

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

NOV 24 2004

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF

CALIFORNIA,

Plaintiff,

vs.

MICHAEL JACKSON,

Defendant.

Case No.: 1133603

Order for Release of Redacted Documents

[Motion for Mental Examination]

The redacted form of the Defendant's Motion for Mental Exam attached to the Plaintiff's Proposed Redaction of Defendant's Motion for Court-Ordered Mental Examinations of Certain Witnesses shall be released and placed in the public file with minor modifications by the court. The court finds that there is more material in the motion that should be redacted than that contained in the proposed redacted version. The unredacted originals shall be maintained conditionally under seal pending the hearing on November 29, 2004.

DATED: November 24, 2004

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
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Santa Barbara, CA 93101
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7

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,

13 Plaintiff,
14
15 v.

16 MICHAEL JOE JACKSON,

17
18 Defendant.
19
20

No. 1133603

PLAINTIFF'S PROPOSED
REDACTION OF
DEFENDANT'S MOTION FOR
COURT-ORDERED MENTAL
EXAMINATIONS OF CERTAIN
PROSECUTION WITNESSES,
AND OUR MEMORANDUM RE:
DEFENDANT'S OWN
WOEFULLY INADEQUATE
REDACTION OF THE MOTION

DATE: November 29, 2004
TIME: 10:00 a.m.
DEPT: TBA (Melville)

UNDER SEAL

21
22 A. Introduction

23 Defendant recently moved the Court to order "mental examinations for the
24 complaining witnesses Jane Doe, John Doe and James Doe on several grounds. His submission
25 consisted of his notice of motion (2 pages), its supporting memorandum of points and
26 authorities (27 pages, plus an unnumbered cover sheet), and a supporting declaration by
27 Attorney Brian Oxman (22 pages); a total of 51 pages of text.

28 ////

1 Defendant also filed his "Ex Parte Application To File Under Seal" his "Motion for
2 Mental Examination."

3 B. The Court's "Protective Order"

4 On January 23, 2004, this Court filed a "Protective Order" binding on both parties
5 and all potential witnesses. It forbids the release of:

6 "1. . . . any purported statement of either the defendant or witnesses relating to this
7 case:

8 "2. . . . any documents, exhibits, photographs, or any evidence, the admissibility of
9 which may have to be determined by the Court"

10 C. Attorney Oxman's Proposed Redaction

11 In his application to seal defendant's Motion for Mental Examinations, Attorney
12 Oxman alleged as a reason for sealing that "An inspection of the documents will reveal that
13 they disclose the testimony of witnesses or potential witnesses and disclose possible evidence,
14 the admissibility of which, is yet to be determined." (Ex Parte App., 3:21-24.) Attorney
15 Oxman's supporting Declaration further stated that sealing was required, in part, to "prevent
16 the disclosure of witnesses, potential witnesses and potential evidence." (Decl. 5:6-9.)

17 Defendant's "Proposed Redacted" version of the moving papers disclose that six
18 words of the two-page Notice of Motion, 84 words of the 27-page supporting Memorandum of
19 Points and Authorities and 84 words of the 22-page Declaration – 174 words in all, on the 51
20 pages of text – were redacted. And though all 51 pages of text, virtually from beginning to
21 end, recited scandalous and prejudicial evidence or "potential evidence," there was no
22 proposed redaction of any of that text. Each and every one of the 174 words redacted by
23 defendant were the names of one member or another of the Doe family.

24 In addition, defendant did not propose to redact even one of the 32 Exhibits,
25 consisting of 113 pages, which accompanied his motion.

26 D. Discussion

27 Defendant and his counsel, and in particular Attorney Oxman, are well-acquainted
28 with the provisions of the Protective Order. Attorney Oxman's declaration in support of his

1 submission of the defense's proposed redaction of the 162 pages comprising defendant's
2 Motion for Mental Examination evidences his awareness that they "disclose the testimony of
3 witnesses or potential witnesses and disclose possible evidence, the admissibility of which, is
4 yet to be determined."

5 How, then, can Attorney Oxman, plausibly suggest to this Court that all but 174
6 words of the argumentative motion he authored, and ALL of the exhibits he attached to that
7 motion, are appropriate for release to the public? Plainly, he can not.

8 Plaintiff respectfully suggests that Attorney Oxman either knows better, or he does
9 not. In either event, this Court, of regrettable necessity, must intervene.

