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

16 THE PEOPLE OF THE STATE OF CALIFORNIA,

17 Plaintiffs,

18 vs.

19 MICHAEL JOSEPH JACKSON,

20 Defendant.

) Case No. 1133603

)
) REPLY TO OPPOSITION TO MOTION
) FOR AN ORDER EXCLUDING
) FOURTEEN ITEMS OF IRRELEVANT
) EVIDENCE

) UNDER SEAL

) Honorable Rodney S. Melville
) Date: TBA
) Time: 9:30 am
) Dept: SM 8

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05 FEB - 8 PM 2:59
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

24
25 MEMORANDUM OF POINTS AND AUTHORITIES

26 INTRODUCTION

27 The District Attorney states that he will not make reference to "baby dangling," cosmetic

28 REPLY TO OPPOSITION TO MOTION FOR AN ORDER EXCLUDING FOURTEEN ITEMS OF
IRRELEVANT EVIDENCE

* Unsealed pursuant to
6/16/05 court order

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

FEB 08 2005

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

1 or plastic surgery, lyrics from Mr. Jackson's songs, bankruptcies filed by Mr. Jackson's family,
2 Al Malnick's alleged ties to organized crime, Dieter Weisner's brothel, Scott Peterson, Mark
3 Geragos' website, Ray Chandler's book, Victor Gutierrez's book and the items obtained from
4 Henry Vaccarro, unless the items somehow become relevant. (Opposition, 2-4.) With regard to
5 these items, the Court should note that the prosecution has not demonstrated that they are
6 relevant and should grant the motion to exclude reference to each of the items at trial.
7 Alternately, the Court should require that the prosecution seek leave before mentioning any of the
8 items in front of the jury.

9 I.

10 **THE THREE CONTESTED ITEMS SHOULD BE EXCLUDED**

11 **A. THE ATTORNEY GENERAL'S INVESTIGATION OF MR. JACKSON'S**
12 **INJURY**

13 The prosecution seeks to introduce Mr. Jackson's claim that he was maltreated during his
14 surrender and booking as "evidence of consciousness of guilt." (Opposition, page 3.) These
15 events, and the Attorney General's report, however, have nothing to do with the allegations that
16 Mr. Jackson committed acts of child molestation or that he participated in a conspiracy.

17 Mr. Jackson is being prosecuted for a crime he did not commit.¹ He is offended by the
18 fact that he was treated badly during the booking process. That criticism of law enforcement for
19 that poor treatment during booking, however, is not relevant to the underlying case.

20 Furthermore, Mr. Jackson objects to the introduction of the Attorney General's report as hearsay.

21 **B. DNA OF ANYONE OTHER THAN THE DEFENDANT**

22 The District Attorney's search of Mr. Jackson's person on December 3, 2004 failed to
23

24 ¹ The prosecution wants the Court, and anyone else who will listen, to believe that Mr.
25 Jackson's defense is that the District Attorney knows for a fact that he is innocent, yet is still
26 prosecuting him for vindictive reasons. (Opposition, page 3.) This is a straw man argument. In
27 reality, Mr. Sneddon and his deputies are myopic in their zeal to convict Mr. Jackson. Whatever
the cause of this, ordinary prosecutorial review of evidence and prosecutorial discretion is absent
from this case.

1 return any relevant evidence. The prosecution's theory that the presence of DNA, belonging to a
2 male other than Mr. Jackson, on underwear confirms that Mr. Jackson keeps underwear, and
3 therefore corroborates the alleged victim's claim that Mr. Jackson kept his underwear, is absurd.
4 The only thing the underwear confirms is that dirty clothes, perhaps belonging to a guest or other
5 family member were found in a storage area in a large bag with other items with other items of
6 laundry.

7 This bag of dirty laundry was found at least eight months after the relevant time period.
8 There is absolutely no foundation to establish that this laundry was accumulated during February
9 or March of 2003. There is no foundation to establish that it was not accumulated, for instance,
10 in September, October or November of 2003, or, on the other hand, that it was not accumulated
11 and thrown into the storage room in 2001 or 2002. The bag of laundry was seized in a storage
12 area, located on the second floor of the arcade building with numerous boxes of books and other
13 miscellaneous items.

