

SEP 12 2023

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SAN BERNARDINO**

19 THE PEOPLE OF THE STATE OF
20 CALIFORNIA,

Case: FVI19000218

21 v.

22 Plaintiff,

23 PEDRO MARTINEZ,

24 Defendant.

**DEFENDANT PEDRO MARTINEZ’
SUPPLEMENTAL BRIEF CONCERNING
MR. MARTINEZ’ MOTION IN LIMINE
NO. 14 REGARDING MAGDALENA
SERNA’S PRIOR ALLEGATIONS AND
INFLUENCE OVER COMPLAINING
WITNESS ISMAEL R. AND THE
CRIMINAL INVESTIGATION AND MR.
MARTINEZ’ MOTION PURSUANT TO
PENAL CODE SECTION 782**

25 **I.**

26 **INTRODUCTION**

27 On September 7, 2023, this Court addressed Motion *in Limine* No. 14 of Defendant Pedro
28 Martinez (“Mr. Martinez”) regarding the admission of witness Magdalena Serna’s (“Ms.
Serna’s”) multiple prior allegations of sexual abuse and child molestation, similar to those

1 alleged here; her obsession with sexual abuse, molestation, and pedophilia and her instruction
2 of complaining witness Ismael R. regarding the same; her influence over and instruction of
3 Ismael R. the allegations in this case; and her influence over the entire criminal investigation,
4 including the interview of complaining witness X'zavier M.

5 The Court inquired as to whether *People v. Foss* (“*Foss*”) (2007) 155 Cal.App.4th 113,
6 supports exclusion of such evidence; the nexus between Ms. Serna’s actions and statements and
7 Ismael R.’s disclosures to a social worker days later; and the nexus between Ms. Serna’s actions
8 and statements and X'zavier M.’s disclosures.

9 The People, *sua sponte*, raised the issue of potential mini-trials and Fifth Amendment
10 violations that the Government believes warrants preclusion of Ms. Serna’s testimony.

11 This supplemental brief addresses each of the Court’s inquiries and the mini-trial and
12 Fifth Amendment issues.

13 II.

14 ARGUMENT

15 **A. Evidence Concerning Magdalena Serna’s Obsession with Sexual Abuse and Child** 16 **Molestation, Numerous Prior Allegations of Sexual Abuse and Molestation, and** 17 **her Influence Over Ismael R. and, Subsequently, Over X'zavier M. Is Not Barred** 18 **Under *Foss***

19 Under *Foss*, there are two purposes for an offer of proof. First, it allows the Court to
20 properly rule on the issue before it. Second, it preserves the issue for appellate review. The
21 *Foss* Court expressly stated that a sufficient offer of proof would justify appellate review:

22 Because defendant was unspecific and made only the most speculative offer of
23 proof in support of his request to inquire into whether Nichols had a morbid fear
24 of sexual matters and child molestation, he cannot establish, on appeal, that the
25 trial court's denial of his request was an abuse of discretion. Defendant's motion
26 stated that he wished to question Nichols “to establish that [Nichols's] morbid fear
27 of sexual matters, (including such fear of particular child molestation [sic]), and
28 the charges are a creature of that morbid fear.” “An offer of proof should give the
trial court an opportunity to change or clarify its ruling and in the event of appeal
would provide the reviewing court with the means of determining error and
assessing prejudice. [Citation.] To accomplish these purposes an offer of proof
must be specific. It must set forth the actual evidence to be produced and not
merely the facts or issues to be addressed and argued. [Citations.]” (*People v.*
Schmies (1996) 44 Cal.App.4th 38, 53).

1 (*Foss*, 155 Cal.App.4th at 127-28.) The Court further stated:

2 Defendant did not give a specific offer of proof of evidence to be produced. His
3 offer was conclusory and concerned only the area of questioning. It did no more
4 than speculate as to what might be proven, reciting the “morbid fear” language
5 from Scholl. This speculation and lack of specificity was inadequate to preserve
6 the issue for consideration on appeal.

7 (*Ibid.*) In order to comply with *Foss*, the defense provides this Offer of Proof as to what Ms.
8 Serna would testify to. Ms. Serna has provided the majority of these statements under oath and
9 the remainder are culled from other sources, and each statement and its source are marked.

10 1. Offer of Proof

11 (a) *Sworn Testimony of Magdalena Serna*

12 Ms. Serna testified under oath that she is a sexual abuse survivor and as a survivor can
13 identify signs of sexual abuse in children. She testified that she was sexually abused throughout
14 “[her] whole childhood” by “multiple assailants” who were “family of [her] father.” (Serna
15 Depo, Vol.1, 206:6-17.) She testified to having been sexually abused during her 6-month stint
16 in the military. (*Id.*, Vol. 1, 207:16-18.) Further, following her discharged from the military,
17 Ms. Serna testified she was “molested” by her sister’s husband. (*Id.*, Vol. 1, 207:19-208:2.) The
18 truth of the allegations is not the issue here -- the fact of the multiple allegations is.

19 During deposition in the related civil case, Ms. Serna testified she could recognize signs
20 of sexual abuse in Ismael R:

21 A. Because it's not normal for a child to touch their anus. You don't say oh, my
22 mom's spending too much time over here. Let me touch my anus. No, it doesn't
23 happen that way.

24 Q. How do you know?

25 A. Because I've read a lot of books about trauma and sexual abuse because I'm a
26 survivor.

27 Q. Okay. And I take it you were a survivor as a child?

28 A. Yes, and as an adult.

(Serna Depo, Vol. 1, 62:12-21.)

1 Ms. Serna has been researching and reading about sexual assault and pedophilia since
2 she was 19 years old. She is 47 now. She testified:

3 Q. When you said that you had been reading about abuse and trauma, can you tell
4 us, for example, what you were reading?

5 A. I don't remember the titles, but I started reading in 20- -- what was it? I was
6 19. So 1993.

7 Q. Okay. So when you were a victim in 1993, you began reading about abuse
8 and trauma?

9 A. No. I began reading about abuse and trauma when I left the military.

10 Q. Okay. And did you have an experience in the military that caused you to start
11 reading about it?

12 A. There and previously.

13 Q. There and previously?

14 A. Yes.

15 (Serna Depo, Vol. 1, 65:5-19.)

16 Q. Okay. And were you trying to figure out yourself what you were feeling or
17 what was your reason for investigating sexual abuse and trauma?

18 A. Just to get to the gist of why people do what they do.

19 Q. So you were more interested in what the offender was doing as opposed to
20 how it affected the victim?

21 A. A little bit of both.

22 Q. And at the time that you began to see Billy acting out by being obnoxious with
23 his mother and hurting his brother and inappropriately touching himself, you had
24 been researching sexual abuse and trauma?

25 A. Yeah.

26 Q. Yes?

27 A. Yes.

28 (*Id.*, Vol. 1., 65:20-66:11.)

Q. Have you studied pedophilia?

A. I watch a lot of programs about that in all the criminal channels that you have.
So I watch a lot of that stuff. And when you read things, you learn more things.
So I've read a lot about it. I've seen a lot of things.

Q. Can you tell us, for example, what you've read about it?

A. Just how it begins with the friendship, and then you start grooming them, and
you give them things, you trust them, and just what he did.

