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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 18 2005

GARY M. BLAIR, Executive Officer
BY *Carrie L. Wagner*
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* *Unsealed pursuant
to 6/16/05 Court's order*

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

IN LIMINE MOTION RE:
ADMISSION OF EXPERT
TESTIMONY ON "BATTERED
WOMEN'S SYNDROME"

DATE: January 28, 2005
TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

~~FILED UNDER SEAL~~

20 **INTRODUCTION**

21 Janet Arvizo is the victim known as Jane Doe in Count One of the indictment. Ms.
22 Arvizo married David Arvizo on July 3, 1985. She was 16 years old at the time. By the time
23 she was 21, Ms. Arvizo had three children. Ms. Arvizo filed for dissolution of the marriage on
24 October 15, 2001.

25 During their 16-year marriage, David Arvizo committed multiple acts of domestic
26 violence against his wife, including hitting different parts of Janet's head and body, pulling her
27 hair and forcing her head under water. For example, on September 29, 2001, Mr. Arvizo
28 arrived home and proceeded to grab Mrs. Arvizo by the hair as she was talking on the phone.

1 He punched her in the head as he often had done in the past. Mrs. Arvizo ran outside to get
2 away from Mr. Arvizo's assault. Mr. Arvizo caught up to her and began beating her on the
3 chest. The battering continued until the police arrived. As a result of this assault, David
4 Arvizo plead guilty to spousal abuse, a violation of Penal Code section 273.5, and was
5 sentenced to 60 days in the Los Angeles County Jail. Mrs. Arvizo's application for a
6 protective order against Mr. Arvizo was issued on November 6, 2001. On June 25, 2002
7 another protective order was issued against him in connection with his conviction for child
8 abuse, stemming from an incident on November 11, 2001. Janet Arvizo's daughter Davellin
9 was the victim in that case.

10 During their marriage Mr. Arvizo also engaged in a pattern of threats and emotional
11 abuse against Mrs. Arvizo. On more than one occasion he forced Mrs. Arvizo to stand outside
12 naked. He prevented her from wearing make-up or shaving her legs. He constantly taunted her
13 with derogatory comments. He threatened to kill her if she told anyone of the abuse. David
14 Arvizo was the sole breadwinner and assumed economic control over Mrs. Arvizo and their
15 family. He consistently abused Mrs. Arvizo's pets. He killed her pet ferret and violently threw
16 her small dog against the wall. The children witnessed much of Mr. Arvizo's abuse of their
17 mother and suffered acts of domestic violence themselves.

18 Janet Arvizo has been humiliated and embarrassed about allowing this abuse to
19 herself and her children. She is a classic victim of long-term domestic violence.

20 The People seek to introduce expert testimony on the subject of domestic violence
21 and Battered Women's Syndrome. This witness is necessary in this case to disabuse jurors of
22 commonly held misconceptions about domestic violence victims. Such expert testimony is
23 admissible to enable jurors to objectively evaluate conduct of victim's of Battered Women's
24 Syndrome free from the restraints of popular myths and misconceptions. This expert testimony
25 will encompass general information about domestic violence and the typical actions, reactions
26 and reasoning of victims of domestic violence which may be counter-intuitive to the average
27 lay juror. Pursuant to Evidence Code section 1107, this testimony will not be offered to prove
28 that the specific charged offenses in fact occurred but rather to help the jury understand the

1 victim's behavior in the context of the stressful and threatening environment she experienced
2 while under the control of the defendant and his co-conspirators. Battered Women's
3 Syndrome is a stress disorder. While this case does not directly involve charges of domestic
4 violence, the fact that one of the victims in this case is a long-term victim of domestic violence
5 is highly relevant to understanding her conduct when she was confronted by common domestic
6 violence stressors such as: death threats to herself and her family, false imprisonment, child
7 abduction, emotional abuse, economic dependency, personal verbal attacks, isolation and
8 hopelessness. This important evidence will be imperative for the jury to properly evaluate
9 Janet Arvizo's credibility at trial.

10 **I.**

11 **UNDER EVIDENCE CODE SECTIONS 801 AND 1107**
12 **EXPERT TESTIMONY ON THE ISSUE OF BATTERED**
13 **WOMEN'S SYNDROME IS ADMISSIBLE TO ASSIST**
14 **THE JURY IN UNDERSTANDING THE CONDUCT OF**
15 **A VICTIM OF BATTERED WOMEN'S SYNDROME**

16 Expert testimony has been widely accepted as a means to help jurors understand the
17 counter-intuitive behavior of victims of stress disorders. "Evidence that explains rape trauma
18 syndrome, child sexual abuse accommodation syndrome and Battered Women's Syndrome
19 informs the finder of fact that how they think the average reasonable person would behave
20 and/or how they think they personally would behave are not necessarily the same way that
21 people who have been raped, molested or battered in fact behave [W]e have difficulty
22 accepting what we do not understand. Depriving the finder of fact of such understanding may
23 well lead to a conclusion based on misconceptions held in good faith. That such conceptions
24 are held in good faith in no way lessens the magnitude of the error and the injustice that may
25 result." (*People v. Day* (1992) 2 Cal.App.4th 405, 419; disapproved on other grounds in
26 *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088-1089.)

