

APR 22 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 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,

13 vs.

14 MICHAEL JOE JACKSON,
15 Defendant.

No. 1133603

16 PEOPLE'S MOTION FOR
17 RECONSIDERATION RE:
18 THE TESTIMONY OF
19 CYNTHIA MONTGOMERY;
20 DECLARATION IN
21 SUPPORT THEREOF; AND
22 REQUEST FOR USE
23 IMMUNITY
(P.C. 1324)

DATE: TBA
TIME: TBA
DEPT.: SM2 (Melville)

24 INTRODUCTION

25 On April 21, 2005, this court issued an order precluding the testimony of witness
26 Cynthia Montgomery on the grounds that she would assert her 5th Amendment privilege on
27 certain areas of inquiry. The People informed the court that Ms. Montgomery would testify,
28 generally, about flights she coordinated during late 2002 and through September of 2003 for
the Defendant. Additionally, she would testify as to the plans made to send the Arvizo family

1 to Brazil shortly after the taping of the "Rebuttal Video." Cynthia Montgomery is a material
2 witness due to her personal knowledge of certain events which are probative regarding the
3 conspiracy alleged in Count 1 of the Information and the interaction of the various unindicted
4 co-conspirators during the relevant time frames. She can explain to the jury how travel
5 arrangements were made for the defendant, who flew with him on those flights, and who she
6 received instructions from within the defendant's camp. Additionally and with specificity, she
7 will testify that during the performance of the duties above described, she was instructed by
8 Mark Scaffel to purchase one-way tickets for the Arvizo's to Brazil on or about February 25,
9 2003; and, that Lauren Wallace told her that she poured wine into soda cans for the defendant
10 because *she was instructed to do so by the defendant*, (a statement which is inconsistent with
11 Lauren Wallace's trial testimony).

12 Due to the "eleventh-hour" notice to the prosecution that she intended to invoke
13 with respect to Defendant Jackson's "surrender flight," we were unable to have meaningful
14 discussions with her attorney or the federal prosecutors investigating the incident prior to the
15 hearing of April 21. Now we have. Since Ms. Montgomery's testimony is highly probative
16 due to her close association with members of Defendant Jackson's 'inner circle' through her
17 role as travel coordinator, we have noticed both the United States Attorney and Ms.
18 Montgomery's attorney of our intent to request she be compelled to testify under a grant of **use**
19 **immunity**.

20
21 **I.**
22 **COMPELLING A WITNESS TO TESTIFY UNDER A**
23 **GRANT OF "USE" IMMUNITY IN STATE COURT**
24 **BARS ANY USE OR DERIVATIVE USE OF**
25 **SUCH TESTIMONY IN FEDERAL COURT**

26 Penal Code section 1324 provides that a prosecutor may request an order granting
27 "use" immunity in order to compel the testimony of a witness who would otherwise assert the
28 constitutional protections of the Fifth Amendment. In *Murphy v. Waterfront Comm'n of New*
York Harbor (1964) 378 U.S. 52, the Supreme Court overturned previous precedents which
had held that testimony which had been compelled in a state court could be used against a

1 defendant in federal court.

2 "... we hold the constitutional rule to be that a state witness may not be compelled
3 to give testimony which may be incriminating under federal law unless the
4 compelled testimony and its fruits cannot be used in any manner by federal officials
5 in connection with a criminal prosecution against him. We conclude,
6 moreover, [*892] that in order to implement this constitutional rule and
7 accommodate the interests of the State and Federal Governments in investigating
8 and prosecuting crime, the Federal Government must be prohibited from making
9 any such use of compelled testimony and its fruits. This exclusionary rule, while
10 permitting the States to secure information necessary for effective law enforcement,
11 leaves the witness and the Federal Government in substantially the same position as
12 if the witness had claimed his privilege in the absence of a state grant of immunity."
13 (pg 79)

14 In *Nelson v. Municipal Court*, (1972) 28 Cal. App. 3d 889, 893, the court applied
15 the *Murphy* rule to a witness who was afraid that her state-compelled testimony would subject
16 her to federal prosecution, "... we conclude that the *Murphy* holding that the testimony in
17 question could be compelled, since the federal government would be barred from *using* any of
18 the testimony, or its fruits, in a subsequent federal prosecution, governs the disposition of this
19 proceeding, and that petitioners, having been granted immunity pursuant to Penal Code section
20 1324, may be compelled to testify. (See; *Kastigar v. United States*, (1972) 406 U.S. 441, 92
21 S.Ct. 1653).

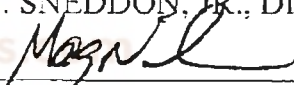
22 Therefore, we respectfully request this court issue an order granting use immunity
23 to the witness Cynthia Montgomery.

24 DATED: April 22, 2005

25 Respectfully submitted,

26 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

27 By:

28 
Mag M. Nicofa, Senior Deputy District Attorney

1
2
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 22, 2005, I served the within **PEOPLE'S MOTION FOR**
11 **RECONSIDERATION RE: THE TESTIMONY OF CYNTHIA MONTGOMERY;**
12 **DECLARATION IN SUPPORT THEREOF; AND REQUEST FOR USE IMMUNITY**
13 on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN
14 OXMAN, by transmitting a facsimile copy thereof to Attorney Sanger.

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

16 Executed at Santa Barbara, California on this 22nd day of April, 2005.

17 

18 Sandra Castro

SERVICE LIST

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DECLARATION OF MAG M. NICOLA

I, MAG NICOLA, say:

1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the People, Plaintiff in this action.


2. This motion for reconsideration and request for an order granting use immunity to Cynthia Montgomery was filed on April 22, 2005.

3. I informed both the Office of The United States Attorney and counsel for Ms. Montgomery that we would seek to compel the testimony of the witness under the provision of P.C. 1324 on April 21, 2005.

4. I believe the information offered by Ms. Montgomery cannot be supplied by other witnesses due to the nature of her first-hand knowledge.

5. I believe there is an absence of any compelling and contrary public interest such that this court should not order said witness to appear and answer questions under oath in this matter.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, except as to matters stated upon my information and belief, and as to such matters I believe it to be true. I execute this declaration at Santa Maria, California on April 22, 2005.


MAG M. NICOLA