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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

15 THE PEOPLE OF THE STATE OF)
16 CALIFORNIA,)

17 Plaintiffs,)

18 vs.)

19 MICHAEL JOSEPH JACKSON,)

20 Defendant.)

Case No. 1133603

OPPOSITION TO DISTRICT
ATTORNEY'S MOTION TO EXCLUDE
REFERENCE BY DEFENSE COUNSEL TO
JANE DOE'S USE OF (OR FAILURE TO
USE) "PSYCHIATRIC MEDICATION"

UNDER SEAL

Honorable Rodney S. Melville

Date: ~~February 10, 2005~~

Time: ~~9:30 a.m.~~

Dept.: 8

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24 MEMORANDUM OF POINTS AND AUTHORITIES

25 INTRODUCTION

26 The prosecution can rest assured that defense counsel will follow the Evidence Code

27
28 OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO EXCLUDE REFERENCE BY DEFENSE COUNSEL
TO JANE DOE'S USE OF (OR FAILURE TO USE) "PSYCHIATRIC MEDICATION"

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB - 4 2005

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

* unsealed pursuant
to 6/16/05 Court order

FILED
FEB - 4 2005

RECEIVED

1 when cross-examining Jane Doe. The prosecution asks this Court to restrict defense counsel's
2 ability to question Jane Doe regarding her use of, or failure to use, psychiatric medication. While
3 the District Attorney concedes that defense counsel "may inquire whether Jane Doe was using
4 drugs during the time she was a witness to the events alleged as relevant to the instant
5 proceedings - and, if so, what drugs." (Motion, page 3.) The District Attorney argues, however,
6 that defense counsel "may not properly expand that inquiry to ask Jane Doe whether she was not
7 taking drugs he may regard as useful in the treatment of certain psychiatric conditions, so as to
8 convey to the jury his belief she was afflicted with those conditions." (Ibid.) Defense counsel
9 will comply with the Evidence Code and this Court's rulings while cross-examining Jane Doe.
10 However, Ms. Doe's use of, or failure to use psychiatric medication, is relevant to the current
11 proceedings based on her testimony to the grand jury and based on the anticipated testimony of
12 witnesses in this case.

13 The exclusion of such relevant evidence threatens to deprive Mr. Jackson of his federal
14 and state constitutional rights to a fair trial, due process of law, the right to confront and cross-
15 examine witnesses against him, and equal protection pursuant to the Fifth, Sixth, and Fourteenth
16 Amendments to the United States Constitution and Article 1, Sections 7, 15 and 24 of the
17 California Constitution.

18 ARGUMENT

19 I.

20 JANE DOE'S USE OF, OR FAILURE TO USE, PSYCHIATRIC MEDICATION IS 21 RELEVANT TO THE CASE AT BAR

22 The District Attorney states that he anticipates that Mrs. Doe was not taking medications
23 during the time in question and that she is not taking them now. (Motion, page 3.) Jane Doe is
24 the prosecution's star witness regarding the conspiracy allegations. It is not surprising, given her
25 documented history, that the District Attorney is concerned that the jury will question her mental
26 health. Ms. Doe's ability to perceive and recollect the alleged events that constituted a criminal
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1 conspiracy, however, are highly relevant to the case at bar. She is the only witness who claims
2 that “killers” were after her and her family. She is the only witness who claims to be able to
3 personally tie Mr. Jackson to the purported conspiracy.

4 A recently disclosed law enforcement interview of Louise Palanker, who provided the
5 Arvizos with financial support, shows that people who met Janet Arvizo perceived her to be
6 mentally ill. Ms. Palanker thought that Janet was mentally ill, perhaps bi-polar. She said that
7 they were “over-the-top.”

8 If, in fact, Mrs. Doe has been diagnosed as suffering from mental illness, which would be
9 relevant to her ability to perceive and recollect, then it is entirely proper for defense counsel to
10 inquire as to whether she failed to take prescribed medication. Any restriction on Mr. Jackson’s
11 ability to confront and cross-examine Ms. Doe threatens to deprive him of his rights pursuant to
12 the Sixth Amendment to the United States Constitution. ¹

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25 ¹ Jane Doe’s use of, or failure to use, medication is particularly relevant given Ms. Doe’s
26 grand jury testimony that she believed that she “saw something that wasn’t there” while traveling
27 with Mr. Jackson on a private jet (RT 981:17-982:19) and her account of an alleged phone
28 conversation with Mr. Jackson, that is the basis for Overt Act 1 in the Indictment, in which she
claims he told her that her children’s lives were in danger. (RT 951:15- 957:11.)

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II.

CONCLUSION

For the above stated reasons, the Court should deny the District Attorney's motion.

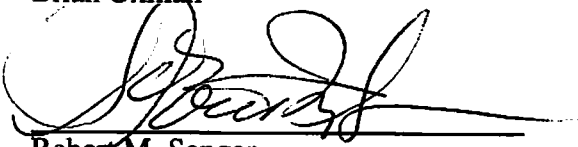
Dated: February 4, 2005

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By:



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MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On February 4, 2005, I served the foregoing document: OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO EXCLUDE REFERENCE BY DEFENSE COUNSEL TO JANE DOE'S USE OF (OR FAILURE TO USE) "PSYCHIATRIC MEDICATION" on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at

BY HAND - I caused the document to be hand delivered to the interested parties at the address above.

STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed February 4, 2005 at Santa Barbara, California.


Bobette Tryon