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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

NOV 24 2004

GARY M. BLAIR, Executive Officer

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

* Unsealed pursuant
to 6/16/05 Court
Order

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
MENTAL EXAMINATIONS FOR
JANET ARVIZO, GAVIN
ARVIZO AND STAR ARVIZO

DATE: November 29, 2004
TIME: 10:00 a.m.
DEPT: TBA (Melville)

16 UNDER SEAL
17 FILED UNDER SEAL
18

19 A. Introduction:

20 Defendant has moved the Court to order "a mental examinations for the
21 complaining witnesses Janet Arvizo, Gavin Arvizo, and Star Arvizo" on the grounds that

22 -- "(1) The prosecution opened the door to permit a mental examination of the
23 complaining witnesses by offering its own mental examination and expert testimony
24 concerning their mental condition, and the complaining witnesses have waived the provisions
25 of Penal Code section 1112 by employing an expert psychologist to examine the witnesses'
26 mental status and provide expert testimony of mental condition;

27 -- "(2) Mr. Jackson cannot cross-examine and confront expert witness Psychologist
28

1 Stanley Katz unless he is permitted equal access to the subject matter of the expert's mental
2 examination . . .," and denial of such access will prejudice his "Sixth Amendment rights to
3 confront and cross-examine expert witnesses against him";

4 -- "(3) Mr. Jackson seeks a mental examination of the witnesses not to assess their
5 credibility but because the complaining witness mother has been [REDACTED]
6 [REDACTED] and her children have been [REDACTED]
7 [REDACTED]
8 [REDACTED]." (Motion 1-2; 20:8-14.) In other words, "to
9 determine their competence to testify." (P&A 22:20-21.)

10 Plaintiff will address the grounds for the pending motion in that order.

11 I . . .

12 PLAINIFF DID NOT "OPEN THE DOOR" TO AN
13 UNCONSENTED-TO COURT-ORDERED MENTAL
14 EXAMINATION OF MEMBERS OF THE
15 ARVIZO FAMILY

16 A. Introduction

17 The point of defendant's "the prosecution opened the door" argument is not entirely
18 clear. Defendant acknowledges that "Ordinarily, mental examinations are not permitted of
19 complaining witnesses under Penal Code section 1112" for the purpose of assessing credibility
20 (P&A 18:23-24), and seems at some pains to insist, repeatedly, that he "seeks a mental
21 examination of the witnesses not to assess their credibility, but because the complaining
22 witness has been [REDACTED] . . ." (Motion 2:13;
23 P&A 1:15 [emphasis added]; P&A 19:22 - 20:3; 20:9-10; 20:20-24.)

24 Possibly sensing that "seeking a mental examination . . . because the complaining
25 witness has been [REDACTED]" sounds an awful lot
26 like expressing a desire to impeach the witness's credibility with fresh evidence of a mental

27 ////

28 ////

1 illness,¹ defendant cites *People v. Ayala* (2000) 23 Cal.4th 225, 263 for the proposition, “trial
2 courts have broad discretion to permit psychiatric examinations of witnesses to determine their
3 **competence to testify.**” (P&A 22:20-22; emphasis added.) “The prosecution placed the
4 complaining witnesses[’] mental condition in issue by tendering two (2)² experts who testified
5 about the complaining witnesses[’] competency” (*Id.*, 24:16-17.)

6 As it happens, the Supreme Court said no such thing in *Ayala* (see 23 Cal.4th at
7 pp.264-265³), and the competency of the complaining witnesses to testify was never suggested
8 as an issue, let alone was it the subject of expert testimony before the Grand Jury. But out of
9 caution, the People will address the “right to examine to determine competency to testify”
10 theory below.

11
12 **B. “Open The Door”/ “Waiver Of § 1112”**

13 Defendant argues that the prosecution “opened the door” to “permit a mental
14 examination of the complaining witnesses by offering its own mental examination and expert
15 testimony concerning their mental condition, and the complaining witnesses have waived the
16 provisions of Penal Code section 1112 by employing an expert psychologist to examine the
17 witnesses’ mental status and provide expert testimony of mental condition” (Motion 2:5-8;
18 P&A 1:6-9).

