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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

JAN 18 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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,  
13  
14 Plaintiff,  
15 v.  
16 MICHAEL JOE JACKSON,  
17 Defendant.

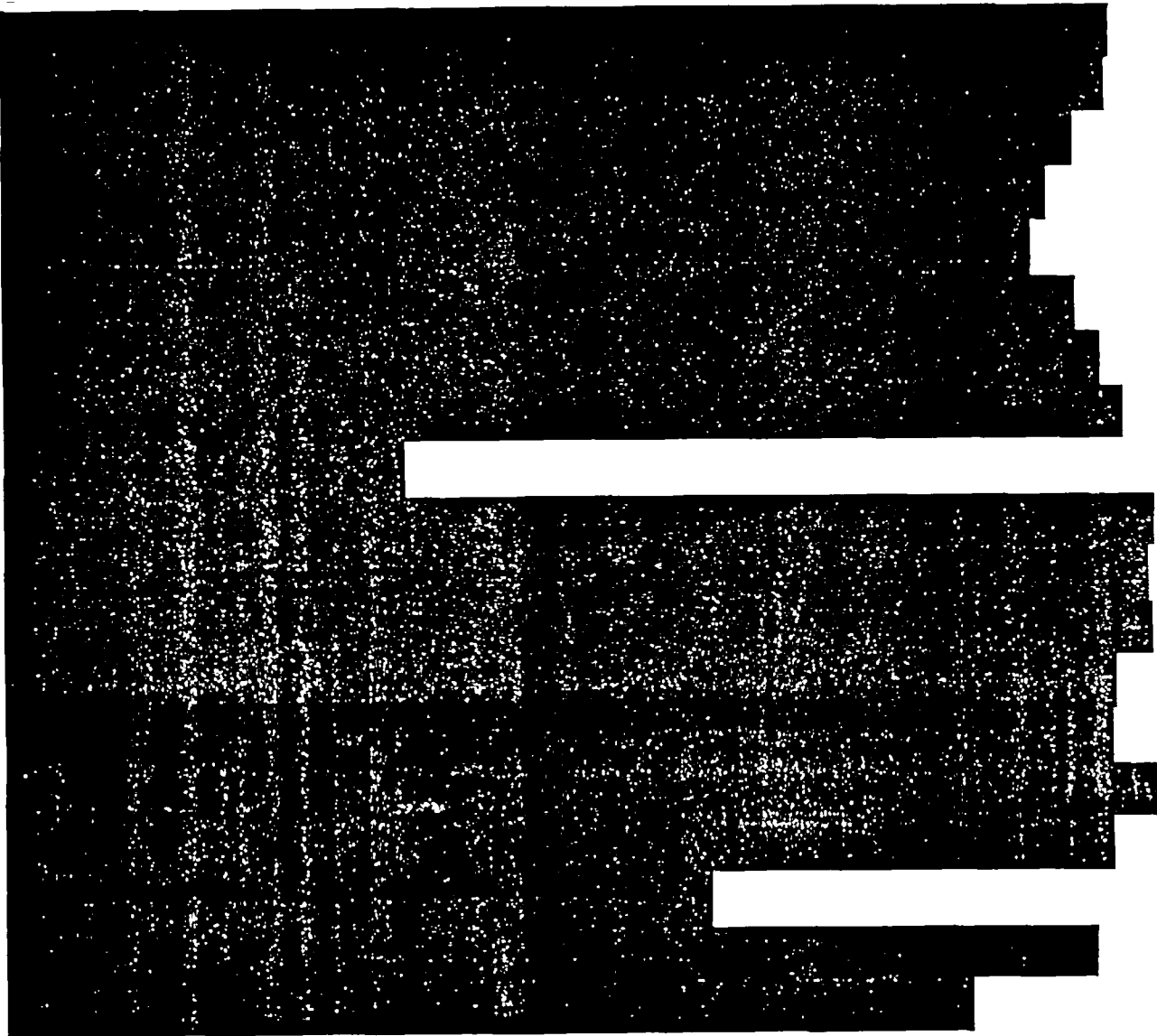
No. 1133603  
IN LIMINE MOTION RE:  
ADMISSION OF EXPERT  
TESTIMONY ON "BATTERED  
WOMEN'S SYNDROME"  
~~PROPOSED~~ REDACTED  
DATE: January 28, 2005  
TIME: 9:30 a.m.  
DEPT: SM 2 (Melville)

~~FILED UNDER SEAL~~

20 INTRODUCTION

21 [REDACTED]  
22 [REDACTED]  
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20           The People seek to introduce expert testimony on the subject of domestic violence  
21 and Battered Women's Syndrome. This witness is necessary in this case to disabuse jurors of  
22 commonly held misconceptions about domestic violence victims. Such expert testimony is  
23 admissible to enable jurors to objectively evaluate conduct of victim's of Battered Women's  
24 Syndrome free from the restraints of popular myths and misconceptions. This expert testimony  
25 will encompass general information about domestic violence and the typical actions, reactions  
26 and reasoning of victims of domestic violence which may be counter-intuitive to the average  
27 lay juror. Pursuant to Evidence Code section 1107, this testimony will not be offered to prove  
28 that the specific charged offenses in fact occurred but rather to help the jury understand the

