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

14
15 THE PEOPLE OF THE STATE OF CALIFORNIA,

16 Plaintiffs,

17 vs.

18 MICHAEL JOSEPH JACKSON,

19 Defendant.

) Case No. 1133603

) RESPONSE TO THE DISTRICT
) ATTORNEY'S SUPPLEMENTAL MOTION
) FOR THE ADMISSION OF ADDITIONAL
) EVIDENCE PURSUANT TO EVIDENCE
) CODE SECTION 1108 AND 1101(B)

) Honorable Rodney S. Melville
) Date: TBA
) Time: 8:30 am
) Dept: SM 8

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28 RESPONSE TO THE DISTRICT ATTORNEY'S SUPPLEMENTAL MOTION FOR THE
ADMISSION OF ADDITIONAL EVIDENCE PURSUANT TO EVIDENCE CODE SECTION
1108 AND 1101(B)

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

APR 18 2005

GARY M. BLAIR, Executive Officer

By: *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

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2 MEMORANDUM OF POINTS AND AUTHORITIES

3 I.

4 THE ADDITIONAL TESTIMONY SHOULD NOT BE ADMITTED BECAUSE THE
5 DISTRICT ATTORNEY FAILED TO COMPLY WITH EVIDENCE CODE SECTION
6 1108 AND PENAL CODE SECTION 1054.7

7 The District Attorney has been aware of the statements of Kassim Abdool for almost a
8 decade. For whatever reason, the prosecution opted not to include this "evidence" in their 1108
9 motion. Penal code Section 1054.7 requires disclosure of statements of witnesses at least 30
10 days prior to trial, or immediately if the information becomes known within 30 days of trial,
11 unless good cause is shown. Now, in the middle of trial, the prosecution seeks to introduce this
12 testimony without offering good cause as to why they did not disclose the statements of Mr.
13 Abdool 30 days prior to trial. The Court should reject this request based on the failure to show
14 good cause.

15 II.

16 THE TESTIMONY OF MR. ABDOOL SHOULD NOT BE ADMITTED PURSUANT TO
17 EVIDENCE CODE SECTION 352

18 The proffered testimony amounts to salacious innuendo, not proper Sections 1108 or
19 1101(b) evidence. The prosecution seeks to introduce testimony that Kassim Abdool¹ that he

20
21 ¹ The District Attorney's motion incorrectly claims that the undersigned contacted Mr.
22 Abdool and met with him around the time of the grand jury investigation in 1993. That is not
23 correct. The fact is that attorney Steve Cochran and investigator Eric Mason met with both
24 Abdool and Ralph Chacon. They used a conference room in the undersigned's law office in
25 Santa Barbara.

26 Both Chacon and Abdool testified to this under oath in their depositions. They testified
27 that they did not talk to nor did they even meet the undersigned during that period of time.

28 Perhaps unintentionally -- or perhaps to distract attention from the personal involvement
of the prosecutors in various aspects of this case -- there is an effort to involve the undersigned in
some sort of meeting with these witnesses. Chacon testified on direct in this trial that he met
with Eric Mason and Steve Cochran. On re-direct, he was asked a leading question about the
time he met with "Mr. Sanger and Mr. Cochran." That was, of course, an improper question

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1 saw wet swimming trunks on a floor, witnessed a brief hug between Mr. Jackson and Jordan
2 Chandler, and that he was asked to bring Vaseline to Mr. Jackson's bedroom. Mr. Abdool's
3 stories will do nothing to assist the trier of fact. The Court should reject the proffered testimony
4 as unduly prejudicial, likely to confuse and inflame the jury and time consuming.

5
6 III.

7 SECTIONS 1108 AND 1101(B) WERE NOT DESIGNED TO ALLOW THIS SORT OF
8 TESTIMONY

9 The prosecution has been given a significant amount of leeway with regard to the
10 presentation of alleged prior offense evidence. This is the time, however, where the Court should
11 draw the line. Sections 1108 and 1101(b) were not designed to allow a prosecutor a second
12 chance to prove, using a preponderance of the evidence standard, a case that he never could have
13 proved beyond a reasonable doubt. The Legislature's principal justification for enacting Section
14 1108 was that "[b]y their very nature, sex crimes are usually committed in seclusion without third
15 party witnesses or substantial corroborating evidence." (*People v. Falsetta* (1999) 21 Cal.4th
16 903, 915.) Ironically, in the present case, the current alleged offenses were supposedly witnessed
17 by a third party, Star Arvizo, whereas the vast majority of the Section 1108 evidence was based
18 on third party circumstantial witnesses.

19 With regard to Abdool, this is precisely the kind of inflammatory evidence that is more
20 prejudicial than probative. It does not amount to evidence of an offense and only serves to

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22 which misstated his testimony on direct. This motion now makes an attempt to place the
23 undersigned at a similar meeting with Abdool. Just like Chacon, Mr. Abdool has testified under
24 oath that he did not meet the undersigned until after discovery started in his lawsuit,
approximately a year later.

25 The prosecution has now been adequately warned that Mr. Sanger had nothing to do with
26 these meetings with Ranch employees during the grand jury investigations. The prosecution is
also on notice that their witnesses have so testified - including Mr. Abdool. If Abdool is allowed
to testify, we would expect that the prosecution would not attempt to introduce such false
evidence, either directly or by innuendo, without a hearing out of the presence of the jury.

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28 RESPONSE TO THE DISTRICT ATTORNEY'S SUPPLEMENTAL MOTION FOR THE
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1 advance the prosecution's case by indirect innuendo. The Court should reject this testimony
2 because it is not proper prior offense evidence.

3 IV.

4 CONCLUSION

5 For the reasons stated above, the Court should not admit the proposed additional
6 alleged prior offense evidence.

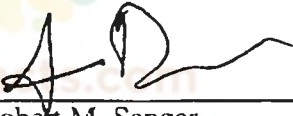
7 Dated: April 18, 2005

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13 ~~EX~~
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