

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 19 2005

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BY *Carrie L Wagner*
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11 MICHAEL JOE JACKSON

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SANTA BARBARA, SANTA MARIA DIVISION

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 MICHAEL JOE JACKSON

19 Defendant.

) CASE NO. 1133603

) ~~[PROPOSED]~~ REDACTED

) REQUEST FOR ATTENDANCE OF OUT-
) OF-STATE WITNESS (PEN. CODE § 1334);
) DECLARATION OF SUSAN C. YU IN
) SUPPORT THEREOF

) [CERTIFICATE OF REQUESTING STATE FOR
) ATTENDANCE OF WITNESS LOCATED
) OUTSIDE CALIFORNIA CONCURRENTLY
) FILED HEREWITH]

) HEARING : NOT REQUIRED

) DATE: N/A

) TIME: N/A

) Place: Dept. SM-2

) ~~FILED UNDER SEAL & BY FAX~~

[PROPOSED] REDACTED REQUEST FOR ATTENDANCE OF OUT-OF STATE WITNESS
(PEN CODE § 1334); DECLARATION OF SUSAN C. YU IN SUPPORT THEREOF

1 TO THE HONORABLE JUDGE RODNEY S. MELVILLE:

2 Defendant Michael Joe Jackson ("Mr. Jackson"), by and through his counsel, hereby
3 requests this Court to issue a Certificate of Requesting State for Attendance of Witness
4 Located Outside California to enable the defense to call [REDACTED] as a witness at his
5 forthcoming trial. [REDACTED] is a material witness whose testimony is essential to Mr.
6 Jackson's defense.

7 This Request is made pursuant to the Uniform Act to Secure the Attendance of
8 Witnesses from Without a State in Criminal Proceedings, codified at Penal Code Sections
9 1334 through 1334.6, and is based on the attached memorandum of points and authorities
10 and the declaration of Susan C. Yu.

12 DATED: January 18, 2005

Respectfully submitted,

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

15 Robert M. Sanger
16 SANGER & SWYSEN

17 Brian Oxman
18 OXMAN & JAROSCAK

19 By: [Signature]
20 Susan C. Yu
21 Attorneys for Mr. MICHAEL J. JACKSON

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 The indictment imagines ten counts against Mr. Jackson: one count of conspiracy to
5 commit false imprisonment, child abduction and extortion (Count 1); four counts of lewd
6 conduct upon a child (Counts 2, 3, 4 and 5); one count of attempt to commit a lewd act
7 upon a child (Count 6); and four counts of administering alcohol to a minor to assist in
8 commission of a felony (Counts 7, 8, 9 and 10). (Yu Decl., ¶ 2.)

9 The indictment further imagines a conspiracy among Mr. Jackson, five named but
10 unindicted individuals, and other "uncharged" and "unknown" alleged co-conspirators to
11 commit child abduction, false imprisonment and extortion. Twenty-eight overt acts in
12 furtherance of this imaginary conspiracy are alleged. (Yu Decl., ¶ 3.)

13 Mr. Jackson has pled not guilty to all counts. He vehemently denies the false
14 allegations planted in the indictment and maintains his complete innocence. (Yu Decl., ¶
15 4.)

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] (Yu Decl., ¶ 5.)

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] (Yu

26 Decl., ¶ 6.)

27 The Defense estimates that [REDACTED] will be required to testify for

1 approximately [REDACTED] days. Depending on the duration of the jury selection and the
2 Prosecution's case in chief, the Defense could commence its case in chief on as early as
3 [REDACTED]. Accordingly [REDACTED] should be required to appear for [REDACTED] testimony on
4 this date. (Yu Decl., ¶ 7.)

5 II.

6 THIS COURT MAY ISSUE A CERTIFICATE RECOMMENDING THAT A COURT
7 IN THE STATE OF [REDACTED] ISSUE A SUBPOENA COMPELLING [REDACTED]
8 [REDACTED] A MATERIAL WITNESS IN THIS CASE, TO APPEAR AND TESTIFY

9 The presence of out-of-state witnesses can be secured through procedures outlined
10 in the Uniform Act to Secure the Attendance of Witnesses from Without A State in
11 Criminal Proceedings ("Uniform Act"). (Pen. Code §§ 1334-1334.6; also see Vannier v.
12 Superior Court, 32 Cal.App.3d 163, 170-173 (1982); People v. Superior Court (Jans), 224
13 Cal.App.3d 1405, 1408-1412 (1990). The purpose of the Uniform Act is to make a
14 uniform law throughout the states that adopt it, so that procurement of witnesses beyond
15 state borders is possible.¹ (Pen. Code § 1334.6.)

16 The provisions of the Uniform Act do not constitute the power to subpoena the out-
17 of-state witness. Rather, they are merely a procedure to request that the other state's court
18 issue a subpoena. (People v. DuBose, 10 Cal.App.3d 544, 549 (1970); People v.
19 Cavanaugh, 69 Cal.2d 262, 265-266 (1968).) In order for the Uniform Act to apply, the
20 person who is located in another state and whose presence in court is desired, must be a

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23 ¹ Also, if a person comes into California to attend and testify in an action pursuant to
24 proceedings under the Uniform Act, the witness is not subject to arrest or service of civil
25 or criminal process in connection with matters that arose before his or her appearance in
26 the matter. (Pen. Code §§ 1334.4, 1334.5; Vannier v. Superior Court, *supra*, 32 Cal.2d at
27 170-173.) This statutory immunity originally arose from public policy considerations to
28 encourage voluntary appearances in cases where the witness otherwise would not appear
due to fear of arrest or service of process. (Murrey v. Murrey, 216 Cal. 707, 710 (1932);
Mattison v. Lichlyter, 162 Cal.App.2d 60, 63 (1958); Velkov v. Superior Court, 40 Cal.2d
289, 292 (1953).)

