
 7. 5056 Household Bank
 8. 5060 JC Penny Credit Services
 9. 5051 King Sizes

10.	5063	MBNA America
11.	5070	Citibank USA NA
12.	5110	Qwest Communications
13.	5111	Pacific Bell
14.	5112	Nextel Communications
15.	5113	Cingular Wireless
16.	5114	Bell South
17.	5115	AT&T Wireless
18.	5116	Arch Wireless
19.	5117	Pacific Bell
20.	5119	Experian Credit Bureau
21.	5120	Equifax Legal Process
22.	5121	The Beverly Hilton
23.	5122	Continental Airlines
24.	5123	American Airlines
25.	5124	AT&T Wireless
26.	5125	Sprint Spectrum
27.	5126	Verizon California
28.	5127	Verizon New Jersey
29.	5128	Cellco dba Verizon Wireless

II. Below is a list (by search warrant number and corresponding description) of the redacted search warrants and the supporting redacted probable cause statements we received from your office. We still have not received the unredacted search warrants, affidavits, and most importantly, returns.

- 30. 5141 American Express
- 31. 5142 Citicorp Credit Services c/o CT Corporation
- 32. 5143 Bank of America
- 33. 5144 Bergdorf Goodman/ Nieman Marcus
- 34. 5145 Capital One Bank
- 35. 5146 Chevron/ Standard Oil CA
- 36. 5147 Federated Department Stores
- 37. 5148 Bank One/ First USA Bank
- 38. 5149 Fleet Credit Card Services
- 39. 5150 MBNA America
- 40. 5151 GE Consumer Card Services/ Mobil Gas Card
- 41. 5152 Nordstroms Card Services

Please let us know when your office will be producing these items to us. Thank you for your professional cooperation and courtesy in this regard.

Very truly yours,



Susan C. Yu

cc: Thomas A. Mesereau, Jr.
Robert M. Sanger
Brian Oxman

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 NOVEMBER 3, 20 04, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENT (RESPONSE TO PROSECUTION'S SUPPLEMENT TO PEOPLE'S REPLY TO DEFENDANT'S MOTION TO COMPEL DISCOVERY) addressed as follows:

THOMAS SNEDDON
DISTRICT ATTORNEY'S OFFICE
1112 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

FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 568-2398 (Thomas Sneddon); (310) 861-1007 (Thomas Mesereau, Jr.). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(l), 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 the person having charge thereof or by hand delivery to the above mentioned parties.

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 3rd day of NOVEMBER, 20 04, at Santa Maria, California.


CARRIE L. WAGNER