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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

APR 20 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,) No. 1133603
13)
14 Plaintiff,) TRIAL BRIEF ON ADMISSIBILITY
v.) OF GAVIN ARVIZO STATEMENT
15) TO CHRIS CARTER
16 MICHAEL JOE JACKSON,)
17) Defendant.) Date: TBA
18) Time: TBA
19) Dept.: SM2 (Melville)

20 **I**

21 **INTRODUCTION**

22 The People seek to introduce the statement of Gavin Arvizo made to the witness
23 Chris Carter during his stay at Neverland Valley Ranch during February of 2003. Gavin
24 Arvizo has already testified about the incident and his statement to Carter during his trial
25 testimony.

26 Chris Carter testified before that Grand Jury that he intercepted a very intoxicated
27 Gavin Arvizo one night at Neverland and "had a little talk" with the boy, in the course of which
28 he told him. "You shouldn't be drinking." Gavin replied, "Well, I can handle it. Michael said

1 if I can handle it, it's okay. It's part of being a man," or words to that effect.

2 **II**

3 **GAVIN ARVIZO'S STATEMENT TO CHRIS CARTER IS**
4 **ADMISSIBLE UNDER EVIDENCE CODE SECTION 791(b)**
5 **AS A PRIOR CONSISTENT STATEMENT.**

6 The proposed evidence fits squarely within the provisions of Evidence Code
7 section 791(b). The defense through their extensive cross-examination of Gavin, the other
8 children, and a variety of witnesses, including the mother, has suggested the current charges
9 were manufactured long after the dates of the family's stay at Neverland Valley Ranch.

10 The defendant is charged in multiple counts of furnishing alcohol to the minor,
11 Gavin Arvizo, during the commission of the molestations. This statement constitutes a
12 consistent statement made at a time prior to the defense's contention that the family
13 manufactured the current charges.

13 **III**

14 **GAVIN ARVIZO'S STATEMENT TO CHRIS CARTER IS**
15 **ADMISSIBLE UNDER EVIDENCE CODE SECTION 1250**

16 **"Statement of Declarant's then Existing Mental or Physical State"**

17 Evidence Code section 1250 provides:

18 (a) Subject to section 1252, evidence of a statement of the
19 declarant's then existing state of mind, emotion, or physical sensation
20 (including a statement of intent, plan, motive, design, mental feeling, pain,
21 or bodily health), is not made inadmissible by the hearsay rule when:

22 (1) The evidence is offered to prove the declarant's state of
23 mind, emotion, or physical sensation at that time or at any other time when
24 it is itself an issue in the action; or

25 (2) The evidence is offered to prove or explain acts or
26 conduct of the declarant.

27 (b) This section does not make admissible evidence of a
28 statement of memory or belief to prove the fact remembered or believed.

1 Gavin doubtlessly was relating his “state of mind” concerning the propriety of
2 drinking: “It’s okay.” But what is particularly relevant here is what Michael Jackson said that
3 gave rise to Gavin’s state of mind.

4 Gavin’s statement to Chris Carter reflects upon his state of mind relative to what
5 the defendant Jackson said that gave rise to Gavin Arvizo’s state of mind. Gavin’s belief that it
6 was okay to drink is circumstantial evidence of Michael Jackson’s successful efforts at
7 seduction.

8 IV

9 GAVIN ARVIZO’S STATEMENT TO CHRIS CARTER IS 10 ADMISSIBLE UNDER EVIDENCE CODE SECTION 1240

11 Evidence Code section 1240 codifies the modern rule, making admissible a
12 statement which “(a) purports to narrate, describe, or explain an act, condition, or event
13 perceived by the declarant; and (b) was made spontaneously while the declarant was under the
14 stress of excitement caused by such perception. (See *People v. Anthony O.* (1992) 5 Cal.App.4th
15 428, 436. 6 Cal.Rptr.2d 794, citing the text; *infra*, section 178 et seq.)

