| 1 2 3 4 5 7 8 9 | COLLINS, MESEREAU, REDDOCK & Thomas A. Mesereau, Jr., State Bar Number Susan C. Yu, State Bar Number 195640 1875 Century Park East, 7th Floor Los Angeles, CA 90067 Tel.: (310) 284-3120, Fax: (310) 284-3133 SANGER & SWYSEN Robert M. Sanger, State Bar Number 05821-233 East Carrillo Street, Suite C Santa Barbara, CA 93101 Tel.: (805) 962-4887, Fax: (805) 963-7311 OXMAN & JAROSCAK Brian Oxman, State Bar Number 072172 14126 East Rosecrans Santa Fe Springs, CA 90670 | JAN 2 1 2005 GARY M. BLAIR, Exocutive Officer COUNTY & WAGNER CARRIE L. WAGNER DAYLOW STATE CARRIE L. WAGNER CARRIE L. | |
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| 10 | Tel.: (562) 921-5058, Fax: (562) 921-2298 Attorneys for Defendant MICHAEL JOSEPH JACKSON | ا فران ا | |
| 12 13 | SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION | | |
| 15 | THE PEOPLE OF THE STATE OF | REDACTED) Case No. 1133603 | |
| 16 17 18 | Plaintiffs, vs. mifacts.com | OPPOSITION TO DISTRICT ATTORNEY'S MOTION RE: ADMISSION OF EXPERT TESTIMONY ON "BATTERED WOMEN'S SYNDROME" | |
| 19 20 21 22 | MICHAEL JOSEPH JACKSON, Defendant | Honorable Rodney S. Melville Date: January 28, 2005 Time: 9:30 a.m. Dept.: 8 | |
| 24 | njfacts.com MEMORANDUM OF POINTS AND AUTHORITIES mjfacts.com | | |
| 25 | INTRODUCTION | | |
| 26 27 | The prosecution asks this Court to allow a yet to be named expert testify regarding | | |
| 85 | OPPOSITION TO DISTRICT ATTORNEY'S MOTION RE: ADMISSION OF EXPERT TESTIMONY ON "BATTERED WOMEN'S SYNDROME" | | |

Battered Women's Syndrome (BWS). The prosecution has failed to establish the relevance of BWS expert testimony to this case. The District Attorney presents an argument, in summary form, that was the victim of a violent spouse. This does not provide the Court with adequate information to make a determination as to whether or not was ever actually abused, let alone, that she suffered from a pattern of abuse that would produce BWS.

The admission of such testimony threatens to deprive Mr. Jackson of his federal and state constitutional rights to a fair trial, due process of law, and right to a reliable verdict and sentence pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States

Constitution and Article 1, Sections 7, 15, 17 and 24 of the California Constitution.

ARGUMENT

I.

IT IS PREMATURE TO RULE ON THIS MOTION BECAUSE THE PROSECUTION HAS FAILED TO PRESENT FACTS TO THE COURT THAT WOULD JUSTIFY THE INTRODUCTION OF BATTERED WOMEN'S SYNDROME TESTIMONY

It is premature for the Court to be deciding these issues. It is not possible for the defense to adequately oppose this motion, because the prosecution has not provided the statements of the proposed witnesses, except in summary fashion, by way of argument. Defense counsel does not know the name of the prosecution's expert. Defense counsel does not know what the prosecution's experts will say.

The prosecution have not presented evidence that would lay a foundation for the admission for this type of testimony. They have not adequately shown that was a battered woman or behaving in any way that was consistent with a battered woman. The prosecution's motion explains how BWS testimony would bolster the testimony of but they have not established that her behavior was consistent with being a battered woman.

Evidence Code Section 1107 (b) states the requirements for the introduction of BWS testimony: "The foundation shall be sufficient for admission of this expert testimony if the

| 1 | proponent of the evidence establishes its relevancy and the proper qualifications of the expert | | |
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| 2 | wimess." Here, the prosecution has not yet named its expert, let alone demonstrated to the Court | | |
| 3 | that the expert is qualified. The prosecution has also failed to lay the necessary foundation to | | |
| 4 | establish the relevancy of this type of testimony in a conspiracy/child molestation case. | | |
| 5 | Instead of acknowledging that some is not a credible witness and dismissing the | | |
| 6 | case, the prosecution seeks to bring in "experts" and distractions with the hope that the jury will | | |
| 7 | mjfacts.com mjfacts.com | | |
| 9 | CONCLUSION | | |
| 10 | For the above stated reasons, Mr. Jackson objects to the introduction of BWS testimony | | |
| 11 | by a yet to be named expert. | | |
| 12 | Dated: January 21, 2005 COLLINS, MESEREAU, REDDOCK & YU Thomas A. Mesereau, Jr. | | |
| 13 | Susan C. Yu | | |
| 14 | SANGER & SWYSEN Robert M. Sanger | | |
| 15 16 | OXMAN & JAROSCAK Brian Oxman | | |
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| 18 | mifacts.coBy: Robert M. Sanger | | |
| 19 | Attorneys for Defendant MICHAEL JOSEPH JACKSON | | |
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| 28 | OPPOSITION TO DISTRICT ATTORNEY'S MOTION RE: ADMISSION OF EXPERT TESTIMONY ON | | |