

APR 20 2005

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

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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

17 Defendant.

No. 1133603

18 PLAINTIFF'S MOTION IN
19 LIMINE TO EXCLUDE
20 EVIDENCE OF NOVEMBER
21 2003 "SURRENDER FLIGHT"
22 ON EVIDENCE CODE SECTION
23 352 AND 5TH AMENDMENT
24 GROUNDS

25 DATE: TBA
26 TIME: TBA.
27 DEPT: SM-2 (Melville)
28

29 A. Introduction:

30 The People intend to call witness Cynthia Montgomery to the stand on April 21,
31 2005. Ms. Montgomery is a self-employed travel agent who, for a period of approximately 4
32 years, was responsible for arranging Defendant Jackson's travel by chartered private aircraft.
33 Ms. Montgomery is expected to offer testimony regarding flight arrangements she made for
34 Defendant Jackson during the time frame outlined by the indictment and up through
35 approximately September of 2003.

36 ///

1 Plaintiff is informed that on November 20, 2003, Defendant Jackson flew from Las
2 Vegas to Santa Barbara on a chartered jet arranged by Ms. Montgomery and operated by
3 "Xtrajet." This particular flight received intense media coverage as it was the occasion of the
4 defendant's surrender to Santa Barbara Sheriff's officials. Ms. Montgomery was not aboard
5 that flight.

6 Plaintiff is informed that a federal investigation is presently underway due to the
7 fact an unauthorized video-only surveillance camera was secreted on that aircraft in violation
8 of 18 U.S.C. 2511, "wiretapping." In addition to the federal investigation, civil actions have
9 been filed by the parties involved in that flight. Ms. Montgomery has, through counsel on
10 April 20, 2005, indicated she would assert her 5th amendment privilege if questioned about the
11 "surrender flight" in this case.

12 **I**

13 **EVIDENCE OF THE NOVEMBER 20 FLIGHT**
14 **IS NOT RELEVANT AND SHOULD BE EXCLUDED**

15 The People do not intend to elicit any evidence from Ms. Montgomery, or any other
16 witness, about the Defendant's flight to Santa Barbara for his booking. Neither the fact of the
17 flight nor the conduct of anyone involved with it is material on any issue in this case. Insofar
18 as the parties have sued each other, the existence of such litigation is collateral and subject to
19 the court's discretion to exclude under section 352 of the Evidence Code.

20 However, if the Defendant is able to convince the court that such area of inquiry is
21 relevant somehow to his defense, we would respectfully request that Ms. Montgomery be
22 allowed to assert her privilege as to *that* issue outside the presence of the jury.

23 **II**

24 **A WITNESS SHOULD BE ALLOWED TO EXERCISE THE**
25 **PRIVILEGE AGAINST SELF-INCRIMINATION OUTSIDE**
26 **THE PRESENCE AND HEARING OF THE JURY**

27 In *People v. Mincey* (1992) 2 Cal.4th 408, our Supreme Court noted that "Evidence
28 Code section 913, subdivision (a) prohibits the trial court and counsel from commenting on a
witness' assertion of a privilege." (*Id.*, p. 441.) The court continued,

1 The statutory prohibition applies to witnesses as well as parties litigant.
2 Defendant's request that the trial court compel Sandra B. to invoke the
3 privilege in the presence of the jury was in direct violation of Evidence
Code section 913. The court's refusal to do so was therefore proper.

4

5 A person may invoke the constitutional privilege against self-
6 incrimination for a reason other than guilt. . . . Thus, inferring guilt
7 from the mere exercise of the privilege would be improper and is at best
8 based on speculation, not evidence. [Citations.] To avoid the
9 potentially prejudicial impact of having a witness assert the privilege
10 against self-incrimination before the jury, we have in the past
11 recommended that, in determining the propriety of the witness's
12 invocation of the privilege, the trial court hold a pretestimonial hearing
13 outside the presence of the jury. [Citation.] This was done here.

14 A defendant's rights to due process and to present a defense do not
15 include a right to present to the jury a speculative, factually unfounded
16 inference. [Citation.] If the trial court in this case had permitted
17 defendant to compel Sandra B. to assert the privilege in front of the jury,
18 it would have been required, on request, to instruct the jury not to draw
19 the very inference defendant sought to present to the jury. (Evid. Code,
20 § 913, subd. (b).)

21 (Ibid.).

22 II

23 **ASSUMING MS. MONTGOMERY EXERCISES HER 5th**
24 **AMENDMENT PRIVILEGE WITH RESPECT TO THE**
25 **"SURRENDER FLIGHT", DEFENSE COUNSEL SHOULD BE**
26 **INSTRUCTED, FIRMLY AND EXPLICITLY, NOT TO TOUCH**
27 **ON THOSE EVENTS IN HIS CROSS-EXAMINATION OF THE**
28 **WITNESS OR TO INTIMATE, IN ANY WAY, THAT SHE HAS**
ASSERTED A PRIVILEGE NOT TO TESTIFY CONCERNING
THOSE EVENTS

29 Plaintiff has remarked, not without considerable justification, that defense counsel
30 tries very hard to get before the jury, by leading questions or commentary, information that has

1 been put out of bounds. Even timely objections are inadequate to un-ringing a bell clanged
2 with defense counsel's customary vigor.

3 If the defense has evidence that would tend to impeach a prosecution witness but
4 that may not be raised or discussed with the witness in the course of cross-examination, it may
5 introduce that evidence in the presentation of its own case to the jury if it so chooses.

6 Considerable experience dictates the necessity of an explicit admonition to counsel
7 concerning the limits of a particular inquiry before those limits are exceeded by an improper
8 question or comment, followed by an apology.

9 DATED: April 20, 2005

10 THOMAS W. SNEDDON, JR.
11 District Attorney

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13 By: 
Mag M. Nicola, Senior Deputy District Attorney

14 Attorneys for Plaintiff
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3 **PROOF OF SERVICE**

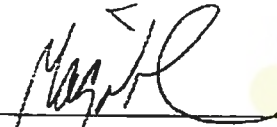
4 STATE OF CALIFORNIA }
5 COUNTY OF SANTA BARBARA } SS

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; 1112 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On April 20, 2005, I served the within PLAINTIFF'S MOTION IN LIMINE TO
11 EXCLUDE EVIDENCE OF THE NOVEMBER 2003 "SURRENDER FLIGHT" on
12 Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, ,
13 by transmitting a facsimile copy thereof to Attorney Sanger at his Fax number in Santa Maria.

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

15 Executed at Santa Barbara, California, on this 20th day of April, 2005.

16 
17 _____
18 Mag M. Nicola