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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

15 THE PEOPLE OF THE STATE OF)
16 CALIFORNIA,)

17 Plaintiffs,)

18 vs.)

19 MICHAEL JOSEPH JACKSON,)

20 Defendant.)

) Case No. 1133603

) MR. JACKSON'S OPPOSITION TO THE
) DISTRICT ATTORNEY'S MOTION FOR
) RECONSIDERATION OF THE COURT'S
) RULING REGARDING THE
) ADMISSIBILITY OF EVIDENCE OF
) "ADULT BOOKS"

) DATE: TBA
) TIME: TBA
) DEPT: SM-8

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MR. JACKSON'S OPPOSITION TO THE DISTRICT ATTORNEY'S MOTION FOR RECONSIDERATION OF
THE COURT'S RULING REGARDING THE ADMISSIBILITY OF EVIDENCE OF "ADULT BOOKS"

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

APR 22 2005

GARY M. BLAIR, Executive Officer

By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 I.

4 THE COURT SHOULD NOT RECONSIDER ITS RULING

5 On January 28, 2005, this Court ordered that “the materials seized during the 1993
6 investigation shall not be admitted.” (Minute Order dated January 28, 2005.) The minutes do
7 not reflect an invitation for reconsideration. Counsel does not recall such an invitation.¹

8 The Court should not reconsider its previous ruling because the prosecution has failed to
9 make a showing that there has been a change in circumstances either by way of a change in the
10 facts or the law. (Civil Code of Procedure Section 1008.) In fact, the perjurous testimony of
11 Janet Arvizo was such that had it been heard prior to the Court’s original ruling, it might have
12 been a basis to exclude other 1108 and 1101(b) material. The Court should not be in the business
13 of shoring up a crumbling prosecution case. That was part of the rationale of the Court’s prior
14 rulings and should remain all the more a part of the rational in not changing those rulings.

15 On the merits, reconsideration should be denied because: (1) the materials in question
16 have nothing to do with the present case and are not probative; (2) the books were seized at a
17 time that is too remote, in comparison to the present case; (3) there is no indication the materials
18 were ever shown to children at any point in time; (4) exhibiting the materials would consume
19 undue time; and (5) the introduction of the books would be prejudicial. Evidence Code Section
20 1108 allows prior offense evidence, subject to Evidence Code Section 352 objections. However,
21 to the extent that this evidence can be considered to be 1108 evidence, it is a perfect example of
22 where the Court should draw the line pursuant to Evidence Code Section 352.

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26 ¹ We do not have a transcript of the January 28, 2005 hearing. If, in fact, the Court did
27 make such an invitation, we will stand corrected. Nevertheless on the merits, reconsideration
28 should still be denied.

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II.

CONCLUSION

For the above-stated reasons, the Court should not change its ruling.

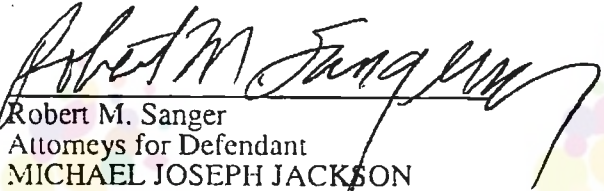
Dated: April 22, 2005

COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mescreau, Jr.
Susan C. Yu

SANGER & SWYSEN
Robert M. Sanger

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 April 22, 2005, I served the foregoing document MR JACKSON OPPOSITION TO THE DISTRICT ATTORNEYS MOTION FOR RECONSIDERATION OF THE COURTS RULING REGARDING THE ADMISSIBILITY OF EVIDENCE OF ADULT BOOKS on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
District Attorney
312 East Cook Street
Santa Maria, CA 93454

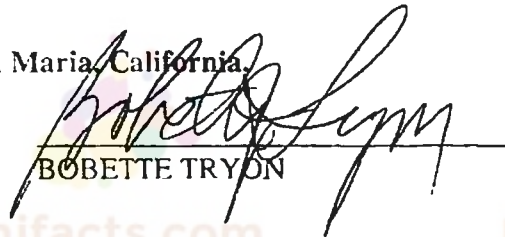
 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid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

 BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties [SEE ABOVE]

 X **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 April 22, 2005 at Santa Maria, California.


BOBETTE TRYON