10 E. Request

11 1. The People respectfully request that Attorney Oxman's proposed redaction of the
12 Motion for Mental Examination he authored be rejected. An appropriately thoroughgoing
13 redaction should be substituted in its place. All of the exhibits to the Motion should be
14 redacted by simply removing them from the moving papers before the redacted motion is
15 scanned and released. Plaintiff tenders herewith its own redaction of defendant's Motion;

16 2. Whoever Mr. Meserchau nominates as the lawyer who will argue the merits of the
17 "Motion for Mental Examination" Mr. Oxman authored on behalf of the defendant should be
18 cautioned not to mention or discuss any of the materials referred to in the moving papers or
19 attached as exhibits thereto. Mr. Oxman has shown beyond the need for further discussion that
20 unless limits are plainly articulated and swiftly enforced he cannot be relied upon to restrain
21 himself on behalf of his client when he believes appreciative note of his arguments will be
22 taken by the media.

23 DATED: November 23, 2004

24 Respectfully submitted,

25 THOMAS W. SNEDDON, JR.
26 District Attorney

27 By: _____
28 Gerald McC. Franklin, Senior Deputy

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18 Attorneys for Defendant
19 MICHAEL JOSEPH JACKSON

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

22 THE PEOPLE OF THE STATE OF
23 CALIFORNIA,

24 Plaintiffs,

25 vs.

26 MICHAEL JOSEPH JACKSON,

27 Defendant

Case No. 1133603

MR. JACKSON'S NOTICE OF MOTION
AND MOTION FOR MENTAL
EXAMINATION

Honorable Rodney S. Melville

Date: November 29, 2004

Time: 8:50 p.m.

Dept: SM 2

28 TO THE CLERK OF THE ABOVE ENTITLED COURT:

29 Please take notice that on November 29, 2004, or as soon thereafter as the matter can be
30 heard, in Department SM-2 of the Santa Barbara Superior Court located at 312 East Cook Street,

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MR. JACKSON'S NOTICE OF MOTION AND MOTION FOR MENTAL EXAMINATION

NOV-23-2004 (TUE) 14:44

SB CO. DISTRICT ATTORNEY

(FAX) 805 560 1078

P. 003/061

1 Santa Barbara, California 92454, before the Honorable Rodney S. McIville. Mr. Michael Jackson,
2 through his counsel, will and hereby does move the court to order a mental examination for
3 complaining witnesses ~~Stanley Katz~~, ~~Stanley Katz~~, and ~~Stanley Katz~~. Mr. Jackson makes this
4 motion on the following grounds:

5 (1) The prosecution opened the door to permit a mental examination of the complaining witnesses
6 by offering its own mental examination and expert testimony concerning their mental condition, and the
7 complaining witnesses have waived the provisions of Penal Code section 1112 by employing an expert
8 psychologist to examine the witnesses' mental status and provide expert testimony of mental condition;

9 (2) Mr. Jackson cannot cross-examine and confront expert witness Psychologist Stanley Katz
10 unless he is permitted equal access to the subject matter of the expert's mental examination, which are the
11 complaining witnesses, and precluding equal access to the witnesses for examination deprives Mr. Jackson
12 of his Sixth Amendment rights to confront and cross-examine expert witnesses against him.

13 (3) Mr. Jackson seeks a mental examination of the witnesses ~~Stanley Katz~~
14 ~~Stanley Katz~~
15 ~~Stanley Katz~~
16 ~~Stanley Katz~~

17 This Motion will be based on this Notice of Motion and Motion, the accompanying
18 Memorandum, the Declaration of Brian Oxman and ~~Stanley Katz~~, and all the records,
19 papers and other pleadings on file with the court.

20 Dated: November 19, 2004

Respectfully submitted,

21 COLLINS, MESEREAU, REDDOCK & YU
22 Thomas A. Mesereau, Jr.
Susan C. Yu

23 SANGER & SWYSEN
24 Robert M. Sanger

25 OXMAN & JAROSCAK
26 Brian Oxman

27 By: 

28 R. Brian Oxman
Attorneys for Defendant
MICHAEL JOSEPH JACKSON
29

MIL JACKSON'S NOTICE OF MOTION AND MOTION FOR MENTAL EXAMINATION

PROOF OF SERVICE BY MAIL AND FAX

I, Maureen Jaroscak declare and say:

I am an attorney at law admitted to practice before all the courts of the state of California and I am an attorney for Mr. Michael Jackson in the above-entitled action. My business address is 14126 East Rosecrans Blvd., Santa Fe Springs, California 90670. I am over 18 years and not a party to the above-entitled action. On November 19, 2004, I served the following:

