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County of Santa Barbara
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 18 2005

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

** Unsealed pursuant
to 6/11/05 court
order*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA DIVISION**

RECEIVED
05 JAN 18 PM 3:22
SUPERIOR COURT
SANTA BARBARA COUNTY
MILLER BUILDING

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MICHAEL JOE JACKSON,

Defendant.

No. 1133603

PLAINTIFF'S REQUEST TO
ADMIT SEIZED EVIDENCE OF
EROTIC MATERIALS TO
DEMONSTRATE DEFENDANT'S
INTENT, PLAN, SCHEME AND
MOTIVE

DATE: January 28, 2005
TIME: 9:30 a.m.
DEPT: SM 8

~~FILED UNDER SEAL~~

The People seek to introduce numerous homosexual and heterosexual picture books, videos, and magazines seized on November 13, 2003, from the defendant's master bedroom suite at Neverland Valley Ranch, the video arcade and from a room adjoining the defendant's private office in a security building. The People also seek to admit three hard-cover books and two photographs seized from defendant's bedroom at Neverland Ranch by the Los Angeles Police Department in August, 1993.

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1 A. Items To Be Introduced

2 Specifically, the People seek to introduce the following items:

3 From the search of defendant's bedroom in 1993, the following unnumbered items:

4 -- **Book:**

5 "Boys Will Be Boys," containing photographs of boys under the age of 14; full frontal
6 nudity. The book is personally inscribed by Michael Jackson;

7 -- **Book:**

8 "In Search of Young Beauty," containing photographs of children, both boys and girls;
9 some nude;

10 -- **Book:**

11 "The Boy, A Photographic Essay"; containing black-and-white photos of boys, some
12 nude;

13 -- **Photograph:**

14 A photograph of a boy, believed to be Jonathan Spence; fully nude.

15 -- **Photograph:**

16 A photograph of a young boy holding an umbrella; wearing bikini bottoms, partially
17 pulled down.

18 From the search of Neverland Ranch on November 13, 2003:

19 **Item #303:** Found in plastic bag, bookshelf in master bath. Homosexual erotica, consisting of:

20 ***CAMP COVE, PHOTOS OF SYDNEY MEN***

21 Book of photographs of adult men, full frontal nudes;

22 ***SCENES D'INTERIEUR***

23 Pictures of nude and semi-nude adult women, some sadomasochistic;

24 ***DRESS UP Playacts and Fantasies of Childhood***

25 1978 photo book. Contains 3 photos of teenage boys naked.

26 **Item #304:** Found near bathtub in master bath; consisting of:

27 ***The Art of Dave Nestler, Wicked Intentions***

28 Nude illustrations, female model, some sadomasochistic;

1 ***The Gnoids, Genetically Manipulated***

2 Nude illustrations, mostly female, some male, extreme sadomasochism and body
3 mutilation;

4 ***BIDGOOD, James Bidgood***

5 Nude young teenage men. Erotica;

6 **2 "Barely Legal" magazines**

7 Pornographic magazines

8 **Item #313:** Master bathroom (den); consisting of:

9 ***NAKED AS A JAYBIRD***

10 1967. Nude adult male and female erotica; very graphic.

11 **Item #363:** Found upstairs in box at base of Jackson's bed in master bedroom; consisting of:

12 12 pornographic magazines;

13 23 nudist magazines, vintage 1930's.

14 **Item #364:** Master bedroom upstairs; consisting of:

15 ***THE CHOP SUEY CLUB***

16 Photo book; some nudes, all male, young adult models.

17 **Item #365:** Master bedroom upstairs; consisting of:

18 ***THE CHRISTY REPORT***

19 History of pornography, heterosexual photos from 1940's on to recent, some graphic,
20 some sadomasochism;

21 ***ROBERT MAXWELL PHOTOGRAPHS***

22 Old photos, some nude, some of young children (nude and dressed).

23 **Item #366:** Master bedroom den; consisting of:

24 ***BIANCHI BOB AND ROD***

25 Nude photos of male couple;

26 ***BEFORE THE HAND OF MAN***

27 Nude photos of young men;

28 ***TAORMINA WILHELM VON GLOEDEN***

Nude photos of teenage boys from late 1800's;

1 ***THE GOLDEN AGE OF NEGLECT***

2 Photos of teenagers, some nude;

3 ***ROOM TO PLAY***

4 Photos of children that are altered, morphed head on older bodies, kids made to look
5 sexualized. Some are nude photos of kids;

6 ***MAN A SEXUAL STUDY OF MAN***

7 Graphic primer for homosexuals. Gay photos, all nude, featuring a study of
8 masturbation, oral and anal sex, each photo 2 men. All homosexual erotica;
9 About two dozen nudist magazines.