16 Statements of any person (participant or observer) made at or near the time of
17 some exciting event under the stress of excitement produced by the event, and relating to the
18 event, are admissible in civil and criminal cases. The theory is that the declarant has had no
19 opportunity to fabricate a false story. The test is: (1) [T]here must be some occurrence startling
20 enough to produce this nervous excitement and render the utterance spontaneous and
21 unreflecting; (2) the utterance must have been before there has been time to contrive and
22 misrepresent, i.e., while the nervous excitement may be supposed still to dominate and the
23 reflective powers to be yet in abeyance; and (3) the utterance must relate to the circumstance of
24 the occurrence preceding it. (*Showalter v. Western Pac. R. Co.* (1940) 16 Cal.2d 460, 468, 106
25 P.2d 895; see *People v. Keelin* (1955) 136 Cal.App.2d 860, 868, 289 P.2d 520; *People v.*
26 *Garcia* (1986) 178 Cal.App.3d 814, 820, 224 Cal.Rptr. 198, citing the text; *People v. Poggi*
27 (1988) 45 Cal.3d 306, 318, 246, Cal.Rptr. 886, 753 P.2d 1082, *infra*, §181; *People v. Farmer*
28 (1989) 47 Cal.3d 888,903, 254 Cal.Rptr. 508, 765 P.2d 940, *infra*, §178; *People v. Provencio*

1 (1989) 210 Cal.App.3d 290, 301, 258 Cal.Rptr.330, quoting the text; *People v. Pensinger*
2 (1991) 52 Cal.3d 1210, 1266, 278 Cal.Rptr. 640, 805 P.2d 899.)

3 When the statements were made and whether they were delivered directly or in
4 response to a question are important factors to be considered on the issue of spontaneity. But,
5 as emphasized in *People v. Washington* (1969) 71 Cal.2d 1170, 81 Cal.Rptr.5, 459 P.2d 259,
6 319, neither lapse of time nor the fact that the declarations were elicited by questioning
7 deprives them of spontaneity.

8 The language and facts of *People v. Farmer* (1989) 47 Cal.3d 888, further
9 illustrates that the fact that the statement is made in response to a question does not necessarily
10 deprive the statement of its spontaneity.

11 “In one sense, a ‘spontaneous’ utterance is one that is
12 voluntary and is initiated by, or at least not elicited from, the speaker.
13 Under this literal interpretation of spontaneity, few of Schmidt-Till’s
14 statements would qualify. The dispatcher urged him to answer her
15 questions, refusing to let him wait until help arrived. While his
16 answers to Strigotte were more voluntary, none of the information
17 was given on his own initiative, but likewise was elicited by specific
18 questions. (47 Cal.3d 903.)

19 “‘But ‘spontaneous’ may also be used in a slightly different
20 sense: to describe actions undertaken without deliberation or
21 reflection. That is what is intended by Evidence Code section 1240,
22 which codifies the earlier common law exception to the hearsay
23 rule.” (47 Cal.3d 903.)

24 In the instant case, the intoxicated Gavin Arvizo is confronted by Michael
25 Jackson’s security guard, Chris Carter. For the 13-year-old child to be confronted by an
26 authority figure certainly created a confrontational and accusatory situation. Gavin’s response
27 to Carter’s question is clearly made under the stress of that confrontation and Gavin’s response
28 was instantaneous and responsive to the accusation. As such, it satisfies the requirements of
Evidence Code section 1240.

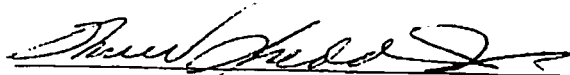
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CONCLUSION

Based upon the above analysis and the applicability of several of the Evidence Code sections noted above, the People's request that witness Chris Carter be allowed to testify to Gavin Arvizo's statement to him should be granted.

DATED: April 20, 2005

Respectfully submitted,



THOMAS W. SNEDDON, JR.
District Attorney

Attorney for Plaintiff