

1 LAW OFFICES OF IAN WALLACH, P.C.  
2 IAN M. WALLACH (SBN 237849)  
3 iwallach@wallachlegal.com  
4 5777 W. Century Blvd., Ste. 750  
5 Los Angeles, CA 90045  
6 Telephone: (213) 375-0000  
7 Facsimile: (213) 402-5516

8 KAEDIAN LLP  
9 KATHERINE C. MCBROOM (SBN 223559)  
10 kmcbroom@kaedianllp.com  
11 8383 Wilshire Blvd., Ste. 210  
12 Beverly Hills, CA 90211  
13 Telephone: (310) 893-3372  
14 Facsimile: (310) 893-3191

15 GRAY & ASSOCIATES, P.C.  
16 NANCY E. GRAY (SBN 150214)  
17 ngray@grayfirm.com  
18 11500 W. Olympic Blvd., Suite 400  
19 Los Angeles, CA 90064  
20 Telephone: (310) 452-1211  
21 Facsimile: (888) 729-2402

22 Attorneys for Defendant  
23 PEDRO MARTINEZ

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 v.

Plaintiff,

PEDRO MARTINEZ,

Defendant.

Case: FVI19000218

**DEFENDANT PEDRO MARTINEZ'S  
MOTION TO RECONSIDER  
PRECLUSION OF EVIDENCE OF HARM  
COMMITTED AGAINST X'ZAVIER M.  
BY HENRY MAURICE PARKER**

1           **I. INTRODUCTION**

2           This court previously precluded any mention of the criminal action wherein  
3           Complaining Witness Xavier M.’s mother and her boyfriend were convicted of child abuse,  
4           and where the boyfriend was sentenced to prison for his participation in that matter, or the  
5           facts at issue in that matter. The case concerned X’zavier M. being bitten on the buttocks by  
6           Henry Maurice Parker and beaten by Henry Maurice Parker and took place within two years of  
7           the alleged incident in this matter.

8           Based on the People’s motion that this was *physical* harm rather than *sexual* harm, the  
9           Court precluded any related evidence.

10          X’zavier has been interviewed on two occasions by CAC – once in 2016 concerning  
11          abuse by his mother and her boyfriend and again, in 2019, concerning allegations against Mr.  
12          Martinez. On September 5, 2023, the People produced transcripts relevant to this case. The  
13          People produced X’zavier’s 2016 CAC interview transcript and produced no transcript of the  
14          2019 interview. X’zavier’s 2016 allegations of physical abuse mimic those made in the 2019  
15          interview. X’zavier is conflating the harm suffered at the hands of his mother and her  
16          boyfriend with the harm law enforcement and the People contend he suffered at the hands of  
17          Mr. Martinez.

18          The defense has always maintained that the allegations against Mr. Martinez are  
19          without merit and were created as a result of leading questions by Deputy Womelsdorf. It is  
20          now apparent that X’zavier’s memory of events he attributes to Mr. Martinez were greatly  
21          impacted by the events he experienced at the hands of Henry Maurice Parker. The two  
22          concepts are complimentary and appropriate for examination.

23           **II. PRODUCTION OF THE TRANSCRIPT OF X’ZAVIER M.’S 2016**  
24           **FORENSIC INTERVIEW AND FAILURE TO PRODUCE THE**  
25           **TRANSCRIPT OF X’ZAVIER M.’S 2018 FORENSIC INTERVIEW**

26          On September 5, 2023, DDA Pribble produced transcripts which the People would seek  
27          to introduce at trial. Ms. Pribble produced a transcript of X’zavier’s 2016 interview with CAC  
28          concerning physical abuse at the hands of his mother and her boyfriend. DDA Pribble did not

1 produce a transcript of Xzavier’s 2019 interview.<sup>1</sup> This 2016 transcript – as it relates to the  
2 prior action -- *should* have been produced at the commencement of this action and, as the  
3 Court will see, contains substantial *Brady v. Maryland*, material.

4 When the Court previously ruled on the 402 motions, it did not have the benefit of  
5 reviewing the transcript that the People provided to the defense on September 5, 2023.

6 Moreover, to date, the People have not produced to the defense the transcript of  
7 X’zavier’s 2019 interview which they seek to use tomorrow, October 18, 2023.