EX PARTE APPLICATION TO FILE UNDER SEAL

MR. JACKSON'S NOTICE OF MOTION AND MOTION FOR MENTAL EXAMINATION

MEMORANDUM IN SUPPORT OF MOTION FOR MENTAL EXAMINATION

DECLARATION OF BRIAN OXMAN AND JOHN HOCHMAN

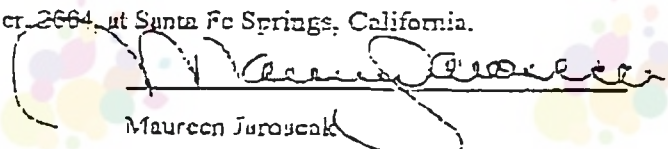
on the interested parties by placing a true copy of the document in a sealed envelope, and depositing it in the United States Mail with first class postage prepaid at La Mirada, California, and addressed as follows:

Thomas Sneddon
1112 Santa Barbara Street
Santa Barbara, CA 93101
Fax No. 805 568-2453

In addition, on this same date, I served a copy of the document by fax to the above-indicated number by transmitting a true copy of it by facsimile pursuant to Rule 2003 of the California Rules of Court, and no error was reported by the machine. Pursuant to Rule 2008(e), I had the machine print a record of the transmission, and a copy of that record is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed this 15th day of November, 2004, at Santa Fe Springs, California.


Maureen Jaroscak

NOV-23-2004 (TUE) 14:44

SB CO. DISTRICT ATTORNEY

(FAX) 805 560 1078

P.012/081

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14 Brian Oxman, State Bar No. 072172
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16 Santa Fe Springs, CA 90670
17 Tel.: (562) 921-5080, Fax: (562) 921-2298

18 Attorneys for Defendant
19 **MICHAEL JOSEPH JACKSON**

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

22 **THE PEOPLE OF THE STATE OF**
23 **CALIFORNIA,**

24 Plaintiffs,

25 vs.

26 **MICHAEL JOSEPH JACKSON,**

27 Defendant.

28 Case No. 1133603

MR. JACKSON'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR MENTAL
EXAMINATION AND DECLARATION
OF COUNSEL

Honorable Rodney S. Melville

Date: November 29, 2004
Time: 8:30 p.m.
Dept: SM 2

MEMORANDUM IN SUPPORT OF MOTION FOR MENTAL EXAMINATION

I.

INTRODUCTION

Mr. Michael Jackson submits this Memorandum in support of his Motion for Mental Examination of Complaining Witnesses, [REDACTED], [REDACTED], and [REDACTED]. Mr. Jackson's motion is based on the following grounds:

(1) The prosecution opened the door to permit a mental examination of the complaining witnesses by offering its own mental examination and expert testimony concerning their mental condition, and the complaining witnesses have waived the provisions of Penal Code section 1112 by employing an expert psychologist to examine the witnesses' mental status and provide expert testimony of mental condition;

(2) Mr. Jackson cannot effectively cross-examine and confront prosecution expert witness Psychologist Stanley Katz unless he is permitted equal access to the subject matter of the expert's mental examination, which are the complaining witnesses, and precluding equal access to the witnesses for examination deprives Mr. Jackson of his Sixth Amendment rights to confront and cross-examine expert witnesses against him.

A. Statement of the Case.1. Plaintiff's Complaint.

Plaintiff filed this action on December 18, 2003, charging Mr. Jackson with seven (7) counts of Lewd Acts Upon a Child in violation of Penal Code section 288a and two (2) counts of administering an intoxicant to a minor in violation of Penal Code section 222. The Complaint was based on interviews from three (3) complaining witnesses: [REDACTED], then age 35, who is the mother of the two (2) minor complaining witnesses, [REDACTED], then age 14, and [REDACTED], then age 13.

1 The complaint was based on more than seven (7) interviews conducted with the complaining
2 witnesses by Psychologist Stanley Katz. Stanley Katz detailed the alleged conduct that formed the basis of
3 the complaint, and the complaint mirrored his interviews and reports to law enforcement. In addition, law
4 enforcement conducted more than two (2) dozen interviews with the complaining witnesses, and more than
5 a hundred separate interviews with other witness.

6 Mr. Jackson voluntarily surrendered to the Santa Barbara Sheriff's Office on November 20, 2003,
7 and was arraigned on the original charges on January 16, 2004. Mr. Jackson pleaded not guilty. However,
8 the prosecution soon abandoned the December 18, 2003, Complaint and convened a Grand Jury to return an
9 Indictment against Mr. Jackson. Without the benefit of witness cross-examination, the Grand Jury issued
10 an indictment on April 26, 2004, consisting of one (1) count of conspiracy with five (5) other-unindicted
11 individuals in violation of Penal Code section 182, four (4) counts of Lewd Acts Upon a Child in violation
12 of Penal Code section 268a, one (1) count of Attempted Lewd Act Upon a Child in violation of Penal Code
13 sections 664 and 288a, and four (4) counts of Administering an Intoxicant in the Commission of a Felony
14 in violation of Penal Code section 222.

