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DC SUPERIOR COURT  
SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH

2016 MAY 12 PM 4:13

UNITED STATES OF AMERICA : Criminal No. 2009 CF1 9230  
:   
v. : Hon. Robert E. Morin  
:   
INGMAR GUANDIQUE : Status: May 13, 2016

**GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENSE NOTICE OF  
DEPOSITIONS IN LIEU OF TRIAL TESTIMONY FOR JOLEEN MCKAY,  
ANNE MARIE SMITH, SUE BORGES ROSSI, AND VINCENT FLAMMINI**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby moves the Court to preclude the taking of a deposition of Joleen McKay on August 5, 2016, of Vince Flammini and Sue Borges Rossi on August 10, 2016, and of Anne Marie Smith on August 11, 2016, in lieu of their trial testimony. As grounds for this response, the United States submits that the defense has failed to establish that "exceptional circumstances" exist that justify the depositions. The government submits further that the testimony of these individuals is not material within the meaning of Superior Court Rule Criminal Procedure 15. The government also avers that the notices themselves are deficient because each fails to comply with the mandates of Rule 15. Finally, the government tenders that allowing these depositions will result in extreme, unfair hardship to the United States.

**Background**

The defendant is before the Court for his role in the May 1, 2001 murder of Chandra Levy in the District of Columbia. None of the deposition witnesses listed were present in the District of Columbia when Chandra Levy was killed. None of the listed deposition witnesses knew the defendant. None of the listed deposition witnesses knew the decedent. Each will be addressed in turn.

Joleen McKay did not know Ms. Levy or the defendant and was not in the District of Columbia on May 1, 2001. Upon information and belief, the defense seeks to depose Ms. McKay because she has alleged that she had an intimate relationship with Gary Condit from 1993 through 1996. The government submits that this relationship, which pre-dates by four years a relationship between Gary Condit and the decedent, is not relevant, let alone material, to the murder case before the Court. The defense has advised undersigned counsel that they intend to depose Ms. McKay because “appearing for trial would be unduly burdensome for her,” as she lives in Northern California, is employed full time, cares for her young children and is the primary caretaker for her ailing mother. The government submits that “unduly burdensome” is not a legal standard within the meaning of Rule 15. Moreover, since Ms. McKay is employed full time, it is presumed that someone else takes care of her children and her ailing mother while she is working at her job, just as it is presumed that someone else would be taking care of her children and her ailing mother while she is testifying at a deposition or at a trial. The government submits that Ms. McKay’s trial testimony, if this Court finds she has any relevant evidence, can be accommodated so that she only has to be away from her family for one day.

Anne Marie Smith alleged that she had an intimate relationship with Gary Condit from 2000 to March of 2001. She said that she last saw Gary Condit in March of 2001. Initially, on June 6, 2001, she told the FBI that she had not talked to Gary Condit since approximately May 17, 2001. She specifically denied talking with him or anyone on his staff since May 17, 2001. She also denied that Gary Condit told her that they could not communicate. On June 26, 2001, an article appeared in a tabloid called the Star, which discussed details of Ms. Smith’s relationship with Gary Condit. Ms. Smith called an FBI agent and complained that the current edition of the Star contained statements about her affair which she attributed to her roommate.

She again stated that she had not communicated with Gary Condit. On June 29, 2001, an attorney for Ms. Smith contacted the FBI and advised Ms. Smith had been untruthful during her prior statement to the FBI. The attorney also advised that Ms. Smith was going to be interviewed by a Fox Network reporter for a broadcast anticipated to be aired on July 2, 2001. The attorney also alleged that Ms. Smith had been approached by an attorney for Gary Condit who had asked her to sign an affidavit which stated that Smith and Condit had no sexual relationship. Finally, he alleged that Smith and Condit had communicated by phone and that Condit asked Smith to sign the affidavit. On July 11, 2001, Ms. Smith was again interviewed by the FBI. This time she admitted that she had not told the truth during her first interview. She said that on May 11, 2001, Gary Condit called her and told her he was going to have to disappear because he was in trouble and that she should not call him for a few days. She alleged that she spoke with him again on May 17, 2001, and Gary Condit told her that the media was trying to tie him to things. She said she spoke with him yet again on June 2, 2001, and that Gary Condit told her she did not have to say anything to the FBI or the media. She said in June of 2001, she spoke with Gary Condit's Chief of Staff, who asked her to speak with Gary Condit's attorney. She said she spoke with Don Thornton, Gary Condit's investigator, on June 11, 2001 and that they both agreed that neither she nor Condit wanted an article in Star magazine to be printed. Thereafter, her attorney received an affidavit from the investigator. Ms. Smith and her attorneys then filed a complaint asking a Stanislaus County, California grand jury to indict Gary Condit and his staff for suborning perjury and obstructing justice for pressing Ms. Smith to deny an affair. The complaint was dismissed. Thereafter Ms. Smith was interviewed on numerous news broadcasts. The government submits that this relationship is not relevant, let alone material to the murder case before the Court.