1 Q. I understand. What I'm interested in is what -- were you reading magazines,
2 periodicals, books? What were you reading?

3 A. Different articles that come up on the internet.

4 Q. So you were doing all this internet research; is that fair?

5 A. Well, that and then like I said, previous books from the age of 19 to current.

6 (*Id.*, Vol. 1, 168:4-168:23.)

7 In September 2018, Ms. Serna and Alba Rosa (“Ms. Rosa”) learned that, while they
8 were vacationing in Las Vegas, Ismael was demanding to be rubbed on the butt by a 3 year-old
9 boy, Micah – son of Essence Smith, who was babysitting Ismael and his little brother. Ms.
10 Serna testified that she spoke to Micah, age 3, herself to get the details. She testified as
11 follows:

12 Q. Okay. Did you ever question Micah about what he was doing?

13 A. Yes.

14 Q. You did personally?

15 A. Yes.

16 Q. And when for the first time did you do that?

17 A. I believe it was after we picked up Billy, and we came back from Vegas, and
18 it was over the phone on speaker with his mom.

19 Q. Okay. What did you say?

20 A. I asked him about what was happening and how did that come about, and he
21 told me that it wasn't the first time. That Billy asked him previously to do that,
22 but he didn't like putting things inside of him. So he would just rub his butt.

23 Q. Okay. And Micah at this point is, what, 5?

24 A. At that point, he was probably 3.

25 (*Serna Depo*, Vol. 1, 37:8-38:1.)

26 She testified that Micah, again only age 3, told her that Ismael was asking Micah to
27 insert objects into his anus. (*Id.*, Vol. 1, 38:2-13.)

28 Ms. Serna testified that she learned Ismael was sexually abusing his little brother,
because when she was cleaning his little brother’s penis, the child pulled away:

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Q. And when he started doing these things -- when Billy started touching himself and placing feces around the house and urinating on the couch and being obnoxious and all these things that you just told us about, did you come to a conclusion that he had been sexually abused?

A. I think I came --

MR. MATIASIC: Objection. Overbroad as to time.

THE WITNESS: I think I came to that conclusion when M.B. (name changed) or when M.B. used to come with us during the week because at that time, he was in a diaper. So when I would change his diaper and I would clean his penis, he would pull away, and I was like that's not normal. So I had his mom, Jennifer, take him to the doctor. They sent him to a specialist, and they said that his testicles were fine. So then we found out that Billy Roe was inappropriately touching his brother in the front and the back.

(*Id.*, Vol. 1, 66:12-67:6.)

Q. Okay. Can you give me a time period when this was happening?

A. I believe in October, they took M.B. to go see the doctor for his testicles, but it took over a month to get the appointment. So it was some time in September that we found out that Billy Roe was inappropriately touching M.B.

Q. And you found this out from M.B.?

A. I found it out because when I was changing his diaper, he pulled away, and we go that's not normal. So I just put two and two together, and it did turn out that Billy Roe was hurting M.B.

Q. Okay. And the age -- the age difference between them was what? Four years?

A. They were 3 and 6 at the time.

(*Id.*, Vol. 1, 67:8-22.)

Ms. Serna testified that, in the months prior to the allegations against Mr. Martinez, Ismael was sexually assaulting his little brother and had confessed everything to her. She testified as follows:

Q. What was he doing to his brother?

A. Hurting him physically, playing with his penis, playing with his butt, pinching him, hitting him, tying him up. He was just doing a lot of bad things.

(*Id.*, Vol. 1, 63:20-24.)

1 THE WITNESS: Well, we sat one day at my house, and he went over everything
2 that he had done to his little brother.

3 BY MS. GRAY:

4 Q. Billy did?

5 A. Yes.

6 Q. Okay. When was that?

7 A. Prior to them moving in, and they moved in between October and December.
8 So it was prior to them moving in that he told me everything.

9 Q. Okay. When you say he told you everything, where were you?

10 A. We were sitting in my office in Rowland Heights.

11 Q. Okay. And was it just the two of you?

12 A. No. His mom was present as well sitting right next to him.

13 Q. Okay. And were you the one asking questions?

14 A. Yes.

15 Q. And tell me what you said to him and what he said to you.

16 A. I just asked him what has he done to his brother, and he told me the things that
17 he had done.

18 Q. Tell me exactly what Billy said to you.

19 A. He would just name off things that he inserted into M.B., a crayon, a pencil, a
20 wire, just all kinds of things that he mentioned. It was horrible.

21 (*Id.*, Vol. 1, 69:22-70:25.)

22

23 Ms. Serna testified that she interpreted Ismael's abuse of his little brother to mean
24 Ismael had been molested. She testified:

25 A. Some kids are curious. But when things go as far as they did with Billy Roe,
26 you know that that's not just him being curious. He was going after a sensation
27 that that man gave him when he was raping him.

28 Q. So you feel that Billy was replicating what had been done to him?

A. Yes.

(*Id.*, Vol. 1, 130:9-16.)

29

30 Ms. Serna testified that she spoke with Ismael's little brother to gather details about
31 Ismael's sexual abuse of him. She testified:

32 Q. Did you talk to M.B. about Billy's use of knives on him?

33

1 A. Yes.

2 Q. When did you do that for the first time?

3 A. It was a week before we buried my friend's nephew. He was sitting on a little
4 stool by the kitchen wall. And when I asked him about it, his whole body shook
5 because he was so afraid of what Billy had done to him with the knives. And then
6 I told him to show me where, and that's when he touched his mouth. And I washed
7 my hands, and I touched it. You could feel the scar tissue in his gums. And then
8 I remember previously seeing cuts on his arm and legs that looked like paper cuts,
9 and it turns out that was Billy (name changed) or I'm sorry, Billy Roe.

10 Q. When you say "it turns out," how did you learn that?

11 A. M.B. told me –

12 (*Id.*, Vol. 1, 119:12-120:6.)

13 Ms. Serna testified that between September 2018 and January 2019, she learned from
14 Ismael that he was being touched inappropriately by three different boys at school, including
15 Complaining Witness X'zavier M. (*Id.*, Vol. 1, 71:17-21.) Ms. Serna testified that she and Ms.
16 Rosa complained to Maple Elementary about the sexual abuse. (*Id.*, Vol. 1, 33:23-34:11.) She
17 testified that they reported “something to the effect of there was a child inappropriately
18 touching [Ismael] and something needed to be done.” (*Id.*, Vol. 1, 34:5-7.) She continued,
19 “We needed to contact the parents and have a sit-down so we can find out what’s happening
20 because apparently, if that child is touching someone else, something’s happening to him, and
21 we wanted to find out who was hurting him.” (*Id.*, Vol. 1, 34:7-11.)

22 Ms. Serna testified that she learned about the boys touching each other at school during
23 weekly discussions with Ismael between September 2018 and January 2019. She testified:

24 Q. So between the time -- between the September 15, 2018, date and two days
25 prior to the arrest of Mr. Martinez, Billy Roe never told you anything about any,
26 sexual abuse, correct?

27 A. Yeah. Every weekend I asked him what was happening, and he would only
28 mention the three other kids¹ that were being abused with him because he was
afraid of mentioning Mr. Pete because of the threats that Mr. Pete made to him.

