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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION
12

13 THE PEOPLE OF THE STATE OF CALIFORNIA,)	Case No. 1133603
)	
14 Plaintiffs,)	OPPOSITION TO DISTRICT
)	ATTORNEY'S MOTION TO ADMIT
15 vs.)	EVIDENCE
)	
16)	Honorable Rodney S. Melville
)	Date: TBD
17 MICHAEL JOSEPH JACKSON,)	Time: TBD
)	Dept: SM 8
18 Defendant.)	
)	
19)	
)	
20)	
)	
21)	

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 INTRODUCTION

24 The District Attorney is trying to do everything he can to keep the jurors from walking
25 into the deliberation room with the facts of this case and the Arvizo family's credibility on their
26 minds. The motion is devoid of legal merit, and, in fact, if granted, would result in a reversible
27 violation of Mr. Jackson's confrontation rights. Even if there were some factual or legal basis to
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OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO ADMIT EVIDENCE

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 26 2005

GARY M. BLAIR, Executive Officer
BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

1 admit this evidence, it is improper rebuttal and would have to be excluded under Evidence Code
2 Section 352.¹

3 For the reasons stated below, the Court should not only deny the prosecution's motion but
4 take whatever action it deems to be appropriate.

5 ARGUMENT

6 I.

7 IT WOULD BE REVERSIBLE CONSTITUTIONAL ERROR TO ALLOW THE
8 INTRODUCTION OF THIS EVIDENCE

9 Jordan Chandler has never been cross-examined. The alleged statements in Mr.
10 Sneddon's declaration are the result of an *ex parte* examination of Mr. Chandler by law
11 enforcement. The drawing by Mr. Chandler and the statements are rank hearsay and have never
12 been tested by cross-examination. The United States Supreme Court, in *Crawford v. Washington*
13 (2004) 541 U.S. 36, squarely held that the Sixth Amendment's Confrontation Clause prohibits
14 the introduction testimonial hearsay statements that have not been subject to cross-examination.

15 The drawing and statements of Mr. Chandler are testimonial. Mr. Chandler was
16 interviewed for the purpose of gathering evidence against Mr. Jackson. Statements of a witness
17 made during questioning "by law enforcement officers fall squarely within" the definition of
18 testimonial hearsay. (*Crawford v. Washington* (2004) 541 U.S. 36, 53.)

19 The purpose of the Confrontation Clause is to protect against the danger of this type of
20 unreliable hearsay testimony. In *Crawford*, Justice Scalia stated:

21 [T]he principal evil at which the Confrontation Clause was directed was the
22 civil-law mode of criminal procedure, and particularly its use of *ex parte*
23 examinations as evidence against the accused. It was these practices that the
24 Crown deployed in notorious treason cases like Raleigh's; that the Marian statutes
invited; that English law's assertion of a right to confrontation was meant to
prohibit; and that the founding-era rhetoric decried. The Sixth Amendment must
be interpreted with this focus in mind.

25
26 ¹ It is hard to believe that the prosecutor could file this motion in good faith, given the
27 lack of a factual basis and the legal prohibition against this type of hearsay. One would hope that
28 this was not merely an attempt on the part of the prosecutor to publicly disseminate this
inadmissible material.

1 (Crawford v. Washington (2004) 541 U.S. 36, 50; emphasis added.)

2 Pursuant to *Crawford*, allowing the proposed evidence in this case, would be a violation of a
3 fundamental constitutional right. As such, its admission would be reversible error.

4 II.

5 **THE PROFFERED EVIDENCE IS HEARSAY**

6 The prosecution, incredibly, claims that evidence of Mr. Chandler's statements and his
7 drawing are not hearsay because they are not offered for the truth of the matter asserted. Instead,
8 the prosecution claims the photographs that establish the truth of his description. (Motion, page
9 5.) This is circular and without merit. Without his description, the photographs do not prove
10 anything. Without the photographs, his description does not prove anything. The statements are
11 hearsay and the Court should reject this argument.

