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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25 **FOR THE COUNTY OF SAN BERNARDINO**

26 THE PEOPLE OF THE STATE OF  
27 CALIFORNIA,

28 Plaintiff,

v.

PEDRO MARTINEZ,

Defendant.

Case: FVI19000218

**DEFENDANT PEDRO MARTINEZ'S  
MOTION NO. 1 TO RECONSIDER THIS  
COURT'S SEPTEMBER 29, 2023  
RULING**

Dept.: M2  
Hon. Christopher Pallone

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
JOSHUA TREE DISTRICT

OCT 03 2023

BY   
NADINE GOLDEN, DEPUTY



1           **I. Precluding The Defense From Inquiring Into Magdalena Serna’s Prior**  
2           **Allegations Of Sexual Abuse Will Result In A Retrial**

3           On September 28, 2023, the Court heard testimony from Magdalena Serna that  
4 included, *inter alia*, the following:

- 5           1. That when she was in diapers her father’s cousin inserted his finger in her anus;
- 6           2. That she experienced a “revolving door” of sexual molestation that she can vaguely  
7           remember between her infancy and kindergarten;
- 8           3. That her brother sexually molested her throughout her childhood;
- 9           4. That she was the victim of an attempted sexual assault during her service in the  
10           military;
- 11           5. That she was sexually assaulted by the husband of her sister;
- 12           6. That her then three-year old son was sexually assaulted by an adult male;
- 13           7. That she was aware – shortly after meeting Ismael in 2017 – that he had been sexually  
14           assaulted by his previous foster parents; and
- 15           8. That she and Alba Rosa, Ismael’s mother, complained to administrators at Maple  
16           Elementary School that three boys, including Co-Complaining Witness X’zavier,  
17           sexually assaulted Ismael.

18           The Court ruled that these events could in fact have occurred, in which case the events  
19 would not be relevant to Serna’s credibility. Second, the Court determined that addressing  
20 each claim would take too much time and require mini-trials.

21           Exclusion of such evidence on these grounds warrants a new trial.

22           In *People v. Stewart* (2020) 55 Cal.App.5th 755, a witness testified that the defendant  
23 assaulted her. There was additional evidence concerning another potential assailant that had  
24 been withheld. The Court described such evidence as follows:

25  
26           Turning to the suppressed information about Doe 2, its potential impeachment value to  
27 the defense, or lack thereof, is a critical aspect of materiality. As we have already  
28 explained, the CPS report and the police report outlined sexual conduct between Doe 2  
and a cousin other than Stewart who was a year older than her (referred to as “Cousin  
D”). The sexual acts began when she was eight or nine years old and continued at least

1 until she was 11. It included acts that were the same or similar to those she accused  
2 Stewart of having committed when she was 11, namely oral copulation, vaginal  
3 penetration and sodomy. Similar to her allegations regarding Stewart, she told the  
4 investigator she had not resisted Cousin D's sexual abuse (in his case because he had  
5 threatened to tell her mother). She also said her brother had caught her engaging in  
6 sexual acts with Cousin D twice. Her brother and Cousin D told the investigator that  
7 Doe 2 was a willing participant, and Cousin D admitted only to oral copulation. Doe 2's  
8 allegations about Cousin D were reported and investigated in 2012, and the matter was  
9 then closed. The description she provided the investigator referred to in the OPD and  
10 CPS reports was entirely different from a report contained in the investigator's notes the  
11 prosecution had produced to the defense, involving an adult stranger who she woke up  
12 to find in her bed while staying at another cousin's house.

13 (*Id.* at 780-781.)

14 The Court explained why such evidence was material:

15 This evidence could have been particularly powerful because Doe 2 or her mother  
16 reported the incidents with Cousin D in 2012, when Doe 2 was 11 years old, which was  
17 her age at the time appellant allegedly induced her to orally copulate him, rubbed her  
18 vagina with his fingers and put his penis in her 'butt.' Yet neither she nor her mother  
19 reported Stewart's alleged abuse in 2012 or at all, until four years later, and only after  
20 they heard about Doe 1's allegations. Further, even when she did report it in 2016, she  
21 reported oral copulation, but not vaginal touching or sodomy. She testified she did not  
22 report the entire story to police '[b]ecause the memories were still coming back to [her].'  
23 The defense could have argued, with some force that Doe 2 and her mother did not report  
24 the alleged abuse by Stewart — even though, near in time to when she said he first abused  
25 her, they reported similar abuse by Cousin D — because the alleged abuse by Stewart  
26 never happened. The defense could have suggested she was either confusing one cousin  
27 with the other or not being truthful. Jurors might have been inclined to question Doe 2's  
28 memory or credibility, given the degree of similarity between her claims of abuse by  
Stewart and those she had made earlier about her other cousin. The same is true of the  
fact that Doe 2's reports of abuse by Stewart were made belatedly and had evolved and  
expanded over time.