15 **2. The witnesses changed the dates and facts for the Indictment.**

16 The Indictment was markedly different from the December 18, 2003, Complaint. The Complaint
17 contained seven (7) counts of Lewd Acts Upon a Child, where the Indictment contained only four (4), plus
18 one of Attempted Lewd Act Upon a Child. Somewhere, the perception of the facts in this case was
19 significantly altered, and the Indictment no longer followed the details and chronology recounted by
20 Psychologist Katz.

21 In addition, the Complaint alleged two (2) counts of Administration of an Intoxicant, where the
22 Indictment alleged four (4). In view of repeated interviews and witness statements, the change in facts,
23 counts, and dates has created an irreconcilable inconsistency with no explanation.

24 The dates of the alleged crimes also changed. The Complaint said five (5) of the seven (7) "lewd
25 acts" allegedly occurred "on or between February 7, 2003, and March 10, 2003," and all the other counts
26 occurred between February 20 and March 10, 2003. But the Indictment now says that all but the new
27 conspiracy charges occurred between February 20, and March 12, 2003. Now it is a conspiracy starting
28 February 7, but no lewd act until February 20. This was not just a narrowing of the time period, but it was

1 also a lengthening of the time period. Suddenly, something happened on March 12 that was not included
2 in the Complaint.

3 In the Indictment, Mr. Jackson was charged with conspiracy to engage in Child Abduction, False
4 Imprisonment, and Extortion. He was not indicted on the actual objects of the conspiracy itself, nor were
5 these acts charged as stand-alone crimes or attempted crimes. Not even the alleged co-conspirators are
6 charged with the crimes.

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] The conspiracy charges are based on the [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED] testified she was forced to do an interview with the Los Angeles County Department
19 of Children and Family Services on February 20, 2004, in the home of her [REDACTED] where she
20

21 'In People v. Reber, 177 Cal. App.3d 523, 530-31 (1986), the court stated:

22 "The capacity of a witness to observe, recollect and narrate an occurrence is a proper
23 subject of inquiry on cross-examination. If as a result of a mental condition such capacity has been
24 substantially diminished, evidence of that condition before, at and after the occurrence ... is
25 ordinarily admissible for use by the trier in passing on the credibility of the witness.' Certain types
26 of mental disorders are highly probative on the issue of a witness' credibility. For example, the
27 veracity of one afflicted with a psychosis such as paranoid schizophrenia may be impaired by
28 distortions in his ability to perceive and recall events; a schizophrenic who suffers delusions and
hallucinations may have difficulty distinguishing fact from fantasy. Where psychotherapy records
contain evidence of such disorders especially probative of the ability of an important prosecution
witness to comprehend and accurately relate the subject of his testimony, the constitutional
confrontation clause has been held to prevail over a statutory privilege."

1 was forced to say wonderful things about Michael Jackson that were all untrue. (GJ tr., p. 1068, ln 11-17;
2 p. 1070, ln. 3-14). She was then brought to the home of [REDACTED] to do a videotaped interview on
3 February 23, 2005, where she and her family were forced to say wonderful things about Michael Jackson.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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[REDACTED]

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MEMORANDUM IN SUPPORT OF MOTION FOR MENTAL EXAMINATION

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explained:

MEMORANDUM IN SUPPORT OF MOTION FOR MENTAL EXAMINATION

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[REDACTED]

[REDACTED] testified on September 6, 2001:

[REDACTED]

continued:

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] testified on September 6, 2001:

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

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The record in this case involving Michael Jackson

This case highlights

This is an appropriate case to require the

1 [REDACTED]
2 [REDACTED]
3 D. The Prosecution Opened the Door and Waived Section 1112 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 Notwithstanding the provisions of subdivision (d) of Section 28 of Article I of the
14 California Constitution, the trial court shall not order any prosecuting witness, complaining witness,
15 or any other witness, or victim in any sexual assault prosecution to submit to a psychiatric or
16 psychological examination for the purpose of assessing his or her credibility. (Emphasis added).
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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2. The Psychologist assessed

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
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13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 3. Psychologist Katz testified

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 Psychologist Katz [REDACTED]
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Psychologist Katz

The Psychologist

The Psychologist also made a

Psychologist Katz determined

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P. 008/043

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Psychologist Katz stated

Psychologist Katz then gave his opinion

Psychologist Katz'

B. Other Expert Opinion was Based on the Psychologist's Interviews.

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[REDACTED]

C. The Prosecution has Opened the Door

Ordinarily, mental examinations are not permitted of complaining witnesses under Penal Code section 1112.