12 This is precisely the point of the *Crawford* case. No matter how convincing the
13 prosecutor claims the alleged evidence is to him, a person accused of a crime in this country has
14 the constitutional right to confront and cross-examine the witness.

15 III.

16 **THIS TESTIMONY IS NOT PROPER REBUTTAL EVIDENCE**

17 The proffered evidence does not rebut any part of the defense case. Contrary to Mr.
18 Sneddon's declaration, there was no testimony that Mr. Jackson "is of a 'shy' and 'modest'
19 nature and so would not have exposed his naked body in the presence of young boys."
20 (Declaration of Thomas W. Sneddon.) A similar statement was made by Carly Barnes to defense
21 investigator Scott Ross, and disclosed to the prosecution, but was never heard by the jury.² Thus,
22 there is nothing to rebut.

23 The prosecution had the opportunity to request the Court's permission to introduce this
24 evidence in its case and chief if it believed it to be admissible. It did not do so. The prosecution

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26 ² It appears that the District Attorney drafted this motion as a "pocket brief," to be used if
27 certain evidence came in. The anticipated testimony never materialized. This "door" never
28 opened. Even if it had, for the reasons stated above and below, this material could not
constitutionally see the light of day.

1 filed a Section 1108 motion that was more than 60 pages long that made no mention of this
2 proffered material. The prosecution has been aware of this material for more than a decade. Mr.
3 Jackson has consistently denied the allegation that he molested Mr. Chandler. The only reason
4 why the prosecution did not seek to introduce this testimony in its case in chief under 1108 is that
5 the Court would not have allowed it then for exactly the same reasons that the Court cannot
6 allow it now.

7 This is a blatant attempt to prejudice the jury with dramatic testimony at the end of the
8 trial. The California Supreme Court specifically rejected this type of rebuttal evidence in *People*
9 *v. Carter* (1957) 48 Cal.2d 737. In *Carter*, the Supreme Court stated that the purpose of limiting
10 rebuttal evidence "is to assure an orderly presentation of evidence so that the trier of fact will not
11 be confused; to prevent a party from unduly magnifying certain evidence by dramatically
12 introducing it late in the trial; and to avoid any unfair surprise that may result when a party who
13 thinks he has met his opponent's case is suddenly confronted at the end of trial with an additional
14 piece of crucial evidence." (*People v. Carter* (1957) 48 Cal.2d 737.) That is exactly what is
15 happening here and the Court should not allow it.

16 IV.

17 **EVEN IF IT WERE OTHERWISE ADMISSIBLE THE COURT SHOULD EXCLUDE**
18 **THIS MATERIAL PURSUANT TO EVIDENCE CODE SECTION 352**

19 This material is not offered as 1108 evidence, according to the District Attorney's own
20 proffer, instead it is offered as 1101(b) evidence based on the prosecution's express statement in
21 its brief. The probative value, if any, under 1101(b) is vastly outweighed by the prejudicial
22 effect.

23 First, the probative value of such evidence is non-existent in light of the fact that the
24 purported evidence regarding "shy" or "modest" never came in. Even if it had, the probative
25 value to the jury on this collateral matter would be minimal at best in deciding the truthfulness of
26 the current allegations.

27 Secondly, the prejudicial effect is immense because the jury would obviously consider
28

1 this material in relation to the 1108 claims. This material would not have come within the
2 Court's original 1108 ruling because it is not direct evidence and it does not corroborate the
3 alleged observations of witnesses Chacon and Abdool. It is not offered by the prosecution as
4 such. However, there is no doubt that it would be confused by the trier of fact and would unduly
5 magnify other 1108 claims by dramatically introducing graphic pictorial evidence late in the trial.
6 In addition to being constitutionally impermissible, and in addition to violating *People v. Carter*,
7 *supra*, it would also have to be excluded under 352 of the Evidence Code.

8 V.

9 CONCLUSION

10 Therefore, based on the reasons set forth above, the Court should exclude this evidence.

11 Dated: May 26, 2005

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