10 **Item #301:** Found in master bathroom near bathtub; consisting of:

- 11 4 "Barely Legal" DVDs;
12 1 "Pimps Up – Ho's Down" DVD.

13 **Item #302:** Found in master bathroom near bathtub; consisting of:

- 14 1 "The Best of Club" pornographic magazine.

15 **Item #306:** Found in metal briefcase sitting on edge of master bathroom bathtubs;
16 consisting of:

- 17 1 "Couples", a pornographic magazine

18 **Item #309:** Found in leather bag located in master bathroom with notes between Michael
19 Jackson and Gavin; consisting of:

- 20 2 pornographic magazines.
21 2 pornographic DVDs.

22 **Item #321:** Found in nightstand next to Jackson's bed in master bedroom; consisting of:

- 23 7 pornographic magazines.

24 **Item #1001:** Found in bathroom cabinet (right side) in Jackson's private office; consisting of:

- 25 1 *Hustler Barely Legal – 2002 Anniversary Edition* magazine.

26 **Item #1002:** Found in bathroom cabinet (left side) in Jackson's private office; consisting of:

- 27 1 *Naughty Neighbors – December 2002* magazine.
28

1 **Item #346:** MacIntosh Power Book G3 laptop computer found in Jackson's master bedroom;
2 which contained:

3 21 graphic nude female images from "Teen Sex" internet site.

4 **Item #347a:** Power Mac G4 located in Jackson's master bedroom; which contained:

5 19 graphic nude female images;

6 Records of multiple visits to the following websites:

7 www.varsityteens.com

8 www.adoptablekids.com

9 www.adoption.com

10 **Item #347b:** Power Mac G4 located in Jackson's master bedroom; which contained:

11 10 teenage sex imaging; documentation of user ID as "King 777 tut / privacy 969."

12 **Item #344** Sony, Vaio model PCV – W20 laptop computer, located adjacent to the master
13 bedroom; which contained:

14 - Adult erotica: user ID: "Marcel Jackson / Dr. Black."

15 **B. Discussion**

16 **1. The Materials**

17 There are principally two orientations to the sexually explicit materials found in
18 defendant's possession:

19 -- Many items described above are all-male erotica. Some depict both naked male adults
20 and children while others principally focus on adult males only. Taken together they reveal a
21 predominantly male orientation.

22 -- The remaining magazines and videos are pornographic materials graphically depicting
23 every imaginable combination of explicit heterosexual, and sometimes homosexual, sexual
24 activities, oftentimes with more than two people participating.¹

25 ¹ Item No. 317, a black briefcase found in a closet in Jackson's bedroom, also contained
26 approximately 19 nude female "centerfolds" and 18 pornographic magazines, several with
27 teenage themes, matching this description. The magazine and photographic contents of this
28 briefcase are independently admissible as being identified by both the victim and his brother as
materials shown them by the defendant Jackson. The fingerprints of both brothers and Jackson
have been found on several of the magazines.

1 2. The Relevance Of The Materials

2 Article 1, section 18 of the California Constitution declares that all relevant evidence
3 is admissible in criminal prosecutions unless its admission is specifically precluded by
4 overriding statutory or constitutional provisions. In assessing the relevancy of a particular item
5 of evidence, a trier of fact must start with the premise that the evidence must have a “. . .
6 tendency in reason to prove or disprove any disputed fact that is of consequence to the
7 determination of the action. (Evid.Code, § 210.)

8 The listed materials are admissible and relevant as circumstantial evidence on the
9 issues of defendant’s intent, motive and method. They are adjuncts to his plan to seduce young
10 boys, and demonstrative evidence of his preparation for their seductions. They are evidence of
11 his method.

