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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 17 2005

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

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

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

16 RESPONSE TO REPLY TO
17 PLAINTIFF'S OPPOSITION TO
18 DEFENDANT'S REQUEST THAT
19 PLAINTIFF BE REQUIRED TO
20 PRESENT THE HEARSAY
21 EVIDENCE OF DEFENDANT'S
22 RESPONSE TO "LIVING WITH
23 MICHAEL JACKSON" AS PART
24 OF ITS CASE IN CHIEF

DATE: TBA
TIME: 8:30 a.m.
DEPT: SM 2 (Mcville)

~~FILED UNDER SEAL~~

25 A. Introduction:

26 Plaintiff moved the Court to allow it to present Martin Bashir's documentary
27 "Living with Michael Jackson" to the jury as part of its case in chief, as evidence of the
28 catastrophic event that motivated Defendant and others to conspire to commit the crimes
alleged in Count One of the indictment. The People moved to introduce the documentary
"Living with Michael Jackson" as evidence of the event – the airing of that documentary
around the world – that prompted the frenzied response alleged in Count One of the
indictment.

1 At the hearing of Plaintiff's motion, Defendant's counsel urged the Court to require
2 Plaintiff to "balance" the prejudicial effect of "Living with Michael Jackson" by presenting
3 immediately thereafter, "The Michael Jackson Interview: The Footage You Were Never Meant
4 To See" film narrated by Maury Povich ("Footage"). Defendant argued that the Bashir
5 documentary was edited to present facts in a misleading fashion and to deliberately show
6 Michael Jackson in a false light. He urged that "Footage" reveals the true context of Mr.
7 Jackson's several statements – a context suppressed by the editing of "Living with Michael
8 Jackson" – and that his right to a fair trial obliged the People to present "Footage" as part of its
9 case in chief.

10 Plaintiff opposed that request. We conceded that much of "Living with Michael
11 Jackson" is "hearsay, but it is nevertheless admissible under the 'operative fact' doctrine. The
12 Court has so ruled." (Opposition 3:1-2.) We noted: "If Defendant believes it would be
13 prudent to introduce admissible evidence that offsets the prejudicial effect of 'Living with
14 Michael Jackson,' he is free to do so as part of his case. The operative word is 'admissible.'
15 Hearsay is inadmissible. 'Footage' is purest hearsay." (Opposition 3:11-14.)

16 In Defendant's "Reply to District Attorney's Opposition to Defendant's Request
17 That Plaintiff Be Required To Present The Hearsay Evidence Of Defendant's Response To
18 'Living With Michael Jackson' As Part Of Its Case In Chief," filed February 15, 2005,
19 Defendant asserts:

20 It appears from the Opposition of the District Attorney that the
21 government does not oppose the playing of the Hamid Moslehi outtakes
22 videos at the time of the playing of the Bashir production. In light of
23 that, the defense will withdraw its request that the "Footage You Were
24 Never Meant To See" be played immediately following the Bashir
25 production. The defense reserves the right to offer said video at
26 another time and will agree to advise the Court in advance to allow for
27 an in limine ruling on the subject.

28 (Reply 2:17-22.)

Defendant badly misreads our Opposition

1 B. Discussion:

2 Nothing in our Opposition remotely suggests that we do “not oppose the playing of
3 the Hamid Moslehi outtakes videos at the time of the playing of the Bashir production.” With
4 the exception of certain admissions of Defendant, the “Footage” paean is hearsay, including
5 those portions filmed by Mr. Moslehi while Mr. Bashir was filming “Living with Michael
6 Jackson.” Precisely because those outtakes are hearsay, they are inadmissible by either side.
7 And because they are “outtakes” – i.e., footage that was never broadcast as part of the final
8 version of “The Michael Jackson Interviews: The Footage You Were Never Meant To See” –
9 they are irrelevant as part of the People’s case in chief because they do not come within the
10 exception that makes “Living With Michael Jackson” admissible: they are not “operative facts”
11 evidence of the important event that prompted Defendant and others to conspire to commit the
12 crimes alleged in Count One of the indictment.

13 In our Opposition we stated that the outtakes of Hamid Moslehi’s “Footage”
14 production do not disclose what the defense represented they would disclose. The outtakes do
15 not show that Defendant’s comments in the “Living with Michael Jackson” documentary about
16 sleeping with children were taken out of context or were in any way misleading. Defendant’s
17 Reply never addressed the issue of what exactly is contained in the Moslehi outtakes that
18 change the meaning of Defendant’s comments. There has been no effort by the defense to
19 identify the specific dialogue contained in the outtakes that might support their contention.

20 Mr. Moslehi was not present at Neverland when Defendant sat with John Doe and
21 spoke of the joy he experienced in sharing his bed with young boys. No outtakes exist as to
22 that conversation. Mr. Moslehi videotaped a conversation with Defendant in Florida. There
23 are outtakes of that videotaped interview. The People contend their content adds nothing to the
24 debate whether the Bashir documentary was factually accurate. The defense, for its part, is
25 notably silent on that issue. Unless and until Defendant demonstrates the relevance and
26 admissibility of any of those outtakes notwithstanding the hearsay rule, the People will object
27 to the defense introduction of the Moslehi outtakes as part of its case. And just in case we
28 have not made our position clear, we object to Defendant’s request that Mr. Moslehi’s

1 outtakes be played as part of the prosecution's case in chief.

2 Defense counsel need to exercise rather more care in their reading of Plaintiff's
3 submissions before they undertake a restatement of our position on a given issue.

4 CONCLUSION

5 Plaintiff is grateful for Defendant's withdrawal of his badly-premised request that
6 "Footage You Were Never Meant To See" be played by the prosecution immediately following
7 presentation of the Bashir production, Living With Michael Jackson." We oppose Defendant's
8 suggestion that Moslehi's own outtakes should be played as part of Plaintiff's case in chief.

9 DATED: February 17, 2005

10 Respectfully submitted,

11 THOMAS W. SNEDDON, JR.
12 District Attorney

13 By:

14 
15 Gerald McC. Franklin, Senior Deputy

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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

On February 17, 2005, I served the within PLAINTIFF'S RESPONSE TO DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S REQUEST THAT PLAINTIFF BE REQUIRED TO PRESENT THE HEARSAY EVIDENCE OF DEFENDANT'S RESPONSE TO "LIVING WITH MICHAEL JACKSON" AS PART OF ITS CASE IN CHIEF on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, and by transmitting a copy by facsimile to Mr. Mesereau's confidential Fax number in Santa Maria.

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

Executed at Santa Barbara, California on this 17th day of February, 2005.

[Handwritten Signature]

SERVICE LIST

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