

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

APR - 5 2005

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

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff,
14 v.
15 MICHAEL JOE JACKSON,
16 Defendant.

No. 1133603

PLAINTIFF'S OPPOSITION
TO DEFENDANT'S
MOTION FOR A MISTRIAL

DATE: TBA
TIME: 8:30 a.m.
DEPT: SM8 (Melville)

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20 A. Introduction

21 Defendant has moved for a mistrial in this matter, arguing that "The District
22 Attorney Committed Prosecutorial Misconduct By Failing To Admonish And Control
23 His Witnesses." (Motion 2:4-5.) The gist of his argument is that it appears to him from
24 "the testimony of several witnesses for the government . . . that the witnesses violated the
25 Court's Order and discussed their testimony with one another." (*Id.*, 2:6-7.) He notes
26 that the Court made an order excluding prospective witnesses until a given witness had
27 given his or her evidence. He argues that the order "precluded [the witnesses] from
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PLAINTIFF'S OPPOSITION TO MOTION FOR MISTRIAL

1 discussing their testimony – particularly the testimony just given in court – with [other]
2 witnesses [who had not yet testified].” (2:19-21.)
3 “Jamic Masada testified that Louise Palanker called him after she testified and discussed
4 the case with him. (RT 4128:22-4130:16.) Mr. Feldman testified that he spoke to Stan
5 Katz, about this case, before and after Katz testified. (RT 4563:27-4565:9.) Mr.
6 Feldman also testified that he discussed the case with Bill Dickerman while Mr.
7 Dickerman was waiting to testify. (RT 4564:24-26.)”

8 Defendant argues that witnesses Palanker and Katz “tainted the subsequent
9 witnesses by talking to them immediately after their testimony. Mr. Masada and Mr.
10 Feldman had the benefit of being prepared by hearing about the examination and cross-
11 examination of the previous witnesses who had just been examined on the same or
12 related subject matter.” (3:2-5.) He argues that his right to a fair trial has been
13 “prejudiced” by the interaction of the witnesses (3:9), and “no other remedy [but
14 declaring a mistrial] will unring the bell of the tainted testimony. (3:23-25.)

15 B. Summary of Response

16 1. “Pre-Testimonial” Conversations

17 Before Attorney Dickerman, Attorney Feldman, or Dr. Katz testified, there were
18 conversations between Attorneys Dickerman and Feldman, and between Attorney
19 Feldman and Dr. Katz.

20 There is nothing in the evidence of any of those witnesses that would suggest
21 their conversations prior to the appearance of any of them was improper, let alone
22 prejudicial to defendant’s right to a fair trial.

23 2. “Post-Testimonial” Conversations

24 There were two “post-testimonial” conversations amongst given witnesses:
25 Between Ms. Palanker and Mr. Masada, and between Dr. Katz and Attorney Feldman.

26 There is nothing in Mr. Masada’s testimony that reveals he discussed anything
27 with Ms. Palanker that touched on the subject of his testimony. There is nothing in the

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1 testimony of Attorney Feldman that suggests what he and Dr. Katz discussed, let alone
2 how any such conversation conceivable affected his own testimony.

3 C. Argument

4 A MOTION FOR MISTRIAL SHOULD ONLY BE GRANTED
5 IF THE COURT IS APPRISED OF PREJUDICE THAT IT
6 JUDGES INCURABLE BY ADMONITION OR INSTRUCTION.
7 NO SUCH PREJUDICE HAS BEEN SUGGESTED BY
8 DEFENDANT

9 1. The Applicable Standard

10 In *People v. Cox* (2003), 30 Cal.4th 916, our Supreme Court noted that

11 “A motion for mistrial is directed to the sound discretion of the trial
12 court. We have explained that “[a] mistrial should be granted if the
13 court is apprised of prejudice that it judges incurable by admonition or
14 instruction. [Citation.] Whether a particular incident is incurably
15 prejudicial is by its nature a speculative matter, and the trial court is
16 vested with considerable discretion in ruling on mistrial motions.”
17 [Citation]” [Citations.]

