

COPY

1 Edward Chernoff, Esq.
2 STRADLEY, CHERNOFF & ALFORD
3 917 Franklin Street, Suite 600
4 Houston, Texas 77002

5 Nareg Gourjian, Esq. (SBN 221861)
6 GOURJIAN LAW GROUP, P.C.
7 101 North Brand Boulevard, Suite 1220
8 Glendale, California 91203
9 Telephone: (818) 956-0100
10 Facsimile: (818) 956-0123

11 Attorneys for Defendant
12 CONRAD R. MURRAY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES

15 THE PEOPLE OF THE STATE OF
16 CALIFORNIA,

17 Case No. SA073164

18 Plaintiff,

19 NOTICE OF MOTION AND MOTION IN
20 LIMINE TO EXCLUDE GRAPHIC AND
21 PREJUDICIAL PHOTOGRPAHS OF
22 DECEDEDENT MICHAEL JACKSON

23 vs.
24 CONRAD R. MURRAY,

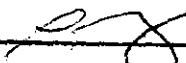
25 (Cal. Evid. Code §§ 350, 352 and 402)

26 Defendant.

27 TO: STEVE COOLEY, DISTRICT ATTORNEY OF LOS ANGELES COUNTY; and his
28 deputies David B. Walgren and Deborah S. Brazil; AND
29 TO: CLERK OF THE ABOVE-ENTITLED COURT:
30 PLEASE TAKE NOTICE that Defendant Conrad R. Murray, by and through counsel,
31 hereby moves this Court for an order excluding gruesome and highly prejudicial
32 photographs of decedent Michael Jackson pursuant to Evidence Code Sections 350, 352 and
33 402.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

APR 07 2011

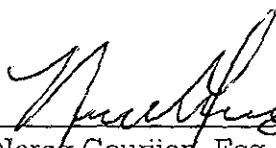
John A. Clarke, Executive Officer/Clerk
By  Deputy

1 This motion is made on the grounds that the prosecution may attempt to introduce
2 photographs of Michael Jackson at trial, and such introduction would be irrelevant and
3 unduly prejudicial.

4 The motion is based on this notice of motion, the memorandum of points and
5 authorities served and filed herewith, the pleadings and records on file herein, and upon
6 such other and further argument as may be presented to the Court at the hearing of this
7 matter.

8
9 Dated: April 5, 2011

Respectfully submitted,

10 By: 

11 Nareg Gourjian, Esq.
12 Edward Chernoff, Esq.
13 Attorneys for Defendant
14 Conrad R. Murray

MEMORANDUM OF POINTS AND AUTHORITIES

1.

INTRODUCTION

4 Dr. Murray is on trial, accused of having caused the death of international superstar,
5 king of pop Michael Jackson. As if that fact alone is not inflammatory enough, the
6 prosecution seeks to further inflame the passions of the jury by introducing autopsy
7 photographs of Mr. Jackson. These photographs are graphic, gruesome and highly
8 prejudicial. The admission of these photographs to the jurors will jeopardize Dr. Murray's
9 right to a fair trial because of the significant risk that the jury will base their decision not on
10 the evidence presented, but on emotional grounds which play no part in a criminal action.
11 More importantly, these photographs are not relevant to establishing any element of the
12 offense charged, but only serve to prejudice Dr. Murray. The photographs must be
13 excluded.

II.

THE GRAPHIC AND PREJUDICIAL PHOTOGRAPHS OF
MR. JACKSON ARE IRRELEVANT.

Only relevant evidence is admissible. (Cal. Evid. Code § 350.) Relevant evidence is defined as that which has any tendency to prove or disprove any disputed fact that is of consequence to the determination of the action. (Cal. Evid. Code § 210.) Evidence that is irrelevant must be excluded. (Evid. Code § 350.)

22 As applied to this case, the graphic photographs of Mr. Jackson do not tend to prove
23 or disprove any fact "of consequence." Dr. Murray does not deny that Mr. Jackson is
24 deceased. There is no argument that an autopsy was conducted and several drugs were
25 found in Mr. Jackson's system. However, all of these findings are of the nature that medical
26 experts can adequately describe to the jury without the use of graphic photographs.

27 It is well settled that photographs which serve to illustrate the nature or extent of the
28 wounds inflicted are admissible when they corroborate the testimony of witnesses or are

1 relevant to the testimony of a pathologist as to the cause of death. This is not such a case.
2 The manner or the location of the infliction of the wounds is not an issue presented here.

3 Dr. Murray recognizes that the prosecution, and likewise the defense, is entitled to
4 demonstrate the specific locations of needle traces on Mr. Jackson's body. However, both
5 parties will certainly do so through the testimony of medical experts who are quite capable
6 of verbally describing the location and specifics of each needle puncture and/or trace
7 without the use of the graphic and highly prejudicial photographs.

8 For instance, in *People v. Marsh* (1985) 175 Cal.App.3d 987, the court found that the
9 admission of seven autopsy photographs did not aid the jury in any way and was just a
10 "blatant appeal to the jury's emotions." (*Id.* at 998.)

11 *Here, the jury was not enlightened one additional whit by*
12 *viewing these seven gory autopsy photographs.* The oral testimony
13 of the autopsy surgeon describing his findings comprehensively
14 advised the jury of his observations and why he concluded there were
15 multiple fatal impact sites which could not have been caused by a fall
16 from the sofa to the hearth. The primary cause of death, i.e.,
17 intercranial brain swelling, was never disputed. There was no expert
18 medical testimony contradicting the autopsy surgeon's conclusions
19 and various other medical witnesses testified to the cause of death
20 without referring to the autopsy photographs.

