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

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs, vs. MICHAEL JOSEPH JACKSON, Defendant.	Case No. 1133603 OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR ADMISSION OF CERTAIN STATEMENTS BY DEFENDANT ON "LIVING WITH MICHAEL JACKSON" AND "60 MINUTES" AS EXCEPTIONS TO THE HEARSAY RULE UNDER SEAL Honorable Rodney S. Melville Date: TBA Time: ~~9:30 a.m.~~ Dept.: 8

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I.

MR. JACKSON MAKES THE SAME OBJECTIONS THAT WERE RAISED PREVIOUSLY WITH REGARD TO PRIOR ACTS EVIDENCE

The prosecution asks this Court to admit "certain statements by Defendant (a) in the course of the filming of Martin Bashir's "Living with Michael Jackson" documentary . . . and (b) on the CBS television program "60 Minutes" on December 28, 2003, for the truth of the matters asserted. (Motion, page 1.) To the extent that these statements relate to "other acts" evidence, pursuant to Evidence Code Section 1108, Mr. Jackson makes the same objections that were previously made, and now pending, to the District Attorney's motion to include such evidence.

Bashir program:

First, referring to the partial transcripts filed as Exhibit A to the prosecution's Motion, the ambiguity at page 7, line 2 has to be resolved. The proponent of the evidence has the burden of laying the foundation that the words were actually said. This is the prosecution's offer of proof. If the prosecution cannot prove that the words on their transcript were said, then they have not laid the foundation and the words are not admissible.

Second, to the extent that the foundation is laid as represented by the offer of proof, the statements of page six through page 8, line 2 and page 8, line 23 through page 9, line 16 ending at the word "No" appear to be related to the allegations of this case. We will argue the weight of the evidence and we do not concede for a minute that the interpretation offered by the prosecution is correct. We also reserve the right to offer other parts of the interview, whether edited out by Mr. Bashir or not, if appropriate.

Third, the statements of Bashir and Gavin Arviso on page 8, lines 7 through 18 are not statement of the defendant and do not come within the exception to the hearsay rule.

Fourth, page 9, line 16 following the word "No" through to the end are subject to the rulings on other acts evidence now pending decision by the Court. Furthermore, they are not admissions.

Ed Bradley program:

The entire transcript filed as Exhibit B to the prosecution's Motion refers to general matters which are not admissions per se. They also refer to matters which are still subject to the Court's ruling.

II.

THE ISSUE HERE IS WHAT STATEMENTS OF MR. JACKSON COME IN AS "ADMISSIONS" AND NOT WHAT THE JURY WILL HEAR FOR OTHER REASONS

Here the prosecution asks for a ruling on "admissions." The Court has already ruled that the Prosecutor can play the Bashir program for the jury. The Court will also consider future issues regarding the playing of the entire statements to put the excerpts in context.

To properly decide what should come into evidence as an alleged admission, the Court must make the requisite findings that the foundation has been laid. As argued above, that requires the Court to look at the technical foundation, the relevance of the remarks and the question of whether they would involve other acts evidence that has not been admitted. In addition, the court should do an analysis under Evidence Code Section 352 to determine if any of the more general

remarks may be more prejudicial than probative if allowed as an alleged admission.

We respectfully submit that the portions asked to be stricken above from the prosecution's request, even if relevant, would be more prejudicial than probative on the real issues before this Court.

III.

CONCLUSION

Mr. Jackson makes the same objections that were made in the opposition to the District Attorney's Evidence Code Section 1108 motion.

Dated: February 15, 2005

COLLINS, MESEREAU, REDDOCK & YU
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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 301 East Cook Street, Suite A, Santa Maria, California 93454.

On February 15, 2005, I served the foregoing document: **OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR ADMISSION OF CERTAIN STATEMENTS BY DEFENDANT ON "LIVING WITH MICHAEL JACKSON" AND "60 MINUTES" AS EXCEPTIONS TO THE HEARSAY RULE** 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 at the above-referenced number.

___ **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 15, 2005, at Santa Maria California.

Bobette Tryon