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

15 THE PEOPLE OF THE STATE OF CALIFORNIA,
16 CALIFORNIA,

17 Plaintiffs,

18 vs.

19 MICHAEL JOSEPH JACKSON,

20 Defendant.

) Case No. 1133603

) MR. JACKSON'S REPLY IN SUPPORT OF
) MOTION IN LIMINE TO EXCLUDE BOOKS,
) MAGAZINE, PHOTOGRAPHS, AND
) COMPUTER IMAGES OF [REDACTED]
) [REDACTED] AND ACCOMPANYING
) DOCUMENTS

) Honorable Rodney S. Melville

) Date: January 28, 2005

) Time: 8:30 a.m.

) Dept: SM 2

) ~~FILED UNDER SEAL~~

21 REPLY IN SUPPORT OF MOTION IN LIMINE RE: BOOKS, MAGS, PHOTOS, & COMPUTER IMAGES

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 27 2005

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

1 **A. Introduction**

2 The effort to try Mr. Jackson for having one of the largest private ██████ in the world is alarming.
3 Not since the dark days of almost three quarters of a century ago has anyone witnessed a prosecution which
4 claimed that the possession of books by well known artists were evidence of a crime against the state. All
5 of the books plaintiff seized as showing criminal "intent" and "motive" can be found in public ██████ and
6 university curriculum across the country where art, photography, and cinematography are taught.

7 Yet, plaintiff wants to tell this Court that it will show that 17 books which are all available from
8 local bookstores, 32 magazines that can be purchased at any corner drug store, two (2) DVDs showing
9 ██████ activity, two (2) photographs of children seized in 1993 of unexplained origin, four (4)
10 computers used by dozens of people who come to visit and who work at Neverland Ranch, and 23
11 ██████ Magazines from 1936 that are collectors items, are evidence of "motive" and "intent" to
12 "█████" ██████ for ██████ activity. However, plaintiff cannot establish a foundation for any of
13 these claims.

14 Mr. Jackson's Motion in Limine to Exclude Reference to Books, Magazines, Photographs, and
15 Computer Images of ██████ is designed to (1) exclude all evidence of ██████ seized
16 from Mr. Jackson's business associates "outside" Neverland Ranch, and (2) require a section 402 hearing
17 on all ██████ items seized "inside" Neverland Ranch. Plaintiff has agreed it will not introduce any items
18 from Mr. Jackson's business associates seized outside the Ranch. Further, plaintiff does not address the
19 necessity of a section 402 preliminary fact hearing in its responding papers, and says only that it will show
20 the relevancy of the materials. However, not only are these materials irrelevant, but also at section 402
21 preliminary fact hearing plaintiff has not and cannot establish a proper foundation.

22 **B. Plaintiff Agrees Not to Introduce Adult Materials from "Outside" Neverland Ranch.**

23 Plaintiff states that it will not use "█████" found in the possession of Mr. Jackson's business
24 associates against him. (1-24-04 Reply Memo, p. 2, lines 11-12).¹⁷ Mr. Jackson acknowledges plaintiff's
25

26 ¹⁷ Plaintiff's fixation with the term "█████" is disturbing. None of the books or magazines
27 involved in this case are "█████." Mr. Jackson has requested the court to preclude plaintiff from
28 engaging in improper legal conclusions in his Motion in Limine to Preclude Reference to ██████ and
█████, and the court should look with grave suspicion upon a plaintiff that wishes to characterize ██████
█████ as a ██████

1 position and will abide by the election. The Court should therefore enter an order that plaintiff agrees not
2 to present to the jury or otherwise utilize any books, magazines, photographs, or computer images of [REDACTED]
3 [REDACTED] seized from outside Neverland Ranch. This is a serious matter, and for plaintiff to play
4 fast and lose with this Court will be neither acceptable nor within the mandates of due process of law.

5 **C. The Court Should Hold a Section 402 Preliminary Fact Hearing Before Permitting**
6 **Reference to [REDACTED] From "Inside" Neverland Ranch.**

7 **1. Plaintiff did not address Mr. Jackson's request for a section 402 hearing.**

8 Mr. Jackson's Motion in Limine challenged plaintiff by stating, "Plaintiff cannot establish the
9 foundational facts of who utilized, controlled, or had access to these books, magazines, photographs, or
10 computers, let alone that Michael Jackson had access to them." (Mr. Jackson's MIL Books, p. 6, ln 6-8).
11 Instead of addressing Mr. Jackson's demand that a section 402 hearing be held where these foundational
12 facts are established for each item, plaintiff ignored the prerequisite and stated instead, "Plaintiff believes
13 we anticipated and have addressed the issue of the relevance and admissibility of salacious materials seized
14 from Neverland in our [Motion to Admit [REDACTED]]" (Opp MIL Books, p. 2, lines 14-16).
15 However, it is apparent that plaintiff has not and cannot address the absence of "foundation" to any of these
16 items, and it is the foundational element that must be established as a prerequisite to admissibility.