12 3. Defendant’s Specific Intent Is In Issue

13 “A ‘plea of not guilty puts in issue every material allegation of the accusatory
14 pleading’ (Pen. Code, § 1019), and when a specific kind or particular type of mental state or
15 intent is a part of the corpus delicti of the crime charged, the not guilty plea puts in issue the
16 existence of that state of mind. [Citation.]” (*People v. Gentry* (1968) 257 Cal.App.2d 607,
17 610.) In the prosecution of an alleged violation of Penal Code section 288, one of the elements
18 that must be proved is that “The touching was done with the specific intent to arouse, appeal to,
19 or gratify the lust, passions, or sexual desires of [the accused] or the child.” (CALJIC 10.42, in
20 pertinent part; see *People v. Maquez* (1994) 28 Cal.App.4th 1315, 1322.)

21 When defendant pled not guilty to the offenses alleged in Counts Two through Six
22 of the pending indictment, he placed “in issue” whether he acted with the lewd and lascivious
23 intent which must be shown to demonstrate a violation of Penal Code section 288. (See *People*
24 *v. Memro* (1995) 11 Cal.4th 786, 864: “Defendant’s intent to violate section 288 was put at
25 issue when he pleaded not guilty to the crimes charged. [Citations.]”)

26 4. Evidence Of Defendant’s Intent And Method

27 The intention with which an act is committed is ordinarily a question of fact for the
28 trier of fact and may be inferred from the surrounding circumstances. (*People v. Darling*

1 (1989) 210 Cal.App.3d 910, 913.) It may be inferred from the accused's prior conduct
2 demonstrating a particular state of mind (Evid. Code, § 1101, subd. (b).) That prior conduct
3 need not be a crime to be admissible under Evidence Code section 1101. (*People v. Willis-*
4 *Watkins* (1979) 99 Cal.App.3d 451, 456 and fn. 1.) “[E]vidence Code section 1101’s
5 recognition of the admissibility of certain evidence to prove such things as ‘preparation,’ ‘plan,’
6 and ‘identity’ is not limited . . . to ‘uncharged offenses,’ but embraces also ‘other acts.’”
7 (*People v. Harris* (1978) 85 Cal.App.3d 954, 958.)

8 The materials described above are relevant to the issues of the defendant’s intent and
9 his method of “grooming” young boys to satisfy his lewd desires. Indeed, they are the very
10 instruments of the seduction process itself and so are demonstrative evidence. From his
11 possession of that material, the trier of fact may infer defendant’s intent, purpose, motive and
12 method of molestation. The sexually explicit materials found on the premises are specifically
13 calculated to appeal to a young boy’s sexual appetite and create the opportunity for the
14 defendant’s molestation of him.

15 5. The Homoerotic Materials Are Circumstantial
16 Evidence Of Defendant’s Sexual Preoccupation
17 With Young Boys And His Intent To Involve
18 Himself Sexually With Them

19 Defendant’s possession of the all-male erotic books and magazines found throughout
20 his house is circumstantial evidence of his interest in male-male sexual relationships. There is
21 no more reasonable explanation for his possession of that material. That evidence would be
22 irrelevant without other evidence that he acted upon that attraction in this case.²

23 In *People v. Memro, supra*, 11 Cal.4th 786, the court reviewed the conviction and
24 death sentence in a capital homicide prosecution in which the defendant was charged with
25 felony murder based upon a killing during the commission of a lewd act with a 7-year-old boy.

26 ² See *People v. Giani* (1956) 145 Cal.App.2d 539, which addressed and correctly rejected
27 the false “concept that if a man belongs to the larger group (homosexual) he is predisposed to
28 commit the particular offense [of molestation of a boy].” (*Id.*, at pp. 545-546.)

1 “Over an objection made on grounds of irrelevance and undue prejudice and also implicitly
2 made under Evidence Code section 2201, the [trial] court ordered certain magazines and
3 photographs depicting clothed and unclothed youths admitted under Evidence Code section
4 1101, subdivision (b), as evidence of motive and intent to perform a lewd or lascivious act on
5 [the victim] in violation of section 288. The court admonished the jury not to consider the items
6 as evidence that defendant was evil or was disposed to commit certain types of crimes.” (11
7 Cal.4th 786, at p. 864.)

