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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SANTA MARIA DIVISION

~~PROPOSED~~ **REDACTION**

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. MICHAEL JOE JACKSON, Defendant.	No. 1133603 PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO RECONSIDER ORDER DENYING BAIL REDUCTION DATE: November 4, 2004 TIME: 8:30 a.m. DEPT: SM 2 (Melville) ~~FILED UNDER SEAL~~

The People respectfully offer this Response to Defendant's "Motion To Reconsider Order Denying Bail Reduction," etc.

1

PRESUMPTION OF GUILT WHEN ASSESSING BAIL

Defendant argues that

> It is not appropriate to assume the charges in the indictment are true for the purpose of reviewing the amount of bail. The principle that the Court must assume guilt in order to determine bail evolved from a clear misreading of case law. Unfortunately, this misreading

has been perpetuated by Witkin. (Witkin & Epstein, California Criminal Law 2008, pages 2368-1369 [sic] (2d. Ed. (1989).)

This fallacy evolved from a results-oriented reading of *Ex Parte Duncan* (1879) 53 Cal. 410, in which the California Supreme Court notes that a habeas review of a trial court bail setting is based by an assumption of guilt standard. (*Id.* at 411.) The Court contrasts that standard with the trial court standard that would have been appropriate "had the proceedings to let him to bail been originally before us . . . ." (*Ibid.*)

The third edition of Mr. Witkin's work, whatever it said, is outdated. And, as it happens, it is Defendant, not Mr. Witkin, who misread *Ex parte Duncan* (1879) 53 Cal. 410.

The relevant language of *Ex parte Duncan*, *supra*, belies Defendant's reading of it:

As observed at the argument, we must assume *in this proceeding* that the petitioner *is guilty of the ten distinct felonies* of which he is indicted. We must assume his guilt, though when he shall be tried it may be made to appear that he is wholly innocent of all the charges.

We said in *Ex parte Ryan* [(1872)] 44 Cal. 558 that "except for the purpose of a fair and impartial trial before a petit jury, the presumption of guilt arises against the prisoner upon the finding of an indictment against him," and this must be taken to be the settled rule.

. . . .

The question is not whether we would have exacted so great a sum in the first instance had the proceedings to let him to bail been originally before us; in other words, the inquiry is not whether a mere difference of opinion may have been developed between this Court and the Municipal Criminal Court as to the amount of bail to be exacted in the case. We are not to assume in this case the functions of the Court committing the prisoner, or substitute our own for its judgment in fixing the amount of bail. Before we are authorized to interfere the bail demanded must be, (as was said in *Ryan's Case*) "*per se* unreasonably great and clearly disproportionate to the offense involved," etc.

(53 Cal. 410, at 411; emphasis the court's.)

The unfortunate Mr. Duncan again sought reduction of his bail by petition for habeas corpus following two mistrials on the several counts of embezzlement for which he had been indicted, and a justice of the Supreme Court again denied the petition: "Upon a former occasion, (January term, 1879) the prisoner applied to the Supreme Court for an order reducing the abount of his bail, and the application was, upon consideration of all the justices, refused. (*Ex parte Duncan*, 53 Cal.410.) Unless the circumstances now disclosed make a case materially different from the case then made to appear, I should be disinclined to depart from what was then determined." (*Ex parte Duncan* (1879) 54 Cal. 75, at p. 78.)

To rehearse what we think is obvious from the foregoing, when it comes to the setting of bail post-indictment the "presumption of guilt" rule articulated by the Supreme Court applies to trial courts and reviewing courts alike. The Supreme Court simply was taking care to point out that as a reviewing court, it could not supplant the trial court in the exercise of the latter's duty to fix the bail *it* deemed appropriate in light of the indictment.

The current edition of California Criminal Law states:

> (2) *Assumption of Guilt.* In considering the seriousness of an offense after an indictment or information, the courts assume that the defendant is guilty. (*In re Horiuchi* [(1930) 105 Cal.App. 714]; *Ex parte Ruef* [(1908)] 7 C.A. 752; cf. *Ex parte Duncan* (1879) 54 C. 75, 79 [fact that two trial juries disagreed was not enough to overcome judge's discretion in refusing to reduce bail].)

(4 Witkin & Epstein, Cal. Criminal Law (3d. ed. 2000) Pretrial Proceedings, § 88, p. 287.)

II

DEFENDANT'S INTENT, OR LACK THEREOF, TO GO [redacted] BEFORE HE WAS A SUSPECT IN A CHILD MOLEST INVESTIGATION IS IRRELEVANT TO THE ISSUE OF PROPER BAIL.

There is no question but that efforts had been made by Defendant's employees and agents [redacted]. Defendant's co-conspirators [redacted],

[redacted].

It is not relevant that prior to Defendant learning he was under investigation for child molestation he did or did not intend [redacted]. What is relevant is that he had the means and desire to [redacted].

A search of Defendant's home on November 18, 2003 retrieved a personal calendar [redacted]. Defendant generally travels by private jet and is easily capable of moving himself long distances on short notice.

III

EVIDENCE OF PRIOR ACCUSATIONS AGAINST DEFENDANT FOR THE SAME OFFENSE IS RELEVANT TO A DETERMINATION OF BAIL

Defendant states that it is inappropriate for the court to consider prior allegations against the defendant which did not result in an indictment or conviction. Defendant points out that two separate grand juries (Los Angeles and Santa Barbara Counties) failed to return indictments. That is certainly true. What Defendant neglects to mention is that [redacted], whereupon the victim's attorney announced that the victim would not be participating in any additional proceeding.

Evidence of prior uncharged acts of child molestation is relevant and admissible in a child molestation trial to show a predisposition to commit that type of offense. (Evid. Code, § 1108.) Such evidence is also relevant at the time of sentencing as a matter in aggravation. Defendant publicly acknowledged, recently, paying undisclosed sums on two occasions several years ago to quietly resolve "certain false allegations that he had harmed children." In determining the appropriate bail in this matter, the Court certainly may consider that Defendant

himself will consider the impact on his trial and sentencing if either or both of those individuals, or others, testify to his prior acts of molestation.

IV

DEFENDANT WEALTH IS AN APPROPRIATE SUBJECT FOR CONSIDERATION OF INCREASED BAIL

"The greater the probability of conviction the greater the inducement to a defendant to become a fugitive from justice. The petitioner shows by his affidavit that he is a man of means, and now engaged in improving his holding in San Francisco. How much he is worth does not appear, but the greater the amount of his wealth the more readily he could give a large bail, and the more readily he could flee to some country where perhaps he could live in comfort on his possessions." (*Ex Parte Ruef* (1908) 7 Cal App 750, 753.)

In the documentary "Living with Michael Jackson" later aired on national and international television, Defendant told his interviewer, Martin Bashir, that he is a "billionaire." His lead counsel recently acknowledged that [redacted] paid to the two claimants in 1993 was a pittance compared to what he would have lost if he became embroiled in litigation of the charges. Michael Jackson appears to be a very wealthy man. The bail as currently set is not excessive.

DATED: October 25, 2004

Respectfully submitted,

THOMAS W. SNEDDON, JR.
District Attorney

By: /S/
Ronald J. Zonen, Senior Deputy

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 October 25, 2004, I served the within PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO RECONSIDER ORDER DENYING BAIL REDUCTION on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage prepaid, at the addresses shown on the attached Service List.

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

Executed at Santa Barbara, California on this 25th day of October, 2004.

Chris Linz