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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

17 THE PEOPLE OF THE STATE OF CALIFORNIA,

18 Plaintiffs,

19 vs.

20 MICHAEL JOSEPH JACKSON,

21 Defendant.

) Case No. 1133603

)  
) MOTION FOR ACQUITTAL FOR  
) INSUFFICIENT EVIDENCE (PENAL CODE  
) SECTION 1118.1); MOTION TO STRIKE  
) STATEMENTS ALLEGEDLY MADE IN  
) FURTHERANCE OF CONSPIRACY

) DATE: TBA  
) TIME: TBA  
) DEPT: SM-8

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 ARGUMENT

24 I.

25 THE COURT SHOULD ENTER A JUDGMENT OF ACQUITTAL ON THE  
26 CONSPIRACY COUNT

27 The District Attorney has not presented substantial evidence to prove that Michael

28 MOTION FOR ACQUITTAL FOR INSUFFICIENT EVIDENCE (PENAL CODE SECTION 1118.1); MOTION  
TO STRIKE STATEMENTS ALLEGEDLY MADE IN FURTHERANCE OF CONSPIRACY

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

MAY 04 2005

GARY M. BLAIR, Executive Officer

BY *Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

1 Jackson was involved in a criminal conspiracy. There have been no witnesses who established  
2 Mr. Jackson's personal role in any alleged conspiracy. Therefore, the Court should dismiss the  
3 conspiracy count.

4 Penal Code Section 1118.1 states:

5 In a case tried before a jury, the court on motion of the defendant or on its own  
6 motion, at the close of the evidence on either side and before the case is submitted  
7 to the jury for decision, shall order the entry of a judgment of acquittal of one or  
8 more of the offenses charged in the accusatory pleading if the evidence then  
9 before the court is insufficient to sustain a conviction of such offense or offenses  
on appeal. If such a motion for judgment of acquittal at the close of the evidence  
offered by the prosecution is not granted, the defendant may offer evidence  
without first having reserved that right.

10 The test for the Court is whether there is substantial evidence of the existence of each  
11 element of the offense charged. (*People v. Wong* (1973) 35 Cal.App. 3d 812, 828; *People v.*  
12 *Matthews* (1994) 25 Cal.App. 4th 89, 97.) In this context, substantial evidence is "evidence that  
13 is reasonable, *credible*, and of solid value--from which a reasonable trier of fact could find the  
14 defendant guilty beyond a reasonable doubt. (*People v. Allen* (2001) 86 Cal.App. 4th 909, 913  
15 citing *People v. Stanley* (1995) 10 Cal.4th 764, 792. Emphasis added.)

16 In particular, the prosecution has not introduced substantial evidence that Mr. Jackson  
17 had either the specific intent to agree or conspire, or the specific intent to commit the underlying  
18 alleged crimes of extortion, child abduction or false imprisonment.<sup>1</sup> There have been no credible

19 \_\_\_\_\_  
20 <sup>1</sup> Some of these issues regarding the lack of intent evidence were raised in the Section  
21 995 motion. However, the standard to withstand a 995 challenge is much lower than the standard  
22 under Section 1118.1. There, the prosecution needed only to show a strong suspicion that each  
23 element of the crime existed. Here, the standard is considerably higher in that the prosecution  
24 must demonstrate substantial evidence that each element of the crime existed.

25 Furthermore, the prosecution's case here lacks almost all of the testimony introduced at  
26 the grand jury that they claimed to support a strong suspicion of specific intent in their 995  
27 opposition. There, the prosecution pointed to Ann Gabriel, Christopher Carter, Christian  
28 Robinson and Jesus Salas as the witnesses who supported a strong suspicion of intent. Here,  
Jesus Salas was prevented from opining about Mr. Jackson's relationship with the alleged co-  
conspirators. Ann Gabriel was prevented from opining about the impact of the Bashir film.  
Christopher Carter did not testify at all so the jury never heard his claims regarding who made  
and received various cell phone calls. Christian Robinson did not testify so the jury did not hear  
his opinions regarding Mr. Jackson's relationships with the alleged co-conspirators.

This is a considerably weaker conspiracy case and the standard of review is considerably  
harder for the prosecution to meet.

MOTION FOR ACQUITTAL FOR INSUFFICIENT EVIDENCE (PENAL CODE SECTION 1118.1); MOTION  
TO STRIKE STATEMENTS ALLEGEDLY MADE IN FURTHERANCE OF CONSPIRACY

1 witnesses who have provided evidence of Mr. Jackson's intent to do anything. The prosecution's  
2 phone records evidence, if anything, proved the lack of substantial evidence tying Mr. Jackson to  
3 the alleged conspiracy. Debbie Rowe's testimony demonstrated that the people around Mr.  
4 Jackson were, if anything, conspiring against him.

5 Conspiracy is a specific intent crime, with the intent divided into two elements: (a) the  
6 intent to agree or conspire, and (b) the intent to commit the offense which is the object of the  
7 conspiracy. (*People v. Backus* (1979) 23 Cal.3d 360, 390.) Accordingly, to prove a particular  
8 person committed a particular offense, the prosecution must show not only that that person  
9 intended to agree with his co-conspirators but also that he and they intended to commit the  
10 elements of that offense. (*People v. Horn* (1974), 12 Cal.3d 290, 296.)

