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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **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.)
21)
22)
23)

) Case No. 1133603

) **BRIEF IN SUPPORT OF OBJECTIONS TO**
) **CONSPIRATOR HEARSAY (Evidence Code**
) **Section 1223); PROPOSED JURY**
) **INSTRUCTION**

) Honorable Rodney S. Melville

) Date: March 2, 2005

) Time: 8:30 am

) Dept: SM 8

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I.**

26 **INTRODUCTION**

27 On January 18, 2005, Mr. Jackson filed a motion in limine to exclude uncharged
28

BRIEF IN SUPPORT OF OBJECTIONS TO CONSPIRATOR HEARSAY (Evidence Code Section 1223)

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAR 02 2005

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

1 conspirator hearsay.¹ On January 28, 2005, the Court ruled that sufficient evidence would have
2 to be presented before uncharged conspirator hearsay statements would be admitted. The Court
3 stated that the jury shall also make a finding that there is sufficient evidence. The Court further
4 stated that requests to conditionally admit such statements subject to evidence of the preliminary
5 fact to be supplied later would be considered. (Minute Order dated January 28, 2005.)

6 II.

7 CONSPIRATOR HEARSAY IS INADMISSIBLE WITHOUT A PRIMA FACIE
8 SHOWING THAT A CONSPIRACY EXISTED

9 The District Attorney has not only not established a foundation that statements were made
10 in the course of a conspiracy by alleged co-conspirators, but has sought to introduce out of court
11 statements from someone who is not even an alleged co-conspirator. David LeGrand was a
12 lawyer out of Las Vegas, working on Michael Jackson's behalf for a brief period of time. The
13 District Attorney has asked his girlfriend, Ann Kite, to recount what LeGrand said and what
14 conclusions she drew from his words.

15 There is no foundation to establish that Ann Kite is a co-conspirator. She never met
16 Michael Jackson and she only worked for her boyfriend on this matter for two weeks. She was
17 fired when she attempted to capitalize on her relationship by scheduling herself as a guest on a
18 nationally syndicated television show.

19 Over the objection of defense counsel, Ann Kite testified to hearsay statements made by
20 David LeGrand. For instance, Ms. Kite testified that Mr. LeGrand told her that her duties were
21 to help with the fallout from the Martin Bashir video. (RT 120:11-12.). No exception to the
22 hearsay rule has been provided. The District Attorney has not alleged that Mr. LeGrand is a co-
23 conspirator. If, however, the District Attorney plans to allege that Mr. LeGrand participated in
24 the purported conspiracy, there is still not a basis to allow the hearsay statements to be

25
26 ¹ The undersigned has attempted to keep this pleading brief in deference to the Court's
27 limited time to consider it. This issue has been previously briefed in Mr. Jackson's Motion in
28 Limine to Limit Uncharged Conspirator Hearsay, which is hereby incorporated.

1 introduced. As the Court stated on January 28, 2005, Evidence Code Section 1223 requires that
2 if these statements are offered as conspirator hearsay, sufficient evidence must be provided
3 before they can be admitted. No such evidence has been provided.

4 Before evidence of the acts and declarations of an alleged co-conspirator is admissible
5 against the other conspirators, prima facie evidence of the conspiracy must be proved. (*People v.*
6 *Saling* (1972) 7 Cal.3d 844, 852.) Prima facie evidence of the conspiracy, in the context of
7 Evidence Code § 1223, means that the jury cannot consider the statement in issue unless it finds
8 the preliminary facts to be true from a preponderance of the evidence. (*People v. Herrera* (2001)
9 83 Cal.App.4th 46.)

10 A prima facie case of conspiracy has not been established. The District Attorney's Trial
11 Brief does not provide sufficient evidence to admit conspirator hearsay statements, and in
12 particular hearsay regarding David LeGrand. The Trial Brief is simply an outline of the District
13 Attorney's theory. It does not contain declarations or any other factual basis for making a
14 preliminary determination that a conspiracy existed. Instead, the theory itself is based on hearsay
15 and innuendo. With regard to Mr. LeGrand, the Trial Brief does not provide any basis to believe
16 that he was a member of a conspiracy.

17 Hearsay should not be admitted under the conspirator hearsay exception because the
18 District Attorney had not made a prima facie case. If, however, the Court decides to admit
19 conditional hearsay statements, the jury should be advised that the statements are being admitted
20 conditionally. A proposed jury instruction regarding conspirator hearsay statements (CALJIC
21 6.24) is attached.

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BRIEF IN SUPPORT OF OBJECTIONS TO CONSPIRATOR HEARSAY (Evidence Code Section 1223)

1 III.

2 CONCLUSION

3 For the reasons stated above, and in Mr. Jackson's Motion in Limine to Limit Uncharged
4 Conspirator Hearsay, the Court should not allow purported conspirator hearsay to be introduced
5 without sufficient evidence.

6 Dated: March 1, 2005

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1 CALJIC 6.24- DETERMINATION OF ADMISSIBILITY OF CO-CONSPIRATOR'S

2 STATEMENTS

3 Evidence of a statement made by one alleged conspirator other than at this trial shall not
4 be considered by you as against another alleged conspirator unless you determine by a
5 preponderance of the evidence:

- 6
- 7 1. That from other independent evidence that at the time the statement was made a
8 conspiracy to commit a crime existed;
 - 9 2. That the statement was made while the person making the statement was participating in
10 the conspiracy and that the person against whom it was offered was participating in the
11 conspiracy before or during that time; and
 - 12 3. That the statement was made in furtherance of the objective of the conspiracy.

13 The word "statement" as used in this instruction includes any oral or written verbal
14 expression or the nonverbal conduct of a person intended by that person as a substitute for oral or
15 written verbal expression.
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