

FEB 10 2005

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*if unsealed pursuant
to 1/11/05 Court
order*

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

FILED
FEB 10 PM 2:20

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

No. 1133603

13 Plaintiff,

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S REQUEST THAT
PLAINTIFF BE REQUIRED TO
PRESENT THE HEARSAY
EVIDENCE OF DEFENDANT'S
RESPONSE TO "LIVING WITH
MICHAEL JACKSON" AS PART
OF ITS CASE IN CHIEF

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.

DATE: ~~February 21, 2005~~
TIME: ~~8:30 a.m.~~
DEPT: SM 2 (Melville)

17 FILED UNDER SEAL

18 Introduction:

19 Plaintiff moved the Court to allow it to present Martin Bashir's documentary
20 "Living with Michael Jackson" to the jury as part of its case in chief, as evidence of the single,
21 catastrophic event that motivated Defendant and others to conspire to commit the crimes
22 alleged in Count One of the indictment. Plaintiff acknowledged that though much of that
23 documentary is hearsay, it would be offered for a non-hearsay purpose: to illuminate
24 Defendant's motive to conspire with the unindicted co-conspirators to falsely imprison Gavin
25 Arvizo and his family and extort Janet Arvizo's agreement to take part in a "rebuttal" video, as
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1 alleged in Count One of the Indictment.

2 The Court granted Plaintiff's motion but limited the proposed evidence to the
3 version of "Living with Michael Jackson" that aired in the United Kingdom on February 3,
4 2003, rather than the more expansive presentation of that documentary in the United States by
5 ABC on February 6th, with its added commentary by Mr. Bashir and Barbara Walters.

6 At the hearing of Plaintiff's motion, Defendant's counsel urged the Court to require
7 Plaintiff to "balance" the prejudicial effect of "Living with Michael Jackson" by presenting,
8 immediately thereafter, "The Michael Jackson Interview: The Footage You Were Never Meant
9 To See" film narrated by Maury Povich ("Footage"). Defendant argued that the Bashir
10 documentary was edited to present facts in a misleading fashion and to deliberately show
11 Michael Jackson in a false light. He urged that "Footage" reveals the true context of Mr.
12 Jackson's several statements – a context suppressed by the editing of "Living with Michael
13 Jackson" – and that his right to a fair trial obliged the People to present "Footage" as part of its
14 case in chief.

15 Summary of Plaintiff's Response

16 "Footage" is purest hearsay. Because it is hearsay, it is not admissible unless it
17 comes within an exception to the hearsay rule.

18 Defendant has not identified any exception to the hearsay rule that would support
19 the admission of "Footage" in this case. That fawning tribute would not be admissible even if
20 Defendant proposed to offer it on his own behalf. In the circumstances, Defendant may not
21 oblige Plaintiff to tender Defendant's proposed hearsay as part of Plaintiff's case-in-chief.

22 Argument

23 I

24 THE DEFENSE MAY NOT COMPEL THE PROSECUTION
25 TO PRESENT INADMISSIBLE HEARSAY EVIDENCE
26 DURING ITS CASE IN CHIEF.

27 The People moved to introduce the documentary "Living with Michael Jackson" as
28 evidence of the event – the airing of that documentary around the world – that prompted the

1 frenzied response alleged in Count One of the indictment. Most of it is hearsay, but it is
2 nevertheless admissible under the "operative fact" doctrine. The Court has so ruled.

3 Defendant's public position was that "Living with Michael Jackson" portrayed him
4 in a false light. He sought to counter that portrayal with a "puff-piece" of his own creation:
5 "The Michael Jackson Interview: The Footage You Were Never Meant To See."

6 "Living with Michael Jackson" is relevant and admissible on the issue of
7 Defendant's motive to commit the acts alleged in Count One. Evidence of defendant's
8 creation and broadcast of "Footage" has no relevance to any issue framed by the indictment.
9 For that reason alone, Plaintiff may not be required to exhibit it to the jury as part of its case in
10 chief.

11 If Defendant believes it would be prudent to introduce admissible evidence that
12 offsets the prejudicial effect of "Living with Michael Jackson," he is free to do so as part of his
13 case. The operative word is "admissible." Hearsay is inadmissible. "Footage" is purest
14 hearsay.

15 If there is authority for the proposition that a defendant may counter admissible,
16 relevant and prejudicial evidence with inadmissible, irrelevant and fawning tributes to him, he
17 has not cited it.