11 Mere association with the perpetrator of a crime is not sufficient to prove a criminal  
12 conspiracy and there must be evidence of some participation in the commission of the offense.  
13 (*People v. Manson* (1976) 61 Cal.App. 3d 102, 126; *Dong Haw v. Superior Court* (1947) 81  
14 Cal.App.2d 153, 158.) Indeed, "[c]onspiracies cannot be established by suspicions." (*Dong Haw*  
15 at 158.) Evidence of an act which furthered another's illegal purpose is not, in itself, sufficient to  
16 prove the person doing the act was a member of a conspiracy to accomplish the illegal purpose.  
17 (*People v. Samarjian* (1966) 240 Cal.App.2d 13, 17; *People v. Villa* (1957) 156 Cal.App.2d 128,  
18 134; see CALJIC No. 6.18.)

19 The only witness who claimed to be able to personally tie Mr. Jackson to the alleged  
20 conspiracy is Janet Arvizo. The Court should, pursuant to CALJIC 2.21.2<sup>2</sup>, distrust or reject Ms.  
21 Arvizo's testimony based on her willfully false statements as to material issues. No one in the  
22 courtroom believed Ms. Arvizo when she testified that all of her statements on the rebuttal video,  
23 including outtakes and seemingly offhand remarks were scripted. No one in the courtroom

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24 <sup>2</sup> CALJIC 2.21.2 states:  
25 A witness, who is willfully false in one material part of his or her testimony, is to  
26 be distrusted in others. You may reject the whole testimony of a witness who  
27 willfully has testified falsely as to a material point, unless, from all the evidence,  
28 you believe the probability of truth favors his or her testimony in other particulars.

1 believed Ms. Arvizo when she stated that she rehearsed the script with Dieter Weisner an average  
2 of ten times a day. It was clear that here statements were willfully false. There was no  
3 corroboration that anything other than the questions were scripted. The "scripted" rebuttal film is  
4 the heart of the prosecution's conspiracy theory and their star witness, Janet Arvizo, lied about it.  
5 Therefore, the Court should distrust or reject her other testimony.

6 The prosecution has taken its best shot at demonstrating that Michael Jackson was  
7 personally involved in a criminal conspiracy. Their evidence has fallen far short of proving the  
8 requisite specific intent. As such, this Court should put an end to the conspiracy portion of the  
9 prosecution's case.

10 II.

11 **THE COURT SHOULD ORDER AN ACQUITTAL PURSUANT TO PENAL CODE**  
12 **SECTION 1118.1 TO AVOID PREJUDICE**

13 If the Court does not grant an acquittal, Mr. Jackson faces the possibility of being  
14 convicted of a crime that the prosecution did not prove, based on the inflammatory nature of the  
15 government's Evidence Code Section 1108 evidence. The testimony of the 1108 witnesses,  
16 while implausible, was prejudicial enough that there is a risk Mr. Jackson will be convicted of  
17 the conspiracy charges based on a desire to punish him for that alleged conduct. The Court  
18 should order an acquittal on the conspiracy count based on the lack of substantial evidence that  
19 Mr. Jackson had any intent to participate in a conspiracy and the risk of prejudice.

20 III.

21 **THE COURT SHOULD ORDER AN ACQUITTAL AS TO THE REMAINING COUNTS**

22 The inherently improbable testimony of Gavin and Star Arvizo did not establish  
23 substantial evidence that Mr. Jackson committed the charges listed in the remaining counts. As  
24 with the testimony of Janet Arvizo, the Court should consider CALJIC 2.21.2, and distrust or  
25 reject the testimony of Gavin and Star.

1 IV.

2 THE COURT SHOULD STRIKE THE STATEMENTS ALLEGEDLY MADE IN  
3 FURTHERANCE OF A CONSPIRACY

4 On January 28, 2005, the Court ruled that sufficient evidence would have to be presented  
5 before uncharged conspirator hearsay statements would be admitted. The Court stated that the  
6 jury shall also make a finding that there is sufficient evidence. The Court further stated that  
7 requests to conditionally admit such statements subject to evidence of the preliminary fact to be  
8 supplied later would be considered. (Minute Order dated January 28, 2005.)

9 The District Attorney has failed to present sufficient evidence of a conspiracy. As such,  
10 the Court should now excluded all statements conditionally admitted as uncharged conspirator  
11 hearsay.

12 V.

13 CONCLUSION

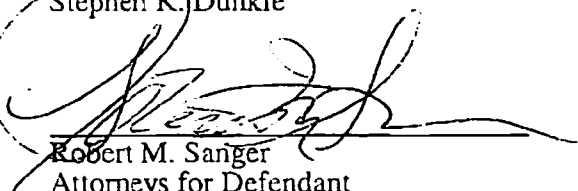
14 For the above-stated reasons, the Court should enter a judgment of acquittal and/or strike  
15 all alleged conspirator hearsay statements.

16 Dated: May 4, 2005

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