¹ One of the “three other kids” is Complaining Witness X'zavier M. (*Id.*, Vol. 1, 71:17-21.)

1 (*Id.*, Vol. 2, 38:17-25.)

2 Q. Do you remember specifically what Billy Roe said? I mean -- and let me
3 clarify that. You've stated what I believe is a summary of what he said, but I want
4 to know specifics, if you recall, what he actually said to you?

5 A. I don't recall what he actually said, because, like I said, it took about four
6 months before he told us the truth because he was so afraid. So in those four
7 months, every week he'd talk about the sexual abuse and the beating from the other
8 kids. And it wasn't until two days prior to the arrest that he said that it was Mr.
9 Pete that was doing all this and kicking him after the kids would kick him, and
10 just a whole lot of ugly.

11 Q. So the first time you spoke to him when you got back from Las Vegas in 2018,
12 can you give me the total of what he said? Like he brought up these other kids'
13 name, and what did he say was happening between them?

14 A. He said that they were touching on each other inappropriately, touching their
15 penises, their butts, going into the rooms and classrooms and doing these things.

16 (*Id.*, Vol. 2, 39:19-40:15.)

17 Ms. Serna testified that Ismael revealed sexual abuse by Mr. Martinez to her over a
18 seven-hour period until approximately 2:00 a.m. Ms. Serna testified that the notes of her
19 questions and his answers and that she provided those to either law enforcement or Ismael's
20 civil counsel. No such notes have been provided to the defense, and no privilege exists
21 between Ms. Serna and Ismael or Ismael's counsel in the civil action.

22 Per Ms. Serna, she also made recordings of Ismael's disclosures sometime after the 7-
23 hour discussion, but she cannot find them. She stated that if a court ordered her to produce the
24 digital recorder for analysis, "it would probably be lost." (*Id.*, Vol. 2, 67:15-68:3.)

25 Ms. Serna further testified as follows:

26 Q. And you were the one who initially called the police?

27 A. Yes.

28 Q. How come you did it?

A. Because he opened up to me, not his mom, and I knew all the details of what
he had said and what had happened to him, and she did not because he wouldn't
talk when she was present.

1 (Id., Vol. 1, 203:19-204:1.)

2 Q. At any point after Billy pointed out these other boys, did Billy give you more
3 information about what these boys had allegedly done to him?

4 A. Yeah. He spoke about it.

5 Q. What did he say?

6 A. This was after the -- two days before the arrest of Pedro Martinez. He just
7 went on for like seven hours about all the abuse that Pedro did to him and he had
8 the kids do to each other. Like, he would have them touch each other, and he
9 would take them into classrooms, and he would have the kids pick on one kid and
10 kick them repeatedly, and then he would kick them. And he said that sometimes
11 he would take them into the classrooms as a group, and sometimes he would take
12 them one on one. And when they went into the classrooms, the lights were off,
13 and that Pedro would take down his pants, make them lay down on the floor, and
14 he would put his penis in his butt, but he didn't say it that way. He would point to
15 his penis, and then he said he would put it -- then he would say back here
16 (indicating.) And he said when he was done doing that, he would put it in his
17 mouth. And he said that he had them do colors. One for green, meaning go, one
18 for yellow to slow down, and red for stop, but the kids had their own colors that
19 they picked. And that when Pedro was sodomizing Billy (name changed), that
20 Billy (name changed) would tell him to stop. But instead of stopping, he would
21 just slow down. And that he would make them watch these videos that were scary
22 about kids getting hurt. And then he would turn off the phone, and in a scary
23 voice, he would say if you tell anybody, I'm going to hurt you just like those kids.
24 And he said that he would go by the name of "Mr. Quarters," and he would say
25 "Mr. Quarters will get you."

26 (Id., Vol. 1, 87:13-88:25.)

27 Q. And tell me what Billy said to you.

28 A. I don't recall the exact conversation, but he explained to me the colors that he
had to go, slow down, and stop. So he said when he was doing that, that he was
going really fast, and that he was hurting him. So he used the color that he had
chose, and that he didn't stop. He just slowed down, and he talked about how
much his stomach would hurt him and his throat because at one time, he got strep
throat in October, and I was assuming that's because he would put his penis in his
anus, and then in his mouth. So it wasn't fun hearing any of that.

(Id., Vol. 1, 138:22-139:8.)

1 Q. Okay. So other than being sodomized, did Billy tell you that he was forced to
2 orally copulate every day except Friday?

3 A. He didn't specify about that. He just specified about the anal penetration, but
4 I'm assuming that yes, because he said he had a routine.

5 Q. Was the word "routine" used by Billy?

6 A. I don't recall if that was my word or his word, to be honest, but he said that the
7 things happened the same all the time.

8 (*Id.*, Vol. 1, 140:22-141:6.)

9 Q. Okay. And am I correct that you did not put together the name of the adult
10 who was hurting him until the arrest?

11 A. A little before the arrest, yes.

12 Q. That's when you looked up Mr. Martinez on the website?

13 A. I looked up all the people that worked at the school that were males, and then
14 I asked him about the interactions. And then when it came to the janitor, he just
15 freaked out.

16 Q. So you were on your computer?

17 A. Yes.

18 Q. And Billy was with you?

19 A. Yes. But when I was on the computer, he wasn't there. So I put these names
20 down on a paper, all the males, and that's how I asked him about every single male,
21 if he had any interactions with them.

22 Q. By name?

23 A. Yes.

24 Q. What about by photo?

25 A. No.

26 (*Id.*, Vol. 1, 91:18-92:14.)

27

28 Ms. Serna testified that she disciplines Ismael. She stated:

29 Q. Did you ever hit Billy Roe?

30 A. I would spank him. But all the things he said I did, I did not.

31 Q. What are all the things he said that you did?

32 A. He said I socked him, I slapped him, I choked him, I threatened him with a
33 knife. What else did he say? I think that's the gist of what he said I did.

34 Q. And is this the allegations that are currently pending against you in the criminal
35 court?

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A. That is correct.

(*Id.*, Vol. 2, 91:18-92:14.)

Q. Did you ever lock him in a room?

A. He was confined to his room, but it wasn't locked.

Q. Did you ever punish him?

A. All the time. He misbehaved. He did a lot of things he shouldn't have. So yes, he was disciplined on a regular basis for his actions.

(*Id.*, Vol. 2, 77:16-22.)

Q. And what did you say to him?

A. I don't recall my exact words, but we were wondering why he's doing these things. And then because of that, he was banned from hanging out in the living room. I was talking to my therapist and I'm like, "This is what I'm doing." She's like, "That's good. You're giving him boundaries. If he's not able to respect something, you keep him out of the rooms that he's not respecting." And that's why he was no longer allowed to come out in the living room, because he was defacing all my property.

(*Id.*, Vol. 2, 85:9-19.)

Ms. Serna testified that she was facing charges of child abuse for harming Ismael and his little brother, but that the charges are false:

Q. I want to -- I'm interested in finding out, Ms. Serna, if you have talked to anybody from DCFS about your relationship with your wife?

A. I mean, they know that we're married. They know that we live together. They know that we get along, but they're always trying to say the opposite of that.