1 material witness in the case. (Pen. Code § 1334.2, 1334.3; People v. Cavanaugh, *supra*, 69
2 Cal.2d at 266; People v. Newville, 220 Cal.App.3d 267, 274 (1963).)

3 A motion is made to the judge in the court in which the action is pending to request
4 the presence of the witness. (Pen. Code § 1334.3.) Upon a showing that the witness is
5 material, the judge of the court in which the action is pending may issue a certificate
6 under the seal of the court stating the facts showing that the witness is material, and the
7 number of days the witness will be required to appear. (Id.) This certificate is then
8 forwarded to a judge of a court of record in the county of the state in which the witness is
9 located. (Id.)

10 Pursuant to California Penal Code Section 1334.3, the witness, at the time the trial
11 subpoena is served on him, shall be tendered the sum of ten cents (\$ 0.10) for each mile
12 necessarily traveled (if he elects surface travel) or the minimum round trip scheduled
13 airlines fare plus twenty cents (\$ 0.20) a mile for necessary surface travel at either end of
14 the flight if the witness elects air travel, and except as provided in subdivision (b) of
15 Section 1334.3,² a per diem of twenty dollars (\$ 20) for each day that he is required to
16 travel and attend as a witness. Further, the witness shall be reimbursed for any additional
17 expenses which the Court finds reasonable and necessary.

18 In this case, [REDACTED] is a material witness whose presence is essential to ensure
19 Mr. Jackson a fair trial. [REDACTED] is intimately familiar with the events surrounding
20 the alleged crimes in the Indictment, particularly the conspiratorial acts, and can testify to
21 Mr. Jackson's complete innocence. Accordingly, the requested Certificate should issue.

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24 ² Penal Code Section 1334.3(b) provides: "If the witness subpoenaed to attend and
25 testify in this state is at the time he or she is required to appear and testify an inmate of a
26 state prison, county jail, or other penal facility, the witness shall, while attending in this
state as a witness, be furnished food and lodging in the jail or other appropriate penal
facility in the county in which the witness is attending court, and food and lodging of that
penal facility shall be rendered in lieu of the per diem specified in subdivision (a).

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1 The defense will then take appropriate steps to forward this Certificate to a Court in
2 [REDACTED], in the county in which [REDACTED] is located. (Yu Decl., ¶ 7.)

3 V.

4 CONCLUSION

5 For all of the foregoing reasons, Mr. Jackson respectfully requests that the Court
6 grant this motion and issue the requested Certificate.

7 DATED: January 18, 2005 Respectfully submitted,

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9 Thomas A. Mesereau, Jr.
10 Susan C. Yu
11 COLLINS, MESEREAU, REDDOCK & YU

12 Robert M. Sanger
13 SANGER & SWYSEN

14 Brian Oxman
15 OXMAN & JAROSCAK

16 By:

17 
18 _____
19 Susan C. Yu
20 Attorneys for Mr. MICHAEL J. JACKSON

DECLARATION OF SUSAN C. YU

I, Susan C. Yu, declare as follows:

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 Collins, Mesereau, Reddock & Yu, and co-counsel for Mr. Michael Jackson in this criminal proceeding. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, I could and would competently testify thereto under oath.

2. The indictment alleges ten counts against Mr. Jackson: one count of conspiracy to commit false imprisonment, child abduction and extortion (Count 1); four counts of lewd conduct upon a child (Counts 2, 3, 4 and 5); one count of attempt to commit a lewd act upon a child (Count 6); and four counts of administering alcohol to a minor to assist in commission of a felony (Counts 7, 8, 9 and 10).

3. The indictment further alleges a conspiracy among Mr. Jackson, five named but unindicted individuals, and other "uncharged" and "unknown" alleged co-conspirators to commit child abduction, false imprisonment and extortion. Twenty-eight overt acts in furtherance of this imaginary conspiracy are alleged.

4. Mr. Jackson has pled not guilty to all counts. He vehemently denies the false allegations planted in the indictment and maintains his complete innocence.

5. [REDACTED]

6. [REDACTED]


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[REDACTED]

7. The Defense estimates that [REDACTED] will be required to testify for approximately [REDACTED] days. Depending on the duration of the jury selection and the Prosecution's case in chief, the Defense could commence its case in chief on as early as [REDACTED]. Accordingly [REDACTED] should be required to appear for [REDACTED] testimony on this date. Once the Certificate issues, the defense will take appropriate steps to forward it to a Court in [REDACTED], in the county in which [REDACTED] is located.

8. Pursuant to California Penal Code Section 1334.3, I will cause [REDACTED] at the time the trial subpoena is served on [REDACTED] to be tendered the sum of ten cents (\$ 0.10) for each mile necessarily traveled (if he elects surface travel) or the minimum round trip scheduled airlines fare plus twenty cents (\$ 0.20) a mile for necessary surface travel at either end of the flight if the witness elects air travel, and except as provided in subdivision (b) of Section 1334.3, a per diem of twenty dollars (\$ 20) for each day that [REDACTED] is required to travel and attend as a witness. Further, I will cause [REDACTED] to be reimbursed for any additional expenses which this Court finds reasonable and necessary.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 18th day of January 2005, at Los Angeles, California.



SUSAN C. YU