

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAR 09 2005

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MICHAEL JACKSON, et al.

Defendant.

Case No.: 1133603

Order for Release of Redacted Documents

[Notice of Motion and Motion to Admit
Evidence of Sexual Conduct]

Redacted Pursuant to Ev. C. § 782

The redacted form of Defendant's Notice of Motion and Motion to Admit Evidence of Sexual Conduct attached to this order shall be released and placed in the public file. The procedure for determining the admissibility of sexual conduct as outlined in Ev. C. § 782 has not been followed. The written motion here contains more material than is permitted by the statute. That excess material has been redacted to bring it in compliance with Ev. C. § 782. The accompanying declaration and exhibits are sealed in compliance with Ev. C. § 782(a)(2).

Dated: MAR 09 2005

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

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10 Attorneys for Defendant
11 MICHAEL JOE JACKSON

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

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 MICHAEL JOE JACKSON

19 Defendant.

) CASE NO. 1133603

) NOTICE OF MOTION AND MOTION TO
) ADMIT EVIDENCE OF [REDACTED]
) [REDACTED] SEXUAL CONDUCT

) HEARING:

) DATE: MARCH 11, 2005

) TIME: 8:30 A.M.

) Place: Dept. SM-2

) FILED UNDER SEAL
) (Pursuant to Evidence Code Section 782)

1 TO THE HONORABLE RODNEY S. MELVILLE AND TO THE DISTRICT
2 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
3 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON
4 AUCHINCLOSS:

5 Please take notice that on March 11, 2005, at 8:30 a.m., or as soon thereafter as the
6 matter may be heard, before the Honorable Rodney S. Melville, defendant Michael Joseph
7 Jackson ("Mr. Jackson") will move and hereby does move the Court, pursuant to Evidence
8 Code Section 782, for an order admitting evidence of sexual conduct of the complaining
9 witnesses [REDACTED] for purposes of impeachment ("Motion").

10 The Motion is made on the grounds that the evidence of sexual conduct is
11 relevant to the credibility of these complaining witnesses under Evidence Code Section
12 780, in that it has tendency in reason to prove or disprove the truthfulness of their
13 testimony at trial, including, *but not limited to*, the following:

- 14 (a) Their character for honesty or veracity or their opposites; and
- 15 (b) The existence or nonexistence of any fact testified to by them.

16 The Motion is made also on the grounds that, pursuant to Evidence Code Section
17 352, the probative value of the proffered evidence is not outweighed by the risk of undue
18 prejudice, confusing the issues, misleading the jury or necessitate undue consumption of
19 time.

20 This Motion will be based on this notice of motion, the memorandum of points and
21 authorities, and declaration of Susan C. Yu served and filed herewith, on such
22 supplemental memoranda of points and authorities as may hereafter be filed with the court
23 or stated orally at the conclusion of the hearing; on all the papers and records on file in this

24 ///
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1 action, and on such oral and documentary evidence as may be presented at the hearing of
2 the Motion

3
4 DATED: March 1, 2005

Respectfully submitted,

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6 Thomas A. Mesereau, Jr.
Susan C. Yu
COLLINS, MESEREAU, REDDOCK & YU

7
8 Robert M. Sanger
SANGER & SWYSEN

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10 Brian Oxman
OXMAN & JAROSCAK

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12 By:



13
14 Susan C. Yu
15 Attorneys for Mr. MICHAEL J. JACKSON

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

[REDACTED]

II.

APPLICABLE LAW

A. Evidence Code Section 782

Evidence Code Section 782, which sets forth procedures for admitting evidence of sexual conduct of complaining witness, provides:

(a) In any prosecution under Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit any crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness under Section 780, the following procedure shall be followed:

(1) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

- 1 (2) The written motion shall be accompanied by an affidavit in which the
2 offer of proof shall be stated. The affidavit shall be filed under seal and
3 only unsealed by the court to determine if the offer of proof is sufficient to
4 order a hearing pursuant to paragraph (3). After that determination, the
5 affidavit shall be resealed by the court.
- 6 (3) If the court finds that the offer of proof is sufficient, the court shall order a
7 hearing out of the presence of the jury, if any, and at the hearing allow the
8 questioning of the complaining witness regarding the offer of proof made
9 by the defendant.
- 10 (4) At the conclusion of the hearing, if the court finds that evidence proposed
11 to be offered by the defendant regarding the sexual conduct of the
12 complaining witness is relevant pursuant to Section 780, and is not
13 inadmissible pursuant to Section 352 of this code, the court may make an
14 order stating what evidence may be introduced by the defendant, and the
15 nature of the questions to be permitted. The defendant may then offer
16 evidence pursuant to the order of the court.
- 17 (5) An affidavit resealed by the court pursuant to paragraph (2) shall remain
18 sealed, unless the defendant raises an issue on appeal or collateral review
19 relating to the offer of proof contained in the sealed document. If the
20 defendant raises that issue on appeal, the court shall allow the Attorney
21 General and appellate counsel for the defendant access to the sealed
22 affidavit. If the issue is raised on collateral review, the court shall allow
23 the district attorney and defendant's counsel access to the sealed affidavit.
24 The use of the information contained in the affidavit shall be limited
25 solely to the pending proceeding.

26 (Evi. Code Section 782, Deering's Cal. Codes Ann. 2005)

27 B. Evidence Code Section 780

28 Evidence Code Section 780 sets forth general rule as to credibility. It provides:

Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

- (a) His demeanor while testifying and the manner in which he testifies.
- (b) The character of his testimony.
- (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
- (d) The extent of his opportunity to perceive any matter about which he testifies.
- (e) His character for honesty or veracity or their opposites.
- (f) The existence or nonexistence of a bias, interest, or other motive.

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[REDACTED]

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[REDACTED]

The Motion should be granted.

IV.

CONCLUSION

For all of the foregoing reasons, Mr. Jackson respectfully requests that the Court grant this Motion.

DATED: March 1, 2005

Respectfully submitted,

Thomas A. Mesereau, Jr.
Susan C. Yu
COLLINS, MESEREAU, REDDOCK & YU

Robert M. Sanger
SANGER & SWYSEN

Brian Oxman
OXMAN & JAROSCAK

By:



Susan C. Yu
Attorneys for Mr. MICHAEL J. JACKSON

PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On March 9, 2005, 2005, I served a copy of the attached ORDER FOR RELEASE FOR REDACTED DOCUMENT (NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF SEXUAL CONDUCT) REDACTED PURSUANT TO EVID. CODE § 782 addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

 FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 456-0699 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(1), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

 MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

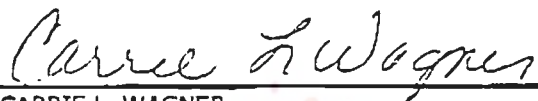
 PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

 EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 9TH day of MARCH, 2005, at Santa Maria, California.


CARRIE L. WAGNER