

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 21 2005

GARY M. BLAIR, Executive Officer
BY *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

) Order for Release of Redacted Documents

) [Opposition to District Attorney's Motion for
) Order Allowing Use of Expert Testimony on
) the Subject of Child Abuse Trauma]

The redacted form of the Opposition to District Attorney's Motion for Order Allowing Use of Expert Testimony on the Subject of Child Abuse Trauma attached to this order shall be released and placed in the public file. The court finds that there is more material in the motion that should be redacted than that contained in the proposed redacted version. The unredacted originals shall be maintained conditionally under seal pending the hearing on January 21, 2005.

DATED: January 21, 2005

Rodney S. Melville

RODNEY S. MELVILLE
Judge of the Superior Court

1 **COLLINS, MESEREAU, REDDOCK & YU**
 2 Thomas A. Mesereau, Jr., State Bar Number 091182
 3 Susan C. Yu, State Bar Number 195640
 4 1875 Century Park East, 7th Floor
 5 Los Angeles, CA 90067
 6 Tel.: (310) 284-3120, Fax: (310) 284-3133

7 **SANGER & SWYSEN**
 8 Robert M. Sanger, State Bar Number 058214
 9 233 East Carrillo Street, Suite C
 10 Santa Barbara, CA 93101
 11 Tel.: (805) 962-4887, Fax: (805) 963-7311

12 **OXMAN & JAROSCAK**
 13 Brian Oxman, State Bar Number 072172
 14 14126 East Rosecrans
 15 Santa Fe Springs, CA 90670
 16 Tel.: (562) 921-5058, Fax: (562) 921-2298

17 Attorneys for Defendant
 18 **MICHAEL JOSEPH JACKSON**

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 20 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

REDACTED

21 THE PEOPLE OF THE STATE OF CALIFORNIA,

22 Plaintiffs,

23 vs.

24 MICHAEL JOSEPH JACKSON,

25 Defendant.

) Case No. 1133603
)
) **OPPOSITION TO DISTRICT**
) **ATTORNEY'S MOTION FOR ORDER**
) **ALLOWING USE OF EXPERT**
) **TESTIMONY ON THE SUBJECT OF**
) **CHILD ABUSE TRAUMA**

) ~~CONFIDENTIAL~~

) Honorable Rodney S. Melville
) Date: January 21, 2005
) Time: 9:30 a.m.
) Dept.: S

26 MEMORANDUM OF POINTS AND AUTHORITIES

27 INTRODUCTION

28 The prosecution asks this Court to allow [REDACTED] and [REDACTED] to

29 OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR ORDER ALLOWING USE OF EXPERT
TESTIMONY ON THE SUBJECT OF CHILD ABUSE TRAUMA

1 testify [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED] (Motion, page 3.)

8 Mr. Jackson submits that this testimony should not be allowed into evidence because the
 9 prosecution has not met its burden of demonstrating that the so-called misconceptions are
 10 actually misconceptions, and that, if they are commonly held misconceptions, that the proffered
 11 testimony will assist the jury.

12 Moreover, the proffered testimony is not supported by an adequate foundation of fact in
 13 this case. The stories of the complaining witness, and his family, are less than credible, not
 14 because the jurors need to be educated about child abuse, but because the stories are false. The
 15 prosecution is not seeking to introduce the expert testimony to educate the jury about child abuse.
 16 Instead, the prosecution is seeking to ask the jurors to suppress their common sense reactions to
 17 hearing incredible evidence.

18 To allow such proffered testimony without an adequate foundation would deprive Mr.
 19 Jackson of his rights to a fair trial, due process of law, and right to a reliable verdict and sentence
 20 pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States
 21 Constitution and Article 1, Sections 7, 15, 17 and 24 of the California Constitution.