17 (*Id.*, p. 953.)

18 2. The Protective Order In This Case Was Intended
19 To Restrict Public Comment That Might Taint
20 The Prospective Jurors In this Case

21 Plaintiff believes the intention of the Protective Order in this case was to
22 inhibit and restrict statements intended for public dissemination prior to the time
23 a jury was selected and its members made subject to the direction of the Court
24 not to hear, read or consider statements made outside of the courtroom
25 concerning the facts or evidence in the case.

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1 3. Defendant Has Not Pointed To Any Evidence That
2 The Complained-Of Communications Between The
3 Witnesses In This Case Have Prejudiced His Right
4 To A Fair Trial

5 Defendant asserts, “Jaimie Masada testified that Louis Palanker called
6 him after she testified and discussed the case with him. (RT 4128:22-4130:16.)”
7 (Motion 2:22-24.) The cited record does not support that allegation. To be
8 sure, Ms. Palanker was frank in her assessment of lead defense counsel’s style
9 on cross-examination, but her expression of her opinion on that score did not
10 violate the Protective Order.

11 Defendant asserts, “Mr. Feldman testified that he spoke to Stan Katz,
12 about this case, before and after Katz testified. (RT 4563:27-4565:9.)” (Motion
13 2:25-26.) The cited record does not support that allegation.

14 Defendant asserts, “Mr. Feldman also testified that he discussed the case
15 with Bill Dickerman while Mr. Dickerman was waiting to testify. (RT
16 4564:24-26.)” (Motion 2:26 - 3:1.) The cited record does not support that
17 allegation.

18 The Court will recall that Mr. Dickerman testified that he had discussed
19 two matters with Mr. Feldman prior to his testimony: (1) “whether Miss Arvizo
20 had waived the attorney client privilege” and (2) “something about the fee
21 arrangement.” (RT 4372:15-27.) That conversation neither violated the
22 Protective Order nor the prohibition given witnesses that they not discuss their
23 testimony with others witnesses.

24 Keeping in mind that Dr. Katz had a professional relationship with both
25 Attorney Feldman and Attorney Dickerman, in that Janet Arvizo was his patient
26 and the client of both Mr. Feldman and Mr. Dickerman at critical times in the
27 months preceding and following the charged offenses, a conversation between
28 Dr. Katz and either of the attorneys prior to his testimony, concerning, e.g., “our

1 recollections of how this case progressed” “so we could both refresh our
2 memories of things that weren’t written down” (RT 4259:19 - 4260:16) would
3 not violate the protective order.

4 There is no “tainted testimony” by any of the witnesses identified by
5 defendant, and no sufficient ground for a mistrial has been discussed. The
6 pending motion should be denied.

7 DATED: March 5, 2005

8 Respectfully submitted,

9 THOMAS W. SNEDDON, JR.
10 District Attorney

11 By: 
12 Gerald McC. Franklin

13 Attorney for Plaintiff
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1 **PROOF OF SERVICE**

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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;
7 I am over the age of eighteen years and I am not a party to the within-entitled
8 action. My business address is: District Attorney's Office; Courthouse; 1112
9 Santa Barbara Street, Santa Barbara, California 93101.

10 On April 5, 2005, I served the within PLADNTIFF'S OPPOSITION
11 TO DEFENDANT'S MOTION FOR A MISTRAL on Defendant, by THOMAS
12 A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by personally
13 delivering a true copy thereof to Mr. Sanger's office in Santa Barbara and
14 transmitting a copy by facsimile to Mr. Mesereau at the confidential FAX
15 number of their temporary office in Santa Maria.

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

18 Executed at Santa Maria, California on this 5th day of April, 2005.

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20 GERALD McC. FRANKLIN

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