8 **III. CONFLATION OF INCIDENTS**

9 CAC social worker Maricruz Dominguez has interviewed Xzavier on two occasions,  
10 once in 2016 in connection with physical abuse by his mother and her boyfriend and, again, in  
11 2019. During Xavier’s 2019 forensic interview with Maricruz Dominguez, which, upon  
12 information and belief, the People intend to play for the jury tomorrow, October 18, 2023,  
13 Xavier M. alleged physical abuse against Mr. Martinez similar to acts alleged against his  
14 mother and her boyfriend.

15 The allegations of physical harm that X’zavier now attributes to Mr. Martinez are similar to  
16 those X’zavier alleged against his mother’s boyfriend – Henry Maurice Parker -- back in 2016.

17 **IV. COMPARISON OF INCIDENTS / STATEMENT OF FACTS**

18 The *physical* harm suffered by X’zavier M. at the hands of Henry Maurice Parker  
19 appear to have impacted his recollection and perception of alleged *physical* harm as to Pedro  
20 Martinez. For example, X’zavier makes an allegation that he was beaten by Mr. Martinez.  
21 (*See (P.13: 7-14 / (P. 14:18-24) / (P. 18:22-19:11)*):  
22  
23  
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25

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26 <sup>1</sup> As it pertains to the prior 2016 action, this information should have been produced at the  
27 commencement of the present action. It was not. The 2016 transcript produced by DDA Pribble on  
28 September 5, 2023, which it erroneously labeled with this case number rather than that associated with  
the 2016 action, is *Brady* evidence.

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Q: Tell me.

A: I got hurt.

Q: You got hurt. Oh, okay. Tell me more.

A: I got hit.

Q: You got hit? Okay.

A: Not my granny. Not by my granny.

Q: Not by your granny, okay. By who?

A: Mr. Pete

----

Q: You said, though, that he hurt you. How did he hurt you?

A: With his knuckles.

Q: With his knuckles. Okay, all right.

----

Q: Tell me everything that happened in the bathroom with Mr. Pete?

A: He pushed me around.

Q: He what?

A: He pushed me around.

Q: He pushed you around? Uh-huh. How did that make you feel?

A: Bad.

Q: Yeah, what would you do when he would push you around?

A: Push him.

Q: And then what would happen?

A: Push me again.

Q: Uh-huh. And then?

A: He keep pushing.

1 X'zavier recalls the actual beating he experienced at the hands of Henry Maurice  
2 Parker. Both are clearly episodes of *physical* harm and both could be easily conflated. (see  
3 (P. 11:8-27 / 12:11-24)).

4 A: [inaudible] he did that, and he did [inaudible] and [inaudible] he  
5 [inaudible] my head.

6 Q: And he's mad and he scratched your head? Uh-huh. Uh-huh. So he's mad.  
7 Who is mad?

8 A: Marquis.

9 Q: And he scratched who's head?

10 A: My head.

11 Q: Oh.

12 A: And I boom.

13 Q: Huh?

14 A: Like this.

15 Q: Oh, like that. Oh. How did that make your head feel?

16 A: So sad.

17 Q: So sad. Did anything happen to your head when he did that? Tell me,  
18 what happened?

19 A: Umm him pull it out.

20 Q: He pulled it out? What did he pull out?

21 A: [inaudible] in my hair.

22 Q: Oh.

23 A: [inaudible] in my hair.

24 ----

25 Q: Tell me? Tell me what -

26 A: [inaudible]

27 Q: - you can remember him doing to you?

28 A: [inaudible] he pinched my [inaudible]

1 Q: Pinched your what?

2 A: Right here.

3 Q: What's that called?

4 A: Cheek.

5 Q: Oh, he pinched your -

6 A: [inaudible] -

7 Q: - cheek.

8 A: Cheek.

9 Q: Tell me everything that happened when he pinched your cheek?

10 A: Cuz he – I was mad at him.

11 Similarly, the allegations of *sexual* harm X'zavier brings against Mr. Martinez are close  
12 in nature to the *sexual* harm that X'zavier was subjected to by Henry Maurice Parker. In one  
13 instance, X'zavier claims that a finger was inserted in his anus (“butt”) by Mr. Martinez, and  
14 in the other, X'zavier was bitten on the derriere (“butt”) by Henry Maurice Parker.