22
 23
 24 ///

25
 26 ///

1 ARGUMENT

2 I.

3 THE COURT SHOULD NOT ALLOW THE PROSECUTION TO INTRODUCE THE
4 EQUIVALENT OF A PROFILE OF A VICTIM OF CHILD MOLESTATION OR A
5 PROFILE OF A CHILD MOLESTER UNDER THE GUISE OF DISPELLING MYTHS
6 ABOUT CHILD MOLESTATION

7 The prosecution seeks to introduce testimony that will allow the prosecution to argue,
8 either explicitly or implicitly, that there is a profile for sexually abused children and for child
9 abusers and that the complaining witness and Mr. Jackson fit those profiles, respectively. This
10 testimony is not admissible. As the prosecution concedes in the motion, the experts are not
11 allowed to testify, based on interviews with the complaining witness or information provided by
12 the prosecution, that a particular complaining witness is credible or that he or she in fact has been
13 molested. (Motion, page 9.) It is also error, however, to allow "general" expert testimony
14 "describing the components of the syndrome in such a way as to allow the jury to apply the
15 syndrome to the facts of the case and conclude the child was sexually abused." (*People v.*
16 *Bowker* (1988) 203 Cal.App.3d 385, 393.) "There more be even more danger where the
17 application is left to the jury because the jurors' education and training may not have sensitized
18 them to the dangers of drawing predictive conclusions." (*Ibid.*)

19 Numerous Court of Appeal decisions, relying on the Supreme Court's opinion in *People*
20 *v. Bledsoe* (1984) 36 Cal.3d 256, have held that experts are precluded from testifying, based on
21 CSAAS, that a particular complaining witnesses' report of alleged abuse is credible because the
22 complaining witness manifests certain defined characteristics which are generally exhibited by
23 abused children. (See, *In re Sara M.* (1987) 194 Cal.App.3d 585, 593; *Seering v. Dept. Of Social*
24 *Services* (1987) 194 Cal.App.3d 298, 310-311, 315; *People v. Roscoe* (1985) 158 Cal.App.3d
25 1093, 1099; *People v. Willoughby* (1985) 164 Cal.App.3d 1054, 1069.) In *Bowker*, the Court of
26 Appeal stated:

27
28

OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR ORDER ALLOWING USE OF EXPERT
TESTIMONY ON THE SUBJECT OF CHILD ABUSE TRAUMA

1 Fundamentally, *Bledsoe* must be read to reject the use of CSAAS evidence as a
 2 predictor of child abuse. It is one thing to say that child abuse victims often
 3 exhibit a certain characteristic or that a particular behavior is not inconsistent with
 4 a child having been molested. It is quite another to conclude that where a child
 5 meets a certain criteria, we can predict with a reasonable degree of certainty that
 6 he or she has been abused. The former may be appropriate in some
 7 circumstances; the latter -- given the current state of scientific knowledge --
 8 clearly is not.

9 (*People v. Bowker, supra*, 203 Cal.App.3d 385, 393.)

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 The proposed testimony of [REDACTED] is an obvious attempt to suggest to the jury
 25 that Mr. Jackson fits the profile of a child molester. The District Attorney has made it quite clear
 26 that he plans to argue that Mr. Jackson [REDACTED]

1 [REDACTED] The Court should
2 recognize that bolstering the argument that Mr. Jackson fits a [REDACTED] profile is not an
3 admissible use of expert testimony. It is improper to admit expert testimony to establish a
4 stereotype and then condemn the defendant for fitting it. (*People v. Robbie* (2001) 92
5 Cal.App.4th 1075, 1087.) In *People v. Robbie*, the Court of Appeal stated that:

6 [P]rofile evidence is inherently prejudicial because it requires the jury to accept an
7 erroneous starting point in its consideration of the evidence. We illustrate the
8 problem by examining the syllogism underlying profile evidence: criminals act in
9 a certain way; the defendant acted that way; therefore, the defendant is a criminal.
10 Guilt flows ineluctably from the major premise through the minor one to the
11 conclusion. The problem is the major premise is faulty. It implies that criminals,
12 and only criminals, act in a given way. In fact, certain behavior may be consistent
13 with both innocent and illegal behavior, as the People's expert conceded here.
14 (*People v. Robbie* (2001) 92 Cal.App.4th 1075, 1085.)