1 victim's behavior in the context of the stressful and threatening environment she experienced  
2 while under the control of the defendant and his co-conspirators. Battered Women's  
3 Syndrome is a stress disorder. While this case does not directly involve charges of domestic  
4 violence, the fact that one of the victims in this case is a long-term victim of domestic violence  
5 is highly relevant to understanding her conduct when she was confronted by common domestic  
6 violence stressors such as: death threats to herself and her family, false imprisonment, child  
7 abduction, emotional abuse, economic dependency, personal verbal attacks, isolation and  
8 hopelessness. This important evidence will be imperative for the jury to properly evaluate  
9 Janet Arvizo's credibility at trial.

10  
11 **I.**  
12 **UNDER EVIDENCE CODE SECTIONS 801 AND 1107**  
13 **EXPERT TESTIMONY ON THE ISSUE OF BATTERED**  
14 **WOMEN'S SYNDROME IS ADMISSIBLE TO ASSIST**  
15 **THE JURY IN UNDERSTANDING THE CONDUCT OF**  
16 **A VICTIM OF BATTERED WOMEN'S SYNDROME**

17 Expert testimony has been widely accepted as a means to help jurors understand the  
18 counter-intuitive behavior of victims of stress disorders. "Evidence that explains rape trauma  
19 syndrome, child sexual abuse accommodation syndrome and Battered Women's Syndrome  
20 informs the finder of fact that how they think the average reasonable person would behave  
21 and/or how they think they personally would behave are not necessarily the same way that  
22 people who have been raped, molested or battered in fact behave . . . . [W]e have difficulty  
23 accepting what we do not understand. Depriving the finder of fact of such understanding may  
24 well lead to a conclusion based on misconceptions held in good faith. That such conceptions  
25 are held in good faith in no way lessens the magnitude of the error and the injustice that may  
26 result." (*People v. Day* (1992) 2 Cal.App.4th 405, 419; disapproved on other grounds in  
27 *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088-1089.)

28 Lenore E. Walker, a clinical and forensic psychologist who is nationally recognized  
as an authority on battered women and who is largely responsible for the development of  
"Battered Woman Syndrome," has defined a "battered woman" as "one who has been, on at

1 least two occasions, the victim of physical, sexual, or serious psychological abuse by a man  
2 with whom she has an intimate relationship.” She further defined Battered Women’s  
3 Syndrome as “a pattern of psychological symptoms that develop after somebody has lived in a  
4 battering relationship.” (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1194 disapproved on  
5 other grounds in *People v. Humphrey, supra*, 13 Cal.4th 1073, 1088-1089.)

6 In the trial of *People v. Aris (supra)*, Dr. Walker testified that Battered Women’s  
7 Syndrome is recognized as a type of post-traumatic stress disorder, which is listed and defined  
8 in the Diagnostic and Statistical Manual of Mental Disorders (DSM-III), and which happens to  
9 anyone exposed to the degree and kind of trauma, such as a natural disaster or combat, that  
10 would be expected to cause psychological problems.” (*People v. Aris, supra*, 215 Cal.App.3d,  
11 at p. 1194.)

12 The rules regarding the admissibility of expert testimony are well settled:

13 First, the decision of a trial court to admit expert testimony “will not be  
14 disturbed on appeal unless a manifest abuse of discretion is shown.”  
15 (*People v. Kelly* (1976) 17 Cal.3d 24, 39, and cases cited.) Second, “the  
16 admissibility of expert opinion is a question of degree. The jury need not  
17 be wholly ignorant of  
18 the subject matter of the opinion in order to justify its admission; if that  
19 were the test, little expert opinion testimony would ever be heard.  
20 Instead, the statute declares that even if the jury has some knowledge of  
21 the matter, expert opinion may be admitted whenever it would ‘assist’  
22 the jury. It will be excluded only when it would add nothing at all to the  
23 jury’s common fund of information, i.e., when ‘the subject of inquiry is  
24 one of such common knowledge that men of ordinary education could  
25 reach a conclusion as intelligently as the witness’” (*People v. McDonald*  
26 (1984) 37 Cal.3d 351, 357).(*People v. McAlpin, supra*, 53 Cal. 3d 1289  
27 at pp. 1299-1300.)

28 In 1991 the Legislature enacted Evidence Code Section 1107 to specifically  
authorize the courts to admit evidence of Battered Women’s Syndrome in any case in which it  
is relevant. Evidence Code Section 1107 provides in pertinent part:

(a) In a criminal action, expert testimony is admissible by either the

1 prosecution or the defense regarding Battered Women's Syndrome,  
2 including the nature and effect of physical, emotional, or mental  
3 abuse on the beliefs, perceptions, or behavior of victims of domestic  
4 violence, except when offered against a criminal defendant to prove the  
5 occurrence of the act or acts of abuse which form the basis of the  
6 criminal charge.

