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SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
JOSHUA TREE DISTRICT

OCT 03 2023

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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. 3 TO RECONSIDER THIS  
COURT'S SEPTEMBER 29, 2023  
RULING**

Dept.: M2  
Hon. Christopher Pallone

1           **I. Precluding The Defense From Inquiring as to Witness Magdalena Serna's**  
2           **Prior Acts of Violence is Error**

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

5           Ms. Serna was arrested and charged with child abuse alleged by Ismael. She  
6 testified that the abuse allegations by Ismael arose from Ismael's alleged contacts  
7 with Mr. Martinez. Ms. Serna claims that Ismael is lying about the abuse  
8 allegations against her.

9           The defense is aware of Ms. Serna's prior violent acts:

10          On August 17, 2010, in Case No. 0PK05232, the Los Angeles County District Attorney  
11 filed a criminal complaint against Ms. Serna for a violation of Penal Code section 368(c), elder  
12 abuse, which occurred on or about August 10, 2010. The LADA alleged that Ms. Serna inflicted  
13 harm upon an elderly man. On September 13, 2010, Ms. Serna entered a plea of guilty to battery  
14 in violation of Penal Code section 242 to dispose of her case. She claims her accuser was lying.

15          On April 1, 2020, in Case No. KA124367, during the pendency of this case, the LADA  
16 filed a criminal complaint against Ms. Serna alleging two counts of child abuse in violation of  
17 Penal Code section 273A(a). The named victims were Ismael and his little brother, Maximo.  
18 The abuse is alleged to have occurred on or about December 9, 2019. The Court placed Ms.  
19 Serna on diversion and the matter was dismissed in June 2022.

20          On September 29, 2023, this Court ruled that evidence of Ms. Serna's criminal case,  
21 wherein Ismael alleged physical and emotional abuse against Ms. Serna, will be precluded from  
22 trial. The Court determined that evidence of child abuse perpetrated by Ms. Serna on Ismael  
23 post-dated the relevant time period, is more prejudicial than probative, and would result in an  
24 undue consumption of time.

25          As to the child abuse allegations, the Court's order is error. Although the criminal  
26 complaint against Ms. Serna specified acts of abuse on or about December 9, 2019, during the  
27 investigation by DCFS, Ismael disclosed that Ms. Serna struck him and threatened him on  
28 numerous occasions. Further, during his deposition in the parallel civil matter, Ismael testified

1 that Ms. Serna "hit him" during the time period wherein he visited Ms. Serna's home on the  
2 weekends (he was regularly visiting Ms. Serna on weekends during the time Mr. Martinez is  
3 alleged to have abused him). Below is an excerpt from his deposition:

4  
5 4 Q Okay. And before you lived in Lena's  
6 house, you went to go visit there sometimes, right?

7 6 A Yes.

8 7 Q Okay. Did you like Lena?

9 8 A Sometimes.

10 9 Q And sometimes you wouldn't?

11 10 A Yes.

12 11 Q When would you not like her? What would  
13 she do?

14 12 A She would hit me.

15 (Deposition of Ismael R., p. 24:4-13.) He also stated as follows:

16 22 Q (Billy), did Lena sexually abuse you?

17 23 A I don't know, but I do remember that she  
18 24 hit me.

19 (*Id.*, p. 52:22-24.)

20 Further, during her testimony on September 28, 2023, Ms. Serna admitted to spanking  
21 Ismael. She stated she would have Ismael remove his pants and lay on her bed and that she  
22 would spank him three times for each purported offense.

23 Ms. Serna has alleged harm by Mr. Martinez against Ismael, including hitting Ismael and  
24 forcing Ismael to fight with other students. She is the only person to whom Ismael made initial  
25 allegations of physical and sexual abuse by Mr. Martinez. She has testified in Court and during  
26 deposition that Ismael is lying about the abuse allegations against her (Ms. Rosa also claims  
27 Ismael is lying about the abuse perpetrated by Ms. Serna). However, she contends that Ismael is  
28 telling the truth concerning allegations of sexual and physical abuse against Mr. Martinez.

Evidence concerning Ismael's allegations of physical abuse against Ms. Serna are  
relevant and material for the following reasons:

1. Ismael is scared of and intimidated by Ms. Serna. This is documented in DCFS records and in deposition transcripts. Dr. McAuliff testified during 402 hearings that

1 the reliability of a first disclosure depends on a number of factors, including the  
2 identity and background of the individual questioning the child.

3 2. Ms. Serna's arrest and criminal case related to the December 9, 2019 acts of abuse  
4 flowed from DCFS' investigation wherein Ismael disclosed several acts of emotional  
5 and physical abuse perpetrated by Ms. Serna against him.

6 3. Ms. Serna claims that Ismael is lying about her acts of abuse against him but is being  
7 truthful about the allegations of physical and sexual abuse against Mr. Martinez. This  
8 goes to the credibility of both Ms. Serna and Ismael.

9 The Court did not specify how evidence of Ms. Serna's abuse of Ismael and her  
10 assertion that Ismael is lying about the abuse is prejudicial. As for undue consumption of time,  
11 this evidence can be presented through Ms. Serna and Ismael who are included on both  
12 parties' witness lists. The jury is entitled to this evidence when determining Ms. Serna's  
13 reliability as to whether and to what extent Ismael made allegations against Mr. Martinez to  
14 her and to assess the credibility of both Ms. Serna and Ismael.

15 The Court erred in its Evidence Code section 352 analysis. The right of an accused in a  
16 criminal trial to due process is, in essence, the right to a fair opportunity to defend against the  
17 State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in  
18 one's own behalf have long been recognized as essential to due process. (*Chambers v. Miss.*  
19 (1973) 410 U.S. 284.) In *Chambers*, the Supreme Court stated:

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

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

1 For the reasons set forth herein, the Court should reconsider its prior ruling and allow the  
2 defense to elicit information on cross-examination concerning Ismael's allegations of emotional  
3 and physical abuse against Ms. Serna as well as Ms. Serna's assertion, under oath, that Ismael  
4 was lying when he made those allegations.

5  
6 DATED: October 3, 2023

THE LAW OFFICE OF IAN WALLACH, PC

7  
8 By: 

9 IAN WALLACH  
Attorney for Defendant  
10 PEDRO MARTINEZ  
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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 W. Century Blvd., Ste. 750, Los Angeles, CA 90045.

On October 3, 2023, I served the following document(s) described as: **DEFENDANT PEDRO MARTINEZ'S MOTION NO. 3 TO RECONSIDER THIS COURT'S SEPTEMBER 29, 2023 RULING** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Deena Pribble, Esq.  
Email: dpribble@sbcda.org

- 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 3, 2023 at Joshua Tree, California.

  
IAN WALLACH