

MAR - 7 2005

GARY M. BLAIR, Executive Officer

BY *Carrie L. Wagner*  
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*\* unsealed pursuant  
to 6/16/05 court order*

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA, )

No. 1133603

13 )  
14 Plaintiff,

PLAINTIFF'S OPPOSITION TO  
MOTION TO ADMIT EVIDENCE  
OF SEXUAL CONDUCT BY  
GAVIN AND STAR ARVIZO

15 v.

16 MICHAEL JOE JACKSON,

DATE: March 11, 2005  
TIME: 2:30 a.m.  
DEPT: SM 8

17 Defendant. )

~~FILED UNDER SEAL~~  
(Evid. Code, § 782)

19  
20 A. Introduction:

21 Defendant moves for an order "admitting evidence of sexual conduct of the  
22 complaining witnesses Gavin Arvizo and Star Arvizo for purposes of impeachment." (Motion  
23 2:5-9.)

24 The "sexual conduct" at issue is alleged acts of Gavin and Star Arvizo masturbating  
25 in a guest room at Neverland Ranch sometime during their stay at the ranch. (The pending  
26 motion itself does not specify the relevant dates. Exhibit A to the motion, a summary of a  
27 defense investigator's interview of Rijo [sic; Rio?] Jackson (DOB 10/6/92) suggests it was  
28 "after his birthday, but before Christmas 2003.")

1 Defendant alleges that

2 The sexual conduct of Gavin Arvizo and Star Arvizo is relevant to this  
3 case because it directly hinges on their credibility. Their act of  
4 masturbation, watching pornography and using sexually suggestive  
5 language is crucial in this case, not for the purpose of showing that they  
6 engaged in such acts, but to prove that their molestation allegations  
against Mr. Jackson is completely false.”

7 (Motion 6:16-20.)

8 Although the content of the proffered evidence involves the Arvizo  
9 boys' sexual conduct, the sexual conduct is not the fact from which the  
10 jury is asked to draw an inference about the Arvizo boys' credibility.  
11 Rather, the jury is being asked to weigh the evidence to determine  
whether the Arvizo boys are telling the truth about Mr. Jackson.

12 (Motion 7:1-4; emphasis in the original.)

13 B. Discussion:

14 The logical connection between the assumed fact that that the Arvizo boys  
15 masturbated themselves in a guest room at Neverland in – whenever -- and the conclusion that  
16 they lied when they testified that defendant masturbated Gavin in his bedroom in late February  
17 and early March, 2003 is not readily apparent. If “the sexual conduct is not the fact from which  
18 the jury is asked to draw an inference about the Arvizo boys' credibility,” what is?? How  
19 would the assumed fact of self-masturbation have a “tendency in reason to . . . disprove the  
20 truthfulness of their testimony at trial”? How would it prove “the . . . nonexistence of any fact  
21 testified to by them”? (Motion 2:10-16, citing Evid. Code, § 780.) How does it tend to prove  
22 that “the alleged molestation by Mr. Jackson never took place”? (Motion 6:11-13.) What  
23 statement or statements by either Gavin or Star in their testimony to the grand jury would be  
24 impeached by such evidence?

25 In her supporting declaration, Attorney Yu avers: “Before the Grand Jury, Gavin and  
26 Star Arvizo testified that Mr. Jackson showed them pornography and taught them how to  
27 masturbate.” (Motion 9:24-25.) It may be Ms Yu's reasoning that if Gavin and Star already  
28 knew how to masturbate prior to February, 2003, defendant couldn't have “taught” either of

1 them how to masturbate that February or later.

2 But neither Gavin nor Star testified that defendant “taught [Gavin] how to  
3 masturbate.”

4 Gavin testified that defendant “[asked] me if I masturbated, and I said no.” (Exh. D;  
5 GJ Tx. 409.) Defendant “[asked] me if I knew how” and “I said no.” Then, “He told me that  
6 he wanted to teach me.” (*Id.*, 410:11-19. And see *id.*, 1545:23 – 1546:5.)

7 Star testified that defendant was “saying that it [masturbation] was natural and it’s  
8 okay to do it, and everyone does it.” Defendant asked Star whether he masturbated, and Star  
9 told him “No.” (Exh. E; GJ Tx 176:18 – 177:7.)

10 Assuming Gavin and Star testify at trial consistently with their testimony to the  
11 Grand Jury, nothing in that testimony would be impeached by evidence that either of them  
12 masturbated himself in a guest room at Neverland sometime before the alleged acts of  
13 molestation by defendant. It would prove no more than that each of them lied to defendant in  
14 response to his inquiry concerning a matter that, plainly, was none of his business. But with  
15 due respect, proving that might prove too much.

16 Defendant suggests that evidence that Gavin had an e-mail address of  
17 gblade2000@aol.com (with a password of “sexy”), and that Star acted “promiscuously” in the  
18 swimming pool with Simone Jackson, would likewise “tend to prove” that defendant did not  
19 molest Gavin. He doesn’t explain why that is so. (Nor does defendant address the fact that it  
20 apparently was he who acquired and paid for the e-mail address for Gavin, to go along with the  
21 computer he purchased for the boy in 2000.)

22 Not only does the proposed evidence not have the potential for impeachment  
23 attributed to it by defendant (and so is irrelevant), its production would doubtlessly create a  
24 substantial danger of undue prejudice. (Evid. Code, § 352.) Exploration of the subject of self-  
25 masturbation with a teen-age boy would, of course, be embarrassing. In that connection,  
26 Evidence Code section 765 admonishes: “(a) The court shall exercise reasonable control over  
27 the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as  
28 effective for the ascertainment of the truth, as may be, and to protect the witness from undue

1 harassment or embarrassment." (Emphasis added.)

2 The pending motion seems devoid of merit. It should be denied.

3 DATED: March 7, 2005

4 Respectfully submitted,

5 THOMAS W. SNEDDON, JR.  
6 District Attorney

7 By:

  
8 Gerald McC. Franklin, Senior Deputy District Attorney

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

4 STATE OF CALIFORNIA  
5 COUNTY OF SANTA BARBARA } SS

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

10 On March 7, 2005, I served the within PLAINTIFF'S OPPOSITION TO MOTION  
11 TO ADMIT EVIDENCE OF SEXUAL CONDUCT BY GAVIN AND STAR ARVIZO on  
12 Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by  
13 personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, and by  
14 transmitting a facsimile copy thereof to Attorney Mesereau at his confidential fax number in  
15 Santa Maria at the addresses shown on the attached Service List.

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

17 Executed at Santa Barbara, California on this 7th day of March, 2005.

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20 Gerald McC. Franklin

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