17 Plaintiff has referred the Court to its Motion to Admit Seized Evidence of [REDACTED] as
18 justification for admitting materials seized from "inside" Neverland Ranch. (1-24-05 Reply Memo, p. 2,
19 lines 14-17) However, in that Motion plaintiff seeks to introduce [REDACTED] picture books, videos, ad magazines
20 seized on November 18, 2003, from various locations throughout Neverland Ranch, including materials
21 seized from a search of Neverland Ranch in 1993.²¹ Mr. Jackson requests as to all such items, that before
22 they are offered to the jury, the Court hold an Evidence Code section 402 preliminary fact hearing to
23 determine the foundation and admissibility of all such items of evidence.

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27 ²¹ As discussed below, the court should exclude 12 year old items, which consist of three (3) books
28 and two (2) unidentified photographs, because not only are they far too remote in time, but also they are
irrelevant to any issues of this case. Plaintiff has never provided Mr. Jackson with materials seized in 1993 in
the course of discovery, and the discovery violation regarding these materials has been inexcusable.

1 Plaintiff should be required to establish a proper foundation fo all of these so called "██████"
2 materials in a hearing outside the presence of the jury. Mr. Jackson should be given an opportunity to
3 address the court in Limine at that time. Apparently, plaintiff has no objection to this procedure because
4 plaintiff did not address it in its response to Mr. Jackson's Motion in Limine.

5 **2. Plaintiff's claims of relevance and intent lack foundation.**

6 Plaintiff seeks to introduce the books, magazines, photographs, and computer images seized on
7 November 18, 2003, in an effort to show "motive" and "plan." However, the effort is an attempt to
8 establish a "character trait" to "prove ... conduct on a specified occasion." Evidence Code section 1101(a).
9 It will be essential for the Court to hold a section 402 preliminary fact hearing to determine the propriety
10 and foundation of this evidence when plaintiff seeks to offer it.

11 Plaintiff cites People v. Memro, 11 Cal. 4th 786 (1995), for the proposition that it can introduce
12 evidence of ████████ ████████ magazines for the purpose of proving a "character trait" of an intent to ████████
13 ████████ (Opp MIL Books, p. 2, lines 17-19). However, the nature of the magazines in Memro were
14 not ████████ and ████████, as they are in this case, nor were they the collectors items of ████████ and ████████
15 from 1936. Plaintiff's efforts to analogize the expensive and noted works of ████████ ████████ and ████████
16 ████████ with the smut in Memro is inapposite.

17 More important, defendant's house in Memro was filled with the magazines in question and the
18 prosecution had no difficulty laying a "foundation" as a prerequisite to admissibility. The items here are
19 quite different, and the leap necessary to "characterize" the materials and lay a "foundation" regarding them
20 is something this plaintiff will not be able to establish in a section 402 hearing.

21 Mr. Jackson's house is filled with thousands and thousands of books, videos, and magazines. In
22 this enormous collection, plaintiff found 17 books by noted authors of world wide reputation that plaintiff
23 has chosen to condemn as if plaintiff had any such right to censor what Mr. Jackson may collect in his
24 ████████. Rather than debate the absurdity of plaintiff's claims here, all this motion is designed to do is
25 require plaintiff to lay the proper foundation in a section 402 hearing as to each item seized at Neverland
26 Ranch, and that is an essential aspect of this trial which in the absence of any objection from plaintiff in its
27 responding papers should be granted.

1 **D. Evidence of Photos and Books From 1993 is Irrelevant, Prejudicial, and Violates**
2 **Mr. Jackson's Rights to a Speedy and Fair Trial.**

3 1. **Plaintiff's effort to introduce stale evidence violates the statute of limitations.**

4 t is prejudicial and a violation of Mr. Jackson's right to due process and a fair trial to utilize "books"
5 and unidentified photographs seized in 1993 to establish a crime 12 years later.³⁷ Permitting such evidence
6 would be speculative because there is no evidence Michael Jackson ever read them, saw them, or knew they
7 existed, and the passage of time deprives him of any ability to present evidence and witnesses regarding
8 these facts because of the disappearance of material witnesses and evidence. In this case, the turnover of
9 Ranch employees, loss of materials that explain the books and pictures, faded memories, and loss of
10 records and witnesses has been severe, and not even plaintiff knows who is depicted in the photographs.

11 The 1993 book seizure occurred prior to the Supreme Court decision in Stogner v. California, 539
12 U.S. 607, 613 (2003), holding California's retroactive statute of limitations extension to be
13 unconstitutional. In other words, three books from among thousands were not sufficient at that earlier time
14 to support a prosecution. To now permit the admission of a book or photographs seized 12 years ago to
15 constitute "motive" and "intent" evidence today is an effort to taint the jury with irrelevant speculation
16 where the probative value is far outweighed by its prejudicial effects, along with a violation of the statute of
17 limitations.