[REDACTED]

1 It is a denial of Mr. Jackson's right to cross-examination not to permit him to have the same
2 opportunity for a psychological evaluation of the same witnesses in order to counter the testimony of the
3 experts who have already examined and disclosed their psychological evaluation of these witnesses [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 It is unfair and a violation of the Sixth Amendment for [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 B. Basis for Motion for Mental Examination.

II.

A PSYCHOLOGICAL EXAMINATION IS APPROPRIATE BECAUSE THE PROSECUTION HAS OPENED THE DOOR, AND MR. JACKSON CANNOT CROSS-EXAMINE EXPERTS WITHOUT EQUAL ACCESS TO THE WITNESSES

A. A Mental Examination is Appropriate to Assess the Witnesses' Competence and Illness.

Penal Code section 1112 provides:

"Notwithstanding the provisions of subdivision (d) of Section 28 of Article I of the California Constitution, the trial court shall not order any prosecuting witness, complaining witness, or any other witness, or victim in any sexual assault prosecution to submit to a psychiatric or psychological examination for the purpose of assessing his or her credibility." (Emphasis added).

A psychological examination is necessary

B. The Legislature Permits Examinations to Assess of Mental Competence and Illness.

Prior to People v. Russell, 69 Cal. 2d 187 (1968), the California Supreme Court had ruled that in the absence of any legislative authority, a trial court had discretion to order a psychiatric examination of the complaining witness in a sex offense if that defendant presented a "compelling reason" to establish the necessity of such an examination. Ballard v. Superior Court, 64 Cal. 2d 159, 176 (1966). Such necessity was shown if the allegations had "little or no corroboration" and the defense asserted there was a connection between the complaining witness's "mental or emotional condition" and her veracity. Id. at 177. Ballard recognized that expert psychiatric testimony regarding the mental or emotional condition of a witness was inadmissible for impeachment purposes, but an exception to this rule existed based on a general distrust of complaining witnesses in sex offense cases. Id. at 171-75.

In People v. Russell, 69 Cal. 2d 187 (1968), the trial court ordered a psychiatric examination of a complaining witness in a sex offense case. However, at trial the court refused without explanation to permit the psychiatrist to testify. The Supreme Court reversed, finding the trial judge had abused his discretion in categorically excluding such evidence. The court found "the legal discretion of the judge should be exercised liberally in favor of the defendant" in permitting a psychiatric examination of a complaining witness. Id. at 198.

"[I]t must be determined from the offer of proof and, if necessary, from voir dire examination, if the evidence sought to be introduced bears upon the matter at issue, to wit, the credibility of the complaining witness - by showing the effect of a particular mental or emotional condition upon her ability to tell the truth. In addition, the evidence offered must be examined with a view to ensuring that the knowledge which is represented can be effectively communicated to the jury Further, the court should make a determination as to whether the examination which is the basis of the evidence utilized techniques of general scientific acceptance and was sufficiently thorough to facilitate a reliable opinion. Finally, the evidence should be examined with a view to preserving the integrity of the jury as the finder of fact: expert opinion is admitted in this area in order to inform the jury of the effect of a certain medical condition upon the ability of the witness to tell the truth - not in order to decide for the jury whether the witness was or was not telling the truth on a particular occasion.

1 "It is to be emphasized, however, that the considerations above suggested can be undertaken
2 only in the course of a thorough review of the evidence sought to be introduced as it is set forth in
3 the offer of proof. Further, we are of the view that the reasoning underlying the court's conclusion
4 as to be the admission of such evidence should appear to some degree in the record in order that
5 appellate review of that conclusion, which reaches only to abuse of the court's discretion, may be
6 facilitated." *Id.* at 196-96 (citations omitted).

7 In 1980, the Legislature eliminated a trial court's discretion to order a psychiatric examination of a
8 complaining witness in a sex offense case "for the purpose of assessing his or her credibility." Penal Code
9 section 1112; *People v. Castro*, 30 Cal. App. 4th 390, 397 (1994). In *People v. Barnes*, 42 Cal. 3d 284
10 (1986), the Supreme Court stated:

11 "The [1980] amendment of section 261, subdivision (2) [deleting the resistance requirement in rape
12 cases], acknowledges that previous expectational disparities, which singled out the credibility of
13 rape complainants as suspect, have no place in a modern system of jurisprudence." *Id.* at 302.

14 The 1980 legislative prohibition on psychiatric examinations of complaining witnesses in sex crime
15 cases "overruled" the "line of authority" established by *Ballard and Russell*. See *People v. Anderson*, 25
16 Cal. 4th 543, 575 (2001) (court retained discretion to permit mental exam for competency, but not for
17 credibility). When the legislature adopted Penal Code section 1112, which forbids the courts from ordering
18 psychiatric examination of victims or complaining witnesses in sex-crime cases, a psychiatric examination
19 can no longer be utilized to assess such a witnesses credibility. *People v. Espinoza*, 95 Cal. App. 4th 1287,
20 1311-12 (2002). However, trial courts have broad discretion to permit psychiatric examinations of
21 witnesses to determine their competence to testify. *People v. Ayala*, 23 Cal.4th 225, 263 (2000).

