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SEP 16 2004  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA  
GARY M. PLETCH, CLERK  
CARRIE L. WARD, DEPUTY CLERK

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, )

No. 1133603

13 Plaintiff, )

PEOPLE'S RESPONSE TO  
DEFENDANT'S REPORT RE:  
FAILURE TO PRODUCE  
DISCOVERY AND REQUEST  
FOR SANCTIONS

14 v. )

15 MICHAEL JOE JACKSON,

16 Defendant. )

DATE: September 16, 2004  
TIME: 8:30 a.m.  
DEPT.: SM 2 (Melville)

17  
18  
19 ~~UNDER SEAL~~

20  
21 INTRODUCTION

22 In a document captioned "Report re Prosecution's Failure To Produce Discovery  
23 and Request for Sanctions" ("Report"), filed on or about August 13, 2004, Defendant accused  
24 the People of intentionally providing late discovery of an internal Santa Barbara Sheriff's  
25 Office Operations Plan for the execution of the search warrants last November, and of  
26 "feigning ignorance" of its existence until a short time ago (Report 3:3). Defendant asserts  
27 there is "no credible explanation" for the delay (*id.* 5:25), and the late production of that  
28 document amounts to a "blatant disregard of its discovery obligation" which has "disrupted

1 these judicial proceedings” (*id.* 6:3-4).

2 The People have consistently recognized their discovery obligations under Penal  
3 Code section 1054.3 and *Brady* do apply to pretrial proceedings. We disagree however that the  
4 defense is entitled to “everything” (see Report 6:12-13) under the rules of discovery in  
5 criminal cases. Finally, defendant’s accusation that the People intentionally withheld evidence  
6 and made misrepresentations to the court and counsel is false. The People request findings in  
7 conformity with this fact.

8 I

9 **THE PEOPLE’S DISCOVERY OBLIGATIONS ARE**  
10 **CIRCUMSCRIBED BY PENAL CODE § 1054.1 AND *BRADY***

11 Apart from the constitutional duty to provide the defense with exculpatory evidence  
12 that is material to guilt or innocence (*Brady v. Maryland* (1963) 373 U.S. 87), the People’s  
13 discovery duties to the defendant are circumscribed by Penal Code section 1054.1:

14 The prosecuting attorney shall disclose to the defendant or his or  
15 her attorney all of the following materials and information, if it is  
16 in the possession of the prosecuting attorney or if the prosecuting  
17 attorney knows it to be in the possession of the investigating  
18 agencies:

- 19 (a) The names and addresses of persons the prosecutor intends to call  
20 as witnesses at trial.
- 21 (b) Statements of all defendants.
- 22 (c) All relevant real evidence seized or obtained as a part of the  
23 investigation of the offenses charged.
- 24 (d) The existence of a felony conviction of any material witness whose  
25 credibility is likely to be critical to the outcome of the trial.
- 26 (e) Any exculpatory evidence.

27  
28 ////

1 (f) Relevant written or recorded statements of witnesses or reports of  
2 the statements of witnesses whom the prosecutor intends to call at  
3 the trial, including any reports or statements of experts made in  
4 conjunction with the case, including the results of physical or  
5 mental examinations, scientific tests, experiments, or comparisons  
6 which the prosecutor intends to offer in evidence at the trial.

7 “In criminal proceedings, under the reciprocal discovery provisions of section 1054  
8 et seq., all court-ordered discovery is governed exclusively by — and is barred except as  
9 provided by — the discovery chapter....” (*In re Littlefield* (1993) 5 Cal.4th122, 129: Pen.  
10 Code, §§ 1054, subd. (e), 1054.5, subd. (a).) The defense is entitled to *Brady* evidence and  
11 those items described in Penal Code section 1054.1. The People have not promised, and the  
12 defense is not entitled to, “everything.”

## 13 II

### 14 THE INTERNAL OPERATIONS PLAN FOR EXECUTION 15 OF SEARCH WARRANTS WAS PROMPTLY DISCOVERED 16 TO THE DEFENSE EVEN THOUGH SUCH DISCOVERY 17 WAS NOT REQUIRED BY LAW

18 Evidence adduced during the defendant’s 1538.5 hearing included the introduction  
19 of the subject of defendant’s complaint concerning a Santa Barbara Sheriff’s Department  
20 Operations Plan from Sgt. Eric Koopmans for the execution of search warrants, a page of  
21 which is captioned “Named Individuals,” and a document captioned “CASE #03-5670 TIME  
22 LINE.” Testimony revealed that these documents were internal Sheriff’s Department  
23 documents intended to acquaint officers with the procedure to be followed in executing the  
24 warrants. They contained no original information. They included only factual summaries of  
25 relevant law enforcement reports, and they were promptly discovered to the defense after the  
26 District Attorney became aware of their existence.

