

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY - 5 2005

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA DIVISION**

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13 THE PEOPLE OF THE STATE OF CALIFORNIA,
14 Plaintiff,
15 vs.
16 MICHAEL JOE JACKSON,
17 Defendant.
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REDACTED PURSUANT TO
No. 1133603 RULE 2073

MOTION TO EXCLUDE OR
LIMIT THE TESTIMONY OF
WITNESSES
(Evidence Code § 702)

DATE: May 5, 2004
TIME: 8:30 AM
DEPT.: SM2 (Melville)

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INTRODUCTION

On February 11, 2005, the People filed a *Motion in Limine to Exclude Testimony of Witnesses* that have no personal knowledge of the facts of this case. The People pointed out in that motion that the defense had failed to provide reports for over 300 witnesses named on their witness list. The court reserved ruling on this motion.

On Monday afternoon of this week, the defense surprised the prosecution with new reports from their first six witnesses. Remarkably, five of these witnesses cannot even be found on defendant's list of over 400 witnesses. At least two of these witnesses

1 have no personal knowledge of the facts of this case. The People hereby move to exclude
2 or limit the testimony of Chantal Robson and Karlee Barnes.

3 4 POINTS AND AUTHORITIES

5 Evidence Code section 702 states in pertinent part:

6 **...the testimony of a witness concerning a particular**
7 **matter is inadmissible unless he has personal knowledge of**
8 **the matter.** Against the objection of a party, such personal
9 knowledge must be shown before the witness may testify
10 concerning the matter." (emphasis added)

11 Evidence Code section 403 provides specific procedures requiring a party to
12 satisfy the court that a given witness has sufficient personal knowledge to testify *before*
13 *the evidence is presented to the jury.* Section 403 states in pertinent part:

14 (a) The proponent of the proffered evidence has the burden of
15 producing evidence as to the existence of the preliminary fact, and
16 the proffered evidence is inadmissible unless the court finds that
17 there is evidence sufficient to sustain a finding of the existence of the
18 preliminary fact, when:

19 (1) The relevance of the proffered evidence depends on the
20 existence of the preliminary fact;

21 (2) The preliminary fact is the personal knowledge of a witness
22 concerning the subject matter of his testimony;

23 While Section 403(b) gives the court latitude to admit testimony of a witness
24 subject to proof of personal knowledge and cautionary instruction, this paragraph still
25 provides for a satisfactory proffer of the testimony of the witness.

26 ARGUMENT

27 Ms. Barnes and Ms. Robson's reports from the defense are attached for the courts
28 reference. As can be readily seen, these two witnesses are being presented to testify that
they have no personal knowledge of any molestation of their respective brothers. It is
also apparent that neither of these witnesses have personal knowledge of what occurred

1 when defendant was alone with their respective brothers and they do not claim to be a
2 witness to any of the events that are currently before this jury. Unless these witnesses are
3 specifically called as character witnesses, this is simply negative evidence loosely
4 disguising character evidence. As mentioned in the Peoples prior brief entitled,
5 *Plaintiff's Memorandum Re: The Admissibility of Certain Testimony of Several of*
6 *Defendant's Proposed Witnesses*, the general rule is that "negative evidence lacking in
7 probative value is properly excluded as too speculative in nature." (*People v. Mehaffey*
8 (1948) 32 Cal.2d 535, 555-556.)

9
10 CONCLUSION

11 The only legitimate purpose for admission of the testimony of Chantal Robson or
12 Karlee Barnes is character evidence that defendant is not a sexual deviant. (See *People v.*
13 *McAlpin* (1991) 53 Cal.3d 1289, 1305-1310.) Under Evidence Code Sections 702 and
14 403, unless defendant establishes this fact before they take the stand their testimony
15 should be excluded.

16
17 DATED: May 5, 2005

18 Respectfully submitted,

19 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

20
21 BY:


22 GORDON AUCHINCLOSS
23 Deputy District Attorney

Memorandum

Re: Interview
By: S. Ross
Subject: Karlee Barnes

Karlee Barnes [REDACTED]

Karlee Barnes was interviewed at Neverland Ranch April 30, 2005. She is currently staying there as a guest of MJJ. Ms. Barnes is in from Australia and is staying with her mother, Lizbeth Barnes, and her brother, Brett Barnes, at the Ranch.

Miss Barnes was seven years old; her brother aged 5, when she wrote a letter to MJJ at the suggestion of her mother. The letter was taken to Melbourne airport by Mrs. Barnes when the children accompanied their mother to see MJJ arrive in Melbourne for a concert. She believed this to be 1988. The letter was dictated to her by her brother Brett, about his daily life and his friends. Ms. Barnes wrote down verbatim what her brother wanted to say. In her words, she was "transcribing" the letter.