15 The *exceptionally brief sole sexual* allegation concerning Mr. Martinez brought by  
16 X'zavier during his forensic interview in 2019 concerns the “butt” and is as follows (P. 25:11-  
17 14):

18 Q: Has something ever happened to your butt?

19 A: *non-responsive*

20 Q: Tell me.

21 A: [inaudible] finger in my butt.

22 Q: What's that?

23 A [inaudible] – he puts his finger in by butt.

24 The *sexual* allegation X'zavier made regarding Henry Maurice Parker during the forensic  
25 interview in 2016 is much more graphic and detailed and also concerns the “butt” (P. 25:11-24  
26 / 26: 15-17 / 30:10-13):

27 Q: What else has he done to you?

28 A: He hits my – he – he hits and he bites me.

1 Q: Oh, he bites you?  
2 A: I'm – I'll try to make a heart. I'll -  
3 Q: Sure.  
4 A: - make a – I'll make a fish.  
5 Q: Tell me about him biting you?  
6 A: [inaudible] It's a pizza.  
7 Q: It is.  
8 A: It looks like pizza.  
9 Q: A, you said that him bites you and you went like this.  
10 A: Yeah.  
11 Q: Tell me about him biting you?  
12 A: Look. [inaudible] that he bite me right here.  
13 -----  
14 Q: What does he bite you with?  
15 A: He bite me with [inaudible] – he bite me with he lips.  
16 Q: With his lips.  
17 -----  
18 Q: Hey, X'zavier, what would happen – you said what would happen to your  
19 body when umm Marquis would bite you?  
20 A: He bite me on the butt.  
21 Q: On your butt?

22  
23 **V. ARGUMENT**

24 To avoid undue consumption of time, the Court has reviewed the applicable law and  
25 analysis set forth below the Defense's prior motion for reconsideration concerning  
26 Complaining Witness Ismael R., and the argument is set forth here solely to maintain an  
27 accurate record. The defense believes that the Court is competently familiar with the law an  
28 analysis set forth below.

1                   **A. Third-Party Culpability Evidence Is Admissible When The Defense Offers**  
2                   **Evidence “Capable” Of Raising A Reasonable Doubt Of Defendant’s Guilt**

3                   In *People v. Hall* (1986) 41 Cal.3d 826, 833, the California Supreme Court established  
4                   the test for admissibility of third-party culpability evidence. The *Hall* Court stated:

5                   To be admissible, the third-party evidence need not show "substantial proof of a  
6                   probability" that the third person committed the act; it need only be capable of  
7                   raising a reasonable doubt of defendant's guilt. At the same time, we do not require  
8                   that any evidence, however remote, must be admitted to show a third party's  
9                   possible culpability. As this court observed in *Mendez*, evidence of mere motive  
                    or opportunity to commit the crime in another person, without more, will not  
                    suffice to raise a reasonable doubt about a defendant's guilt: there must be direct  
                    or circumstantial evidence linking the third person to the actual perpetration of the  
                    crime.

10                  (*People v. Hall* (1986) 41 Cal.3d 826, 833.) The standard is *not* substantial likelihood – the  
11                  standard is whether the evidence is “capable” of impacting the verdict.

12                  The Court’s previous basis for issuing its ruling was made in the absence of the above  
13                  factual information and without the transcript of the 2016 forensic interview. And this may  
14                  have led the Court to conclude that Mr. Parker only engaged in *physical* harm, rather than  
15                  *sexual* harm, and that the claims against Mr. Martinez were only *sexual* in nature and not  
16                  *physical* in nature, which is not the case. The issue is whether prior events can impact a  
17                  child’s recollection. In this case, the harm caused to X’zavier M. by Henry Maurice Parker  
18                  likely contributed to X’zavier M.’s perception of the harm he now believes to have been  
19                  committed by Mr. Martinez.

20                   **B. The Jury Is Entitled To Know The “Totality Of The Circumstances”**  
21                   **Related To A Child’s Disclosure Of Sexual Assault**

22                  Factors used to determine reliability of a child’s disclosure are found in discussions  
23                  relating to the Court’s determination of reliability of those statements -- to justify publication to  
24                  the jury -- under Evidence Code section 1360. In *People v. Roberto V.* (2001) 93 Cal.App.4th  
25                  1350, 1355, the Court states that “[w]hether particularized guarantees of trustworthiness exist is  
26                  determined by examining the totality of circumstances that surround the making of the statement  
27                  and that render the declarant particularly worthy of belief.”  
28

1           Approximately two to three years prior to the events at issue, Xavier M. was subjected to  
2 egregious harm at the hand of Henry Maurice Parker. These events have had an effect on  
3 Xavier's memory of the present events. When ascertaining the reliability of X'zavier's memory  
4 in the present instance, the jury is entitled to know what impact that X'zavier's prior experience  
5 is having on his present recollection. To deprive the jury of those factors for consideration  
6 would be to deprive the jury of the totality of the circumstances necessary to evaluate the  
7 reliability of Xavier's testimony.