27 The People have no duty to make a complete and detailed accounting to the defense  
28 of all police investigative work on a case. (*Moore v. Illinois* (1972) 408 U.S. 786, 795; *People*  
*v. Nation* (1980) 26 Cal.3d 169, 175.) Nor are the People required to actively investigate the  
facts and circumstances of the case for the benefit of the accused. (*People v. Gurtenstein*

1 (1969) Cal.App.3d 441, 449.)

2 Any statements of witnesses contained in the Sheriff's Operations Plan and attached  
3 documents are also contained in the investigative reports and videotapes that have already been  
4 discovered to the defense. An internal search warrant operations plan for law enforcement use  
5 that contains only paraphrased information contained in official reports is clearly outside the  
6 purview of Penal Code Section 1054.1 and so is not discoverable.

7 Nevertheless, the People promptly discovered these documents, as we have many  
8 others; in good faith and beyond the discovery we are obliged to make by applicable law. For  
9 this we have been maligned by the defense.

10 The defense's strategy has become all too obvious. Thus far, the defense has  
11 accused virtually every person who has anything to do with this case with *outrageous*  
12 misconduct. The case is a "shakedown" of a major celebrity. The victim is lying; the victim's  
13 mother is a "parasite;" the victim's family members are lying and motivated by greed. The  
14 defendant's former employees are liars and bit players who are "willing to give testimony  
15 about anything [in order] to be important." (Defendant's 995 Reply, 8:16-17.) The District  
16 Attorney is a "bully" who has intimidated witnesses and committed "outrageous misconduct."  
17 He is motivated by revenge and "attempted to make a case where none exists" because "Mr.  
18 Jackson is a celebrity." (*Id.*, 21:18-19.) All of the prosecutors in this case are "rogues." And  
19 most recently, Santa Barbara County Counsel and the California Attorney General have been  
20 accused of engaging in a "sham and a scam" to smear the defendant.

21 If the defense chooses to run a "scorched-earth" battle in which they attempt to  
22 assassinate the character of everybody in sight in an obvious attempt to avoid culpability, that  
23 is their business. Empty rhetoric is not a defense to criminal charges, and its repetition is  
24 usually seen for the bluster it is. However, when they accuse the prosecution of misconduct,  
25 they better have the evidence to back up their claim.

26 "An attorney has the unqualified duty to refrain from acts which mislead the court;  
27 representation to the court of facts known to be false is presumed intentional and a violation of  
28 an attorney's duties as an officer of the court under Business and Professions Code Section

1 6068.” (*People v. Jackson* (1979) 23 Cal.3d 509, 513.)

2 The defense was informed that the prosecution became aware of the Operations  
3 Plan a mere two days before it was discovered. (See Exh. “A” to Report.). They have no  
4 evidence that this document was intentionally withheld by the prosecution, yet they recklessly  
5 accuse the prosecutor of misconduct.

6 The People seek no sanction for this offense but ask the court to make a finding that  
7 the prosecution made no misrepresentations to the court or counsel and violated no canon or  
8 law with respect to the discovery of this article of evidence.

9 We hereby notify the defense that future spurious accusations will prompt our  
10 request for a hearing in which the defense will be asked to prove up their accusation or face  
11 sanctions themselves.

12 DATED: September 7, 2004

13 Respectfully submitted,  
14 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

15  
16 BY: Gordon Auchincloss (by R. ZONEP)  
17 GORDON AUCHINCLOSS  
18 Senior Deputy District Attorney  
19 Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA }  
COUNTY OF SANTA BARBARA } SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On September 8, 2004, I served the within PEOPLE'S RESPONSE TO DEFENDANT'S REPORT RE: FAILURE TO PRODUCE DISCOVERY AND REQUEST FOR SANCTIONS on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, by delivering a true copy thereof to each of them in open court.

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

Executed at Santa Maria, California on this 8th day of September, 2004.

*RJ Zonen*

Ronald J. Zonen