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13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SANTA BARBARA
16 SANTA MARIA DIVISION

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA,

19 Plaintiff,

20 vs.

21 MICHAEL JOE JACKSON

22 Defendant.

CASE NO. 1133603

MR. JACKSON'S REPLY IN
SUPPORT OF HIS MOTION TO
COMPEL DISCOVERY; REQUEST
FOR HEARING RE
ARRANGEMENTS FOR DEFENSE
REVIEW OF SEIZED ITEMS.

Hearing: May 28, 2004
Time: 8:30 a.m.
Place: Dept. 9

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 26 2004

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

1 Michael J. Jackson, through his counsel, hereby submits this reply
2 memorandum in support of his motion to compel discovery. As part of this motion
3 and the result of the parties' meet-and-confer concerning discovery, counsel for Mr.
4 Jackson respectfully requests that the Court be advised of and, if necessary, rule
5 upon arrangements by which the defense will examine and have access to items
6 seized pursuant to search warrant.

7 DATED: May 26, 2004 Respectfully submitted,

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

11 By: Thomas A. Mesereau
12 Thomas A. Mesereau, Jr.

13 Steve Cochran
14 KATTEN MUCHIN ZAVIS ROSENMAN

15 By: Steve Cochran
16 Steve Cochran

17 Robert M. Sanger
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19 By: Robert M. Sanger
20 Robert M. Sanger
21 Attorneys for defendant
22 MICHAEL J. JACKSON

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 I. AN ORDER COMPELLING DISCOVERY IS NECESSARY IN SPITE
4 OF ASSURANCES BY THE PROSECUTION.

5 The notion that this Motion is unnecessary ignores the record. The
6 prosecution began boasting about its case against Mr. Jackson back in November,
7 2003. Mr. Jackson endured a booking process and posted exorbitant bail a full six
8 months ago. Charges were initially filed in December and at the arraignment in
9 January 2004, this Court told the prosecution to provide discovery.

10 Months ago, defense counsel sent written requests for complete discovery and
11 access to items seized by police during various searches. The prosecution never
12 responded. The last wave of discovery by the prosecution was received on
13 March 12, 2004. Until around the time this Motion was filed, the prosecution
14 provided no schedule for defense access to the seized items, some of which has been
15 in the prosecution's possession since November of last year. The prosecution is no
16 longer in a position to demand dialogue about discovery that defense counsel
17 requested back in January and February.

18 The prosecution promises that its investigation is ongoing and will continue all
19 the way to and through trial. The import of the prosecution's position is that the
20 defense will be provided discovery in piecemeal fashion, after information is
21 gathered and processed by police, up until the eve of trial. This approach to
22 discovery is unfair and unacceptable.^{1/}

23 The prosecution is incorrect in its claim that defense counsel identified no
24 problems with the current state of discovery during the recent telephone conference
25 referred to in the opposition papers. There is no dispute that tape recordings of
26

27 ^{1/} The prosecution deflects its responsibility in this matter by requesting an order
28 compelling discovery from the defense. The record does not justify such an order and
if the prosecution desires such relief, it is obliged to file a motion like any other litigant.

1 witness statements taken months ago have not been produced to the defense. The
2 results of forensic examination conducted on seized items has yet to be produced,
3 even though that process began months ago. The prosecution represented during that
4 call that witness statements summarized in approximately five hundred pages of
5 reports are being prepared and will be produced in the near future.^{2/}

6 The inescapable conclusion on these facts is that this Motion is necessary to
7 compel the prosecution to make the completion of discovery a priority. This case is
8 indisputably complex. Absent the completion of discovery and ample time thereafter
9 for defense analysis and investigation, Mr. Jackson's right to a fair trial cannot be
10 assured. This Motion should be granted.

11 **II. A HEARING IS NECESSARY REGARDING ARRANGEMENTS FOR**
12 **DEFENSE ACCESS TO SEIZED ITEMS**

13 At last, counsel have commenced dialogue about the manner by which the
14 defense will be allowed to examine seized items in the possession of police. Defense
15 counsel have requested a procedure that allows meaningful access and reasonable
16 privacy without disturbing chain of custody.

17 There are approximately four hundred (400) seized items. Initial defense
18 review of these items followed by re-examination, further analysis and possible
19 forensic testing will require substantial time. Supervision by this Court may be
20 necessary to ensure adequate access by the defense. Therefore, defense counsel
21 respectfully requests that this matter be placed on the Court's agenda at the hearing
22 on Mr. Jackson's discovery motion.

23 **III. A HEARING IS NECESSARY FOR THE COURT TO ORDER ACCESS**
24 **TO THE GRAND JURY EXHIBITS.**

25 Approximately two (2) weeks ago, Mr. Sanger and Mr. Zonen met and
26 discussed access to the exhibits admitted before the Grand Jury. The clerk of the
27

28 ^{2/} Several hundred pages were made available to Mr. Sanger yesterday, May 25,
2004 but have not been reviewed by counsel as yet.

1 Court indicated that a court order was necessary to permit counsel and their
2 investigator to inspect and copy the exhibits. Mr. Zonen agreed to stipulate to such
3 an order. The stipulation was immediately prepared and submitted to which we
4 received no response.

5 During our meet and confer with Mr. Auchincloss, he indicated that he would
6 not agree to such an order unless he had control over our inspection. Defense
7 counsel objected and pointed out that the Court has custody of the exhibits and that
8 Court personnel would supervise any inspection in compliance with their procedures
9 and the Court's instructions. Mr. Auchincloss said we would have to take this up
10 with the Court.

11 Therefore, we request that the Court also place this issue on the Court's
12 agenda at the hearing on Mr. Jackson's motion for discovery.

13 DATED: May 26, 2004 Respectfully submitted,

14
15 Thomas A. Mesereau, Jr.
16 Susan C. Yu
17 COLLINS, MESEREAU, REDDOCK & YU

18 By: Thomas A. Mesereau
19 Thomas A. Mesereau, Jr.

20 Steve Cochran
21 KATTEN MUCHIN ZAVIS ROSENMAN

22 By: Steve Cochran
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24 Robert M. Sanger
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27 Robert M. Sanger
28 Attorneys for Defendant
MICHAEL J. JACKSON

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Katten Muchin Zavis Rosenman (the "business"), 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

() I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

(X) By Facsimile Machine, I caused the above-referenced document(s) to be transmitted to the persons listed below:

On May 26, 2004, I served the foregoing documents described as MR. JACKSON'S REPLY IN SUPPORT OF HIS MOTION TO COMPEL DISCOVERY; REQUEST FOR HEARING RE ARRANGEMENTS FOR DEFENSE REVIEW OF SEIZED ITEMS on the interested parties in this action as follows:

Thomas W. Sneddon, Jr.
District Attorney of Santa Barbara
1105 Santa Barbara Street
Santa Barbara, CA 93101

Fax: 805-568-2398

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on May 26, 2004, at Los Angeles, California.


Shirley Appleton