

MAY 10 2005

GARY M. BLAIR, Executive Officer  
BY *Carrie L. Wagner*  
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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  
13 THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

14 vs.

15  
16 MICHAEL JOE JACKSON,

Defendant.

No. 1133603

**PLAINTIFF'S MOTION TO  
EXCLUDE TESTIMONY OF  
PURPORTED PRIOR SEX  
ACTS WITH MINOR  
WITNESS PURSUANT TO  
EVIDENCE CODE § § 352**

DATE: May 3, 2005

TIME: 8:30 AM

DEPT.: SM2 (Melville)

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21 INTRODUCTION

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23 The defense has provided an affidavit and interview report regarding the proposed  
24 testimony of witness Angel Vivanco. Mr. Vivanco will apparently testify that during his  
25 employment at Neverland Ranch, he struck up a "quasi-sexual" relationship with the then 16  
26 year-old sister of the victim of the 288(a) charges currently on trial. Notwithstanding the fact  
27 that Mr. Vivanco was an adult at the time of the purported sexual conduct, and the nature of  
28

1 that conduct is punishable as a felony under Penal Code section 288a(b)(1), the defense  
2 apparently offers this testimony in order to attack the credibility of Davelin Arvizo.

3 **I.**  
4 **EVIDENCE OF A WITNESS' SEXUAL CONDUCT**  
5 **SHOULD BE EXCLUDED UNDER E.C. 352 and 1101(a)**

6 The issue of whether or not Arvizo engaged in sexual conduct with the proffered  
7 witness falls squarely within the exclusionary rule of Evidence Code sections 352 and 1101(a).

8 Otherwise relevant evidence is generally "inadmissible" in a criminal case if it is  
9 "evidence of a person's character or a trait of his or her character . . . when offered to prove his  
10 or her conduct on a specified occasion." because Evidence Code section 1101, subdivision (a)  
11 says so. In most cases, the proffered "bad character" evidence is evidence of the defendant's  
12 prior commission of certain crimes, the relevance of which is that the defendant's track record  
13 demonstrates his "disposition" to commit such crimes. However, in this instance it is offered  
14 as a collateral attack on the credibility of a prosecution witness and victim of the conspiracy  
15 count. It is a transparent attempt to smear this victim of the current offense. Ironically, the  
16 offered testimony shows not that she is of "bad character," but instead that she was a victim of  
17 felonious sexual misconduct by a *defense witness employed by the defendant*.

18 While generally a defendant can introduce evidence of a character trait of a crime  
19 victim, that evidence must be relevant and pass the 352 hurdle. In *People v. Chandler*, (1997)  
20 56 Cal.App. 4<sup>th</sup> 703, at 711, the court held that exclusion of a defense witness' testimony  
21 regarding the sexual history of the complaining witness was proper in that it did not pass the  
22 test of 352. Specifically, the conduct was not relevant to her credibility.

23 Evidence Code section 352 serves as an overall limitation on otherwise relevant  
24 evidence in all lawsuits, criminal or civil. It provides: "The court, in its discretion, may  
25 exclude evidence if its probative value is substantially outweighed by the probability that its  
26 admission will (a) necessitate undue consumption of time or (b) create substantial danger of  
27 undue prejudice, of confusing the issues, or of misleading the jury."

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1 The defense has offered nothing to this court explaining why the alleged fact of  
2 Davelin's prior victimization should be heard in this matter. There is simply no relevancy. For  
3 these reasons, the evidence should be excluded.

4 DATED: May 3, 2005

5 Respectfully submitted,

6 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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8  
9 By: 

10 Mag M. Nicola  
11 Senior Deputy District Attorney

12 Attorneys for Plaintiff  
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1 **PROOF OF SERVICE**

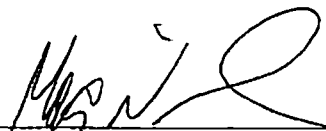
2  
3 STATE OF CALIFORNIA }  
4 COUNTY OF SANTA BARBARA } SS

5  
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  
8 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,  
9 California 93101.

10 On January 18, 2005, I served the within **PLAINTIFF'S REPLY TO**  
11 **DEFENDANT'S OPPOSITION RE: EVIDENCE CODE § 402 ISSUES** on Defendant, by  
12 THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally  
13 delivering a true copy thereof to Mr. Sanger.

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

15 Executed at Santa Barbara, California on this 24th day of January, 2005.

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Mag M. Nicola

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26 **SERVICE LIST**

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28 THOMAS A. MESEREAU, JR., ESQ.