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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 18 2005

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

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

11 ~~PROPOSED~~ REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

No. 1133603

13 Plaintiff,

14 PLAINTIFF'S REQUEST TO
ADMIT SEIZED EVIDENCE OF
EROTIC MATERIALS TO
15 DEMONSTRATE DEFENDANT'S
INTENT, PLAN, SCHEME AND
MOTIVE

16 v.

17 MICHAEL JOE JACKSON,

18 Defendant.

DATE: January 28, 2005
TIME: 9:30 a.m.
DEPT: SM 8

19 ~~FILED UNDER SEAL~~

20
21 The People seek to introduce numerous [REDACTED] books,
22 videos, and magazines seized on November 13, 2003, from the defendant's master bedroom
23 suite at Neverland Valley Ranch, the video arcade and from a room adjoining the defendant's
24 private office in a security building. The People also seek to admit three hard-cover books and
25 two photographs seized from defendant's bedroom at Neverland Ranch by the Los Angeles
26 Police Department in August, 1993.

27 ////

28 ////

1 A. Items To Be Introduced

2 Specifically, the People seek to introduce the following items:

3 From the search of defendant's bedroom in 1993, the following unnumbered items:

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Discussion

1. The Materials

[REDACTED]

[REDACTED]

1 2. The Relevance Of The Materials

2 Article 1, section 18 of the California Constitution declares that all relevant evidence
3 is admissible in criminal prosecutions unless its admission is specifically precluded by
4 overriding statutory or constitutional provisions. In assessing the relevancy of a particular item
5 of evidence, a trier of fact must start with the premise that the evidence must have a "...
6 tendency in reason to prove or disprove any disputed fact that is of consequence to the
7 determination of the action. (Evid.Code, § 210.)

8 The listed materials are admissible and relevant as circumstantial evidence on the
9 issues of defendant's intent, motive and method [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 3. Defendant's Specific Intent Is In Issue

13 "A 'plea of not guilty puts in issue every material allegation of the accusatory
14 pleading' (Pen. Code, § 1019), and when a specific kind or particular type of mental state or
15 intent is a part of the corpus delicti of the crime charged, the not guilty plea puts in issue the
16 existence of that state of mind. [Citation.]" (*People v. Gentry* (1968) 257 Cal.App.2d 607,
17 610.) In the prosecution of an alleged violation of Penal Code section 288, one of the elements
18 that must be proved is that "The touching was done with the specific intent to arouse, appeal to,
19 or gratify the lust, passions, or sexual desires of [the accused] or the child." (CALJIC 10.42, in
20 pertinent part; see *People v. Maquez* (1994) 28 Cal.App.4th 1315, 1322.)

21 When defendant pled not guilty to the offenses alleged in Counts Two through Six
22 of the pending indictment, he placed "in issue" whether he acted with the lewd and lascivious
23 intent which must be shown to demonstrate a violation of Penal Code section 288. (See *People*
24 *v. Memro* (1995) 11 Cal.4th 786, 864: "Defendant's intent to violate section 288 was put at
25 issue when he pleaded not guilty to the crimes charged. [Citations.]")

26 4. Evidence Of Defendant's Intent And Method

27 The intention with which an act is committed is ordinarily a question of fact for the
28 trier of fact and may be inferred from the surrounding circumstances. (*People v. Darling*

1 (1989) 210 Cal.App.3d 910, 913.) It may be inferred from the accused's prior conduct
2 demonstrating a particular state of mind (Evid. Code, § 1101, subd. (b).) That prior conduct
3 need not be a crime to be admissible under Evidence Code section 1101. (*People v. Willis-*
4 *Watkins* (1979) 99 Cal.App.3d 451, 456 and fn. 1.) "[E]vidence Code section 1101's
5 recognition of the admissibility of certain evidence to prove such things as 'preparation,' 'plan,'
6 and 'identity' is not limited . . . to 'uncharged offenses,' but embraces also 'other acts.'"
7 (*People v. Harris* (1978) 85 Cal.App.3d 954, 958.)

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
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20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 In *People v. Memro, supra*, 11 Cal.4th 786, the court reviewed the conviction and
24 death sentence in a capital homicide prosecution in which the defendant was charged with
25 felony murder based upon a killing during the commission of a lewd act with a 7-year-old boy.

26 _____
27 ² See *People v. Giani* (1956) 145 Cal.App.2d 539, which addressed and correctly rejected
28 the false "concept that if a man belongs to the larger group (homosexual) he is predisposed to
commit the particular offense [of molestation of a boy]." (*Id.*, at pp. 545-546.)