19
20 ¹ See, e.g., *People v. LaRue* (1923) 62 Cal.App. 276, 284: “It is admissible . . . in order to
21 affect the credibility of the witness, to prove that he was or is subject to insane delusions; that
22 his mind and memory are impaired by disease.” (Wharton’s Criminal Evidence, 10th ed., sec.
23 370a.)”

24 ² Counsel would do all concerned a favor by relying on the ability of the reader of his
25 pleadings to immediately grasp what, e.g. the letters “t-w-o” mean when combined together,
26 without the fussy and distracting “(2)” next to them. Motions are neither contracts nor
27 commercial paper, in which use of that tiresome style may be justified.

28 ³ *Ayala* sought psychiatric tests of an adverse witness “in order to ascertain whether
Castillo was competent to testify. . . . [¶] The Trial court denied the motion without comment.
[¶] There was no error. . . . Defendant bore the burden of showing Castillo’s incompetence.
[Citation.] He failed to meet that burden.” (23 Cal.4th, at pp. 265-266.)

1 Penal Code section 1112 provides:

2 Notwithstanding the provisions of subdivision (d) of Section 28 of
3 Article I of the California Constitution, the trial court shall not order any
4 prosecuting witnesses, complaining witness, or any other witness or
5 victim in any sexual assault prosecution to submit to a psychiatric or
6 psychological examination for the purpose of assessing his or her
7 credibility.

8 Since section 1112's prohibition is expressly limited to examinations undertaken to
9 "assess credibility" – a point recognized by defendant (see P&A 22:14-21) – presumably
10 defendant's theory of "waiver" is to be understood as an argument that he may indeed seek
11 mental examinations of the Arvizos precisely in order to impeach their credibility, his
12 protestations to the contrary notwithstanding.

13 C. The Testimony At The Grand Jury Proceedings

14 Defendant reasons that since testimony by Dr. Katz and Attorney Feldman
15 encompassed references to Dr. Katz's interviews of Gavin and Star Arvizo and his evaluation
16 of them as "credible," somehow that "opened the door" to a court-ordered examination of them
17 on that issue prior to trial.

18 Dr. Katz did not testify before the Grand Jury to any interview or examination by
19 him of Janet Arvizo, whose mental state is, quite evidently, the primary focus of the pending
20 motion. To be sure, Dr. Katz testified that he believed Gavin and Star were "credible." But he
21 did so in the context of explaining that as a "mandated reporter," he was obliged to convey
22 only "credible" reports of child molestation to the authorities.

23 Attorney Feldman testified he was contacted by the Arvizos concerning their
24 distress about Gavin having been featured (without his or his guardian's consent) in Martin
25 Bashir's "Living with Michael Jackson" program as one of defendant's special friends. Mr.
26 Feldman related his clients' concern that Gavin's peers were drawing adverse inferences about
27 him from his relationship with Michael Jackson. Mr. Feldman wanted "an honest view of what
28 was really going on with the kid," and knew Dr. Katz was the person to give him that view.

1 The only opinion Mr. Feldman expressed concerning Janet Arvizo's state of mind
2 was that Mark Geragos' publicly stated opinion that she was motivated by "greed" was "a bald
3 face lie." (GJ Tx. 76-77.)

4 More importantly and relevantly to the pending motion, the prosecution does not
5 anticipate offering "expert evidence" at trial on the subject of Janet Arvizo's mental state or
6 that of her children. Perhaps self-evidently, the defense cannot demand court-ordered mental
7 examinations to counter evidence put before the grand jury some months ago. That proceeding
8 is over and done with.

9
10 D. Janet Arvizo Did Not "Waive" The Protection Of Penal Code § 1112

11 Janet Arvizo didn't "employ" Dr. Katz, ever, and the prosecution didn't "employ"
12 him "to give expert testimony concerning his examination of the witnesses."

13 Dr. Katz was retained by Attorney Feldman, not Janet Arvizo, to evaluate the
14 Arvizo children before Mr. Feldman decided what action, if any, should be taken on the Arvizo
15 family's behalf concerning Michael Jackson's involvement of young Gavin in Martin Bashir's
16 filming of "Living with Michael Jackson." Mrs. Arvizo was interviewed by Dr. Katz but not
17 formally evaluated or examined by him. She was in no position to "waive" the protection of
18 Penal Code section 1112, even assuming that statute's prohibition can be "waived" other than
19 by the prosecution's own act of introducing evidence of the complaining witnesses' mental
20 state at trial on the issue of her credibility.