27 Lenore E. Walker, a clinical and forensic psychologist who is nationally recognized
28 as an authority on battered women and who is largely responsible for the development of
"Battered Woman Syndrome," has defined a "battered woman" as "one who has been, on at

1 least two occasions, the victim of physical, sexual, or serious psychological abuse by a man
2 with whom she has an intimate relationship.” She further defined Battered Women’s
3 Syndrome as “a pattern of psychological symptoms that develop after somebody has lived in a
4 battering relationship.” (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1194 disapproved on
5 other grounds in *People v. Humphrey*, *supra*, 13 Cal.4th 1073, 1088-1089.)

6 In the trial of *People v. Aris* (*supra*), Dr. Walker testified that Battered Women’s
7 Syndrome is recognized as a type of post-traumatic stress disorder, which is listed and defined
8 in the Diagnostic and Statistical Manual of Mental Disorders (DSM-III), and which happens to
9 anyone exposed to the degree and kind of trauma, such as a natural disaster or combat, that
10 would be expected to cause psychological problems.” (*People v. Aris*, *supra*, 215 Cal.App.3d,
11 at p. 1194.)

12 The rules regarding the admissibility of expert testimony are well settled:

13 First, the decision of a trial court to admit expert testimony “will not be
14 disturbed on appeal unless a manifest abuse of discretion is shown.”
15 (*People v. Kelly* (1976) 17 Cal.3d 24, 39, and cases cited.) Second, “the
16 admissibility of expert opinion is a question of degree. The jury need not
17 be wholly ignorant of
18 the subject matter of the opinion in order to justify its admission; if that
19 were the test, little expert opinion testimony would ever be heard.
20 Instead, the statute declares that even if the jury has some knowledge of
21 the matter, expert opinion may be admitted whenever it would ‘assist’
22 the jury. It will be excluded only when it would add nothing at all to the
23 jury’s common fund of information, i.e., when ‘the subject of inquiry is
24 one of such common knowledge that men of ordinary education could
25 reach a conclusion as intelligently as the witness’” (*People v. McDonald*
26 (1984) 37 Cal.3d 351, 357). (*People v. McAlpin*, *supra*, 53 Cal. 3d 1289
27 at pp. 1299-1300.)

28 In 1991 the Legislature enacted Evidence Code Section 1107 to specifically
authorize the courts to admit evidence of Battered Women’s Syndrome in any case in which it
is relevant. Evidence Code Section 1107 provides in pertinent part:

(a) In a criminal action, expert testimony is admissible by either the

1 prosecution or the defense regarding Battered Women's Syndrome,
2 **including the nature and effect of physical, emotional, or mental**
3 **abuse on the beliefs, perceptions, or behavior of victims of domestic**
4 **violence**, except when offered against a criminal defendant to prove the
5 occurrence of the act or acts of abuse which form the basis of the
6 criminal charge.

7 (b) **The foundation shall be sufficient for admission of this expert**
8 **testimony if the proponent of the evidence establishes its relevancy**
9 **and the proper qualifications of the expert witness.** Expert opinion
10 testimony on Battered Women's Syndrome shall not be considered a
11 new scientific technique whose reliability is unproven. (Emphasis
12 added.)

13 Even before the Legislature specifically made evidence of Battered Women's
14 Syndrome admissible under Evidence Code section 1107, the Court of Appeal upheld the
15 admissibility such evidence under Evidence Code Section 801. (*People v Aris, supra*, 215
16 Cal.App.3d 1178.)

17 Evidence Code Section 801 provides:

18 If a witness is testifying as an expert, his/her testimony in the form of an
19 opinion is limited to such an opinion as is

20 (a) related to a subject that is sufficiently beyond common experience
21 that the opinion of an expert would assist the trier of; and

22 (b) Based on matter (including his special knowledge, skill,
23 experience, training, and education) perceived by or personally known
24 to the witness or made known to him at or before the hearing, whether
25 or not admissible, that is of a type that reasonably may be relied upon by
26 an expert in forming an opinion upon the subject to which his testimony
27 relates, unless an expert is precluded by law from using such matter as a
28 basis for his opinion.