21 *Nor is this a case where it is necessary to show the autopsy*
22 *photographs to prove malice (see *People v. Milan* (1973) 9 Cal.3d*
23 *185, 194 or to justify aggravation of the crime and penalty (see*
24 *People v. Murphy* (1972) 8 Cal.3d 349, 365.) Here, where the
25 uncontradicted medical testimony identified the precise location and
26 nature of the injuries the autopsy photographs have little, if any,
27 additional probative value. As in *People v. Smith* (1973) 33 Cal.App.3d
28 51, 69, disapproved on other grounds in *People v. Wetmore* (1978) 22
Cal.3d 318, 324, fn. 5, "*they supplied no more than a blatant*
appeal to the jury's emotions. Their prejudice-arousing effect
heavily outweighed their probative value." (*See also People v.*
Gibson (1976) 56 Cal.App.3d 119, 135.)

29
30 A like conclusion was reached in *People v. Anderson* (1987) 43 Cal.3d 1104, where
31 the court stated that photographs of the victim "seem relevant only on what in this case is a
32 non-issue and therefore should not have been received into evidence." (*See also People v.*
33 *Burns* (1952) 109 Cal.App.2d 524, 542 ("Surely, there is a line between admitting a
34 photograph which is of some help to the jury in solving the facts of the case and one which

1 is of no value other than to inflame the minds of the jurors. That line was crossed in this
2 case."); *People v. Reston* (1956) 139 Cal.App.2d 485, 491 [error to admit autopsy photograph
3 of the deceased.)

4 Accordingly, the photographs are not material to any contested issue. They will only
5 unnecessarily and unfairly prejudice the jury against Dr. Murray. (*See Maxwell v. United*
6 *States* (9th Cir. 1966) 368 F.2d 735, 740 [court has discretion to exclude such photographs];
7 *Chavez v. Dickson* (9th Cir. 1962) 300 F.2d 683, 689 [admission of inflammatory photographs
8 may rise to the level of a due process violation].) As a result, the graphic photographs fail to
9 meet the relevancy standard of Evid. Code section 210 and must be excluded.

10

11

III.

12

13

THE PREJUDICIAL EFFECT OF ADMITTING GRAPHIC PHOTOGRAPHS OF MR. JACKSON OUTWEIGHS ANY PROBATIVE VALUE.

14

15

16

17

Cal. Evidence Code § 352 grants this Court the discretion to "exclude evidence if its
probative value is substantially outweighed by the probability that its admission will (a)
necessitate undue consumption of time, or (b) create substantial danger of undue prejudice,
of confusing the issues, or of misleading the jury." (Evid. Code § 352.)

18

19

20

21

22

23

24

25

A number of Courts have held that photographs may be excluded where offered for
no other purpose but to inflame the emotions of the jury. (*See People v. Gibson* (1976) 56
Cal.App.3d 119, 134 (exclusion of graphic photographs that were cumulative and calculated
to inflame the jury, with little probative value on issues); *People v. Burns* (1952) 109
Cal.App.2d 524, 541 (reversible error to admit photographs of victim where only purpose was
to inflame the jurors' emotions); *see also People v. Carter* (1957) 48 Cal.2d 737, 751 (if
principal effect of evidence is to arouse passion of jury and inflame them against defendant,
then evidence must be excluded).)

26

27

28

Here, as discussed above, whatever little probative value exists is further diminished
because the medical experts can easily testify about the location of injections on Mr.

1 Jackson's body and other related findings. The use of graphic photographs will not add
2 anything new that the medical experts cannot adequately describe to the jurors.

3 Thus, while taking the low probative value into account, this Court should consider
4 the extremely prejudicial effect of admitting these photographs. The potential to inflame the
5 jury is readily apparent even from a cursory examination of the photographs that depict the
6 deceased Mr. Jackson. The jury is likely to be swayed by emotion when viewing such
7 graphic photographs. As a result, the jury may overly sympathize with the prosecution and
8 find Dr. Murray liable even though the evidence may not establish guilt beyond a reasonable
9 doubt. When the relevance and usefulness of the photographs is balanced against its ability
10 to impassion the jury and inflate a potential verdict, the threat of unfair prejudice to Dr.
11 Murray is great.

12 Moreover, admitting these photographs is cumulative and would necessitate an
13 undue consumption of time. The prosecution will undoubtedly provide detailed testimony
14 regarding the cause and manner of death. The photographs would be cumulative of the
15 testimony of the medical experts who will testify. As held by the California Supreme Court
16 in *People v. Thompson* (1980) 27 Cal.3d 303, 318, “[i]f evidence is merely cumulative with
17 respect to other evidence which the People may use to prove the same issue, it is excluded
18 under a rule of necessity.” Accordingly, if the photographs are not needed to clarify or
19 explain a material matter in dispute, there is “no added probative value...They supply no
20 more than a blatant appeal to the jury's emotions.” (*People v. Smith* (1973) 33 Cal.App.3d 51,
21 69.)

22 ///

23 ///

24 ///

25

26

27

28

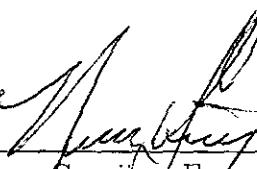
1 IV.

2 CONCLUSION

3 For the foregoing reasons, Dr. Murray respectfully requests that the autopsy
4 photographs of decedent Michael Jackson be excluded from trial.

5
6 Dated: April 5, 2011

Respectfully submitted,

7 By: 

8
9 Nareg Gourjian, Esq.
10 Edward Chernoff, Esq.
11 Attorneys for Defendant
12 Conrad R. Murray