7 (b) The foundation shall be sufficient for admission of this expert  
8 testimony if the proponent of the evidence establishes its relevancy  
9 and the proper qualifications of the expert witness. Expert opinion  
10 testimony on Battered Women's Syndrome shall not be considered a  
11 new scientific technique whose reliability is unproven. (Emphasis  
12 added.)

13 Even before the Legislature specifically made evidence of Battered Women's  
14 Syndrome admissible under Evidence Code section 1107, the Court of Appeal upheld the  
15 admissibility such evidence under Evidence Code Section 801. (*People v Aris, supra*, 215  
16 Cal.App.3d 1178.)

17 Evidence Code Section 801 provides:

18 If a witness is testifying as an expert, his/her testimony in the form of an  
19 opinion is limited to such an opinion as is

20 (a) related to a subject that is sufficiently beyond common experience  
21 that the opinion of an expert would assist the trier of; and

22 (b) Based on matter (including his special knowledge, skill,  
23 experience, training, and education) perceived by or personally known  
24 to the witness or made known to him at or before the hearing, whether  
25 or not admissible, that is of a type that reasonably may be relied upon by  
26 an expert in forming an opinion upon the subject to which his testimony  
27 relates, unless an expert is precluded by law from using such matter as a  
28 basis for his opinion.

Since the Legislature enacted section 1107, courts have admitted expert testimony  
of Battered Women's Syndrome under both sections 1107 and 801. (*People v. Humphrey,*  
*supra*, 13 Cal.4th 1073, 1088.)

It is important to note that courts have routinely recognized the relevance of

1 Battered Women's Syndrome in cases in which domestic violence was *not* charged. For  
2 example, in the case of *People v. Day, supra*, 2 Cal.App.4th 405, 415-417, the Court of Appeal  
3 held in a trial before the enactment of Evidence Code section 1107 that defense counsel was  
4 incompetent *for not* presenting expert testimony on the behavior of victims of domestic  
5 violence to defend against the charge of murder.

6 II.

7 THE ADMISSION OF EXPERT TESTIMONY ON  
8 BATTERED WOMEN'S SYNDROME WILL ASSIST  
9 THE TRIER OF FACT IN UNDERSTANDING THE  
10 BEHAVIOR OF, AND IN EVALUATING THE  
11 CREDIBILITY OF, [REDACTED]

[REDACTED]

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10 BEHAVIOR OF, AND IN EVALUATING THE  
11 CREDIBILITY OF,

[REDACTED]

1 [REDACTED]  
2 [REDACTED]

3 The common characteristics of Battered Women's Syndrome are distinctive.  
4 Battered women tend to stay in the abusive relationship, they are trained to be the  
5 peacekeepers, they feel they are responsible to make relationships work. They generally are  
6 taught to be optimistic and hopeful, terminating the relationship usually has adverse economic  
7 consequences. Leaving the relationship may be very dangerous, and the battered woman is  
8 aware of the danger. Threats to kill the battered woman or to abscond with the children if she  
9 leaves are typical. The woman loses self-esteem, is fearful, and does not have the  
10 psychological energy to leave, resulting in "learned helplessness" and "a kind of psychological  
11 paralysis." (See *People v. Brown* (2004) 215 Cal.4th 892, 899; *People v. Aris*, *supra*, 215  
12 Cal.App.3d 1178, 1194.) [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
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[REDACTED]

**CONCLUSION**

[REDACTED]

These are also the features of this case.

This expert testimony will be general in nature and will not be fact-dependent. It will be used solely to de-bunk general myths and misperceptions about the behavior of victim's of domestic violence. A proposed instruction for the jury's guidance in this area (CALJIC

1 9.35.1) is attached.

2 The People respectfully request that expert testimony on Battered Women's  
3 Syndrome be admitted at trial.

4  
5 DATED: January 17, 2005

6 Respectfully submitted,

7 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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10 BY: 

11 GORDON AUCHINCLOSS  
12 Senior Deputy District Attorney  
13 Attorneys for Plaintiff  
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PROOF OF SERVICE

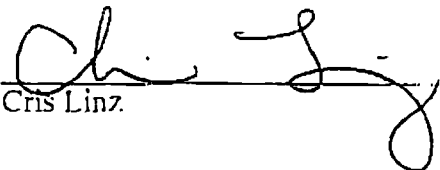
STATE OF CALIFORNIA )  
COUNTY OF SANTA BARBARA ) SS

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 January 18, 2005, I served the within IN LIMINE MOTION RE: ADMISSION OF EXPERT TESTIMONY ON "BATTERED WOMEN'S SYNDROME" on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN, his counsel of record, by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy thereof to be mailed to Mr. Mesereau, 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 18 day of January, 2005.

  
Cris Linz

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