21 II

22 THERE IS MERIT TO THE ARGUMENT THAT THE
23 DEFENSE SHOULD BE PERMITTED EQUAL ACCESS
24 TO THE SUBJECT OF AN EXPERT WITNESS'S MENTAL
25 EXAMINATION, IF THAT WITNESS TESTIFIES TO HIS
26 OPINION OF THE SUBJECT'S MENTAL STATE GAINED
27 FROM THAT EXAMINATION. NO SUCH EVIDENCE
28 WILL BE OFFERED IN THIS CASE.

The People agree with the substance of defendant's "equal access" argument, to the

1 effect that a defendant cannot confront and cross-examine an expert witness on the issue of the
2 mental state of a person the expert has examined unless defendant is permitted equal access to
3 the subject of the expert's examination.

4 The short and sufficient answer to that argument, repeated by defendant some 20
5 times, is that the prosecution does not intend to offer expert evidence concerning the mental
6 status of Janet Arvizo or any of her children.

7
8 III

9 JANET ARVIZO'S COMPETENCY TO TESTIFY
10 IS NOT AN ISSUE IN THIS CASE

11 As our California Supreme Court noted in *People v. Ayala*, *supra*, 23 Cal.4th 225,
12 at pages 265-265, the Evidence Code defines the qualifications of a person to testify in a
13 matter: "Except as otherwise provided by statute, every person, irrespective of age, is qualified
14 to be a witness and no person is disqualified to testify to any matter." That statute appears
15 under the heading "General rule as to competency." "Competency" is not the same thing as
16 "credibility": "A degraded character may be a competent witness though not credible.
17 [Citations.]" (*Langer v. Langer* (1948) 84 Cal.App.2d 806, 809.)

18 Section 701 of the Evidence Code – "Disqualification of Witness" – provides:

19 (a) A person is disqualified to be a witness if he or she is:

20 (1) Incapable of expressing himself or herself concerning the matter so
21 as to be understood, either directly or through interpretation by one who
22 can understand him; or

23 (2) Incapable of understanding the duty of a witness to tell the truth.

24 (b) In any proceeding held outside the presence of a jury, the court may
25 reserve challenges to the competency of a witness until the conclusion of
26 the direct examination of that witness.

27 In *People v. Lewis* (2001) 26 Cal.4th 334, our Supreme Court considered
28 appellant's claim that one Pridgon, an eye-witness to defendant's robbery and murder of a
woman, was incompetent to testify and that the trial court erred in ruling otherwise. Lewis

1 called several defense expert witnesses “who testified regarding Pridgon’s mental disorders,
2 including his psychosis, paranoia, and ‘schizophreniform disorder’” and “auditory
3 hallucinations.” (26 Cal.4th at p. 354.) A rebuttal expert testified that “notwithstanding
4 Pridgon’s diagnosed mental disorders and low intellect, ‘[t]here is nothing that would lead me
5 to believe that he would be incapable of reporting an account of an act of this nature,’ though
6 Pridgon’s degree of accuracy would be that of a seven year old.” (*Id.*, p. 355.)

7 “‘[I]f there is evidence that the witness has [the capacity to perceive
8 and recollect], the determination whether [he] in fact perceived and does
9 recollect is left to the trier of fact.’ [Citations.]” (*People v. Dennis*,
10 *supra*, 17 Cal.4th at p. 526; 2 Witkin, Cal. Evidence (4th ed. 2000)
11 Witnesses, § 46, p. 297 [the capacity to perceive and recollect is “only
12 preliminarily determined by the trial judge, and ultimately redetermined
13 by the jury”].) A trial court should allow a witness's testimony unless
14 “no jury could reasonably find that he has such [personal] knowledge.”
15 (Cal. Law Revision Com. com., reprinted at 29B pt. 2 West's Ann. Evid.
16 Code, *supra*, foll. § 701, p. 284.) “The fact that a witness has made
17 inconsistent and exaggerated statements does not indicate an inability to
18 perceive [or] recollect” (*People v. Willard* (1983) 155 Cal. App. 3d
19 237, 240.) Nor does a witness's mental defect or insane delusions
20 necessarily reflect that the witness lacks the capacity to perceive or
21 recollect. (*People v. McCaughan* (1957) 49 Cal. 2d 409, 420; *People v.*
22 *La Rue* (1923) 62 Cal. App. 276, 284) A witness's uncertainty
23 about his or her recollection of events does not preclude admitting his or
24 her testimony. (*People v. Avery* (1950) 35 Cal. 2d 487, 492 [uncertainty
25 of recollection goes to the weight and not admissibility of a witness's
26 testimony].)