18 II

19 THE "FOOTAGE" FILM IS NOT JUST HEARSAY, IT IS 20 INACCURATE, FAWNING AND IRRELEVANT HEARSAY

21 The title, "Living with Michael Jackson: The Footage You Were Never Meant To
22 See" suggests that there was footage made in the course of the production of "Living with
23 Michael Jackson" that was edited out before the documentary was aired. Defense counsel
24 represented to the court that "Footage" served to correct the false impression created by
25 Bashir's editing by putting Defendant's controversial statements in their larger context. The
26 suggestion was that by presenting "the rest of the story," Defendant's statements would be
27 heard and understood as innocuous.

28 In fact, however, rather little footage made contemporaneously with the filming of

1 "Living with Michael Jackson" was seen in "The Footage You Were Never Meant To See."
2 Instead, "Footage" is a Hollywood production that contains a collection of film clips from
3 Defendant's old performances from childhood to early adulthood, interviews with the
4 defendant, members of his family (including his father, who denies that he beat his children)
5 and friends. It contains scenes of children frolicking about Neverland, and carefully scripted
6 commentary designed to place the Defendant in a favorable if not entirely truthful light.

7 A. Debbie Rowe

8 "The Footage You Were Never Meant To See" film prominently features Debbie
9 Rowe, Defendant's ex-wife and mother of his first two children. She is recorded as saying she
10 happily conceived these two children for him in the traditional way because of her desire that
11 he become a father. Her commentary in the film neither confirms nor denies Jackson's earlier
12 quotes that she did not want her children to know their mother.

13 If Defendant is suggesting that "Footage" offers the viewer a larger and accurate
14 context to Defendant's statements in "Living with Michael Jackson" about his children not
15 having a relationship with their mother, then Defendant should expect that Ms Rowe will be
16 called to testify to the contrary: (1) that she never had sex with the defendant; (2) that she is
17 currently being denied access to her children; (3) that she has had to go to court to compel
18 Defendant to allow her to visit her children; (4) that it was not her idea to have her children
19 wear scarves over their faces in public; (5) that her commentary in Povich's "Footage" film
20 was carefully scripted and largely untruthful; and finally (6), that co-conspirator Marc Schaffel
21 told her she would be allowed to visit her children if she cooperated in the filming.

22 B. Sleeping With Boys

23 The most devastating part of "Living with Michael Jackson" is Bashir's discussion
24 with Defendant of Michael Jackson's habit and custom of sleeping with adolescent boys. The
25 footage of Defendant's interaction with John Doe and the footage of his commentary about
26 sleeping with children were filmed on two different occasions and at two different locations: at
27 Neverland and in Florida. Defendant's personal videographer, Hamid Moslehi, was not
28 present during the Neverland interview. There would have been no additional outtakes from

1 the Neverland interview that would have shown that the Bashir interview was somehow
2 distorted or altered to present Defendant in a false light.

3 Moslehi was present for the Florida interview. The footage of that interview, at
4 least that portion contained in the Povich film, changed nothing. The only attempt to
5 neutralize Defendant's comments about sleeping with children was the inclusion of a statement
6 by his ex-wife Debbie Rowe, who said she often shares her bed with visitors as they watch
7 television. Rowe did not say that the visitors on her bed were unrelated children.

8 There is nothing in "Footage" that puts Defendant's admissions in a different or
9 more agreeable context. "Footage" does not include any additional statements by Defendant
10 that would suggest that his admission, "I've slept in a bed with many children. I slept in the
11 bed with all of them" – including Macauley Culkin and Kieran Culkin – as a "very loving" and
12 "very right" thing, means something other than that he sleeps with young boys not his own and
13 it is not wrong to do so.

14 CONCLUSION

15 Defendant's request that the People be ordered to present inadmissible evidence to
16 offset the prejudicial effect of admissible evidence should be denied.

17 DATED: February 10, 2005

18 Respectfully submitted,

19 THOMAS W. SNEDDON, JR.
20 District Attorney

21 By: 

22 Gerald McC. Franklin, Senior Deputy

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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 February 10, 2005, I served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S REQUEST THAT PLAINTIFF BE REQUIRED TO PRESENT THE HEARSAY EVIDENCE OF DEFENDANT'S RESPONSE TO "LIVING WITH MICHAEL JACKSON" AS PART OF ITS CASE IN CHIEF 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 personally serving a true copy thereof to defense counsel in open court.

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

Executed at Santa Barbara, California on this 10th day of February, 2005.



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