8 The Supreme Court approved the admission of that sexually explicit material on the
9 issue of the defendant’s intent:

10 We have examined the magazines and photographs in question. They
11 contain sexually explicit stories, photographs and drawings of males
12 ranging in age from pre-pubescent to young adult. Some of the
13 photographs are of similar character. Others depict youths in a manner
14 that is not sexually suggestive. [¶]

15 [¶] . . . Although not all were sexually explicit in the abstract, the
16 photographs, presented in the context of the defendant’s possession of
17 them, yield evidence from which the jury could infer that he had a sexual
18 attraction to young boys and intended to act on that attraction.”

18 (*Id.*, pp. 864-865.)

19 In the case at bar, the evidence listed above is admissible pursuant to Evidence Code
20 section 1101, subdivision (b) for precisely the same reason similar evidence was admitted in
21 Memro’s prosecution.

22 It is plaintiff’s belief that defendant possessed the heterosexual materials for the
23 purpose of “grooming” young boys. “Grooming” is the process of deliberately exposing young
24 boys to graphic sexual materials to awaken or heighten their interest in matters of sex and
25 reduce their sexual inhibitions. Defendant’s personal display of these materials to pubescent
26 boys was calculated. So was defendant’s decision to make them accessible and readily
27 available to the “special friends” he allowed to go into his private bedroom even in his absence.

28 A significant number of the materials are “young”-themed. Many of the materials

1 depict teenage or teenage-looking young girls, generally naked and often engaged in sexually
2 explicit activities with males. The publications featuring young nude females were acquired
3 because their appearance would generally appeal to teenage heterosexual boys. Many even
4 carry the additionally suggestive and provocative label “Barely Legal.”

5 These materials were used in conjunction with the defendant’s often-stated
6 references to the value and pleasures of self or mutual masturbation to satisfy one’s sexual
7 desires and needs. The defendant spoke more than once to the victim and the victim’s brother
8 about masturbation. He encouraged the boys to masturbate. He sang the praises of
9 masturbation. In fact, one of the books found in the master bedroom’s den (Item No. 366: “A
10 Sexual Study of Man”) contain all male nude photographs and photographs of men engaged in
11 homosexual acts. It features a study of masturbation and oral and anal sex.

12 Taken together, these materials are the instruments of seduction and are
13 circumstantial evidence of defendant’s systematic approach to that seduction and of his intent to
14 engage in sexual acts with young boys as the fruit of that seduction.

15 6. Evidence of “Preparation” and “Plan”

16 The relevance of the listed materials in this prosecution extends beyond the issue of
17 the defendant’s intent. As noted, the materials also corroborate other evidence of the
18 defendant’s attraction to young boys, all of which suggests the motive for his relationship with
19 Gavin Arvizo was sexual. His method was to use graphic and sexually explicit heterosexual
20 pornographic materials as his instruments in the grooming and seduction processes. The
21 materials, considered with other evidence of his preoccupation with young boys, reflect a plan
22 and a scheme to use them with the boys with whom he cultivated a close relationship to achieve
23 his goal of seeking their acquiescence and active participation in lewd acts with him. As such,
24 their admissibility falls squarely within the dictates of Evidence Code section 1101, subdivision
25 (b).

26 A plan or scheme need not be particularly distinctive to warrant admissibility of
27 evidence of that scheme to show that the defendant acted pursuant to that plan in committing
28 the charged offenses. (*People v. Kraft* (2000) 23 Cal.4th 978, 1031-1032.) Here, one must not

1 overlook the fact that the molestations were “acquaintance molestations.” This is not a
2 “stranger” molestation, nor is it a case where a child’s will was overcome by force. These
3 sexually arousing materials, considered in conjunction with limitless amounts of alcohol, were
4 calculated to create an intimate relationship with Gavin in an atmosphere conducive to behavior
5 without restrictions.

6 In analogous situations, courts have routinely admitted evidence of the possession of
7 burglary instruments as circumstantial evidence of an individual’s intent to commit the crime of
8 burglary. (*People v. Darling, supra*, 210 Cal.App.3d 910, at page 913 [possession of
9 screwdriver]; *People v. Wilson* (1965) 238 Cal.App.2d 447, 463 [plastic strips found in
10 defendant’s pocket could be used to slip locks on doors and were “reasonably adapted to the
11 performance of the entry which is in fact effected”]; *People v. Gibson* (1949) 94 Cal.App.2d
12 468, 471 [defendant found in alley with ladder, a bag of tools and a rope; that evidence
13 admissible to establish his burglarious intent even if he was interrupted before achieving his
14 objective].)