14 First, none of the forensic testing by the government established that any of the laundry in
15 the bag had anything to do with the complaining witnesses in this case. The prosecution's
16 forensic testing failed to result in any evidence that Mr. Jackson molested the complaining
17 witness. Now, when faced with a total lack of relevant DNA evidence, the prosecution is seeking
18 to introduce inflammatory and irrelevant DNA evidence to prejudice the jury against Mr. Jackson
19 and undermine his right to a fair trial. Second, there is nothing nefarious or illegal about having
20 underwear belonging to another person in a storage area. The prosecution has not laid any
21 foundation as to how the clothing was accumulated. Given the fact that Michael Jackson had
22 many guests, including family members, at his large ranch, deprives this salacious innuendo from
23 any evidentiary value, whatsoever. This "evidence" should be excluded.

1 **C. UNDERWEAR AND COCAINE**

2 This is a child molestation and conspiracy case.² The evidence seized by the prosecution
3 is irrelevant to either of those charges. However, the prosecution is seeking to introduce
4 evidence of drug use for the purpose of prejudicing the jury against Mr. Jackson. The blood
5 evidence seized in November of 2003, eight months after the alleged events in question, is
6 irrelevant. Whether or not Mr. Jackson was using prescribed Demerol at any point in his life has
7 nothing to do with the allegations in February or March of 2003.

8 Furthermore, evidence of the presence of cocaine on underwear seized from Mr.
9 Jackson's home should be excluded. First, the evidence was found eight months after the events
10 in question. Second, there is no allegation that Mr. Jackson was using cocaine during the
11 relevant alleged events or that cocaine use would be relevant to either the conspiracy count or the
12 child molestation counts. Third, the prosecution's forensic evidence does not support the
13 argument they wish to present to the jury. The prosecution claims that "[t]he most likely reason
14 the cocaine was detected on both samples is that defendant excreted it in both his blood and his
15 urine." (Opposition, page 5.) This explanation, however, is scientifically impossible. The
16 evidence, according to the prosecution's forensic reports, is that actual cocaine was found on the
17 fabric of the underwear and on the blood on the underwear, not that evidence of cocaine use (i.e.
18 metabolites) were found in Mr. Jackson's blood. This evidence does not demonstrate the use of
19 cocaine by Mr. Jackson and is irrelevant even under the prosecution's absurd theory.

20 It should be noted that the prosecution does not support their theory with a declaration or
21 any legitimate scientific information. In fact, it would be impossible to lay the foundation that
22 they boldly assert. We have not been provided with any forensic reports that supports their
23 theory.

24 _____
25 ² The prosecution apparently plans to argue that contradictory theories that Mr. Jackson
26 is a drug addict, who is unable to control his behavior due to drug use, while at the same time, is
27 a criminal mastermind who was micro-managing a conspiracy to falsely imprison, extort and
abduct the Doe family.

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II.

CONCLUSION

Based on the reasons set forth in the Motion and in the Reply, above, this court should exclude any reference to each of the fourteen irrelevant items. The introduction of such evidence will deprive Mr. Jackson of his federal and state constitutional rights to a fair trial, due process of law, and equal protection pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Sections 7, 15 and 24 of the California Constitution.

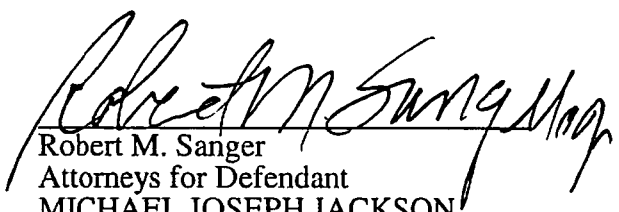
Dated: February 8, 2005

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OXMAN & JAROSCAK
Brian Oxman

By:


Robert M. Sanger
Attorneys for Defendant
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 8, 2005, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows:

EX PARTE APPLICATION FOR AN ORDER THAT REPLY TO OPPOSITION TO MOTION FOR AN ORDER EXCLUDING FOURTEEN ITEMS OF IRRELEVANT EVIDENCE BE FILED UNDER SEAL

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

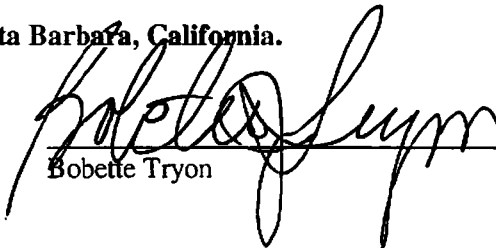
 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid 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.

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

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

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

Executed February 8, 2005, at Santa Barbara, California.


Bobette Tryon