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5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

6
7 THE PEOPLE OF THE STATE OF) Case No.
CALIFORNIA,)
8) MOTION IN LIMINE
Plaintiff,) TO EXCLUDE EXPERT WITNESS
9) ABOUT THE ALLEGED VICTIM'S
vs.) CAPACITY TO CONSENT AS A
10) OF DENIAL OF DUE PROCESS
11)
12 Defendant.) Date:
13) Time:
14) Dept:

15 I. ISSUE

16 IN VIEW OF EVIDENCE CODE SECTION 1112, WHICH BARS A
17 COURT FROM ORDERING AN ALLEGED VICTIM TO SUBMIT TO A
18 PSYCHOLOGICAL EVALUATION, THE PROSECUTION SHOULD NOT
19 BE ALLOWED TO OFFER EXPERT OPINION ON EVALUATIONS TO
20 WHICH IT SUBJECTED THE ALLEGED VICTIM.

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22 This motion is to be read along with defendant's motion
23 entitled "Motion for Psychiatric Evaluation of the Complaining
24 Witness." Both motions are offered in the alternative; one
25 shall become moot if the other is granted.

1 II. PROCEDURAL FACTS:

2 RECENT PSYCHOLOGICAL TESTING BY THE PROSECUTION

3
4 The complaining witness has been subjected to the following
5 psychological/psychiatric examinations at the behest of the
6 government: **List and describe the exams**

7
8 III. ARGUMENT:

9 ALLOWING PSYCHOLOGISTS TO TESTIFY ON THE PROSECUTION'S
10 BEHALF IN A SEXUAL ASSAULT CASE DENIES THE DEFENDANT
11 HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE
12 PROCESS AND EQUAL PROTECTION BY THE APPLICATION OF
13 PENAL CODE SECTION 1112.

14
15 Penal Code Section 1112, enacted in 1980, provides:

16
17 "The trial court shall not order any
18 prosecuting witness, complaining witness, or
19 any other witness, or victim of any sexual
20 assault prosecution to submit to a
21 psychiatric or psychological examination for
22 the purpose of assessing his or her
23 credibility."

24 Before this legislation the trial court had discretion to
25 compel such an examination in sex offense cases. **Ballard vs.**

1 **Superior Court** (1966) 64 C2d 159, 49 Cal.Rptr. 302, 410 P.2d
2 838. **Ballard** established an exception for sex offense cases to
3 the general rule disfavoring psychiatric evidence of
4 credibility. The courts have generally excluded such evidence
5 out of concern that "expert" testimony on credibility will not
6 assist jurors in performing their function of independently
7 assessing witness credibility. **Ballard vs. Superior Court;**
8 **People vs. Manson** (1976) 61 CA3d 102, 132 Cal.Rptr. 265,
9 Cert.Denied 1977 430 U.S. 986, 97 Sup.Ct. 1686, 52 L.Ed.2d 382.
10

11 While it is true that there is no inherent unconstitutional
12 disparity in treatment of sex charges as contrasted with other
13 crimes under Section 1112 (see **People vs. Fleming** (1983) 140
14 CA3d 540, 189 Cal.Rptr. 619) defendant's right to due process
15 will be violated by allowing prosecution witnesses to testify as
16 to the psychological condition and credibility of the victim.

17 As **Fleming** states:

18 "Under almost every rule of evidence, some
19 arguably relevant material is excluded. The
20 confrontation in due process clauses do not
21 prohibit a legislature from determining that
22 a certain class of evidence is generally
23 unreliable or excessively prejudicial and
24 barring its use altogether. Defense counsel
25 was permitted to employ all the traditional

1 techniques of impeachment during the cross-
2 examination of the victim. No restriction
3 of appellant's right to confrontation of his
4 accuser or to compulsory process occurred."

5 (**Id.**, at p. 544, emphasis added.)
6

7 Defendant therefore contends that allowing **prosecution**
8 testimony on the credibility or psychological condition of the
9 victim, while applying Penal Code Section 1112 to the
10 availability of this evidence to his defense, constitutes a
11 denial of his state and federal constitutional rights to due
12 process and equal protection, thus making Penal Code Section
13 1112 unconstitutional as applied. In order to fairly administer
14 the well intentioned Penal Code Section 1112 such evidence must
15 be completely excluded as generally unreliable or excessively
16 prejudicial and its use altogether barred.
17

18 Dated:

19 Respectfully submitted,
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24 Attorney for Defendant
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