8  
9           **C. Highly Relevant Evidence Of Henry Parker's Conduct On Xavier M. And**  
10           **Are Proper Areas Of Inquiry For The Defense**

11           Evidence is relevant if it has any tendency in reason to prove or disprove any disputed  
12 fact that is of consequence to the determination of the action. (Evid. Code, § 210.) Under  
13 Evidence Code section 351, all relevant evidence is admissible unless specifically excluded by  
14 statute. Whether or not X'zavier's experience with Henry Maurice Parker affects his  
15 recollection of the events at issue in this matter is clearly relevant to the issue of the reliability  
16 of X'zavier's testimony and is proper for examination.

17  
18           **VI. CONCLUSION**

19           For the reasons set forth above, the defense should be allowed to examine X'zavier M.  
20 regarding what transpired with Mr. Parker, so that the jury can determine the effect that this  
21 experience had on his present recollection and claims against Mr. Martinez.

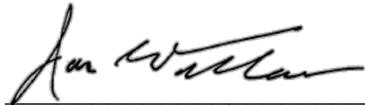
22           The conduct of Mr. Parker bears a substantial similarity to that of which Mr. Martinez  
23 stands accused. Mr. Martinez is entitled to explore whether X'zavier -- following a suggestive  
24 series of questions from Deputy Womelsdorf -- is recalling, in whole or part, the conduct  
25 committed against him by Mr. Parker, and not that alleged against Mr. Martinez.

26           This is not a matter of jury confusion. It is a proper matter of evidence for the jury to  
27 consider. And the People are free to argue that the evidence is not substantial. Its relevance  
28

1 and probative value, however, are clear. And there is no resulting prejudice arising from  
2 presenting it to the jury for consideration.<sup>2</sup>

3 DATED: October 17, 2023

LAW OFFICES OF IAN WALLACH, P.C.

4  
5 By: 

IAN M. WALLACH  
Attorney for Defendant  
PEDRO MARTINEZ

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18 <sup>2</sup> The defense brings this motion in part to preserve the issue for appellate review. Evid. Code, § 354,  
19 “Effect of erroneous exclusion of evidence” provides as follows:

20 A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be  
21 reversed, by reason of the erroneous exclusion of evidence unless the court which passes upon  
the effect of the error or errors is of the opinion that the error or errors complained of resulted  
in a miscarriage of justice and it appears of record that:

- 22 (a) The substance, purpose, and relevance of the excluded evidence was made known  
23 to the court by the questions asked, an offer of proof, or by any other means;  
24 (b) The rulings of the court made compliance with subdivision (a) futile; or  
(c) The evidence was sought by questions asked during cross-examination or recross-  
examination.

25 The Defense has satisfied all three prongs essential to preserve the issue for appellate review. First,  
26 the defense made the offer of proof in its trial brief, again throughout these proceedings, and,  
27 additionally, in this motion. Second, this Court has ruled that issues relating to any potential harm  
inflicted upon Complaining Witness X’zavier M. are precluded from mention. In so doing, the  
28 defense is precluded from introducing material evidence through cross-examination or recross-  
examination of the witnesses. Lastly, our inability to ask questions during cross-examination or  
recross-examination --- stemming from the Court’s order – is the purpose of the present motion.

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**PROOF OF SERVICE**

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

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

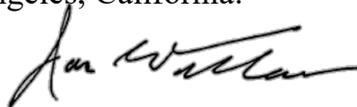
On October 8, 2022, I served the following document(s) described as: **DEFENDANT PEDRO MARTINEZ'S MOTION TO RECONSIDER PRECLUSION OF EVIDENCE OF HARM COMMITTED AGAINST X'ZAVIER M. BY HENRY MAURICE PARKER**

in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Deputy District Attorney Deena Pribble  
DPribble@sbcda.org

- BY MAIL:** I deposited such envelope in the mail at 5777 West Century Blvd., Suite 750, Los Angeles, CA 90045. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to California Rules of Court. The telephone number of the sending facsimile machine was (310) 893-3191. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list.
- BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the above addressee(s).
- BY ELECTRONIC MAIL:** On the above-mentioned date, from Los Angeles, California, I caused each such document to be transmitted electronically to the party(ies) at the e-mail address(es) indicated above. To the best of my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed.
- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 17, 2023 at Los Angeles, California.



\_\_\_\_\_  
IAN WALLACH