22 In *People v. Gurule*, 28 Cal. 4th 557, 591-92 (2002), the court stated:

23 "The mental illness or emotional instability of a witness can be relevant on the issue of credibility,
24 and a witness may be cross-examined on the subject, if such illness affects the witness's ability to
25 perceive, recall, or describe the events in question. (*People v. Herring* (1993) 20 Cal.App.4th 1066,
26 1072; *People v. Anderson* (2001) 25 Cal. 543, 608) (conc.opn. of Kennard, J.)."

27 Psychological evaluations of a witness are permissible in order to determine the ability of the
28 witness to tell the truth as opposed to whether they are in fact telling the truth. *People v. Castro*, 30 Cal.

1 App 4th 390, 396 (1994). The purpose of section 1112 is to prevent a psychological examination "for
2 purpose of addressing his or her credibility," but not for other legitimate purposes People v. Armbruster,
3 163 Cal. App. 3d 660, 663 n. 1 (1985) (psychiatric exam may be ordered for other purpose such as witness
4 competency). Psychiatric examinations to determine credibility are disfavored, as opposed to competency
5 questions or other appropriate purposes. People v. Manson, 61 Cal. App. 3d 102, 137-38 (1976).

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
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13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED] No expert can be effectively cross-examined where only that expert has access to the subject
21 matter and everyone else is precluded from checking the expert's observations.

22
23 A defendant has the right to cross-examine an expert witness on all aspects of the opinion rendered
24 regarding the psychological state of a person the expert has examined. Nielsen v. Superior Court, 55 Cal.
25 App. 4th 1150, 1155 (1997). The right to cross examination of an expert who has rendered an opinion on
26

27 [REDACTED]
28 [REDACTED]

1 the mental status of a witness extends to all records, things, and the subject matter of the expert's
2 evaluation. People v. Reher, 177 Cal. App. 3d 523, 527 (1986). The right of confrontation and cross-
3 examination of witnesses against a defendant is paramount to the state's policy of protecting anonymity of a
4 complaining witness, a juvenile offender, or crime victim. Davis v. Alaska, 415 U.S. 308, 315-16 (1974).
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6 [REDACTED]
7 [REDACTED]
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9 [REDACTED] of
10 [REDACTED]
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24 [REDACTED] where the defendant places his mental competence in issue because the
25 court has the power to require him to submit to a mental examination by an expert retained by the
26 prosecution. Baqleh v. Superior Court, 100 Cal. App. 4th 478, 488 (2002). In the context of a Penal code
27 section 1369 competency hearing, the prosecution expert must be given "the same access to petitioner as
28

1 the defense expert enjoyed." Id. The defense may not deny the prosecution's experts access to the
2 defendant thereby preventing the expert from credibly disputing the opinions of defense experts because
3 such denial of access would unfairly obstruct the truth-finding process. Id. at 490. See People v. McPeters,
4 2 Cal. 4th 1148, 1190 (1992) (It is unfair to permit a party to place his mental condition in issue and to
5 support that contention with psychiatric testimony, while at the same time preventing the people from
6 examining the defendant and presenting their own expert testimony).

7
8 In People v. Davis, 31 Cal. App. 3d 782 (1973), defendant was charged with auto theft. Defendant
9 relied solely on diminished capacity as a defense against the charge and obtained an order from the court
10 appointing a psychiatrist to examine him. At the trial the psychiatrist testified to defendant's mental
11 condition, and that he felt defendant probably lacked specific intent to deprive the vehicle owner of its
12 possession. The prosecution then moved for appointment of its own psychiatrist because defendant had
13 placed his mental condition in issue. The trial court granted the motion to examine defendant. The
14 prosecution's psychiatrist was permitted to testify about his evaluation of defendant and to state an opinion
15 on whether defendant could have formed the requisite specific intent, but not as to any incriminating
16 statements defendant made during the examination. Defendant was convicted, and the Court of Appeal
17 affirmed, finding no error in permitting the prosecution to have a psychiatric examination of the defendant
18 because the defendant placed in issue his mental condition. Id. at 786-87. An order appointing a
19 psychiatrist to examine a defendant does not violate a defendant's constitutional right against self-
20 incrimination because the defendant can assert the privilege to remain silent, either by refusing to submit to
21 the examination or to answer questions. Id. at 785.

