

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 26 2005

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*Unsealed pursuant
to 6/16/05 Court order*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

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12
13 THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
14 vs.
15
16 MICHAEL JOE JACKSON,
Defendant.

No. 1133603

PLAINTIFF'S REPLY TO
DEFENDANT'S
OPPOSITION TO
PLAINTIFF'S MOTION TO
ADMIT EXPERT
TESTIMONY ON
DEFENDANT'S FINANCES

DATE: ~~January 28, 2004~~
TIME: ~~8:30 AM~~
DEPT.: SM2 (Melville)

~~FILED UNDER SEAL~~

21
22 A. Introduction

23 Defendant evokes the well established rule that a defendant's poverty generally may
24 not be admitted to prove a motive to commit a crime involving the acquisition of money or
25 other thing of value (citing *People v. Koontz* (2002) 27 Cal.4th 1041, 1076 and *People v.*
26 *Carrillo* (2004) 119 Cal.App.4th 94). He argues that, therefore, his own wealth "may not be
27 used to establish a motive because it utilizes a suspect criteria in an unfair discrimination that
28 violates Mr. Jackson's rights to equal protection and to a fair trial to prove a motive where the

1 same thing can be said whether the defendant is rich or poor.” (Motion 3:4-7.)

2 The attempted parallel is unpersuasive.

3 *Carrillo, supra*, 119 Cal.App.4th 94, succinctly articulated the rationale of the rule
4 that poverty is, in most cases, not a basis for inferring a motive to steal:

5 While “lack of money is logically connected with a crime involving
6 financial gain . . . [t]he trouble is that it would prove too much against
7 too many.” (*State v. Mathis* (1966) 47 N.J. 455 [221 A.2d 529, 538]
8 [reversing murder conviction because, inter alia, the prosecutor
9 introduced evidence that “projected before the jury the forbidden theme
10 that defendant had no apparent means of income and hence was likely to
11 commit a crime for dollar gain”].) As the court explained in *United*
12 *States v. Mitchell* (9th Cir. 1999) 172 F.3d 1104, “Lack of money gives
13 a person an interest in having more. But so does the desire for money,
14 without poverty. A rich man’s greed is as much a motive to steal as a
15 poor man’s poverty. Proof of either, without more, is likely to amount
16 to a great deal of unfair prejudice with little probative value.” [*Id.* at pp.
17 1108-1110 [reversing robbery conviction because the prosecutor
18 introduced evidence of defendant’s ‘impecunious financial
19 circumstances’].)

20 At bottom, the issue is one of fairness: “It is fundamental to our
21 conception of a fair trial that equality of treatment must be afforded to
22 all without regard to differences in social status or economic condition.
23 In a society which cherishes the ideal of equal justice for all and seeks to
24 accord the equal protection of the laws to all those who are accused of
25 crime, it would be difficult to accept any other view.” (*United States ex*
26 *rel. Mertz v. State of New Jersey* (3d Cir. 1970) 423 F.2d 537, 541; see
27 also 2 Wigmore, Evidence, § 392, p. 431 [Chadbourn rev. ed. 1979]
28 [practical result of poverty evidence “would be to put a poor person
under so much unfair suspicion and at such a relative disadvantage that
for reasons of fairness [such evidence] has seldom been
countenanced”].)

(*People v. Carrillo, supra*, 119 Cal.App.4th 94, at p. 102.)

Carrillo’s citation to *United States v. Mitchell* (9th Cir. 1999) 172 F.3d 1104 is
instructive. That court noted, “There is a distinction between an interest, in the sense that it is

1 in anyone's interest to be richer rather than poorer, and an inclination. A mere interest,
2 unconnected with inclination, desperation, or other evidence that the person was likely to
3 commit the crime does not add much, in most cases, to the probability that the defendant
4 committed a crime." (*Id.*, at p. 1109.)

5 If poverty – often an intractable condition imposed by circumstances of birth,
6 education or mental condition beyond the ability of an individual to overcome – ought not to
7 be assigned as a motivating factor for a defendant's theft-related crime on policy grounds, it
8 does not follow that evidence of a motive to preserve one's wealth is subject to the same policy
9 rule of exclusion.