Upon their arrival at the airport, MJJ dancers from the show were passing out promotional gifts, she believes, from Pepsi. She recalled her mother handing one of the dancers the letter. Several weeks later Miss Barnes answered their phone and a person asking, "May I please speak with Brett Barnes." Since Brett was a small child she asked the other person to confirm that they wanted to speak to Brett Barnes. The other voice said, "Yes, please." At that point, Miss Barnes thought the voice was possibly that of Michael Jackson. She called her brother to the phone and said, "I think it's Michael Jackson". Mrs. Barnes then took the phone and spoke to the person confirming that it was in fact Michael Jackson before giving the phone to Brett.

According to Ms. Barnes, the family received phone calls from MJJ off and on over the next five years. In December of 1991, MJJ invited the family to spend Christmas with him at the Ranch. Miss Barnes, her parents, and brother Brett were all flown out to California. Miss Barnes recalled when she arrived at the Ranch they not only met MJJ, they also met Liz Taylor. Miss Barnes and her brother stayed in Guest Unit #3 although her recollection was they did not sleep the first night. Rather, she and her brother stayed up in MJJ's room playing games and watching television. Miss Barnes indicated that she and her brother slept through the entire following day.

The family came over between the years of 1991 – 1994, according to Miss Barnes, “too many times to count”. Miss Barnes said she slept in MJJ’s room on numerous occasions and slept in the loft area once, possibly twice. She said mostly there were mattresses on the floor where the kids slept in sleeping bags including many of MJJ’s relatives, specifically MJJ’s cousins Levon and Elijah Jackson. She recalled that the boys would sleep on the floor, “because they wanted it that way.” Miss Barnes never slept in the same bed with MJJ.

The family was invited on numerous occasions to travel with MJJ on tour. While on the road Miss Barnes had her own hotel room. She also recalled that a tutor had traveled with them on tour. She recalled the access to MJJ’s room was different while on tour. She recalled that there was usually a body guard at the door because of fans, and that MJJ held meeting in his room. They were not allowed to disrupt the meetings.

She described her relationship with her brother as being “very close.” Miss Barnes believes with certainty that “had her brother been touched inappropriately by anyone, including Michael Jackson, he would have told her.” She added that Brett would never have allowed himself to be touched inappropriately. Miss Barnes added that she would have noticed a change in his behavior, and that this never happened. Miss Barnes added that Brett would have never returned to the Ranch had anything like that happened to him. Miss Barnes also said that both she and her brother used to hide from their parents when it was time to leave Neverland. She said they always left the ranch looking forward to returning and this adds to her confirmation that nothing ever happened.

She said Brett knows the difference between right or wrong. Miss Barnes said, “At age 5, 15 or 20, he would say ‘no’ if somebody had attempted something like that. She described her brother as a very strong person. When asked if she ever went swimming with MJJ, she recalled only time she ever saw MJJ ever in the swimming pool; when he was pushed in by Brett and MJJ’s cousins. At that time MJJ was fully clothed. She recalled that this was at a time of an Easter egg hunt, and that after being pushed into the pool, MJJ went into his house to dry and change clothes. Upon his return, was again hit with eggs by the children and pushed into the pool for a second time.

Miss Barnes described MJJ as being very modest and says she has no recollection of ever seeing him in swim shorts or without a shirt. She described her brother as also being very modest and recalls her brother swimming with a t-shirt on as well.

Miss Barnes did not believe Brett would have changed clothes in the guest bathrooms near the pool where somebody might have walked in on him. She

believed he would have gone back to his guest suite or to the main house to dry off and change clothes. Miss Barnes also added that back at this time in 1991 – 1994, it was before the birth of MJJ's children and they very frequently stayed as guests in the main house where the children's rooms are currently located.

While at the house, Miss Barnes did not recall a lock on MJJ's bedroom door and recalls having full access to come and go through MJJ's bedroom and any other portion of the ranch that she chose. The only time security persons were present for them, was when they took the golf carts up to the gazebo or anywhere that was off road. She added this was strictly for safety purposes citing they were just kids at the time. They were children and her understanding was that Security was there to make sure they didn't get lost or hurt.

While on the road, Brett stayed with MJJ in his hotel room according to Miss Barnes that was the only place Brett would stay. She had her own suite, and her mother (and father upon occasion) would have their own suite.

Miss Barnes indicated that she and her family have been given this great friendship and opportunity in their relationship with MJJ. She said they have been to Europe; the United States; South America; and to parts of Australia they might never had seen had it not been for MJJ.

Miss Barnes is currently employed as an executive assistant for an insurance broker.

Mrs. Barnes went on to tell about when they agreed to go on tour, MJJ told her to get a local tutor to travel with the children. MJJ wanted her to chose the teacher for two reasons; 1 – MJJ wanted the children comfortable with the tutor; 2 – MJJ wanted them to have an Australian tutor who would understand and keep to the Australian curriculum.