Q. When you say they're trying to say the opposite of that, what do you mean?

A. Just -- they try to paint me as a monster.

Q. Okay. And is it your understanding that this picture is being painted because of an allegation that you physically hurt Billy?

A. Yes.

Q. And you are currently facing charges about that; is that correct?

A. Yes.

Q. You have a public defender as a counsel?

A. Yes.

Q. And other than the charge that you physically abused Billy, they've -- all the same charges were made about you and M.B.; correct?

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A. Yes.

Q. Okay. And I take it that M.B. has been out of the house as well?

A. Yes.

Q. Okay. And neither M.B., nor Billy live with their mother in Tustin?

A. Correct.

(*Id.*, Vol. 1, 180:17-181:20.)

Ms. Serna testified that she did not abuse Ismael or his brother and blames Mr. Martinez for Ismael's false allegations:

A. Yes. Look at what's going on now. This guy's been putting things off for over three years when everybody knows he's guilty.

Q. When you say "everybody knows he's guilty," have you heard of people filing charges that aren't true?

A. No.

Q. Well, they filed charges that weren't true against you, isn't that true?

A. Yeah, but that was all because of Mr. Pete.

Q. So you're blaming Mr. Martinez for Billy Roe filing charges against you?

A. Definitely.

(*Id.*, Vol. 2, 133:2-133:13.)

Ms. Serna testified that she was also charged with furnishing alcohol to a minor, but that she is not guilty. She claims the accusation is retaliation for telling a mother she needed to reprimand her child. She testified:

Q. You -- in addition to the criminal case we talked about earlier, you have another case for -- where there's allegations of furnishing alcohol to a person under 21 years of age. Am I hearing that right?

A. Yeah. They're both gonna be dismissed in June.

Q. Got it. Is the person that you furnished alcohol to, is their name --

A. I did not furnish alcohol.

Q. I'm sorry. I did not mean to -- the person that has alleged that you furnished alcohol to, is their name kept private from any court records, if you know?

A. Probably. They're minors.

Q. They were less than 18 years old then?

A. Minors, yes.

1 Q. You said both of those cases are going to be dismissed?

2 A. That is correct.

3 Q. How do you know that?

4 A. My attorney told me so.

5 Q. I'm sorry. I didn't mean to elicit attorney-client privileged communications.
6 Apart from anything your attorney told you, do you know some factual basis, some
7 evidence, that exonerates you from those two cases?

8 A. There's no proof of anything. These are just made because a child got upset
9 because he lost my son's 400-dollar phone, and I asked his mom if I could give
10 him standards to do for being irresponsible with someone else's possessions. So
11 then a big old shindig happened because of that. And then the sister got mad
12 because the mom told me private stuff. And everything just got out of control and
13 they made some lies to try to punish me.

14 Q. Who was that mom you're referring to?

15 A. I don't even remember her name anymore. But she's a lady who adopted her
16 kids because their mom was a druggie. So she took all of her kids.

17 Q. Did you ever have any interaction with those kids?

18 A. Yes.

19 (*Id.*, Vol. 1, 109:6 -110:20.)

20 Ms. Serna testified that she was convicted of battery in 2010, but that she pled guilty to
21 something she didn't do and was actually the victim of the assault:

22 Q. Okay. In 2010, you were charged with a crime; is that correct?

23 A. Yeah. I pled to something I didn't do because my mom was dying.

24 Q. Okay. So you pled to the crime of battery?

25 A. That is correct.

26 Q. And did your sexual assault in 2010 have anything to do with the people
27 involved in the battery?

28 A. No.

Q. So you maintain that you pled guilty, and you were not guilty?

A. That is correct.

Q. You paid a restitution, did you not?

A. Yes.

Q. And you went to anger management classes?

A. Yes.

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Q. How long?

A. I don't know.

Q. Did they help?

A. I didn't have anger issues. I was the victim of an assault, and I pled guilty to something because my mom was dying.

(*Id.*, Vol. 1, 211:23 - 212:23.)

Ms. Serna testified that she initiated the civil lawsuit against Mr. Martinez and the HUSD and sought media attention despite not being married to Ms. Rosa. She testified:

Q. Ms. Serna, when you were interviewed by the police in January of 2019 -- I'm sorry. When you were interviewed by ABC News in January of 2019, did you seek them out?

A. Yes, ma'am.

Q. You sought out ABC News?

A. I sought out an attorney that was going to give us a stage so –

(*Id.*, Vol. 1, 237:9-16.)

Q. Ms. Serna, when was the last time that you saw the videotape of ABC News?

A. Is that the only one that's out there?

Q. I'm only aware of one. How many different news media organizations did you speak to?

A. I'm not sure how many, but more than one.

(*Id.*, Vol. 1, 238:21-239:1.)

(b) Additional Evidence

Ms. Serna's sister-in-law, Audrey Reyes, has known Ms. Serna for many years. She first met Ms. Serna when Ms. Serna was a junior or senior in high school. (Reyes Depo, 8:11-16.) She is aware of Ms. Serna's allegation of sexual abuse in the military and during childhood.

Ms. Serna told Ms. Reyes that her older brother, as a child, constantly sexually assaulted her, including sodomizing her. (*Id.*, 25:6-12; 40:13-21.) Ms. Serna also informed her that when she was a baby that her father's cousin stuck his finger in her anus. (*Id.*, 25:13-20.)

1 As for her adult years, Ms. Serna told Ms. Reyes that she slept with the husband of one
2 of her sisters because the two were high and drunk. However, Ms. Serna ultimately claimed that
3 he was in the wrong and had ultimately taken advantage of her. (*Id.*, 24:22-25:2; 39:1-12.) Ms.
4 Serna also claims that her older sister’s husband digitally penetrated her while she was sleeping
5 in the living room. (*Id.*, 25:3-5.)

6 On March 2, 2012, Ms. Serna accused a family friend of molesting her then 4-year old
7 son, including touching his butt. Ms. Serna refused to speak about this allegation at her
8 deposition. According to Los Angeles County Sheriff’s Department Report – 012-01508-2999-
9 418, Ms. Serna reported to Deputy Limpankorn that her 4-year-old son had been physically and
10 sexually assaulted by a family friend, Alex George Selva, Jr., three weeks prior in Ontario,
11 California. Ms. Serna stated that Mr. Selva showed her son his penis and touched his butt with
12 his hands over his clothes. He also reported that Mr. Selva kicked her son in the penis. She added
13 that her son was demonstrating strange behaviors such as rubbing and grinding his groin area
14 on Andreas Sanchez, Ms. Serna’s roommate. She also stated that Mr. Selva hit her son in the
15 butt with a hammer. The case was referred to San Bernardino County.

16 Despite requests, the People have not produced any San Bernardino County Sheriff’s
17 Department or Ontario Police Department reports related to these events to the defense.

18 The defense will furnish this report to the Court upon request.
19

20 Ismael and his little brother were removed from Ms. Rosa on November 22, 2016. On
21 January 30, 2018, Ismael was released to Ms. Rosa under DCFS and Court jurisdiction. On
22 October 31, 2018, the Court terminated jurisdiction over the matter. Ms. Rosa began dating Ms.
23 Serna sometime in 2017, while her children were living in foster care.