(*Stewart*, 55 Cal.App.5th at 781-782.)

*Stewart* determined that suppression of such evidence warranted a new trial. First, the  
Court addressed the lower court's denial of Defendant's motion for a new trial, stating:

The trial court denied the motion for new trial that Stewart filed after he received the CPS  
reports on the ground that the evidence was not material. It would not have 'rendered a  
different result probable on retrial,' the court reasoned, because the limited exceptions  
for admission of past sexual acts evidence set forth in Evidence Code sections 1103,  
subdivision (c)(1) (evidence of past sexual conduct by complainant offered to prove  
consent in juvenile sex crime prosecution) and 782 (evidence of past sexual conduct by

1 complainant or § 1108 witness offered to challenge credibility) were subject to the  
2 balancing test of Evidence Code section 352. The court's assessment under section 352  
3 was that "to resolve the issue as to whether [Stewart's sexual acts] [were] consensual or  
4 nonconsensual by [Doe 2] ... would simply be too time consuming. It would involve a  
5 trial within a trial." With respect to section 782, it reasoned that while the defense might  
6 argue "that the evidence showed ... a character trait on the part of [Doe 2]—to falsely  
7 claim unconsensual sexual conduct," the "credibility exception to [Evidence Code  
8 section] 782 must be narrowly exercised" and the presentation of such evidence would  
9 have been "too time consuming."

10 (*Id.* at 784.) The Court then explained why the lower court's ruling mandated a new trial:

11 We do not agree that the defense could have been barred from using the suppressed  
12 information to impeach Doe 2 on these grounds. As to the time-consuming rationale,  
13 the court allowed the prosecution to conduct what amounted to a minitrial when it  
14 admitted Doe 2's testimony under Evidence Code section 1108, calling Doe 2 herself,  
15 her mother and a police officer, the latter two to bolster Doe 2's credibility; the jury was  
16 instructed on the use of that propensity evidence; and the prosecutor spent a significant  
17 part of her opening statement and closing argument discussing Doe 2. In this  
18 circumstance, it would have been an abuse of discretion to prevent Stewart from using  
19 the excluded evidence to cross-examine Doe 2. **While a trial court has discretion to  
20 balance between the probative value of evidence and the danger of prejudice,  
21 confusion and undue consumption of time, "[t]his balance is particularly delicate  
22 and critical where what is at stake is a criminal defendant's liberty.' [Citation.]  
23 Evidence Code section 352 must bow to the due process right of a defendant to a  
24 fair trial and his right to present all relevant evidence of significant probative  
25 value to his defense."** (*People v. Burrell-Hart* (1987) 192 Cal.App.3d 593, 599.)

26 As to the trial court's second rationale concerning any attempt to prove Stewart's  
27 conduct as to Doe 2 was consensual, **the defense did not claim it would have used the  
28 evidence to show Doe 2's acts were consensual. Rather, it claimed it would have  
used the information to challenge her credibility.** And again, while the trial court  
stated it would have barred use of the evidence to challenge Doe 2's credibility because  
it would have been "too time consuming," to have done so would have been an abuse of  
discretion. **Where prior claims of sexual abuse are directly relevant to the  
credibility of the complaining witness, or in this instance, a propensity witness  
whose testimony was central to the trial, a defendant's right to a fair trial requires  
that he be allowed to use evidence relevant to that witness's credibility to impeach  
him or her.** Any undue consumption of time could have been avoided by limiting the  
time devoted to such cross-examination to a degree commensurate with the witness's  
direct examination and the relevance of the impeachment testimony. This can be  
accomplished under the procedure set forth in Evidence Code section 782 under which  
a defendant makes an offer of proof and shows the relevancy of the sexual conduct and  
the court holds a hearing outside the presence of the jury at which the complaining  
witness may be questioned. (Evid. Code, § 782, subd. (a); see *People v. Daggett* (1990)  
225 Cal.App.3d 751, 757 [trial court erred in failing to hold hearing to determine

1 whether prior molestations were sufficiently similar to acts of which defendant was  
2 accused to be relevant to the credibility of complaining witness].)

3 (*Stewart*, 55 Cal.App.5th at 785 (*emphasis added*).)

