

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA STREET ADDRESS: 312-C East Cook Street MAILING ADDRESS: P.O. Box 5369 CITY AND ZIP CODE: Santa Maria, CA 93456-5369 BRANCH NAME: Cook Division	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA BARBARA NOV 04 2004
People of the State of California v. Michael Joe Jackson	GARY M. BLAIR, Executive Officer BY <i>Carrie L. Wagner</i> CARRIE L. WAGNER, Deputy Clerk
FINDINGS AND ORDER RE REPLY TO OPPOSITION TO MOTION TO QUASH CERTAIN SUBPOENAS	CASE NUMBER: 1133603

On July 27, 2004, the DA filed its Reply to Opposition to the Motion to Quash Certain Subpoenas under conditional seal. On November 4, 2004, the court granted the motion to seal the document. The Court makes the following findings:

This document in its unredacted form identifies potential witnesses provides the identity of the minor complaining witness or his family. It specifically identifies potential witnesses by name.

In this case, protection of the Defendant's right to a fair trial and protection of the identity of the minor complaining witness and his family overcomes the right of public access to the record. A substantial probability exists that those interests will be prejudiced if the record is not sealed as requested. The intensity of the media coverage in this case is unprecedented. Each court hearing is thoroughly reported and exhaustively analyzed by the media. It is substantially probable that if the evidence expected to be given at trial were to be released pretrial, it would be similarly reported and analyzed. The sealing order is necessary to maintain the integrity of the available jury pool by limiting its exposure to the expected evidence and testimony pretrial and to prevent exposure to inadmissible items of evidence. The Court has consistently held that because of the pervasive media coverage in this case, the Defendant's right to a fair trial outweighs public access. Those findings are relevant here and incorporated by reference. [See Findings and Order re: Motion for Protective Order, filed January 23, 2004 and Findings and Order re: Sealing of Search Warrant Materials, filed January 23, 2004]

There are no less restrictive means to protect those interests. The extraordinary circumstances present in this case overcome the presumption that cautionary admonitions and instructions to the jury pool would have a curative effect. It is far more desirable to avoid the prejudice in the first instance than to hope to identify unaffected jurors later.

The Court acknowledges that its order must be narrowly tailored to accommodate the maximum public disclosure. The redacted version attached to this order should be placed in the public file.

Dated. NOV 04 2004

Rodney S. Melville

 Judge of the Superior Court
 RODNEY S. MELVILLE

COPY

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
5 1105 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
7 FAX: (805) 568-2398

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JUL 27 2004

GARY M. BLAIR, Executive Officer
BY *Carril Wagner*
CARRIL WAGNER Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARLA DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

15 v.

17 MICHAEL JOE JACKSON,

18 Defendant.

No. 1133603

PLAINTIFF'S BRIEF REPLY
TO DEFENDANT'S OPPOSITION
TO OUR MOTION TO QUASH
SUBPOENAS FOR [REDACTED]
[REDACTED] WILLIAM
DICKERMAN AND STAN J.
KATZ; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF GERALD
McC. FRANKLIN

(Code Civ. Proc., § 1987.1; Pen.
Code, § 1330)

20 DATE: July 27, 2004
21 TIME: 8:30 a.m.
22 DEPT: TBA (Melville)

23 UNDER SEAL

24 Introduction:

25 This is Plaintiff's brief Response to defendant's Opposition to Plaintiff's motion to
26 quash certain subpoenas in this case.

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I

1
2 DEFENDANT WOULD NOT NECESSARILY PREVAIL IN HIS
3 PENDING MOTION TO SUPPRESS EVIDENCE MERELY
4 BECAUSE MR. MILLER MAY HAVE BEEN EMPLOYED BY
5 ATTORNEY GERAGOS, WHETHER OR NOT THE SEARCHING
6 OFFICERS KNEW OF HIS EMPLOYMENT STATUS BEFORE
7 THE SEARCH WAS UNDERTAKEN OR LEARNED OF IT IN THE
8 COURSE OF THE SEARCH ITSELF

9 Defendant apparently has persuaded himself that a warranted search of a private
10 investigator's office is "an invasion of the defense camp" and therefore unlawful and
11 unconstitutional for that reason alone.