15 Here, the prosecution is seeking to introduce the type of expert testimony that was found
16 to be impermissible in *People v. Robbie*. As was the case in *Robbie*, the prosecution intends to
17 introduce expert testimony, not to address commonly held misconceptions by explaining that
18 "there is no 'typical sex offender,' but to instead present the jury with "another image: an
19 offender whose behavioral pattern exactly matched the defendant's." (*People v. Robbie, supra*,
20 92 Cal.App.4th 1075, 1087.) This type of testimony is inadmissible.

21 II.

22 THE COURT SHOULD HOLD A HEARING OUTSIDE THE PRESENCE OF THE 23 JURY TO DETERMINE WHETHER THE MYTHS RAISED BY THE PROSECUTION 24 ARE ACTUALLY MYTHS AND WHETHER THEY ARE RELEVANT, BASED ON 25 THE EVIDENCE AT TRIAL

26 The prosecution has not demonstrated that the proposed testimony will assist the trier of
27 fact. The Court of Appeal stated that:

28 In the typical criminal case, however, it is the People's burden to identify the myth
29 or misconception the evidence is designed to rebut. Where there is no danger of
jury confusion, there is simply no need for the expert testimony.
(*People v. Rawker* (1988) 203 Cal.App.3d 385, 394, citing *People v. Bledsoe* (1984) 36 Cal.3d
236, 248.)

1 The evidence in this case is not confusing. There are inconsistencies in the stories of the
2 complaining witness and his family, but those inconsistencies are not based on misconceptions.

3 Under the prosecution's theory of the admissibility of Child Sexual Abuse
4 Accommodation Syndrome (CSAAS) testimony, the prosecution is allowed to introduce more
5 CSAAS expert testimony in a case where on its face, the testimony of the complaining witness is
6 less credible. This is true, because, based on the prosecution's argument, the more a jury would
7 believe that the complaining witness is a liar, based on common sense, the more it is necessary to
8 rehabilitate his testimony with the testimony of experts. It is not surprising, based on that theory,
9 that the prosecution is seeking to introduce the testimony of two child abuse trauma experts.

10 In other words, simply saying that the complaining witness' testimony may not be
11 believed is not enough. The prosecution has to show that there are specific facts regarding which
12 the expert can assist the jury in understanding. This is not like any other set of allegations the
13 undersigned has ever seen and one suspects not like any the experts have seen. If the prosecution
14 cannot establish specific facts, the expert is doing nothing other than telling the jury that the
15 alleged victims ought to be believed no matter what they say. That is not evidence. That is
16 argument.

17 The Court should hold hearings, outside the presence of the jury, to determine if the so-
18 called misconceptions suggested by the prosecution are actually present, based on the evidence at
19 trial, and to determine if the testimony of [REDACTED] and [REDACTED] will actually assist the
20 jurors in doing their job.

21
22
23
24
25
26
27

///

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

III.

CONCLUSION

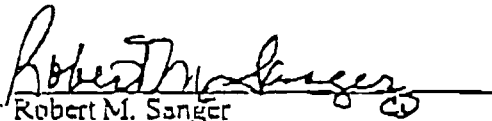
For the above stated reasons, Mr. Jackson objects to the introduction of the prosecution's proposed expert testimony on the subject of child abuse trauma.

Dated: January 18, 2005

COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr.
Susan C. Yu

SANGER & SWYSEN
Robert M. Sanger

OXMAN & JAROSCAK
Brian Oxman

By: 
Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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 JANUARY 25, 2005, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR ORDER ALLOWING USE OF EXPERT TESTIMONY ON THE SUBJECT OF CHILD ABUSE TRAUMA) 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.

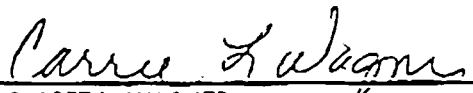
PERSONAL SERVICE

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 25TH day of JANUARY, 2005, at Santa Maria, California.


CARRIE L. WAGNER