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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 24 2005

GARY M. BLAIR, Executive Officer

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

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SANTA BARBARA**

10 **SANTA MARIA DIVISION**

*Unsealed Pursuant
to 6/16/05 Court order*

11 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,

No. 1133603

13 vs.

14 **PLAINTIFF'S REPLY TO**
15 **DEFENDANT'S**
16 **OPPOSITION RE:**
17 **EVIDENCE CODE § 402**
18 **ISSUES**

19 MICHAEL JOE JACKSON,
20 Defendant.

DATE: January 28, 2004
TIME: 8:30 AM
DEPT.: SM2 (Melville)

~~UNDER SEAL~~

21 **INTRODUCTION**

22 The purpose of plaintiff's MOTION IN LIMINE RE: EVIDENCE CODE SECTION
23 402 ISSUES is to establish the appropriate boundaries and rules for trial which did not appear
24 to restrain the defense during pre-trial proceedings. If there was any question whether defense
25 intends to persist in ignoring the laws regarding, inadmissible character evidence; collateral
26 impeachment, relevancy, arguing facts not in evidence, and irrelevant attacks upon "the
27 government", that question was put to rest by defendant's reply brief.

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I.
**THE PLAINTIFF SHOULD BE REFERRED TO BY THEIR
PROPER PARTY NAME:
"THE PEOPLE OF THE STATE OF CALIFORNIA"**

Defendant's argues that *People v. Black* (2003) 114 Cal.App.4th 830 does not apply to the issue of "calling" the people by some other name during trial. He is incorrect. The very issue before the court in *Black* was the defendant's assertion that "the People" be called by some other name during trial. (*Id.* @ p. 832.) The court in *Black* summarily rejected defendant's argument almost as quickly as this court did when defendant filed its MOTION FOR AN ORDER THAT THE DISTRICT ATTORNEY NOT BE ALLOWED TO TELL THE JURY THAT HE REPRESENTS "THE PEOPLE" etc... Defendant should have represented the denial of this motion in his reply and should not suggest that the court's ruling is an unconstitutional "manipulation."¹

II.
**DEFENDANT SHOULD ABIDE BY THE
RULES OF EVIDENCE REGARDING CHARACTER EVIDENCE AND
IMPEACHMENT ON COLLATERAL MATTERS**

Defendant captions his argument with an assertion of his right to confront and cross-examine witnesses and use proper impeachment at trial. The People have no quarrel with that. Defendant's then launches into a three page diatribe against the Arvizo family filled with character evidence, demagoguery, impeachment on issues that are collateral to the case at bar and facts outside of the record². Some of this evidence may be admissible at trial – some of it may not. However, defendant should understand there are rules of admissibility for such evidence and the court is the gatekeeper – not the defense.

Defendant needs to appreciate that the rules of evidence apply to both sides. To

¹ Defendant's continuing ad hominem attacks on this prosecutor throughout his reply brief are unnecessary and unproductive. Whether a prosecutor is proud to work for the government has no bearing on the issue of the proper party name used during trial. Defendant's argument that because the prosecutor is employed by the government he should therefore be referred to as "the government" is pure sophistry. Under this line of reasoning the court, its clerks and the public defenders should also be referred to as "the government."

² In addition to more personal sniping at the prosecutor. If defendant checked his FAX machine he would see that the prosecutor was working to finish these motions on Martin Luther King Day when he FAXed two of them to defense counsel - a day before it was required. We are all working very hard in this case and this was done as a courtesy to counsel.

1 date the People have filed no less than eight evidentiary motions requesting the court' review
2 regarding admissibility on a multitude of subjects including character evidence. Defendant has
3 filed no evidentiary motions concerning the admissibility of defense evidence. This is telling.
4 In virtually every instance, the defense has stridently opposed the prosecutions motions for
5 admission of evidence. It appears defendant feels the rules of evidence are a one way street.
6 They should know better. It is no more proper for the defense to bring up the J.C. Penney
7 litigation without a proper motion and pre-trial ruling than it would be for the prosecution to
8 blindside the defense at trial with the facts of defendant's 1993 child molestation litigation
9 without obtaining the court's permission.

10 For someone who claims they don't need to explain their intentions to the court,
11 defendant spends considerable time attempting to justify the admission of a variety of character
12 and credibility evidence. Most of defendant's bold assertions have never seen the light of a
13 courtroom. Many have not been discovered to the prosecution or even mentioned before in
14 court. All of the items defendant mentions are proper subjects for in limine review before they
15 are disclosed to the trier of fact.