18 In Stogner v. California, 539 U.S.607, 613 (2003), the Court said:

19 "Significantly, a statute of limitations reflects a legislative judgment that, after a certain
20 time, no quantum of evidence is sufficient to convict.... And that judgment typically rests, in large
21 part, upon evidentiary concerns--for example, concern that the passage of time has eroded memories
22 or made witnesses or other evidence unavailable.... Indeed, this Court once described statutes of
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25 ³⁷ On December 18, 2004, this Court ordered that before "testimony" of prior Evidence Code section
26 1108 acts could be admitted, plaintiff would have to establish a case in chief of the existence of the current
27 alleged acts. Under no conditions should plaintiff be permitted to evade the Court's ruling by introducing or
28 making reference in opening statement to books from 12 years ago that have no connection to either the so-
called prior acts or the current allegations. This kind of evidence is not only irrelevant, but also so remote in
time as to be distracting and unduly prejudicial under Evidence Code section 352.

1 limitations as creating 'a presumption which renders proof unnecessary.' Wood v. Carpenter, 101
2 U.S. 135, 139, 25 L.Ed. 807 (1879)." (Emphasis add added).

3 Similarly, the Court stated in United States v. Marion, 404 U.S. 307, 322 (1971):

4 "The law has provided other mechanisms to guard against possible as distinguished from
5 actual prejudice resulting from the passage of time between crime and arrest or charge.... '[T]he
6 applicable statute of limitations . . . is . . . the primary guarantee against bringing overly stale
7 criminal charges. "Such statutes represent legislative assessments of relative interests of the State
8 and the defendant in administering and receiving justice; they" are made for the repose of society
9 and the protection of those who may (during the limitation) . . . have lost their means of defense.'
10 Public Schools v. Walker, 9 Wall. 282, 288, 19 L.Ed. 576 (1870). These statutes provide
11 predictability by specifying a limit beyond which there is an irrebuttable presumption that a
12 defendant's right to a fair trial would be prejudiced."

13 The use of three (3) 12-year old books crosses a limit beyond which there is an irrebuttable
14 presumption a defendant's right to a fair trial would be destroyed. It is an act so prejudicial as to violate
15 Mr. Jackson's rights to due process. Permitting any testimony about a book or unidentified photograph
16 when witnesses and documents have disappeared is a violation of fundamental fairness.

17 **2. The 12 year old books and photos cannot show criminal intent today..**

18 The passage of 12 years renders improper the introduction of any evidence that creates an inference
19 of criminal acts from three (3) books and two (2) photos. The age of these non-criminal items makes unfair
20 any offer of them into evidence, and the inference of "criminal intent" which plaintiff wishes to extrapolate
21 from them violates the statute of lamentations in California and due process that plaintiff's allegations that
22 these items show criminal intent would be time barred as criminal charges if plaintiff were to seek to bring
23 those charges against Mr. Jackson today. It is also certain the highest Court in the land would conclude Mr.
24 Jackson cannot obtain a fair trial on those time barred allegations. In this case, especially, it will be
25 impossible for Mr. Jackson to receive a fair trial based on allegations that he possessed three (3) books and
26 two (2) photographs 12 years ago when the people involved and witnesses to their nature, origin, and use
27 have all disappeared. Not even plaintiff knows who the photographs depict, why they were taken, why they
28 were on Neverland Ranch, or who put them there.

1 Moreover, if these allegations were formal charges, Mr. Jackson would be entitled to a dismissal of
2 such charges on both State and Federal Speedy trial grounds because the delay in bringing these allegations
3 to court has severely prejudiced Mr. Jackson's ability to defend against them. Barker v. Wingo, 407 U.S.
4 514, 530 (1972)(prejudice may be shown by loss of a material witness or other material evidence or fading
5 memory caused by lapse of time; Jones v. Superior Court, 3 Cal.3d 734, 741 (1970). Equally, the claim
6 that [REDACTED] can be used to create an inference of criminality are also a violation of Mr.
7 Jackson's right to a speedy trial. People v. Hill, 37 Cal.3d 491 (1984)(prosecution witness memory faded);
8 Barker v. Municipal Court, 64 Cal.2d 806, 813 (1966).

9 Were the Court to allow plaintiff to proceed in presenting evidence of long past photographs that no
10 body even knows who is in the picture, Mr. Jackson would be deprived of a fair trial. The evidence of
11 three (3) books from 12 years ago is both remote as to time, vague as to the nature of the claim involved,
12 and irrelevant to establish anything in connection with this case. The passage of time violates Mr.
13 Jackson's rights to a speedy trial on the inference of "criminality" the prosecution wishes to create by
14 reference to such items, and exclusion of all such evidence is essential to preserve Mr. Jackson's right to a
15 fair trial, along with protecting against violations of due process of law.

16 **E. Conclusion.**

17 For the foregoing reasons, Mr. Jackson requests his Motion in Limine to Exclude Reference to
18 Books, Magazines, Photographs, and Computer Images of [REDACTED] be granted.

19 DATED: January 26, 2005

Respectfully submitted,

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