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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ____

PEOPLE OF THE STATE OF)	Case No.
CALIFORNIA,)	
)	
Plaintiff,)	MOTION ON ADMISSIBILITY
)	OBSESSION OF
RELATIVE/CAREGIVER)	
vs.)	WITH ISSUE OF MOLESTATION
)	
)	Date:
)	Time:
Defendant.)	Dept:
_____)	

TO: All parties and to their attorneys of record, and to the

Honorable Judge of the Superior Court:

Defendant requests that he be permitted to explore the existence of a morbid fear of sexual matters, in particular child molestation, of (insert name of relative or caregiver) which he contends has contributed to or resulted in the instant charge(s).

ARGUMENT

DEFENDANT IS ENTITLED TO CROSS-EXAMINE
(Insert name of witness) AS TO HER FEAR OF SEXUAL MATTERS.

"Cross-examination is the principle means by which the believability of a witness and the truth of his testimony are

tested.' (Citation omitted.)" (Farrell L. v. Superior Court (1988) 203 Cal.App.3d 521, 526.) While it is true that it is within the trial court's discretion to control the limits of cross-examination, "wide latitude should be given to cross-examination designed to test the credibility of prosecution witnesses in a criminal case." (People v. Belmontes (1988) 45 Cal.3d 744, 780.) Improper restriction of cross-examination may result in the denial of a defendant's 6th amendment confrontation rights and the denial of his right to present a defense if he is precluded from "engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness and thereby 'to expose to the jury the facts from which jurors. . .could appropriately draw inferences relating to the reliability of the witness.'" (Davis v. Alaska (1974) 415 U.S. 308,] at 318 [94 S.Ct. 1105, 1111, 39 L.Ed.2d 347].)" (Delaware v. Van Arsdall (1986) 475 U.S. 673, 680.)

One means of attacking the credibility of a witness is establishing the "existence or non-existence of a bias, interest or other motive" in the action. (Evidence Code §780(f).) In People v. Scholl (1964) 225 Cal.App.2d 558, the Court of Appeal reversed a defendant's conviction of child molest because of the trial court's refusal to allow him to cross-examine the alleged victim's mother's bias, specifically as to "advances made to her by various men." (Id., at p. 563.) The court recognized that cases involving charges of child molest which lack corroboration and are essentially credibility contests between the child and

the defendant are particularly fraught with danger from the defense point of view. (Id., at p. 563.) The court further recognized that frequently in such cases, the defendant must counter two accusers, the child and her mother or other relative, and for that reason, cross-examination of the mother or relative as to any abnormal fear of sex which could be transmitted to the child and the basis for false accusation is appropriate:

"Where, as in the instant case, the charge is of sexual misconduct with a child, the problem is intensified, since we are, as we shall point out, concerned with the reliability of not one but two prosecutrices. The child (the alleged victim) may, as we all know, be motivated by malice against the defendant, based on some real or fancied wrong in punishment, restraint, or the like. Against such false charges, the defendant's sole defense is evidence of bias and cross-examination to show bias. Again, the child may, without malice, be the victim of sexual fantasies. Psychiatric experience tells us that such fantasies are far from uncommon and that, at an age when reality and imagination are frequently indistinguishable, the charge of sexual abuse may flow from the fantasy and not from the reality. For this reason, in California, the child can be cross-examined as to other charges, against other men, of similar acts. (People v. Hurlburt (1958)166 Cal.App.2d 334 [333 P.2d 82, 75 A.L.R.2d 500].)

In addition to the problems inherent in the testimony of the child herself, such cases usually involve, also, problems inherent in the testimony of a mother or other relative. Normally, it is from such a person that information of the alleged offense comes to the prosecution. But we know that, for some

women, the normal concern for the welfare of their child may take an aggravated form. If the mother is abnormally oriented toward sexual conduct, and has an abnormal fear of and reaction to sexual relations, she may, quite unconsciously, build up, in her own mind, a quite innocent act or caress into a grievous wrong. Young children are especially suggestible. The inquiries put by such a mother to her daughter may, themselves, implant into the child's mind ideas and details which existed only in the fears and fantasies of the adult. Once implanted, they become quite real in the mind of the child witness and are impervious to cross-examination.

In addition, experience has shown that a mother may be motivated by actual malice, fear, retribution, retaliation, jealousy, or other motives of her own toward defendant and either by design, or unintentionally, may have implanted in the child's mind, nonexistent details which convert an innocent act into a heinous one.

For the same reasons that require a broad freedom of exploration of the child's propensities to fabricate or to imagine sexual crimes, we think a defendant should be allowed to explore, within reasonable range, the possibility of similar propensities or motivation on the part of the adult from and through whom the charge to authority emanates in alleged crimes of this nature.

In the instant case, no witness corroborated the child's story; no physical evidence of molestation existed. Under these circumstances, it seems to us error to deny to the defendant a reasonable opportunity to explore the not impossible existence of such a morbid fear of sexual acts in the mind of the mother as to make the charge a creature of that morbidity." Id. at pp. 563-564.)

Scholl was cited with approval in People v. Todd (1969) 1 Cal.App.4th 547, 553, wherein the court noted, "It has been judicially recognized that many of the same motivations which induce false charges of sex claims to be made by alleged victims, also move mothers and other relatives to make unfounded accusations of sexual misconduct."

Defendant notes one published decision which found the exclusion of such evidence an appropriate exercise of the trial court's discretion, People v. Adames (1997) 54 Cal.App.4th 198.

However, the appellate court's reasoning is fact specific to that case and does not rely on factors present in this case:

" Whether, Sylvia, the victim's mother, had been molested as a child may arguably have some bearing on her credibility, i.e., she truly believed the victim's accusations against appellant or had a motive to fabricate her testimony in favor of the prosecution.

Evidence that she had been molested as a child, however, would not have produced a significantly different impression of her testimony in view of Sylvia's testimony that initially she did not believe the molestation had occurred. Also, such evidence would have had minimal impact on the crucial issue of whether appellant in fact committed the acts in question since Sylvia was not a percipient witness, and her testimony was not crucial to appellant's conviction." (Id., at p. 209.)

CONCLUSION

The defendant is entitled to examine the above named witness to establish that witness's morbid fear of sexual matters, (including such fear of particular child molestation), and the charges are a creature of that morbid fear. (To the extent that you can, argue the inherent weakness of the prosecution's case as you know it, i.e., the charges are not corroborated by physical evidence, the victim's complaint was belated, the victim has made inconsistent statements, etc.)

Dated:

Respectfully Submitted,

Attorney for Defendant