22
23 "However, by presenting psychiatric testimony in support of his diminished capacity
24 defense, defendant here has waived his privilege against self-incrimination, at least to the extent of
25 foreclosing any objection to the testimony of a court-appointed psychiatrist relating to the
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1 diminished capacity issue (In re Spencer, [63 Cal2d.400, 412 n.10 (1965)]). Our Supreme Court
2 held in Spencer that opinion testimony from a court-appointed psychiatrist based upon his
3 examination of a defendant in a criminal case is admissible as prosecution rebuttal during the guilt
4 phase of the trial, once the defendant has placed his mental condition in issue by proffering an
5 insanity or diminished capacity defense." Id. at 786.

7 The three conditions set forth in In re Spencer were satisfied because defendant had the assistance of
8 counsel, placed his mental condition in issue, and the court instructed the jury that it should not consider
9 incriminating statements defendant made to the psychiatrist. Id.

11 "The order was not made until defendant had actually presented the testimony of Dr. Gardner in
12 support of his diminished capacity defense. Thus, the affirmative defense was clearly in issue and it
13 was appropriate for the People to present psychiatric testimony in rebuttal if such evidence was
14 available or could be developed." Id. at 787

25 In Centeno v. Superior Court, 117 Cal. App. 4th 30, 40 (2004), the court stated:

26 "It is true that a defendant who renders his mental condition as an issue may be subject to
27 examination by prosecution experts. (People v. McPeters, supra, 2 Cal.4th at p. 1190; Bagley v.
28

1 Superior Court, supra, Cal.App.4th at pp. 485-493; People v. Davis, supra, 31 Cal.App.3d at pp.
2 786-787.]”
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III.

CONCLUSION


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18 For the foregoing reasons, Mr. Michael Jackson requests his Motion for Mental Examination of
19 Compaining Witnesses be granted.

DATED: November 12, 2004

20 COLLINS, MESEREAU, REDDOCK & YU
21 Thomas A. Mesereau, Jr.
22 Susan C. Yu

23 SANGER & SWYSEN
24 Robert M. Sanger

25 OXMAN & JAROSCAK
26 Brian Oxman

27 By: 
28 R. Brian Oxman
Attorneys for Mr. Michael Jackson

DECLARATION OF BRIAN OXMAN

1. Plaintiff filed this action on December 18, 2003, charging Mr. Jackson with seven (7) counts of Lewd Acts Upon a Child in violation of Penal Code section 288a and two (2) counts of administering an intoxicant to a minor in violation of Penal Code section 222. The Complaint was based on interviews from three (3) complaining witnesses: [REDACTED], then age 35, who is the mother of the two (2) minor complaining witnesses, [REDACTED], then age 14, and [REDACTED], then age 13. [REDACTED]

3. Mr. Jackson voluntarily surrendered to the Santa Barbara Sheriff's Office on November 20, 2003, and was arraigned on the original charges on January 16, 2004. Mr. Jackson pleaded not guilty. However, the prosecution soon abandoned the December 18, 2003, Complaint and convened a Grand Jury to return an Indictment against Mr. Jackson. Without the benefit of witness cross-examination, the Grand Jury issued an indictment on April 26, 2004, consisting of one (1) count of conspiracy with five (5) other unindicted individuals in violation of Penal Code section 182, four (4) counts of Lewd Acts Upon a Child in violation of Penal Code section 288a, one (1) count of Attempted Lewd Act Upon a Child in violation of Penal Code sections 664 and 288a, and four (4) counts of Administering an Intoxicant in the Commission of a Felony in violation of Penal Code section 222.

MEMORANDUM IN SUPPORT OF MOTION FOR MENTAL EXAMINATION

1 4. The Indictment was markedly different from the December 18, 2003, Complaint. The Complaint
2 contained seven (7) counts of Lewd Acts Upon a Child, where the Indictment contained only four (4), plus
3 one of Attempted Lewd Act Upon a Child. Somewhere, the perception of the facts in this case was
4 significantly altered, and the Indictment no longer followed the details and chronology recounted by
5 Psychologist Katz.
6

7 5. In addition, the Complaint alleged two (2) counts of Administration of an Intoxicant, where the
8 Indictment alleged four (4). In view of repeated interviews and witness statements, the change in facts,
9 counts, and dates has created an irreconcilable inconsistency with no explanation.
10

11 6. The dates of the alleged crimes also changed. The Complaint said five (5) of the seven (7) "lewd
12 acts" allegedly occurred "on or between February 7, 2003, and March 10, 2003," and all the other counts
13 occurred between February 20 and March 10, 2003. But the Indictment now says that all but the new
14 conspiracy charges occurred between February 20, and March 12, 2003. Now it is a conspiracy starting
15 February 7, but no lewd act until February 20. This was not just a narrowing of the time period, but it was
16 also a lengthening of the time period. Suddenly, something happened on March 12 that was not included
17 in the Complaint.
18