12 Given the number of warranted searches that have been upheld even for the search
13 of *lawyers'* offices, defendant will want to reexamine the premise of his argument. The
14 question in each case is whether probable cause existed for the complained-of search – and
15 whether statutory procedures for the search of offices of certain professionals (private
16 investigators not among them) were complied with.

17 II

18 FOR PURPOSES OF THIS MOTION, THE PHRASE "DISTANCE
19 BE LESS THAN 150 MILES FROM HIS OR HER PLACE OF
20 RESIDENCE TO THE PLACE OF TRIAL" IN PENAL CODE §
21 1330 SHOULD BE GIVEN THE SAME CONSTRUCTION GIVEN
22 BY THE COURT OF APPEAL TO THE PHRASE "AT A
23 DISTANCE GREATER THAN 20 MILES FROM HIS OR HER
24 RESIDENCE" IN FORMER CCP § 203

25 In *People v. Adams* (1987) 196 Cal.App.3d 201, the Court of Appeal considered,
26 inter alia, the defendant's challenge to the jury panel that convicted him, first raised in his
27 motion to quash the panel in the trial court on the ground that the panel proffered him was
28 underrepresentative of Blacks. At that time, Code of Civil Procedure section 203 provided, in
relevant part, "In addition, in the County of Los Angeles no juror shall be required to serve at a
distance greater than 20 miles from his or her residence." The court administrator for the Los
Angeles Superior Court, testified that his office interpreted section 203 "based upon mileage

1 actually traveled by jurors driving to the courthouse.” (*Id.*, p. 203.) Defendant’s expert witness
2 testified “that the Black population in census tracts within a 20-mile ‘radius’ to the San
3 Fernando courthouse, ‘as the crow flies,’ is 8.8 percent.” “Appellant contends that if the 20-
4 mile distance in Code of Civil Procedure section 203 were interpreted as a radius, as the crow
5 flies, then appellant made a prima facie showing that the jury panel at the San Fernando
6 courthouse was not a fair cross-section of the community” (*Id.*, pp. 203-204.)

7 The Court of Appeal rejected his argument on that construction of section 203.

8 The trouble is that appellant offers no reason (other than it leads to a
9 statistical result he prefers in this case) why section 203 should be
10 interpreted in this manner. Code of Civil Procedure section 203 does
11 not use the term “radius.” It states: “. . . In counties with more than one
12 court location, the rules shall reasonably minimize the *distance traveled*
13 by jurors. In addition, in the County of Los Angeles no juror shall be
14 required to serve at a distance greater than 20 miles from his or her
15 residence. (Italics added.) Jurors do not travel to court as the crow flies.
16 By its own language, section 203 concerns itself with the distance
17 *traveled* by jurors, not necessarily a hypothetical radius imposed on a
18 map without regard to topography or urban driving conditions.
19 Furthermore, Code of Civil Procedure section 196 provides that jurors
20 “shall be reimbursed for mileage at the rate of fifteen cents (\$0.14) per
21 mile *for each mile actually traveled* in attending court as a juror, in
22 going only.” (Italics added.) The court administrator’s interpretation of
23 the 20-mile limit as actual driving distance is reasonable in light of the
24 statutory scheme, and appellant’s interpretation is not.

25 (*Id.*, 196 Cal.App.3d 201, 204.)

26 As it happens, there is no statutory provision for reimbursing a witness in a criminal
27 case for the miles he travels to (or to and- from) court, apart from Penal Code section 1329,
28 subdivision (a)’s provision for a “reasonable sum” for the “necessary expenses” of such a
29 witness in addition to a \$12 per diem fee.