16 For instance, defendant wants to introduce evidence that Janet Arizo lied to her ex-
17 husband, David Arvizo.³ Mr. Arvizo emotionally and physically abused his wife during their
18 sixteen year marriage which ended in 2001. He was convicted for this conduct and for child
19 abuse and he has made it clear he would like nothing better than to continue to abuse his
20 former family. This is precisely the type of highly inflammatory collateral matter that needs to
21 be briefed, carefully considered by the court and weighed under Evidence Code Section 352
22 before the jury hears it.

23 Another prime example of defendant's misunderstanding in this area concerns his
24 desire to introduce other acts of sexual conduct to impeach the victim. Evidence Code Section
25 782 specifically proscribes the admission of credibility evidence involving prior sexual
26 conduct of a victim before a defendant files a motion and requests a hearing outside the
27

28 ³ Defendant fails to state when these purported lies occurred, what they concerned and how this would be relevant to anything in this case.

1 presence of the jury.

2 How would defendant react if the shoe were on the other foot? Would defendant
3 object to the prosecution admitting psychiatric expert evidence that he suffers from the
4 condition of chronic pedophilia without asking leave of the court? How about that defendant
5 is a demerol addict that abuses illegal drugs and alcohol when he is playing with prepubescent
6 boys? These are precisely the types of sensitive areas that require the courts consideration of
7 the rules of evidence before admission.

8
9 **III.**
10 **AD HOMINEM ATTACKS BY THE DEFENSE**

11 Defendant states “Counsel should not resort to name calling and the defense has no
12 intention of doing so.” He then scolds this prosecutor by name for referring to counsel’s
13 “theatrical rancor; and “frantic bleating” about prosecutorial misconduct. These arguments
14 require cheek. Defendant feels he should be protected from any accusation of ad hominem
15 argument because any accusation would be “ad hominem.” Whatever defendant wants to call
16 it, his strategy throughout these proceedings has been tediously obvious to everyone who has
17 watched – deflect attention from defendant’s crimes by obstreperously accusing everyone
18 involved in this case of something else.

19 This is old news and defendant misses the point. The concern expressed in the
20 People’s motion is that defendant will continue to push this irrelevant topic at trial. It is utterly
21 astonishing is that the People had to bring this motion before defendant announced his
22 intention to call Tom Sneddon as a witness at trial. This is clearly improper. Defendant’s
23 anemic justifications for calling the district attorney to the stand should appear in a motion he
24 files, not in a reply.⁴

25 _____
26 ⁴ Defendant misrepresents Mr. Sneddon’s personal involvement in the case against defendant: Concerning the
27 Australia trip in 1993, Mr. Sneddon travelled with 2 detectives and 2 prosecutors from the L.A.D.A.’s Office to interview a
28 potential child sex victim. Regarding the “critical” interview with Janet Arvizo – there was none. With the exception of
Mr. Sneddon showing her the photos and obtaining the jacket, the facts of the case were never discussed and there are
witnesses to this. Janet Arvizo applied for State Victim Program. Mr. Sneddon never “arranged for her to get money” and
to characterize it as such is misleading. All of this was covered in detail during Mr. Sneddon’s testimony.

1 Finally, defendant confuses the rules of evidence with the crime of extortion.
2 Defendant has apparently failed to fully consider the ramifications of how making an issue of
3 Tom Sneddon's motive in this case would make Mr. Sneddon's complete knowledge about
4 defendant relevant. This is not extortion it is the law and defendant would be wise to consider
5 it.

6 Defendant has made innumerable charges of prosecutorial misconduct in this case
7 and each time the court has found the charge meritless. Defendant's latest iteration deserves
8 the same treatment and he should not be allowed to publish these false and irrelevant
9 allegations in front of the jury.

10 DATED: January 24, 2005

11 Respectfully submitted,

12 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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14 By: 

15 GORDON AUCHINCLOSS
16 Senior Deputy District Attorney

17 Attorneys for Plaintiff
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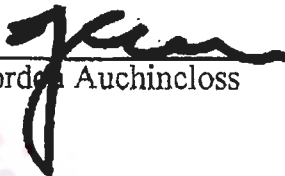
STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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 REPLY TO DEFENDANT'S OPPOSITION RE: EVIDENCE CODE § 402 ISSUES** 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 24th day of January, 2005.


Gordon Auchincloss

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