

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

APR 06 2005

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
MICHAEL JACKSON,
Defendant.

) Case No.: 1133603
)
) FINDINGS AND ORDER RE: MOTION TO
) DISMISS
)
)
)
)
)

The motion to dismiss heard on March 11, 2005 describes the court's comments made on January 28, 2005 as a modification of the Protective Order. When, a witness, Martin Bashir, had filed a motion to clarify that the Order did not apply to him, the court stated that the Order did apply to him and that as a result Mr. Bashir was not permitted to disclose evidence related to the pending charges known to him by personal observation. It was further stated that Order did not preclude him from acting in his professional capacity as a journalist and giving commentary to the same extent that he would have been able to were he a journalist lacking any personal knowledge of the facts.

The clarification made January 28th was in no sense a modification of the Protective Order. That Order was never intended to be a prior restraint on press reporting of the case, and would have been unconstitutional if it had so intended. No limitation was placed on the right of

1 journalists to broadcast reports and commentary on the case. The Order addresses itself to
2 witnesses, parties, attorneys and court staff and orders them in their respective capacities to make
3 no public statements or release evidence about the case. There has been commendable general
4 compliance with this Order, and it is the court's assessment that this compliance has assisted
5 materially in permitting the selection of an unbiased jury and in avoiding distractions to the
6 necessary focus upon the task of trying the case in the courtroom.

7 The January 28th ruling was not a special exemption extended to Mr. Bashir. Any of the
8 other witness who is also a journalist is likewise permitted to ply his or her trade, and is not
9 restrained from reporting or commenting on the present case. They are, however, restrained
10 from discussing what they know from personal observation.

11 Nothing in the Protective Order prevents Mr. Jackson from acting or appearing publicly
12 in his capacity as an entertainer, or from speaking publicly on issues unrelated to this case. Nor
13 is there any restraint on any journalists who might wish to present to the public a different view
14 of the case than expressed by Mr. Bashir. Moreover, Mr. Jackson has been permitted on each
15 occasion on which he has made a request to make a public statement responding to adverse
16 publicity.

17 The Court further finds that there has been no identifiable impact as a result of Mr.
18 Bashir's broadcast on Mr. Jackson's right to a fair trial. The jury venire was instructed before
19 the airing of the Bashir programs not to watch programs or read news reports on the case. After
20 the case was aired a jury was selected with a fully adequate opportunity to examine prospective
21 jurors on whether they had been influenced by pretrial publicity. The sitting jury has been
22 regularly instructed to avoid media stories on the trial and Mr. Jackson, and to decide the
23 evidence on the case as presented in the courtroom.

24 The Court accordingly denies the motion to dismiss. As to the accompanying request for
25 the right to respond on an equal-time basis to refute the Bashir programs, the court is willing to
26 entertain such a request. As noted there is no restriction on the right of an interested journalist to
27 produce such a program. If, however, Mr. Jackson wishes to participate in such a program by
28 directly commenting on the evidence in the pending case or speaking from his personal

1 knowledge of the case, he is required by the terms of the Protective Order to submit his proposed
2 statement to the court for approval. This restriction exists by virtue of the approval by both
3 defense and prosecution to the terms of the present Protective Order.

4
5 DATED: APR 06 2005

Rodney S. Melville
6 RODNEY S. MELVILLE
7 Judge of the Superior Court
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On April 6, 2005, 2005, I served a copy of the attached FINDINGS AND ORDER RE MOTION TO DISMISS addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 456-0699 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

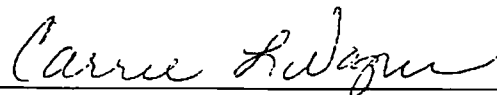
PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 6th day of APRIL, 20 05, at Santa Maria, California.



CARRIE L. WAGNER