1 "Over an objection made on grounds of irrelevance and undue prejudice and also implicitly
2 made under Evidence Code section 2201, the [trial] court ordered certain magazines and
3 photographs depicting clothed and unclothed youths admitted under Evidence Code section
4 1101, subdivision (b), as evidence of motive and intent to perform a lewd or lascivious act on
5 [the victim] in violation of section 288. The court admonished the jury not to consider the items
6 as evidence that defendant was evil or was disposed to commit certain types of crimes." (11
7 Cal.4th 786, at p. 864.)

8 The Supreme Court approved the admission of that sexually explicit material on the
9 issue of the defendant's intent:

10 We have examined the magazines and photographs in question. They
11 contain sexually explicit stories, photographs and drawings of males
12 ranging in age from pre-pubescent to young adult. Some of the
13 photographs are of similar character. Others depict youths in a manner
14 that is not sexually suggestive. [¶]

15 [¶] . . . Although not all were sexually explicit in the abstract, the
16 photographs, presented in the context of the defendant's possession of
17 them, yield evidence from which the jury could infer that he had a sexual
18 attraction to young boys and intended to act on that attraction."

19 (*Id.*, pp. 864-865.)

20 In the case at bar, the evidence listed above is admissible pursuant to Evidence Code
21 section 1101, subdivision (b) for precisely the same reason similar evidence was admitted in
22 Memro's prosecution.



1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
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14 [REDACTED]

15 6. Evidence of "Preparation" and "Plan"

16 The relevance of the listed materials in this prosecution extends beyond the issue of
17 the defendant's intent. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 [REDACTED]
26 A plan or scheme need not be particularly distinctive to warrant admissibility of
27 evidence of that scheme to show that the defendant acted pursuant to that plan in committing
28 the charged offenses. (*People v. Kraft* (2000) 23 Cal.4th 978, 1031-1032.) [REDACTED]

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6 In analogous situations, courts have routinely admitted evidence of the possession of
7 burglary instruments as circumstantial evidence of an individual's intent to commit the crime of
8 burglary. (*People v. Darling, supra*, 210 Cal.App.3d 910, at page 913 [possession of
9 screwdriver]; *People v. Wilson* (1965) 238 Cal.App.2d 447, 463 [plastic strips found in
10 defendant's pocket could be used to slip locks on doors and were "reasonably adapted to the
11 performance of the entry which is in fact effected"]; *People v. Gibson* (1949) 94 Cal.App.2d
12 468, 471 [defendant found in alley with ladder, a bag of tools and a rope; that evidence
13 admissible to establish his burglarious intent even if he was interrupted before achieving his
14 objective].)

15 In *Darling, supra*, 210 Cal.App.3d 910, appellant argued that his possession of a
16 screwdriver was evidence of a "character trait" and so should have been excluded pursuant to
17 Evidence Code section 1101. In response, the court noted "that even character evidence may be
18 admissible on the issues of intent, preparation and plan." (210 Cal.App.3d at p. 914, n. 2, citing
19 *People v. Rodriguez* (1986) 212 Cal.3d 730, 757.)

20 Nor, as *Darling* also points out, is it necessary to show that the tools or instruments
21 found in the defendant's possession actually were used in the commission of the charged crime
22 itself to be admissible. (*People v. Darling, supra*, 210 Cal.App.3d at 914.)

23 7. Evidence of Motive

24 Juries considering the guilt or innocence of a defendant charged with a criminal
25 offense are routinely instructed in the words of CALJIC 2.51:

26 Motive is not an element of the crime charged and need not be shown.
27 However, you may consider motive or lack of motive as a circumstance in
28 this case. Presence of motive may tend to establish the defendant is
guilty. Absence of motive may tend to show the defendant is not guilty.

1 [REDACTED]
2 like the evidence of the defendant's gang membership considered in *People v. Williams* (1997)
3 16 Cal.4th 153, is relevant and material to prove the defendant's motive. (See also *People v.*
4 *Conrad* (1973) 31 Cal.App.3d, 308 – portions of a tape recording of one of the defendant's
5 statements in which he stated that he was a narcotic addict and was getting money to support his
6 habit by stealing, hustling and dealing dope was admissible on the issue of motive.)

7 CONCLUSION

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 DATED: January 18, 2005

14 Respectfully submitted,

15
16
17 By: _____

18 THOMAS W. SNEDDON, JR.
19 District Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On January 18, 2005, I served the within PLAINTIFF'S REQUEST TO ADMIT SEIZED EVIDENCE OF EROTIC MATERIALS TO DEMONSTRATE DEFENDANT'S INTENT, PLAN, SCHEME AND MOTIVE on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage prepaid, at the addresses shown on the attached Service List.

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

Executed at Santa Barbara, California on this 18 day of January , 2005.

[Handwritten Signature]
signature
Chris Ritz

SERVICE LIST

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