19 7. In the Indictment, Mr. Jackson was charged with conspiracy to engage in Child Abduction, False
20 Imprisonment, and Extortion. He was not indicted on the actual objects of the conspiracy itself, nor were
21 these acts charged as stand-alone crimes or attempted crimes. Not even the alleged co-conspirators are
22 charged with the crimes.
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[REDACTED]

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24. [REDACTED]

25. [REDACTED]

mjfacts.com

mjfacts.com

mjfacts.com

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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
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12 [REDACTED]

mjfacts.com

mjfacts.com

mjfacts.com

27. [REDACTED] testified on September 6, 2001:

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

28. [REDACTED] continued:

mjfacts.com

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26 [REDACTED]
27 [REDACTED]
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28 32. [REDACTED] testified on September 6, 2001:

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14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 38. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

39. [REDACTED]

[REDACTED]ides:

"Notwithstanding the provisions of subdivision (d) of Section 28 of Article I of the California Constitution, the trial court shall not order any prosecuting witness, complaining witness, or any other witness, or victim in any sexual assault prosecution to submit to a psychiatric or psychological examination for the purpose of assessing his or her credibility." (Emphasis added).

40. [REDACTED]

41. [REDACTED]

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MEMORANDUM IN SUPPORT OF MOTION FOR MENTAL EXAMINATION

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50. The psychologist

51. Psychologist Katz

MEMORANDUM IN SUPPORT OF MOTION FOR MENTAL EXAMINATION

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1 58. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 59. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 I declare under penalty of perjury under the laws of the State of California the foregoing is true and
18 correct.

19 Executed this 19th day of November, 2004, at Santa Fe Springs, California.

20
21 
22

23 R. Brian Oxman

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

NOV-23-2004 (TUE) 15:29

SB CO. DISTRICT ATTORNEY

(FAX) 805 560 1078

P. 041 / 043

1 DECLARATION OF [REDACTED]

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4 I, [REDACTED], declare:

5 1. I am a physician licensed to practice medicine by the State of California and I am a Diplomate of
6 the American Board of Psychiatry, and a Clinical Professor of Psychiatry at University of California at Los
7 Angeles School of Medicine. I submit this declaration in support of the Motion for Mental Examination
8 filed by Mr. Michael Jackson.

9

10 2. [REDACTED]

11 [REDACTED] These reports are true and correct

12 I declare under penalty of perjury under the laws of the State of California the foregoing is true and
13 correct.

14 Executed this 19th day of November, 2004, at Los Angeles, California.

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18 [REDACTED]

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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 November 23, 2004, I served the within PLAINTIFF'S PROPOSED REDACTION OF DEFENDANT'S MOTION FOR COURT-ORDERED MENTAL EXAMINATIONS OF CERTAIN PROSECUTION WITNESSES and PLAINTIFF'S MEMORANDUM RE: DEFENDANT'S WOEFULLY INADEQUATE REDACTION OF HIS 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, by transmitting a facsimile copy thereof to Attorneys Mescreau and Oxman, and by causing a true copy thereof to be mailed to each of them (Mr. Sanger excepted), first class postage prepaid, at the addresses shown on the attached Service List.

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

Executed at Santa Barbara, California on this 23rd day of November, 2004.


Gerald McC. Franklin

SERVICE LIST

THOMAS A. MESEREAU, JR.
Collins, Mesereau, Reddock & Yu, LLP
1875 Century Park East, No. 700
Los Angeles, CA 90067
FAX: (310) 284-3122
Attorney for Defendant Michael Jackson

ROBERT SANGER, ESQ.
Sanger & Swysen, Lawyers
233 E. Carrillo Street, Suite C
Santa Barbara, CA 93001
FAX: (805) 963-7311
Co-counsel for Defendant

BRIAN OXMAN, ESQ.
Oxman & Jaroscak, Lawyers
14126 E. Rosecrans Blvd.,
Santa Fe Springs, CA 90670
FAX: (562) 921-2298
Co-counsel for Defendant

PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On NOVEMBER 24, 20 04, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (MOTION FOR MENTAL EXAMINATION) addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

☒ FAX

By faxing true copies thereof to the receiving fax numbers of: (310) 861-1007 (Thomas Mesereau Jr.); (805) 568-2398 (Thomas Sneddon), said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(l), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

☐ MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

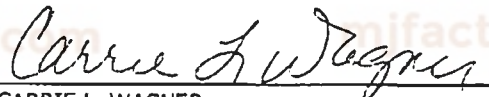
☐ PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

☐ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 24TH day of NOVEMBER, 20 04, at Santa Maria, California.


CARRIE L. WAGNER