Since the Legislature enacted section 1107, courts have admitted expert testimony
of Battered Women's Syndrome under both sections 1107 and 801. (*People v. Humphrey,*
supra, 13 Cal.4th 1073, 1088.)

It is important to note that courts have routinely recognized the relevance of

1 Battered Women's Syndrome in cases in which domestic violence was *not* charged. For
2 example, in the case of *People v. Day, supra*, 2 Cal.App.4th 405, 415-417, the Court of Appeal
3 held in a trial before the enactment of Evidence Code section 1107 that defense counsel was
4 incompetent *for not* presenting expert testimony on the behavior of victims of domestic
5 violence to defend against the charge of murder.

6 II.

7 THE ADMISSION OF EXPERT TESTIMONY ON
8 BATTERED WOMEN'S SYNDROME WILL ASSIST
9 THE TRIER OF FACT IN UNDERSTANDING THE
10 BEHAVIOR OF, AND IN EVALUATING THE
11 CREDIBILITY OF, THE VICTIM, JANET ARVIZO

12 Perhaps the most difficult and confounding evidence this jury will be required to
13 consider and make sense of is the behavior of Janet Arvizo during the progress of the alleged
14 conspiracy.

15 The defense has made it abundantly clear that it will employ demagoguery and
16 hyperbole to attack Mrs. Arvizo's credibility in any way they can. It is certain that whatever
17 anomalous behavior she may have exhibited during the operative timeframe will be placed
18 under the microscope. The truthfulness of Mrs. Arvizo's testimony will be substantially
19 corroborated by other evidence. Still, the jury must ponder the following questions:

- 20 -- Why did she return to her abusers at Neverland?
- 21 -- Why didn't she go to the police?
- 22 -- Why didn't she make greater attempts to leave?
- 23 -- Why was she so susceptible and gullible?
- 24 -- Why was she so easily controlled and manipulated by these men?
- 25 -- Why did she continue to trust those who had proven themselves to be untrustworthy?
- 26 -- Why did she act so helpless?
- 27 -- Why did she continue to have hope and belief in Jackson?
- 28 -- Why did she prevaricate on the "rebuttal video" about what a "father figure" Jackson was?

1 The answers to these questions may be found in expert testimony on the subject of
2 Battered Women's Syndrome.

3 The common characteristics of Battered Women's Syndrome are distinctive.
4 Battered women tend to stay in the abusive relationship, they are trained to be the
5 peacekeepers, they feel they are responsible to make relationships work. They generally are
6 taught to be optimistic and hopeful, terminating the relationship usually has adverse economic
7 consequences. Leaving the relationship may be very dangerous, and the battered woman is
8 aware of the danger. Threats to kill the battered woman or to abscond with the children if she
9 leaves are typical. The woman loses self-esteem, is fearful, and does not have the
10 psychological energy to leave, resulting in "learned helplessness" and "a kind of psychological
11 paralysis." (See *People v. Brown* (2004) 215 Cal.4th 892, 899; *People v. Aris*, *supra*, 215
12 Cal.App.3d 1178, 1194.) Virtually all of these characteristics are present in Janet Arvizo's
13 relationship with defendant.

14 Janet Arvizo's is a 16-year victim of domestic violence. Her marriage finally broke
15 apart *during the period of time* that Mrs. Arvizo and her family were acquainted with
16 defendant. Defendant was well aware that Mrs. Arvizo was a divorced, single mother from an
17 indigent background with sole custody of her children at the time of the charged offenses. The
18 acts of power, isolation and control that constituted the charges alleged in Count One depended
19 significantly on the fact that Mrs. Arvizo had just left a violent sixteen-year marriage.
20 Defendant and his coconspirators preyed upon Mrs. Arvizo's vulnerability and this
21 vulnerability enabled them to control her in the manner they desired.

22 Defendant and his co-conspirators obtained power over Janet Arvizo by exploiting
23 her vulnerabilities. Virtually every act of control over Janet Arvizo involved behavioral issues
24 she had been forced to cope with during her violent marriage. Defendant began by becoming
25 the surrogate patriarch of the Arvizo family. He insisted that Gavin call him "Daddy" and
26 Gavin complied. Next, defendant obtained control over all three children by spoiling them
27 with gifts and every possible indulgence teenage children could ever imagine at Neverland. A
28 private amusement park, zoo, an elaborate video arcade, movie theatre, swimming pool,

1 private chefs, sweets and every toy imaginable were at the Arvizo children's disposal. The
2 Arvizo boys were then welcomed into the world of the forbidden with no school, late nights,
3 alcohol, profanity and pornography. All of this worked to drive wedge between the children
4 and their mother which was used to control her.

