

MAY 10 2005

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

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

13 vs.

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15
16 MICHAEL JOE JACKSON,

Defendant.

No. 1133603

**PLAINTIFF'S MOTION TO
EXCLUDE TESTIMONY OF
PURPORTED PRIOR SEX
ACTS WITH MINOR
WITNESS PURSUANT TO
EVIDENCE CODE § § 352**

DATE: May 3, 2005

TIME: 8:30 AM

DEPT.: SM2 (Melville)

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21 INTRODUCTION

22 The defense has provided an affidavit and interview report regarding the proposed
23 testimony of witness Angel Vivanco. Mr. Vivanco will apparently testify that during his
24 employment at Neverland Ranch, he struck up a "quasi-sexual" relationship with the then 16
25 year-old sister of the victim of the 288(a) charges currently on trial. Notwithstanding the fact
26 that Mr. Vivanco was an adult at the time of the purported sexual conduct, and the nature of
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1 that conduct is punishable as a felony under Penal Code section 288a(b)(1), the defense
2 apparently offers this testimony in order to attack the credibility of Davelin Arvizo.

3 **I.**
4 **EVIDENCE OF A WITNESS' SEXUAL CONDUCT**
5 **SHOULD BE EXCLUDED UNDER E.C. 352 and 1101(a)**

6 The issue of whether or not Arvizo engaged in sexual conduct with the proffered
7 witness falls squarely within the exclusionary rule of Evidence Code sections 352 and 1101(a).

8 Otherwise relevant evidence is generally "inadmissible" in a criminal case if it is
9 "evidence of a person's character or a trait of his or her character . . . when offered to prove his
10 or her conduct on a specified occasion." because Evidence Code section 1101, subdivision (a)
11 says so. In most cases, the proffered "bad character" evidence is evidence of the defendant's
12 prior commission of certain crimes, the relevance of which is that the defendant's track record
13 demonstrates his "disposition" to commit such crimes. However, in this instance it is offered
14 as a collateral attack on the credibility of a prosecution witness and victim of the conspiracy
15 count. It is a transparent attempt to smear this victim of the current offense. Ironically, the
16 offered testimony shows not that she is of "bad character," but instead that she was a victim of
17 felonious sexual misconduct by a *defense witness employed by the defendant*.

18 While generally a defendant can introduce evidence of a character trait of a crime
19 victim, that evidence must be relevant and pass the 352 hurdle. In *People v. Chandler*, (1997)
20 56 Cal.App. 4th 703, at 711, the court held that exclusion of a defense witness' testimony
21 regarding the sexual history of the complaining witness was proper in that it did not pass the
22 test of 352. Specifically, the conduct was not relevant to her credibility.

23 Evidence Code section 352 serves as an overall limitation on otherwise relevant
24 evidence in all lawsuits, criminal or civil. It provides: "The court, in its discretion, may
25 exclude evidence if its probative value is substantially outweighed by the probability that its
26 admission will (a) necessitate undue consumption of time or (b) create substantial danger of
27 undue prejudice, of confusing the issues, or of misleading the jury."

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1 The defense has offered nothing to this court explaining why the alleged fact of
2 Davelin's prior victimization should be heard in this matter. There is simply no relevancy. For
3 these reasons, the evidence should be excluded.

4 DATED: May 3, 2005

5 Respectfully submitted,

6 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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8 By: 

9 Mag M. Nicola
10 Senior Deputy District Attorney

11 Attorneys for Plaintiff
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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA)
5)
6 COUNTY OF SANTA BARBARA) SS

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

11 On January 18, 2005, I served the within **PLAINTIFF'S REPLY TO**
12 **DEFENDANT'S OPPOSITION RE: EVIDENCE CODE § 402 ISSUES** on Defendant, by
13 THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally
14 delivering a true copy thereof to Mr. Sanger.

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

16 Executed at Santa Barbara, California on this 24th day of January, 2005.

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19 Mag M. Nicola

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26 **SERVICE LIST**

27 THOMAS A. MESEREAU, JR., ESQ.
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