10 Suppose a supremely well-paid business executive who exercised poor judgment in
11 his investment of the shareholders' money took unlawful actions to avoid being found out and
12 fired for his bad judgment – say, by creating false invoices and cooking the company's books.
13 Evidence of his motive to avoid detection, and the loss of income that would follow detection,
14 surely would be admissible in a criminal prosecution for those cover-up attempts.¹

15 Michael Jackson definitely was not poverty-stricken when he committed the
16 charged offenses, and the People have no intention of attempting to prove that he was. To the
17 contrary. He described himself to Martin Bashir as a "billionaire." With due allowance for
18 hubris, Michael Jackson certainly was a multi-millionaire, albeit with a billionaire's spending
19 habits. His motive in this case was to preserve both his fortune and his reputation, the integrity
20 of which was central to his ability to continue to earn a significant income. He perceived
21 (correctly) that his too-candid expression to Bashir of his fondness for sharing his bed with
22 young boys posed an immediate and substantial threat to his financial well-being. As Ann
23 Gabriel testified to the Grand Jury, the scope of the public relations disaster posed by Bashir's
24 documentary was a "25" on a scale of 1 to 10. (RT 1485:17-23.)

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26
27 ¹ Martha Stewart's famous downfall was not for arguably bad judgment or even a violation
28 of the law when she dumped her ImClone stock, but for lying about it to investigators to avoid
being labeled an "insider trader" and the consequential harm to her public image.

1 Michael Jackson could not endure the fallout from "Living with Michael Jackson,
2 and it sent him into a panic that drove him to commit the allegations in Count One of the
3 indictment. Defendant believed that the only means of dealing with the tsunami of public
4 opprobrium was to use the Arvizo family as pawns in his public relations counterattack on
5 Bashirs entitled "Living with Michael Jackson - The Footage You were Never meant to See."
6 This made-for-TV video was a contrivance engineered by defendant and his coconspirators to
7 salvage what was left of defendant's public image.

8 It was defendant who stood to benefit financially from preventing the media from
9 having access to the Arvizo family by isolating and controlling them. It was defendant who
10 stood to benefit financially from obtaining the Arvizos on audio and video tape singing his
11 praises. And it was defendant who stood to benefit financially by making this family vanish by
12 taking the children out of school, terminating their apartment lease and sending them to Brazil.
13 Evidence of his financial situation and the immediate threat to it occasioned by Michael
14 Jackson's own words provides a direct link between the conspiracy and the one person in the
15 world who stood to benefit from it - Michael Jackson.

16 CONCLUSION

17 The People have argued elsewhere that the jury cannot accurately judge the
18 enormity of the impact the broadcast of "Living with Michael Jackson" must have had on
19 Michael Jackson himself unless they see the entire documentary, just as it was aired in the
20 United States in February, 2003. For the same reason, the jury cannot accurately judge
21 defendant's assessment of the impact of that documentary on his financial well-being without
22 evidence of his financial circumstances, both immediately before news of the documentary's
23 content became public and thereafter.

24 The testimony of a financial expert is required, and is both relevant and admissible.

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28 ////

DATED: January 26, 2005

Respectfully submitted,

THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

By: Gordon Auchincloss by Gerald M. C. Frank
GORDON AUCHINCLOSS
Senior Deputy District Attorney

Attorneys for Plaintiff

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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business
8 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On January 26, 2005, I served the within **PLAINTIFF'S REPLY TO**
11 **DEFENDANT'S OPPOSITION TO EVIDENCE OF DEFENDANT'S FINANCES** on
12 Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by
13 personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by
14 transmitting a facsimile copy thereof to Attorney Mesereau at his confidential Santa Maria fax
15 number, and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage
16 prepaid, at the addresses shown on the attached Service List.

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

18 Executed at Santa Barbara, California on this 26th day of January, 2005.

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21 _____
22 Gerald McC. Franklin
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