30 Penal Code section 1330, like Code of Civil Procedure section 203, measures the
31 distance traveled to court by a witness “from his or her [place of] residence” if obedience to an
32 unendorsed subpoena (like a jury summons) must be obeyed. “In construing a statute, unless a

1 contrary intent appears [citations], the court presumes that the Legislature intended that similar
2 phrases be accorded the same meaning [citation], particularly if the terms have been construed
3 by judicial decision. [Citations.]” (*People v. Wells* (1996) 12 Cal.4th 979, 985.)

4 In our respectful submission, *People v. Adams*, *supra*, 196 Cal.App.3d 201 governs
5 the proper construction of Penal Code section 1330.

6 Penal Code section 1330 provides that a witness is “not obliged” to obey an
7 unendorsed subpoena that purports to require his attendance in a court of another county that is
8 more than 150 miles from his *residence*. Attorney Dickerman’s *office* may be within 150 miles
9 of the Santa Maria courthouse, but his residence is not.

10 Defendant suggests that “If for Some Reason, the Court Finds it Necessary to
11 Endorse the Subpoenas, Good Cause Appears.” (Response 6:2-3.)

12 Perhaps so. But the Court may not endorse an unendorsed subpoena after it has
13 been served. Defendant will need to have a new subpoena, properly endorsed, issue for the
14 witness.

15 III

16 THERE ARE NO NON-STATUTORY GROUNDS FOR 17 SUPPRESSING EVIDENCE IN A CRIMINAL CASE

18 Defendant reads *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703 as authority
19 for his argument that evidence may be *suppressed* for a perceived violation of the defendant’s
20 due process rights.

21 If defendant thinks so, he misreads *Laff*. That case held that a trial court has an
22 obligation to consider and determine claims that materials seized pursuant to a search warrant
23 are protected by either the attorney-client privilege or the core work-product “privilege” “and
24 thus should not be inspected by or disclosed to law enforcement authorities” (*id.*, p. 720). and
25 that it has “inherent authority to appoint a special master” to assist it in determining the merits
26 of such a claim (*id.*, p. 735). Seized evidence may be withheld from the government if it is
27 found to come within one or both of those privileges.

28 That is the holding in *Laff*, and *Laff*’s holding may not be transmuted into a holding

1 that non-privileged evidence may be *suppressed* simply because it was obtained in obedience to
2 a warranted search from what defendant is pleased to call the "defense camp."

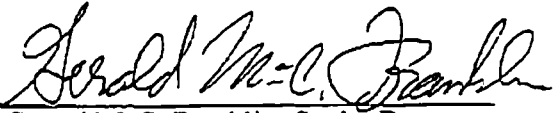
3 CONCLUSION

4 Defendant's several arguments appear to be premised on a misunderstanding of the
5 applicable law. To the extent they are mistaken, they should not avail him.

6 DATED: July 27, 2004

7 Respectfully submitted,

8 THOMAS W. SNEDDON, JR.
9 District Attorney

10 By: 
11 Gerald McC. Franklin, Senior Deputy

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1 PROOF OF SERVICE

2
3 STATE OF CALIFORNIA }
4 COUNTY OF SANTA BARBARA } SS

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6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business
8 address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On July 27, 2004, I served the within PLAINTIFF'S BRIEF REPLY TO
11 DEFENDANT'S OPPOSITION TO OUR MOTION TO QUASH CERTAIN SUBPOENAS
12 on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER,
13 and BRIAN OXMAN by personally serving a true copy thereof to each of them in the
14 courtroom in which defendant's matter is pending.

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

16 Executed at Santa Maria, California on this 27th day of July, 2004.

17
18 _____
19 Gerald McC. Franklin
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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 4, 20 04, I served a copy of the attached FINDINGS AND ORDER RE REPLY TO OPPOSITION TO MOTION TO QUASH CERTAIN SUBPOENAS 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(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.

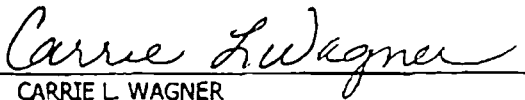
PERSONAL SERVICE

By leaving a true copy thereof at their office with 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 4TH day of NOVEMBER, 20 04, at Santa Maria, California.


CARRIE L. WAGNER