4 Ms. Serna's allegations are not subject to Evid. Code § 782 as she is not a complaining  
5 witness. This Court has already had the hearing as to § 352. There is no additional time to be  
6 consumed.

7 The *Stewart* holding explains why such evidence should be presented to the jury, as it is  
8 directly relevant to the credibility of Magdalena Serna, who instigated the investigation and  
9 took the alleged first disclosure interview of Ismael.<sup>1</sup>

10 The right of an accused in a criminal trial to due process is, in essence, the right to a fair  
11 opportunity to defend against the State's accusations. The rights to confront and cross-examine  
12 witnesses and to call witnesses in one's own behalf have long been recognized as essential to  
13 due process. (*Chambers v. Miss.* (1973) 410 U.S. 284.) In *Chambers*, the Supreme Court  
14 stated:

15 The right of cross-examination is more than a desirable rule of trial procedure. It is  
16 **implicit in the constitutional right of confrontation, and helps assure the accuracy**  
17 **of the truth-determining process."** *Dutton v. Evans*, 400 U.S. 74, 89 (1970); *Bruton v.*  
18 *United States*, 391 U.S. 123, 135-137 (1968). It is, indeed, "an essential and fundamental  
19 requirement for the kind of fair trial which is this country's constitutional goal." *Pointer*  
20 *v. Texas*, 380 U.S. 400, 405 (1965). Of course, the right to confront and to cross-examine  
21 is not absolute and may, in appropriate cases, bow to accommodate other legitimate  
22 interests in the criminal trial process. *See, e.g., Mancusi v. Stubbs*, 408 U.S. 204 (1972).  
23 But its denial or significant diminution calls into question the ultimate "integrity of the  
24 fact-finding process" and requires that the competing interest be closely examined.

25 (*Chambers*, 410 U.S. at 295 (*emphasis added*).)

26 The jury is entitled to this evidence when determining Ms. Serna's reliability as to  
27 whether and to what extent Ismael made allegations against Mr. Martinez.

28 The *Stewart* holding explains why such evidence should be presented to the jury, as it is  
directly relevant to the credibility of Magdalena Serna, to whom Ismael allegedly made the

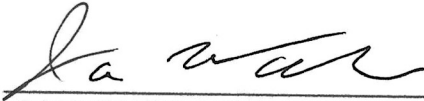
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<sup>1</sup> Moreover, the Court has heard testimony from Dr. McAuliff that the conditions of the First Disclosure Interview are of paramount importance when determining reliability, including the background and potential bias of the adult receiving the disclosure.

1 initial disclosure, and whose report resulted in the police investigation. The jury is entitled to  
2 hear and evaluate this evidence when determining whether and to what extent Ismael made  
3 actual allegations against Mr. Martinez.  
4

5 DATED: October 2, 2023

THE LAW OFFICE OF IAN WALLACH, PC

6  
7 By: 

8 IAN WALLACH  
9 Attorney for Defendant  
10 PEDRO MARTINEZ  
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**PROOF OF SERVICE**

3  
4  
**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I am employed in the County of Los Angeles, State of California. I am over the age of  
6 eighteen years and not a party to the within action. My business address is 5777 W. Century  
7 Blvd., Ste. 750, Los Angeles, CA 90045.

8 On October 2, 2023, I served the following document(s) described as: **DEFENDANT**  
9 **PEDRO MARTINEZ'S MOTION NO. 1 TO RECONSIDER THIS COURT'S**  
10 **SEPTEMBER 29, 2023 RULING** in this action by placing true copies thereof enclosed in  
11 sealed envelopes and/or packages addressed as follows:

12 Deena Pribble, Esq.  
13 Email: dpribble@sbcda.org  
14

- 15  **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant  
16 to California Rules of Court. The telephone number of the sending facsimile machine  
17 was (310) 893-3191. The name(s) and facsimile machine telephone number(s) of the  
18 person(s) served are set forth in the service list.
- 19  **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the  
20 above addressee(s).
- 21  **BY ELECTRONIC MAIL:** On the above-mentioned date, from Los Angeles,  
22 California, I caused each such document to be transmitted electronically to the  
23 party(ies) at the e-mail address(es) indicated above. To the best of my knowledge, the  
24 transmission was reported as complete, and no error was reported that the electronic  
25 transmission was not completed.
- 26  **STATE:** I declare under penalty of perjury under the laws of the State of California  
27 that the foregoing is true and correct.  
28

Executed on October 2, 2023 at Joshua Tree, California.



IAN WALLACH