

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 25 2005

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

COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr., State Bar Number 091182
Susan C. Yu, State Bar Number 195640
1875 Century Park East, 7th Floor
Los Angeles, CA 90067
Tel.: (310) 284-3120, Fax: (310) 284-3133

SANGER & SWYSEN
Robert M. Sanger, State Bar Number 058214
233 East Carrillo Street, Suite C
Santa Barbara, CA 93101
Tel.: (805) 962-4887, Fax: (805) 963-7311

OXMAN & JAROSCAK
Brian Oxinan, State Bar Number 072172
14126 East Rosecrans
Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298

Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

) Case No. 1133603

)
) REPLY TO OPPOSITION TO MOTION
) FOR AN ORDER ALLOWING
) INDIVIDUAL SEQUESTERED VOIR DIRE
) OF PROSPECTIVE JURORS

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville
) Date: January 23, 2005
) Time: 9:30 am
) Dept: SM 8

REPLY TO OPPOSITION TO MOTION FOR AN ORDER ALLOWING INDIVIDUAL SEQUESTERED VOIR DIRE OF PROSPECTIVE JURORS

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INDIVIDUAL SEQUESTERED VOIR DIRE IS NECESSARY DUE TO THE RELEASE
4 OF THE CONTENTS OF THE GRAND JURY TRANSCRIPTS TO THE PUBLIC

5 The prosecution concedes that *People v. Ramos* (2004) 34 Cal.4th 494 stands for the
6 proposition that this Court has the authority to conduct sequestered voir dire. The prosecution,
7 however, takes issue with whether sequestered voir dire is necessary in this case, in light of the
8 Court's decision to use a jury questionnaire that explores media bias. (Opposition, pages 1-2.)
9 While this is not a death penalty case, as the prosecution points out (Motion, page 2), there has
10 been more publicity regarding this case than in a typical death penalty case.

11 This motion is necessitated, in part, by the leak of the grand jury transcripts which
12 occurred on the eve of trial. That leak has created the maximum potential for prejudice to Mr.
13 Jackson's Sixth and Fourteenth Amendment right to a fair trial. Due to the effectiveness of the
14 Court's previous orders, only a small amount of information regarding this case had been
15 available to the public. Now, following the release of the contents of the grand jury transcripts,
16 in a www.smokinggun.com story titled "The Predator," among other sources, anyone with access
17 to newspapers, television or the internet has been exposed to much of the prosecution's one-sided
18 presentation to the grand jury. This disclosure, and more importantly, the timing of this
19 disclosure, has created a tremendous risk that potential jurors will not be able to act impartially
20 based on their exposure to the leaked information.

21 Much of the prosecution's opposition amounts to a theory regarding the origin of the leak,
22 who stands to gain or lose from the publicity, and a couple of cheap shots aimed at Mr. Jackson
23 and his family regarding public appearances. Specifically, the prosecution argues that the leaked
24 grand jury information has the effect of "impugning the integrity and credibility of the
25 prosecution team" and that it has "the potential of creating a negative image with the prospective
26 jury panel." (Opposition, page 2.) The prosecution goes on to argue that the defense benefitted

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1 from the leaked information and insinuates that the defense is responsible for the leak. This
2 argument has nothing to do with whether or not the Court should allow sequestered voir dire.
3 Furthermore, the Court should note that if the prosecution was truly concerned with prejudice to
4 its case, based on these leaks, the prosecution would be joining Mr. Jackson in requesting
5 individual sequestered voir dire.

6 II.

7 **THIS IS A PROPER EXERCISE OF DISCRETION IN A SITUATION THAT IS NOT**
8 **LIKELY TO RECUR**

9 It is correct that the Court has the duty to exercise discretion in determining whether or
10 not sequestered voir dire is necessary in a particular case. (*People v. Ramos* (2004) 34 Cal.4th
11 494.) The discretion has to be exercised in light of the circumstances of the particular case.
12 Here, the circumstances are highly unusual and dictate the exercise of discretion in favor of
13 sequestered voir dire on publicity issues.

14 First, this is an extremely high profile case locally, nationally, and internationally. There
15 is no reasonable alternative to making specific efforts to protect the jury from further
16 contamination. The publicity is so widespread that there is no jurisdiction in this state, or
17 perhaps in this country, that would afford Mr. Jackson a trial in front of jurors who have not been
18 influenced by the publicity.

19 Second, although the Court has substantial efforts to avoid tainting the pool by
20 unnecessary pretrial publicity, the grand jury transcripts have been leaked at the last moment
21 before trial. The transcripts are, of course, extremely prejudicial to the defense by their very
22 nature. They were the prosecution's "best shot" at stating their case at a comparatively early
23 stage without cross-examination or scrutiny by the defense or a court. Much of what was set
24 forth as gospel to the grand jury has been significantly eroded or disproved since that time.

25 Therefore, this is a case in which the particular facts require exercise of discretion to
26 grand sequestered voir dire. This will not lead to "opening the floodgates" or abuse of the
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1 sequestered voir dire process in other cases since such an extraordinary set of facts is unlikely to
2 recur with frequency in the future.

3 III.

4 THE JURY QUESTIONNAIRE DOES NOT ADDRESS THE ISSUE OF THE NATURE
5 AND EXTENT OF PREJUDICE CAUSED BY PRETRIAL PUBLICITY AND,
6 THEREFORE, INQUIRIES IN OPEN COURT WILL CONTAMINATE OTHER
7 JURORS

8 The jury questionnaire, as now constituted, asks for only yes or no answers. The Court
9 noted that it would be better to allow oral voir dire on publicity for two reasons: (1) The
10 prospective jurors should not commit to answers on this subject in writing before having an
11 opportunity to hear the Court; and (2) Trial counsel should have an opportunity to inquire about
12 this sensitive issue in person.

13 While these are valid concerns, the result is that the questionnaire procedure will not
14 avoid the prejudice that will occur when jurors are subject to group voir dire and the question
15 inevitably turns to whether the jurors have been exposed to reports of the grand jury proceedings.
16 It is not possible to probe the extent that jurors have been exposed to the grand jury materials, in
17 the presence of other jurors, without further contaminating the jury pool.

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1 IV.

2 **CONCLUSION**

3 Therefore, based on the reasons set forth above and the reasons set forth in the motion,
4 Mr. Jackson respectfully requests that the Court issue an order allowing for sequestered
5 individual voir dire, based on the fact that voir dire is impracticable, or, alternatively, that the
6 trial be postponed until the public attention regarding the contents of the grand jury transcripts
7 has subsided.


8 Dated: January 25, 2004

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

10 SANGER & SWYSEN
Robert M. Sanger

11 OXMAN & JAROSCAK
12 Brian Oxman

13
14 By:

15 
16 Robert M. Sanger
17 Attorneys for Defendant
18 MICHAEL JOSEPH JACKSON

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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 January 25, 2005, I served the foregoing document entitled: **REPLY TO OPPOSITION TO MOTION FOR AN ORDER ALLOWING INDIVIDUAL SEQUESTERED VOIR DIRE OF PROSPECTIVE JURORS** 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
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

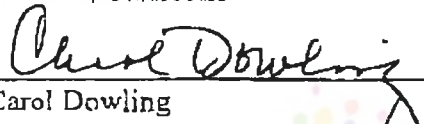
 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid 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.

 X **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

 X **BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.

 X **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 25, 2005, Santa Barbara, California.



Carol Dowling