24 The children were removed from the home of Ms. Rosa and Ms. Serna in December 2019.
25 On December 12, 2019, Ismael reported to a DCFS counselor that Ms. Serna threatens to kill
26 him and physically abuses him. Notably, Ismael reported that Ms. Serna spanks him by 3s. For
27 one bad thing, he gets 3 spankings; for 2 its 6 spankings, and for 3 it’s 9 spankings. He stated
28

1 Ms. Serna has BB guns and pistols and that she told him when he grows up, she'll shoot him.
2 His December 13, 2019 physical exam was consistent with the physical abuse alleged.

3 On December 12, 2019, Ms. Serna reported to DCFS counselor Karina Salcedo that she
4 spansks the children, including Ismael, by making them remove their pants and lay down on the
5 bed. She spansks them three times. During this same interview, Ms. Serna referred to Ismael as
6 "a cunning individual" and "the devil's son." Ms. Serna reported that a few days before she had
7 reported Ismael to the police for cutting his younger brother (Ms. Serna testified to this at
8 deposition – Vol. 2, 111:20-112:7.) Ms. Serna reported to Ms. Salcedo that Ismael is a
9 psychopath and that she fears him. According to Ms. Salcedo, Ms. Serna made the following
10 statements:

- 11
- 12 - "Ismael is doing criminal acts. He needs to go to jail. He smears feces on the mirror. . .
13 he's an evil child, cunning 7-year old."
 - 14 - "I pray that if God is not going to make him better that he just takes him. I'm not going
15 to apologize for saying that."

16 During a December 17, 2019 interview, Ms. Serna made the following statements to Karina
17 Salcedo:

- 18
- 19 - Ismael "spreads feces over [redacted] on the keyboard, over the nice towel. He gives
20 [redacted] paper cuts on his nipples."
 - 21 - Ismael stuck a pencil, hot wheels car, crayon, dice and an orange cord in [redacted]'s
22 butt.
 - 23 - Ms. Serna reported that she threatens Ismael with a belt but doesn't hit him with it.

24 On December 17, 2019, the social worker questioned Ms. Serna's 12 year old son about
25 abuse in the home. Mr. Serna would not allow him to be interviewed alone. When the counselor
26 asked her 12 year old son whether he has marks or bruises, Ms. Serna stated that she has bruises
27 on her body from playing with the boys. Without prompting, she stood up from her chair to pull
28 down her pants to show the interviewer her legs.

1 On December 18, 2019, Ismael reported that “Lena” hits him every day, with both open
2 hands and closed fists. Ismael reported that she slaps him across the face, has slammed him
3 across the door, and **grabbed him on his private parts.**

4
5 Los Angeles County Sheriff Deputy Farias interviewed Ms. Serna at her home
6 concerning the child abuse of Ismael and his brother. Immediately after Deputy Farias, left, Ms.
7 Serna called LA County Sheriff’s station requesting to press charges against Ismael for
8 vandalism. During deposition, Ms. Serna testified, “I want [Ismael] to pay for all damages that
9 he did to the house because of Mr. Pete. I think that’s fair.” (Serna Depo, Vol. 2, 8-10.)

10
11 Ismael’s foster mother reported to DCFS that Ms. Rosa coaches Ismael during visits not
12 to talk about Ms. Serna or the abuse in the home. This was both observed by her and told to her
13 by Ismael. Further, the foster parents reported that Ms. Rosa gives toys to Ismael with messages
14 from Ms. Serna.

15 The defense will provide the Court a copy of the DCFS records and Detective Farias
16 report upon request.

17
18 2. The Evidence Should Be Admitted Under *Foss*

19 In *People v. Foss* (“*Foss*”) (2007) 155 Cal. App. 4th 113, the Court held that the
20 “testimony of a noncomplaining witness in a sex crime case who may have been a victim herself
21 of unwanted sexual attention or advances, likewise should not be inherently distrusted”. (*Id.* at
22 128.) And the defense agrees. But that is not relevant to the defense’s position.

23 In *Foss*, the Court properly criticized holdings in cases such as *Ballard v. Superior Court*
24 (1966) 64 Cal.2d 159, which established a rule authorizing trial judges to order a complaining
25 witness to submit to involuntary psychiatric examinations if the complaining witness's claims
26 have little or no corroboration. (*Foss*, 155 Cal.App.4th at 128). Further, the *Foss* court properly
27 criticized the holding in *People v. Russel* (1968) 69 Cal.2d 187 that “the trial court should have
28

1 admitted the psychiatric testimony on the issue of the credibility of the complaining witness:
2 “[H]aving in mind the rationale and objective of Ballard and the danger in sex offense cases that
3 the charge may rest on the credibility of the child as against the bare denial of the defendant, we
4 think that the legal discretion of the judge should be exercised liberally in favor of the
5 defendant.” (quoting *Russel*, 69 Cal.2d at 198). The *Foss* court properly described Penal Code
6 Section 1112 (forbidding courts from ordering psychiatric examinations of victims or
7 complaining witnesses in sex-crime cases in order to assess their credibility.). (*Foss*, 155
8 Cal.App.4th at 130)

9 The defense *agrees* with *Foss* in these regards. The defense is not requesting a
10 psychiatric evaluation (or admission of evidence discovered from such an evaluation) of Ismael,
11 Ms. Serna, or, for that matter, any psychiatric evaluations at all.

12 The question at issue here is not the one addressed in *Foss* -- whether one who has
13 suffered sexual attention or advances should be distrusted. The relevant question before this
14 Court is whether the defense may address Ms. Serna’s sworn statements that discussed the events
15 at issue with Ismael to show any potential impact, Ms. Serna’s statements relied on by Deputy
16 Womelsdorf and Detective LaDuke when interviewing X’zavier (and any potential impact), and
17 the effect Ms. Serna’s statements had on the investigation by Deputy Womelsdorf, Detective
18 Arias, and Sergeant Tracy.

19 (a) *Ms. Serna’s Impact on the First Alleged Disclosure by Ismael R.*

20 The Court is aware from the Offer of Proof that Ismael did not initially identify or
21 implicate Pedro Martinez, the school janitor known as “Mr. Pete.”

22 Ms. Serna testified that when she was cleaning the penis of Ismael’s little brother (the
23 other child of her girlfriend), the child “pulled away.” Ms. Serna stated that as a result of the
24 child pulling away, she “had” Ms. Rosa take the child to the doctor to have his testicles
25 examined.

1 From this conduct, Ms. Serna realized that Ismael had been sexually abusing his brother.
2 She testified that she confronted Ismael and he admitted to inserting various objects into his
3 brother's anus.

4 Ms. Serna, who had been speaking to Ismael about pedophilia for months, then conducted
5 a seven-hour interview, up into 2:00 a.m. on a Saturday morning and allegedly obtained the
6 statements that formed the basis of information of Deputy Womelsdorf when he took the first
7 disclosure interview of X'zavier, the entire investigation, the allegations contained in the
8 criminal complaint, and, ultimately, this action.