5 Economic control followed. While at Neverland, the Arvizos lived in luxury and all
6 expenses were paid. To leave Neverland was to leave a financial security this family had never
7 experienced. Defendant insured the Arvizos could not leave his realm of by taking the
8 children out of school, ending the lease on their apartment and placing all their worldly
9 possessions in storage at a hidden location. The Arvizos now had no place to live and were
10 forced to go where the defendant wanted them to go.

11 Removing the family from the country was next. Trips to Calabasas to obtain visas
12 and passports for Brazil manifested defendant's control at this point. New clothes and luggage
13 were purchased by defendant for the Arvizos, making them even more financially beholden to
14 him. At this point the family was completely under his control.

15 When the Los Angeles Department of Child and Family Services intervened after
16 concerned citizens reported defendant's alarming declaration that he sleeps with little boys in
17 the Martin Bashir's *Living with Michael Jackson* television special, defendant further
18 manipulated Janet Arvizo by telling her she would have her children taken away if she did not
19 convince the social workers that Michael Jackson was a wonderful man who posed no threat to
20 the family.

21 The underlying control feature of this entire chronology was fear. From the very
22 first time defendant contacted the Arvizos on February 4, 2003 until the Arvizo children finally
23 escaped from Neverland in March, defendant and his coconspirators were continually telling
24 Janet Arvizo that there were people who wanted to kill her and her family. These fictitious
25 threats were contrived by defendant and his co-conspirators. They were generally vague and
26 over time expanded to include her parents. At one point the threats came from the
27 coconspirators themselves, who claimed they could kill Mrs. Arvizo's family. These co-
28 conspirators denigrated Ms. Arvizo, calling her "stupid" and a "stupid woman" when she was

1 at all uncooperative. Janet Arvizo did not like what was going on at Neverland but she did not
2 want to take her children away from its perceived safety. Even the rebuttal video in which Ms.
3 Arvizo and the children prevaricated about Jackson being “family” was made on the premise
4 that public praise of Jackson would appease the “killers.” Throughout the film defendant had
5 the entire family to refer to him repeatedly as a “father” to all the children.

6 Just as she was trapped so long in her violent marriage, Janet Arvizo was trapped by
7 defendant. Fear and stress were once again controlling her, and defendant held all the strings.
8 Just like the battered woman, hope that things would improve was all she had. She could not
9 leave the protection of the defendant because defendant and his staff were protecting her from
10 the fictitious “killers.” Even when the threat appeared to come from the co-conspirators
11 themselves, she could not leave because defendant had assumed economic control over her
12 life. Also, the threats from the fictitious “killers” outside Neverland never diminished. She
13 could not tell the authorities because the threats were too vague. What would the authorities be
14 able to do? Meanwhile defendant not only threatened the lives of her and her children but he
15 threatened the State would take the children away from her if she did not do his bidding.

17 CONCLUSION

18 Janet Arvizo was placed in a box that defendant constructed out of lies, threats and
19 bits and pieces of her troubled past. Economic control, death threats, threats to take the
20 children away, put-downs and forced isolation are all classic features of domestic violence and
21 Battered Women’s Syndrome. These are also the features of this case. Janet Arvizo had a
22 peculiar vulnerability to defendant’s manipulations because of her history as a victim of
23 domestic violence. In order for the jury to properly evaluate Janet Arvizo’s behavior under the
24 stressors presented by defendant, it is imperative that they understand the stress disorder that
25 directly affected this behavior.

26 This expert testimony will be general in nature and will not be fact-dependent. It
27 will be used solely to de-bunk general myths and misperceptions about the behavior of victim’s
28 of domestic violence. A proposed instruction for the jury’s guidance in this area (CALJIC

1 9.35.1) is attached.

2 The People respectfully request that expert testimony on Battered Women's
3 Syndrome be admitted at trial.

4
5 DATED: January 17, 2005

6 Respectfully submitted,

7 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

8
9
10 BY: 

11 GORDON AUCHINCLOSS
12 Senior Deputy District Attorney
13 Attorneys for Plaintiff

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2
3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA

5 COUNTY OF SANTA BARBARA

6 }
7 } SS
8 }
9 }

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

14 On January 14, 2005, I served the within IN LIMINE MOTION RE: ADMISSION
15 OF EXPERT TESTIMONY ON "BATTERED WOMEN'S SYNDROME" on Defendant, by
16 THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN, his counsel of
17 record, by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara,
18 by transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy
19 thereof to be mailed to Mr. Mesereau, first class postage prepaid, at the addresses shown on the
20 attached Service List.

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

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

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25 Cris Linz
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