15 In *Darling, supra*, 210 Cal.App.3d 910, appellant argued that his possession of a
16 screwdriver was evidence of a “character trait” and so should have been excluded pursuant to
17 Evidence Code section 1101. In response, the court noted “that even character evidence may be
18 admissible on the issues of intent, preparation and plan.” (210 Cal.App.3d at p. 914, n. 2, citing
19 *People v. Rodriguez* (1986) 212 Cal.3d 730, 757.)

20 Nor, as *Darling* also points out, is it necessary to show that the tools or instruments
21 found in the defendant’s possession actually were used in the commission of the charged crime
22 itself to be admissible. (*People v. Darling, supra*, 210 Cal.App.3d at 914.)

23 7. Evidence of Motive

24 Juries considering the guilt or innocence of a defendant charged with a criminal
25 offense are routinely instructed in the words of CALJIC 2.51:

26 Motive is not an element of the crime charged and need not be shown.
27 However, you may consider motive or lack of motive as a circumstance in
28 this case. Presence of motive may tend to establish the defendant is
guilty. Absence of motive may tend to show the defendant is not guilty.

1 Defendant Jackson's possession of both all-male erotica and heterosexual materials,
2 like the evidence of the defendant's gang membership considered in *People v. Williams* (1997)
3 16 Cal.4th 153, is relevant and material to prove the defendant's motive. (See also *People v.*
4 *Conrad* (1973) 31 Cal.App.3d, 308 – portions of a tape recording of one of the defendant's
5 statements in which he stated that he was a narcotic addict and was getting money to support his
6 habit by stealing, hustling and dealing dope was admissible on the issue of motive.)

7 **CONCLUSION**

8 The People respectfully request that the items set forth above be deemed admissible
9 as demonstrative evidence of the materials defendant used in acquainting his young "special
10 friends" with the pleasures of sexual arousal and masturbation, and as circumstantial evidence
11 of the defendant's motive and method and plan to seduce young boys and his intent to molest
12 them.

13 DATED: January 18, 2005

14 Respectfully submitted,

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17 By: 

18 THOMAS W. SNEDDON, JR.
19 District Attorney
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3 **PROOF OF SERVICE**
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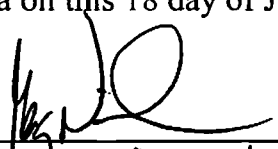
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6 STATE OF CALIFORNIA
7 COUNTY OF SANTA BARBARA } SS
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9 I am a citizen of the United States and a resident of the County aforesaid; I am over
10 the age of eighteen years and I am not a party to the within-entitled action. My business address
11 is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California
12 93101.
13

14 On January 18, 2005, I served the within PLAINTIFF'S REQUEST TO ADMIT
15 SEIZED EVIDENCE OF EROTIC MATERIALS TO DEMONSTRATE DEFENDANT'S
16 INTENT, PLAN, SCHEME AND MOTIVE on Defendant, by THOMAS A. MESEREAU, JR.,
17 ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr.
18 Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney
19 Mesereau, and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage
20 prepaid, at the addresses shown on the attached Service List.
21

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

23 Executed at Santa Barbara, California on this 18 day of January, 2005.

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signature Gerald Franklin

PROOF OF SERVICE

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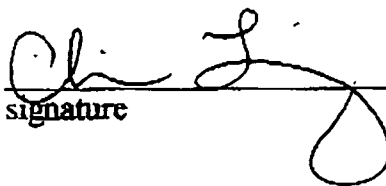
STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA } SS

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 January 18, 2005, I served the within PLAINTIFF'S REQUEST TO ADMIT SEIZED EVIDENCE OF EROTIC MATERIALS TO DEMONSTRATE DEFENDANT'S INTENT, PLAN, SCHEME AND MOTIVE 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 transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy thereof to be mailed to Mr. Mesereau, first class postage prepaid, at the addresses shown on the attached Service List.

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

Executed at Santa Barbara, California on this 18 day of January , 2005.


signature

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