9
10 *(b) Ms. Serna's Impact On The First Disclosure Of Complaining Witness*
11 *X'zavier and others*

12 We reiterate that this is *not* a case in which three unrelated child witnesses made
13 consistent and unrelated allegations against the Mr. Martinez. Ms. Serna is the nexus between
14 the allegations allegedly made by Ismael and X'zavier.

15 Ms. Serna previously accused X'zavier of sexually assaulting Ismael. Ms. Serna testified
16 that she was correct when she accused X'zavier of sexually assaulting Ismael -- and determined
17 that X'zavier was compelled to do so by the Mr. Martinez. Ms. Serna's statement provided the
18 basis of knowledge of Deputy Womelsdorf when he took the first disclosure interview of
19 X'zavier.

20 Ms. Serna states that she subsequently engaged in a seven-hour interview with Ismael
21 where he made horrific and bizarre sexual allegations against a man at school. Ms. Serna stated
22 that she pulled the roster of the school employees, and that Ismael ultimately identified the
23 janitor as the assailant.

24 Conversely, to date, **the only implicating statements** made by Ismael were those made
25 at the forensic interview – namely that “Mr. Pete” touched his butt (over the clothes); “put him
26 in the dark”; and “has a taser that he uses to kill people.”
27
28

1 “Do you think you’re in trouble right now? Is that why you’re a little shy to talk to me?
2 If I told you weren’t in any, any trouble at all , would you be more relaxed?”

3 “You’re not in any trouble. I just came to talk to you and check on you to make sure
4 you’re okay. Okay? You didn’t do anything wrong; right? So you have nothing to worry
5 about.”

6 “Don’t worry. Don’t think you’re going to be in any trouble. Okay? I just come and check
7 on you and make sure you’re okay. All right.”

8 “Hey, don’t worry about that. Okay? I want you to feel comfortable talking to me and
9 don’t think I’m going to get you in any trouble. Are you worried somebody else might
10 get in trouble if you talk to me.?”

11 “Would it make your feel more comfortable if I told you that no one is ever going to hurt
12 you, and I’ll keep you safe?. . . Me and Officer Mullenix, that’s our job is to make sure
13 kids don’t have to do things they don’t want to do. Okay? But it’s very important – and
14 you’re doing a great job talking to me, and I’m so happy you’re talking to me. It’s very
15 important you tell me everything you can remember, Okay?”

16 “I know it's hard to remember sometimes, especially because you had a long holiday
17 weekend.”

18 Further, Deputy Womelsdorf praised and rewarded X’zavier when he agreed with or
19 confirmed Deputy Womelsdorf’s statements. After agreeing with certain suggested acts, Deputy
20 Womelsdorf stated:

21 Hey X’zavier, I think you’re one of the bravest kids I know. You know why? Because
22 sometimes when people do something mean it takes a lot of courage to talk to people,
23 especially like policemen, like me. So I’m proud of you bud.” Detective LaDuke
24 immediately followed up with “Good job, bud. Do you want a piece of candy?. . . Do you
25 want two candies? . . .Don’t tell your mommy. . .

26 Later, Deputy Womelsdorf stated, “If I give you one more candy, do you mind hanging
27 out for a second?. .. All right, I’ll let you pick one out, and then you can color for a few more
28 minutes. Okay?”

1 The questioning by Deputy Womelsdorf consisted of all leading questions wherein he
2 suggested that X'zavier had engaged in oral copulation and sodomy – all allegations by Ms.
3 Serna. At the social worker interview at CAC, X'zavier did not disclose oral copulation or
4 sodomy.

5 The defense is entitled to explore the basis of Deputy Womelsdorf's interview of
6 X'zavier. The issue is *not* that addressed in *Foss* (whether one who has suffered sexual attention
7 or advances should be distrusted). The issue is whether Detective Womelsdorf's adoption of the
8 narrative -- provided by Ms. Serna -- impacted the results of the first disclosure interview of
9 X'zavier.

10 *(e) Ms. Serna's Testimony is Relevant to the Interview of Mr. Martinez by*
11 *Detective Arias and Sergeant Tracy, The Resulting Investigation, And*
12 *The Allegations That Comprised Those Contained In The Complaint*

13 Detective Arias and Sergeant Tracy interviewed the Mr. Martinez. Detective Arias asked
14 repeated questions drawn from the narrative provided by Ms. Serna. For instance:

15 Detective Arias asked, "Who is Mr. Quarters?" (Ms. Serna, and not Ismael or X'zavier,
16 claimed Mr. Martinez would use the term "Mr. Quarters" to threaten children to not
17 disclose misconduct. There is no other evidence at all regarding Mr. Quarters.

18 Both Detective Arias and Sergeant Tracy told Mr. Martinez that there were multiple
19 victims, when, at the time, Ismael had not been interviewed and the children identified
20 by Serna, except for X'zavier (who eventually agreed with Deputy Womelsdorf
21 suggestions) denied any abuse.

22 At one point, Detective Arias stated, "These kids are claiming they were raped and
23 threatened if they went to any adult or the police . . . you weren't going to be their friend
24 and you were going to do more violent things to them." He continued, "this is what it
25 sounds like: Six year olds, I'm going to tell 'em – I'm going to do my thing. I'm going
26 to tell 'em this and I'm going to scare 'em, and then they're not going to tell anybody."
27 Detective Tracy stated, "And there's not just one victim, and you know who they are, so
28 that's why we're giving you the opportunity." She continued, "These kids have identified
you." But Ms. Serna identified Mr. Martinez. And Deputy Womelsdorf suggested to

1 X'zavier that Mr. Martinez assaulted him, and Deputy Womelsdorf rewarded X'zavier
2 when he assented.

3 The entire resulting investigation concerned public press releases and the filing of a
4 criminal complaint alleging conduct described -- not by Ismael -- but by Ms. Serna. The initial
5 Complaint charges Mr. Martinez with sexual intercourse or sodomy against Ismael (Count 1)
6 and oral copulation or sexual penetration against Ismael (Count 2). As of the date of this
7 Complaint, Ismael did not disclose any touching other than Mr. Martinez' alleged touching of
8 Ismael on the butt outside his clothes. These charge contained in the criminal complaint can
9 only be attributed to Ms. Serna's statements to law enforcement.

10 The defense is entitled to explore the basis of Detective Arias' and Sergeant Tracy's
11 interview of Mr. Martinez, the allegations incorporated into the complaint, and the subsequent
12 investigation. This issue was not that addressed in *Foss* (whether one who has suffered sexual
13 attention or advances should be distrusted).

14 3. The Facts at Issue Here are Substantially Dissimilar to Those in *Foss*

15 Unlike *Foss*, the defense is not seeking to explore whether a non-party witness was a
16 victim of sexual crimes. The defense is entitled to explore whether the non-reporting party at
17 the center of the investigation has a long-standing history of accusing men of sexual crimes
18 against herself, her child, children of her new girlfriend (including Ismael and his little brother),
19 and Ismael's classmates, including X'zavier.

20 In *Foss*, the Complaining Witness provided detailed accounts of each incident. Here, the
21 only detailed account of abuse against Ismael was provided by Ms. Serna. And the only coherent
22 accounts of abuse against Ismael and X'zavier were provided by Ms. Serna.