The defense has advised that cross-country travel for Ms. Smith is an undue hardship because she has cancer. They have given no information about her treatment or about why she cannot travel for one day to appear for trial.

Sue Borges Rossi did not know Ms. Levy or the defendant and was not in the District of Columbia on May 1, 2001. Upon information and belief, the defense seeks to depose Ms. Rossi because she has alleged in the National Enquirer that she had an intimate relationship with Gary Condit for three years which ended in 1991. Using the name Susie Borges Rossi, Ms. Rossi imparted salacious details of her sex life with Gary Condit, and made the outlandish allegation that in 1988, Gary Condit told her that he had a team of people assembled to remove and hide his own corpse in the event that he died while having sex with Ms. Rossi. Ms. Rossi opined that if Gary Condit knew how to get rid of his own body, "clearly he knows how to get rid of Chandra's body." The government submits that this relationship, which pre-dates by a decade a relationship between Gary Condit and the decedent, is not relevant, let alone material, to the murder case before the Court. The government submits further that this Court would not permit Ms. Rossi to testify that Gary Condit knew how to get rid of Chandra Levy's body. The defense has advised only that they seek this deposition "because cross-country travel would be unduly burdensome and inconvenient for Ms. Rossi. She resides in Northern California." The government submits that inconvenient travel is not an "exceptional circumstance" within the meaning of Rule 15.

Vince Flammini spoke with the FBI on June 21, 2001. He said he was a chauffeur/bodyguard for Gary Condit for 9 ½ years and worked out of Condit's Modesto, California office until he was fired in September of 2000. He had no further contact with him. He said he was aware of several women who had affairs with Condit. He alleged that Condit mentioned someone named Chandra to him between July and August of 2000. He said that he

did not believe that Condit is capable of physically harming anybody, but believed that Condit is capable of mentally hurting someone.

Thereafter, Flammini was interviewed by several members of the media. On February 27, 2002, he spoke with Fox News' "Hannity & Colmes" show and said that he did not think Gary Condit was capable of murder, but he also opined that Chandra Levy could have died accidentally by "maybe a sex drug." He alleged that Condit had affairs with many women over the years. He said that he did not know exactly how many, but speculated "probably in the hundreds." Flammini also said that years ago, Gary Condit told him that his [Condit's] friends were so loyal, that if he killed somebody, his friends would help him bury the body.

On April 29, 2002, Flammini was interviewed by Greta Van Susteren and others for FoxNewsEdge. This time he said that Gary Condit described a woman, but never told him her name and that the description was consistent with photos of Chandra Levy he had seen in the media. He also said, that Gary Condit never said anything to him to suggest he would be involved in her disappearance. He also complained that he had not been interviewed by anyone in law enforcement (notwithstanding his June 21, 2001 interview with the FBI).

On August 23, 2004, Flammini was again interviewed by the FBI. This time he said that he provided Gary Condit with testosterone during the period when he was Condit's driver. This time he alleged that Condit extorted \$300.00 per month from Flammini for getting him the job as his bodyguard/driver. This time he alleged that perhaps one of Condit's staff members, Randy Groves, attacked and killed Chandra Levy. He further speculated that perhaps Chandra Levy was killed by Gary Condit inadvertently while engaged in sex.

Of course, none of Flammini's opinions are relevant or material to the murder case before the Court. The defense seeks to depose Mr. Flammini because he has indicated that he has

health problems that prevent extensive travel and because he resides in Northern California. No precise health problems have been delineated. The government submits that extensive travel will not be required. Should the Court determine he has any relevant testimony, he should be able to travel and testify in one day at trial.

### **Legal Principles**

Superior Court rule of Criminal Procedure 15 sets forth a clear course of action for the taking of trial depositions.

Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party to be taken and preserved for use at trial, the Court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition . . .

Rule 15(a).

The Rule clearly defines “notice;”

The party at whose instance a deposition is to be taken shall give to every other party written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined.

Rule 15(b).

The decision to grant or deny a motion to depose a prospective witness is within the sound discretion of the trial court. *In re Grand Jury Proceedings*, 697 F.Supp. 262 (D. Rhode Island 2010) (authorization to take depositions of several victims who were expected to die in the near future, appropriate): *United States v. Johnpoll*, 739 F.2d 702, 708 (2d Cir.), *cert. denied*, 469 U.S. 1075 (1984). Although there is no mechanical rule for determining when depositions should be allowed, the generally accepted requirements are that the testimony of the witness is material and the witness unavailable. *United States v. Salim*, 855 F.2d 944, 948 (2d Cir. 1988); *United States v. Sines*, 761 F.2d 1434, 1439 (9<sup>th</sup> Cir. 1985). The principal objective of Rule 15 is

the preservation of evidence for use at trial where there is a possibility that a prospective witness may become unavailable. *Furlow v. United States*, 644 F.2d 764, 767 (9<sup>th</sup> Cir.), *cert. denied*, 454 U.S. 871 (1981) (proper to take deposition where witness is ill and has not left the VA hospital for past three years).

Rule 15(c) provides that whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the Court may direct that the expenses of travel and subsistence for the defendant and his attorney for attendance at the deposition, and the costs of the transcript of the deposition shall be paid by the government.

Rule 15(e) provides that transcripts of depositions may be used at trial in lieu of trial testimony provided that the witness is unavailable for trial.

### **Argument**

As set forth above, Rule 15(b) requires that the notice of a deposition state the “names and address of each person to be examined.” The defense notices fail to comply with Rule 15 because each notice fails to state the address of the witnesses to be examined.

Moreover, the defense has not shown exceptional circumstances that justify the depositions. That the witnesses live in Northern California does not constitute an exceptional circumstance. That travel is inconvenient does not constitute an exceptional circumstance. Having a full time job, children and an ill mother does not constitute an exceptional circumstance. Indeed, even an illness, without more, does not constitute an exceptional circumstance. *Stack v. United States*, 519 A.2d 147 (D.C. 1986). Additionally, nothing in the deposition notices leads the government to conclude that any of these witnesses are, or are likely to become, unavailable for trial. Put simply, there is no sound reason to depose any of them. Likewise, the defense has failed to provide even the barest of proffers of the proposed testimony

of these witnesses. They have provided no *Jencks* materials for their witnesses. *See* Rule 15(d)(3). As set forth above, these witnesses did not know Chandra Levy. They did not know the defendant. And they were not in the District of Columbia when Chandra Levy was killed. The speculations of these witnesses about what they feel may have happened to Chandra Levy does not constitute competent admissible evidence. Under these circumstances, this Court should deny a motion to depose these witnesses.

Finally, requiring the government to pay for the travel of its three trial attorneys assigned to this case is onerous. Based on the timing of these depositions, two different trips will have to take place. Plane tickets, rental cars, subsistence and hotel rooms for two different trips will require significant expenditures. The government submits it has already borne significant travel costs and will continue to do so to prepare for trial. To expect the government to bear additional costs to travel for these depositions of witnesses who offer no relevant, let alone material evidence, is unfair and prejudicial. This defendant is indigent. It is unknown whether the defense will request that government pay for the defendant's costs to attend this deposition. While the defendant has a right to attend depositions, the government submits it is unfair and dangerous to require the U.S. Marshal's Service to ensure that the defendant attend these depositions inasmuch as defendant Guandique has broken his shackles while in custody in the past. This is especially so where, as here, there is no reason to anticipate that these witnesses will not be available to testify at trial, provided the Court finds they have any relevant testimony to give.


WHEREFORE, the United States respectfully requests that the Court reject the defense notices of depositions on the grounds that they do not comply with Rule 15(b) and deny any



motions for said depositions because the defense has failed to demonstrate exceptional circumstances of the case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that, this 12th day of May, 2016, I e-mailed a copy of the foregoing pleading and caused a copy to be hand-delivered to the offices of Jonathan Anderson, Eugene K. Ohm, Emily Barth, and Katerina Semyonova of the Public Defender Service for the District of Columbia, at 633 Indiana Avenue, N.W., Washington, D.C. 20004.



Deborah Sines  
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