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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 21 2005

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

** Unsealed pursuant
to 6/16/05 court
order*

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

15 THE PEOPLE OF THE STATE OF
16 CALIFORNIA,

17 Plaintiffs,

18 vs.

19 MICHAEL JOSEPH JACKSON,

20 Defendant.

) Case No. 1133603

)
) OPPOSITION TO DISTRICT
) ATTORNEY'S REQUEST TO ADMIT
) SEIZED EVIDENCE OF "EROTIC
) MATERIALS"

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville
) Date: January 28, 2005
) Time: 9:30 a.m.
) Dept.: 8

23 _____)
24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **INTRODUCTION**

26 The prosecution asks this Court to admit a variety of materials seized from Mr. Jackson's

27 _____
28 OPPOSITION TO DISTRICT ATTORNEY'S REQUEST TO ADMIT SEIZED EVIDENCE OF "EROTIC
MATERIALS"

1 home. The prosecution has failed to lay an adequate foundation that would justify the
2 introduction of these materials.

3 The admission of such testimony threatens to deprive Mr. Jackson of his federal and state
4 constitutional rights to a fair trial, due process of law, and right to a reliable verdict and sentence
5 pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States
6 Constitution and Article 1, Sections 7, 15, 17 and 24 of the California Constitution.

7 **ARGUMENT**

8 **I.**

9 **THE PROSECUTION HAS FAILED TO ESTABLISH AN ADEQUATE FOUNDATION**
10 **TO JUSTIFY THE ADMISSION OF THE SEIZED MATERIALS INTO EVIDENCE**

11 The prosecution essentially argues that any materials of a sexual nature, whether they are
12 art books, adult magazines, history books, or even evidence that adoption websites have been
13 visited, are relevant evidence of intent, plan, scheme and motive.¹ Based on the boilerplate
14 profile of a pedophile in the search warrant, one would have expected that law enforcement
15 would have found child pornography during the police raid on Mr. Jackson's home. Instead, the
16 prosecution culled out an assortment of lawful materials. The Court should not allow the
17 prosecution to present these materials to the jury as evidence.

18 The problem with the prosecution's argument is that the prosecution has failed to
19 establish a foundation that these materials are relevant to material issues in this case. Instead
20 they are seeking to introduce anything that might sway the jury, whether relevant or not. The
21 District Attorney has a "belief" that the seized materials are evidence of a scheme or intent to
22 molest. (Motion, page 8.) A "belief" is not enough. He has to adequately establish a foundation

23
24 ¹ The prosecution is very apt at purporting to connect dots, when they think it helps
25 them, and not, when they think it hurts their case. For instance, everything the prosecution found
26 at Mr. Jackson's residence, that is even remotely sexual in nature, and in some cases not sexual at
27 all, is neatly tied to the charges against Mr. Jackson, according to the prosecution. On the other
hand, when the evidence is inconvenient, such as the behavior of the complaining witnesses, they
claim that it is either irrelevant to the charges against Mr. Jackson or must be explained to the
jury using a team of expert witnesses.

1 to introduce these or any other materials to the jury. The District Attorney's beliefs are so far
2 ranging that he believes that if anyone has anything in their home depicting a nude or relating to
3 sex, it can be introduced to bolster a weak, conflicting and dishonest witness.

4 Furthermore, the District Attorney believes that he can argue that these items would be
5 considered for the opposite of what they, in fact, are. According to the District Attorney,
6 heterosexual adult materials do not demonstrate a sexual interest in adult women, they are
7 evidence of "grooming." An art book depicting nude males does not demonstrate an interest in
8 photography, it is evidence of homosexuality. In other words, whether or not the evidence is
9 what it is, the District Attorney wants to use it as a prop to distract the jury, rather than to prove
10 his case using real evidence.

11 The descriptions of the seized evidence tell us more about the minds of the prosecutors
12 than about the mind of Mr. Jackson. A book titled SCENES D'INTERIERU is listed by the
13 District Attorney as being "[h]omosexual erotica," yet it is described as containing pictures of
14 nude and semi-nude adult women. (Motion, page 2.) A book of photographs from the 1800's is
15 said to be somehow relevant. Some of the seized evidence isn't even arguably sexual in nature,
16 let alone evidence of an intent or plan to commit child molestation. The District Attorney asserts
17 that evidence that a computer user on one of the computers in Mr. Jackson's home visited
18 websites such as "www.adoption.com" or "www.adoptablekids.com" has relevance to the
19 alleged offenses, without any attempt to lay a foundation as to who visited those sites or why.
20 The prosecution puts all of these lawful materials together and argues that they are admissible
21 because they provide useful fodder for the prosecution's bolstering "experts." This argument is
22 not the legal equivalent of a foundation to put these materials in front of a jury.

23 II.

24 THE MATERIALS SEIZED IN 1993 ARE NOT RELEVANT TO THE CURRENT CASE

25 Materials seized in 1993 are not evidence of a crime and are not relevant to the present
26 case. The District Attorney has failed to demonstrate that these materials have any relevance to
27

1 the case at bar. The fact that the seizures occurred over a decade ago demonstrates that the
2 materials were seized too long ago to be relevant now. The proponent of the evidence has the
3 burden of establishing the foundation. No foundation has been established.

4 Furthermore, the District Attorney has not provided the 1993 materials listed in the
5 motion to defense counsel in discovery. It is too late in the process to introduce new materials.
6 These materials have nothing whatsoever to do with the present case and should not be admitted.

7 III.

8 **THE PREJUDICE TO ADMITTING THESE MATERIALS FAR OUTWEIGHS ANY**
9 **SPECULATIVE PROBATIVE VALUE**

10 There is no probative value to these materials. They are to be introduced simply to
11 distract from the underlying case the prosecution built on the allegations of a family of
12 opportunists. Instead of acknowledging the obvious and dismissing the case, the prosecution
13 seeks to bring in "experts" and distractions with the hope that the jury will "believe" Mr. Jackson
14 to be guilty in the absence of actual proof.

15 Under Evidence Code Section 352, there must: (1) be probative value; and (2) that
16 probative value must outweigh any prejudicial effect. The effect is prejudicial where, as here, it
17 is fodder for counterfactual aspersions and is designed to confuse and inflame the jury. If there is
18 evidence, let them present it, otherwise this case should be dismissed.

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IV.

CONCLUSION

For the above stated reasons, Mr. Jackson objects to the materials listed in the District Attorney's motion.

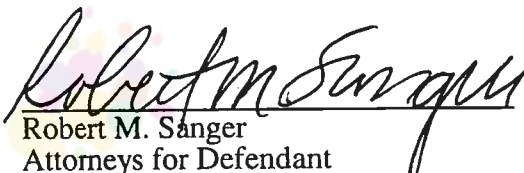
Dated: January 21, 2005

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By:


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MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On January 21, 2005, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows: EXPARTE APPLICATION FOR AN ORDER THAT NOTICE OF MOTION FOR AN ORDER THAT OPPOSITION TO DAS REQUEST TO ADMIT SEIZED EVIDENCE OF EROTIC MATERIALS and OPPOSITION TO DAS REQUEST TO ADMIT SEIZED EVIDENCE OF EROTIC MATERIALS and REDACTED VERSION on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

 X **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

 X **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 21, 2005, at Santa Barbara, California.


Bobette J. Tryon