23 Here, the first disclosure interview of X'zavier was made with a belief in the truth of the
24 allegations relayed to Deputy Womelsdorf by Ms. Serna, as well as Ms. Serna's iteration of
25 events contained in the reports reviewed by Deputy Womelsdorf.

26 Here, the facts addressed in the complaint in this matter were based on allegations provided
27 solely by Ms. Serna. And the detectives inquired into allegations solely provided by Ms. Serna.
28

1 The only affirmations by Ismael are that “Mr. Pete touched my butt (over the clothes); Mr. Pete
2 “put me in the dark”; and Mr. Pete “has a taser that he uses to kill people.”

3 But in *Foss*, there was substantial other corroborating evidence -- the witness at issue had
4 found child pornography on the defendant’s computer. (*Foss*, supra, at 121).

5 In this case, by contrast, there were SANE examinations on both complaining witnesses,
6 DNA investigations on the Mr. Martinez, and exhaustive blood and semen analysis examinations
7 of the alleged sites where the allegations allegedly occurred – all of which provided no forensic
8 corroborating evidence.

9 The only evidence is testimonial, all of which, concerning the two complaining witnesses,
10 traces back to Ms. Serna.

11 **B. Evidence Of Ms. Serna’s History, Beliefs, And Interview Practices Are Essential**
12 **For The Jurors’ Analysis Of Claims Of Both Complaining Witnesses**

13 This Court is well aware of the grave responsibility it has. Reliability is the linchpin for
14 determining admissibility of evidence under the fairness standard required by the Due Process
15 Clause of the Fourteenth Amendment. (*Manson v. Braithwaite*, 432 U.S. 98 (1977).) This Court
16 must give the jury the evidence it needs to ensure the reliability of the evidence presented by the
17 People at trial.

18 Woven into the consideration of this case is the question of a child witness's susceptibility
19 to influence through coercive, suggestive, or even benign questioning. There are nationally-
20 recognized factors applicable to child-interviews -- especially the first disclosure interview --
21 regarding improper interview techniques and their potential effect on child witness credibility.
22 For example, in *State v. Michaels*, 136 N.J. 299,642 A 2d 1372, at 1377 (1994), the Court stated:

23 We note that a fairly-wide consensus exists among experts, scholars, and
24 practitioners concerning improper interrogation techniques. They argue that
25 among the factors that can undermine the neutrality of an interview and create
26 undue suggestiveness are a lack of investigatory independence, the pursuit by the
27 interviewer of a preconceived notion of what has happened to the child, the use of
28 leading questions, and a lack of control for outside influences on the child's
statements, such as previous conversations with parents or peers.

1 And there is abundant authority regarding a consistent and recurring concern over the
2 capacity of the interviewer and the interview process to distort a child witnesses' recollection.²
3 Many interview practices are sufficiently suggestive or coercive to alter irremediably the
4 perceptions of child witnesses.

5 The notion that a child witness is peculiarly susceptible to influence comports with our
6 intuition and common experience. The broad question of whether children as a class are more
7 susceptible to suggestion than adults is one that has been definitively answered in psychological
8 research. The issue the Court must determine is whether the interviewing and questioning
9 techniques used with the child witness in this case were so suggestive that they had a capacity
10 to substantially alter the child's recollections of events and thus compromise the reliability of
11 the child's personal knowledge.

12 That an investigatory interview or counseling of a young child can be suggestive and thus
13 shape the child's recollection and responses has been generally accepted in the scientific
14 community for over twenty years.³ A wide consensus exists among experts, scholars, and
15 practitioners concerning questioning and interrogation techniques with children. This research
16 argues that among the factors that can undermine the neutrality of an interview and create undue
17 suggestiveness are:

- 18 a. A lack of investigatory independence;
- 19 b. The pursuit by the interviewer of a preconceived notion of what has happened;
- 20 c. A lack of control for outside influences on the child's statements;
- 21 d. A lack of control for cooperative conversationalist effects;

22
23 ² See Ceci, Toglia & Ross (Eds), *Children's Eyewitness Memory*, (New York: Springer-Verlag, 1987); Ceci,
24 Ross & Toglia (Eds), *Perspectives On Children's Testimony*, (New York: Springer-Verlag, 1989); John Doris
25 (Ed), *The Suggestibility of Children. Recollections*, (Washington, D.C.: American Psychological Association
26 Press, 1991); Ceci & Bruck, *Jeopardy in the Courtroom - A Scientific Analysis of Children's Testimony*,
27 (Washington, D.C.: American Psychological Association Press, 1996); and Campbell, T. *Smoke and Mirrors:
28 The Devastating Effect of False Sexual Abuse Claims*. New York, Insight Books (1998). See also generally *The
APSAC Handbook Child Maltreatment*, Second Edition, 2002

³ For example, see: Goodman & Helgeson, *Child Sexual Assault: Children's Memory and the Law*, 40 U.
Miami L. Rev. (1985); Myers, *The Child Witness: Techniques for Direct Examination, Cross-Examination, and
Impeachment*, 18 Pac. L.J., 801 889 (1987); Younts, *Evaluating and Admitting Expert Opinion Testimony in
Child Sexual Abuse Prosecutions*, 41 Duke L.J. 691 (1991).

- 1 e. A lack of control for source monitoring failures;
- 2 f. The use of leading questions; and
- 3 g. The use of repeated questions.⁴

4 The use of repeated questions adds a dangerous manipulative element to questioning,
5 interview, and counseling. When a child is asked a question and gives an answer, and the
6 question is immediately asked again, the child's normal reaction is to assume that the first answer
7 was wrong or displeasing to the adult questioner.⁵ Dr. Stephen Ceci and his colleagues,
8 examined how re-interviewing children can alter their recollection of events. Each week for 10
9 or 11 consecutive weeks, preschool children were individually interviewed by a trained adult.
10 During each brief interview the interviewer would play cards with the child and each time, ask:
11 "Do you remember going to the hospital with a mousetrap on your finger?" After ten weeks of
12 thinking about both real and fictitious events, the preschool children were interviewed by a new
13 adult who simply asked: "Tell me if this ever happened to you: Did you ever get your finger
14 caught in a mousetrap and have to go to the hospital to get the trap off?" 58% of the preschool
15 children produced false narratives and the elaborateness of their narratives by the final week
16 astounded the experimenters. When pressed, the experimenters concluded "we think that these
17 children are so believable because at least some of them have come to believe these false stories
18 themselves." ⁶

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25 ⁴ See Lorandos & Campbell, *Myths and Realities of Sexual Abuse Evaluation & Diagnosis: A Call*
26 *For Judicial Guidelines*, Vol. 7, Issues in Child Abuse Accusations (1995).
27 ⁵ See Poole & White, *Effects of Question Repetition on Eyewitness Testimony of Children and Adults*, 27
28 *Developmental Psychology* 975. November (1991) and Poole, D. & Lamb, M. (1999), *Investigative Interviews*
with Children, Washington, D.C. American Psychological Association Press.
⁶ Ceci, Crotteau-Huffman, Smith & Loftus, *Repeatedly Thinking About Non-Events, Consciousness &*
Cognition, 388-407 (1994).