27 (*People v. Lewis*, *supra*, 26 Cal.4th 334, at pp. 356-357.)

28 “The challenging party must establish a witness’s incompetency by a preponderance
of the evidence. [Citations.] Unlike a witness’s personal knowledge, a witness’s competency
to testify is determined exclusively by the court. [Citations.]” (*People v. Lewis, supra*, 26
Cal.4th at p. 360.)

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1 Consistent with Pridgon's diagnosis of having the intellect of a seven
2 year old, he expressed difficulty with complex questions and often
3 responded in incomplete, sometimes nonsensical, sentences. Mere
4 difficulty in understanding a witness, however, does not disqualify that
5 witness under Evidence Code section 701, subdivision (a). To the
6 extent defendant contends Pridgon's responses were unbelievable –
7 including his testimony that he 'heard' blood and knew how money
'sounds' – this was an issue of credibility for the jury and not relevant to
8 the issue of Pridgon's competency. [Citation.]” (*Id.*, at p. 361.)

9 This Court has the transcript of the Grand Jury proceedings in which every member
10 of the Arvizo family testified. It was able to observe Janet Arvizo during her testimony in the
11 hearing of one of defendant's suppression motions. It need take no further evidence on the
12 issue of the competency of any of the witnesses who appeared before the Grand Jury to testify
13 at trial. “An unsubstantial challenge does not require a voir dire examination; the granting or
14 denial of a motion to voir dire a witness on competency is within the sound discretion of the
15 trial judge.” (2 Witkin, Cal. Evid. (4th ed. 2000) § 48; p. 300.)

16 CONCLUSION

17 By statutory decree, the Court is barred from ordering any person likely to testify in
18 this case to submit to a psychological or psychiatric examination of his or her credibility. (Pen.
19 Code, § 1112.) The People do not intend to offer expert testimony concerning the credibility
20 of any witness in this case, though Dr. Katz may testify that he was mandated to report
21 “credible” information concerning the sexual molestation of a child to the authorities.

22 There is no evidence that any of the complaining witnesses in this matter are not
23 competent to testify at trial. Defendant's motion for an order compelling the Arvizo family
24 members to submit to mental examination is without merit.

25 Given the number of pages devoted to the alleged facts offered in support of the
26 pending motion, it is not unreasonable to suppose defense counsel will be eager to rehearse all
27 of those “facts” in their oral argument in support of the motion, in the presence of media
28 representatives. Most of the “facts” upon which defendant relies likely would not get before


1 the jury that considers defendant's guilt or innocence. In any event, defendant's recital of
2 those "facts" is extremely prejudicial, as it was intended to be. All of it comes within the
3 Court's Protective Order and should not be aired in public prior to trial.

4 Defendant has demonstrated by his sealing motion that he does not perceive any of
5 matters he discusses at length in his moving papers as coming within the Protective Order. It
6 therefore appears that the Court must caution counsel in the plainest of words that he is not to
7 discuss ANY of those facts in the course of his argument, and that sanctions for disobedience
8 of the Court's caution will be swift in their coming and biblical in their severity.

9 DATED: November 24, 2004

10 Respectfully submitted,

11 THOMAS W. SNEDDON, JR.
12 District Attorney

13 By: 
14 Gerald McC. Franklin, Senior Deputy

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 November 24, 2004, I served the within PLAINTIFF'S OPPOSITION TO
11 DEFENDANT'S MOTION FOR MENTAL EXAMINATIONS FOR JANET ARVIZO,
12 GAVIN ARVIZO AND STAR ARVIZO on Defendant, by THOMAS A. MESEREAU, JR.,
13 ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr.
14 Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorneys
15 Mesereau and Oxman, and by causing a true copy thereof to be mailed to each of them (Mr.
16 Sanger excepted), first class postage prepaid, at the addresses shown on the attached Service
17 List.

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

19 Executed at Santa Barbara, California on this 24th day of November, 2004.

20 
21 _____
22 Gerald McC. Franklin

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