Mrs. Barnes said MJJ was never anything but respectful to her family and gave them opportunities they would otherwise never have had.

Memorandum

Re: Interview
By: S. Ross
Subject: Chantal Robson

Chantal Robson [REDACTED]

Ms. Robson was interviewed telephonically on May 2, 2005. She is currently living with her mother. Ms. Robson first met MJJ when she and her family came to the United States as part of a dance troop with Johnny Young Talent when she was ten years old, she believes in 1989. Both she and Wade toured with this troop for two years through Australia before coming to the United States to perform at Disneyland.

Ms. Robson recalled her mother contacting MJJ and being invited to a music studio called Studio One, where they met MJJ was recording. From this meeting, the entire family was then invited, the next day, to Neverland Ranch. Ms. Robson said the entire family included her parents and grandparents as well.

Ms. Robson said her brother and mother had met MJJ when her brother won a dance contest, but she did not meet MJJ until they arrived in California. She said she had spoken to him on the many occasions and that MJJ called their house. She added that he mostly called to talk to Wade but spoke to her, her mother and father quite often as well.

Ms. Robson recalled that the first night at Neverland, she and her brother stayed in MJJ's room, but she believes that she slept in the bed in the downstairs portion of MJJ's room. She recalled that Wade and MJJ went upstairs, but felt she was intruding on MJJ's private space and remained downstairs. When asked if she slept in pajamas, Ms. Robson said she believed both she and her brother slept in their clothes.

Ms. Robson's recollection was not that this was a planned sleeping arrangement, rather she and her brother were up so late playing games and watching television they fell asleep. She recalled the second night also falling asleep in the upstairs portion of MJJ's room in MJJ's bed. Ms. Robson said it was more like "hanging out and falling asleep." She recalled waking up and hearing Wade and MJJ still playing games and recalls thinking she was missing some of the fun. She recalled that as it was new surroundings, she was more comfortable at the house the second night.

Ms. Robson said MJJ used to tell them all the time, don't do drugs; don't drink; and don't curse. He told them once he would stop being their friend if they ever did drugs. He always tried to teach them things.

Ms. Robson recalled this conversation being in the Jacuzzi at the ranch with MJJ. She recalled MJJ was wearing swimming trunks, but believes he might have also been wearing a white tee shirt. She said Wade was also in the Jacuzzi with her and MJJ, with their mother present. She did not believe that her mother went in the water. She also recalled MJJ was embarrassed about his "skinny legs" and also recalls MJJ showing Joy Robson what the Sun had done to his skin. She was not certain, but remembers that he might have pulled up the shirt to show her. Ms. Robson also recalled this being in the daytime.

Ms. Robson recalled a trip to the United States where Wade and their mother came to see MJJ and stayed for 6 weeks. She was not able to go because her father did not want her out of school that long, as she was older than Wade and he felt her schooling at that age was more important than Wade's. She recalled that she was invited to join her brother and mother on the trip and this was the only reason she did not.

Ms. Robson moved to the United States in 1992 with her mother and brother. She recalled that MJJ rented an Oakwood Apartment for them for the first month, but they were on their own after that. She recalled they looked for and moved into apartment by themselves.

Ms. Barnes described her relationship with her brother as "very close." She believes that had anything ever happened to him, Wade would have told her and their mother immediately. She said when the allegation first surfaced, she went to Wade and told him to look her in the eye and tell her if anything happened. Wade said nothing had happened with him, and MJJ never touched him. Ms. Robson added that she and her mother and brother are all very close and talk about their lives with each other all of the time. They have spoken about this case as well.

Ms. Robson said she has been to the ranch, "thousands of times, when MJJ has been there and when he hasn't." She added that she has never been denied access to any portion of the ranch, nor has she ever had security tell her she could not go anywhere. She did not recall locks on MJJ's door, but did not believe she ever tried to go into his room when he wasn't there out of respect for his privacy.

When she wanted to go to the ranch, she would call Evvy. Although she was never denied access, she recalls times where there were events planned at the ranch, and asked if she could go another time. Ms. Robson recalled one event where an

organization for children was going to be there and she volunteered to come help the staff with the feeding of this large group of children.

Ms. Robson is currently a dance teacher. She teaches small children and will sometime fly to New York to teach adults.

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PROOF OF SERVICE

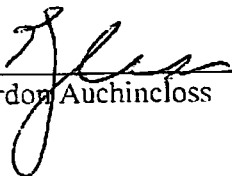
STATE OF CALIFORNIA)
) SS
COUNTY OF SANTA BARBARA)

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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On May 5, 2005, I served the MOTION TO EXCLUDE OR LIMIT THE TESTIMONY OF WITNESSES; on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER , by personal service in court.

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

Executed at Santa Barbara, California on this 5th day of May, 2005.



Gordon Auchincloss