1 **C. Just As The Court Considered The Changes In Contemporary Attitudes From The**
2 **Antiquated Perceptions Expressed in *Ballard* And *Russel* To The Time Of *Foss*, This**
3 **Court Must Consider The Changes In Such Attitudes From The Time Of *Foss* To**
4 **The Present**

5 *Foss* examined the changes of contemporary attitudes regarding victims of sexual assault
6 over time. Similarly, this court must consider that contemporary attitudes regarding those
7 accused of sexual assault have also changed since *Foss*.

8 The *Foss* correctly addressed the outdated disturbing attitudes reflected in *Ballard, supra*,
9 64 Cal.2d 159 and *Russel, supra*, 69 Cal.2d 187 which, over a half-century ago, allowed judges
10 to order psychiatric evaluations of victims of sexual assault.

11 But in the 15 years since *Foss* was decided, disturbing attitudes are appearing against the
12 accused, rather than the accusers. Last year the American Bar Association began, and then
13 ultimately ceased, efforts to call for a change in the definition of “consent” in sex cases which
14 would have shifted the government’s burden of proof from proving lack of consent to a
15 defendant’s burden of proof establishing consent existed.⁷ The “Me Too” movement has had
16 profound benefits in the employment, educational, and civil law arenas, addressing many of the
17 same archaic outdated perceptions addressed by the Court in *Foss*. But the pendulum’s swing
18 in the area of criminal law -- at this point -- dangerously infringes upon constitutional rights and
19 especially the presumption of innocence and right to cross-examination.

20 For example, it is expected, in this case, that the People will argue that “children don’t
21 lie”, “the victims have no reason to lie in this case”, and that “how can the allegations of these
22 victims be so similar unless it happened.” The People will bolster these notions with a Child
23 Sexual Abuse Accommodation Syndrome (“CSAAS”) expert. CSAAS has been criticized as
24 being a pseudoscience which prosecutors regularly utilize to rehabilitate the credibility of their
25 witnesses – the message being anything the child says or doesn’t say demonstrates abuse.⁸

26 ⁷ See <https://www.insidehighered.com/news/2019/08/14/american-bar-association-tables-new-definition-consent-criminal-sex-assault-cases> (last accessed September 10, 2023).

27 ⁸ Several states have prohibited testimony regarding CSAAS, based on evidence that it is not accepted generally
28 by scientist, except with regard to delayed reporting. Neither the American Psychiatric Associations nor the
American Psychological Association has recognized CSAAS. (*See State v. G.L.G.*, 234 N.J. 265 (2018) (NJ

1 The jury is entitled to see the evidence that explains how it is the children were influenced
2 by the adults around them, including Ms. Serna and Deputy Womelsdorf who reiterated Ms.
3 Serna’s statements to X’zavier. And unlike *Foss*, the evidence at issue is not speculative – it is
4 sworn testimony and statements to law enforcement officers and government officials by the
5 individual who took the first disclosure interview of Ismael, made the initial reports, and
6 previously accused X’zavier of sexual misconduct against Ismael.

7 To preclude the jury from hearing this extremely relevant evidence would violate the
8 Fifth and Sixth Amendments to the Constitution of the United States of America and their
9 counterparts contained within the Constitution of the State of California.

10 **D. Ms. Serna’s Has No Fifth Amendment Privilege**

11 On September 7, 2023, the People, *sua sponte*, argued that Ms. Serna may invoke the
12 Fifth Amendment privilege rendering her unavailable and that her testimony in the related civil
13 action could not be introduced because the People were not a party to that action. The People
14 are wrong.

15 It is “the duty of [the] court to determine the legitimacy of a witness’ [s] reliance upon
16 the Fifth Amendment.” (*People v. Lopez* (1999) 71 Cal.App.4th 1550, 1554). California
17 Evidence Code section 404 provides that the person claiming the Fifth Amendment privilege
18 “has the burden of showing that the proffered evidence might tend to incriminate him; and the
19 proffered evidence is inadmissible unless it clearly appears to the court that the proffered
20 evidence cannot possibly have a tendency to incriminate the person claiming the privilege.”
21 *citing Roberts v. United States* (1980) 445 U.S. 552, 560, fn. 7.)

22 When a criminal matter is disposed of, there is no longer a Fifth Amendment privilege.
23 (*See People v. Lopez*, 71 Cal.App.4th 657, *citing People v. Fonseca* (1995) 36 Cal.App.4th
24 631, 635; *In re Courtney S.* (1982) 130 Cal.App.3d 567, 573.)

25 There has been no showing that the proffered evidence could incriminate Ms. Serna in
26 any way. The criminal case at issue was dismissed on June 13, 2022. (*See Case No.*

27 _____
28 Supreme Court rejected the admissibility of child sexual abuse accommodation syndrome finding that it did not
satisfy the evidence rule governing admission of expert testimony.)

1 KA124367 (Los Angeles Sup. Ct., West Covina Courthouse)) There is no longer any right to
2 appeal.

3 Any other claims relating to child abuse or molestation in 2018 or 2019 are now barred
4 by the applicable misdemeanor one year statute of limitations or the applicable three-year
5 felony statute of limitations. (Cal. Pen. Code Secs. 801, 802).

6 Moreover, the grounds for any criminal action are not going to be at issue. The defense
7 is not seeking to obtain evidence from Ms. Serna that could be used in a criminal action. The
8 defense intends to inquire to Ms. Serna about her sworn testimony in the related civil action
9 regarding claims she asserts are false that were made by Ismael.

10 The People have not put forth any grounds that would allow this Court to “determine
11 the legitimacy of a witness' [s] reliance upon the Fifth Amendment” (*See Lopez, supra*, 71
12 Cal.App. at 1554) and find that such a privilege exists.

13
14 **E. There Is No Risk Of Mid-Trial Mini-Trials**

15 The defense does not intend to litigate the legitimacy of the sexual assault claims that
16 Ms. Serna made against others. The issue is not whether Ms. Serna’s claims are accurate, but
17 whether she made them and her practice of doing so in the past (and at least five times in the
18 year prior to *her* similar allegations against the defendant).

19 If the People wish to seek to substantiate the allegations, the defense does not object to
20 any attempt to do so.

21
22 DATED: September 11, 2023

KAEDIAN LLP

23
24 By: _____

KATHERINE C. MCBROOM
Attorney for Defendant
PEDRO MARTINEZ

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 8383 Wilshire Blvd. Suite 210, Beverly Hills, CA 90211.

On September 11, 2023, I served the following document(s) described as:
DEFENDANT PEDRO MARTINEZ’ SUPPLEMENTAL BRIEF CONCERNING MR. MARTINEZ’ MOTION IN LIMINE NO. 14 REGARDING MAGDALENA SERNA’S PRIOR ALLEGATIONS AND INFLUENCE OVER COMPLAINING WITNESS ISMAEL R. AND THE CRIMINAL INVESTIGATION AND MR. MARTINEZ’ MOTION PURSUANT TO PENAL CODE SECTION 782
in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

- BY MAIL:** I deposited such envelope in the mail at 8383 Wilshire Blvd. Suite 210, Beverly Hills, CA 90211. 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.

Deputy District Attorney Deena Pribble, DPribble@sbcdca.org

STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 11, 2023 at Los Angeles, California.

Katherine McBroom