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Attorney for: Susan Flores, subpoenaed witness

ELECTRONICALLY FILED BY
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County of Monterey
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By: Renee Inofuentes, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

SALINAS BRANCH

People of the State of California,

Plaintiff,

vs.

Ruben Ricardo Flores,

Defendant.

Case no. 22CR003713

MOTION OF SUBPOENAED WITNESS SUSAN FLORES TO QUASH THE PEOPLE'S SUBPOENA TO TESTIFY AT THE TRIAL; MEMORANDUM OF LAW; DECLARATION OF JEFFRY C. RADDING

Date: July 11, 2022
Time: 8:30 a.m.
Dept: 4

To: The District Attorney for San Luis Obispo County, and to counsel of record for defendant Ruben Ricardo Flores:

PLEASE TAKE NOTICE that on July 11, 2022 at 8:30 a.m. in Department 4 of the above-named court, Susan Flores, a witness subpoenaed by the People, will move the court for an order quashing the prosecution's subpoena for her to appear as a trial witness.

The motion will be made on the grounds identified in the Memorandum of Law, below, on the declaration of counsel submitted herewith, and upon such evidence and argument as is presented at the hearing of the motion.

Respectfully submitted,

Dated: July 11, 2022

JEFFRY C. RADDING
Attorney for Susan Flores

MEMORANDUM OF LAW

I

THE PEOPLE'S SUBPOENA OF SUSAN FLORES OUGHT TO BE QUASHED

In a case bearing intense community (if not national) notoriety, Paul Ruben Flores ("Paul") is accused of murdering Kristin Smart, a Cal Poly student, over twenty-five years ago. Paul's father, Ruben Ricardo Flores ("Ruben"), is accused of being an accessory after the fact of the alleged homicide. Trial is now pending.

The petitioner herein, Susan Flores, is the mother of Paul Flores. The People have served Ms. Flores with a subpoena to appear as a trial witness. Through counsel and agreement with the People, on the subpoena Ms. Flores remains on call to appear as a witness.

Ms. Flores seeks the subpoena to be quashed as it is her intent to exercise the Fifth Amendment privilege not to testify. Ms. Flores also seeks a prompt hearing and decision on the issue, as she will remain subject to the court's exclusion order and unable to attend her son's murder trial until it is resolved. It is her desire and intent to attend the trial and support her son.

In July 2021, the San Luis Obispo Superior Court conducted the preliminary hearing in this matter. For that hearing, the People subpoenaed Ms. Flores as a witness. In response, Ms. Flores brought a motion to quash on the same grounds that are currently advanced. The motion was granted; accordingly, Ms. Flores was not called to the stand and was permitted to attend the preliminary hearing proceedings notwithstanding the witness exclusion order.

In the course of the San Luis Obispo County Sheriff's investigation leading to the current prosecution, Ms. Flores has always been considered as potentially subject to being charged in the case and was the subject of the ongoing investigation. Ms. Flores has been the object of search warrants and telephone intercept warrants directly related to this case and as recently as early 2021, near to when Paul Flores and Ruben Flores were arrested. On April 14, 2021, upon the arrest of Paul Flores and his father, in response to a question at a press conference District Attorney Dan Dow stated,

> "So the evidence is that, the question is are we going to be charging Susan Flores or any other family members. At this point, the evidence implicates Paul Flores in murder and Ruben Flores to accessory to murder. We don't have evidence sufficient to charge anyone else at this time, but as I said the investigation is ongoing. If it were to lead to other suspects, we will follow the evidence when that becomes available."

Ms. Flores's fifth amendment privilege clearly is implicated. On the advice of counsel, Ms. Flores intends to exercise her constitutional privilege.

This case involves an alleged homicide and an alleged accessory to a homicide. The jeopardy of any "other suspects" necessarily will be related to or dependent upon the charges now pending and to the facts underlying those charges. Any accessory charge is directly dependent upon the murder charge. (*See* Calcrim 440: "*To prove that the defendant is guilty of (being an accessory to a felony) the People must prove that: 1. Another person, whom I will call the perpetrator, committed a felony* ...") Accordingly, with respect to any person deemed to be or potentially included in the category of "other suspects," testimony *in any way relevant* to the pending charges triggers fifth amendment privileges.

The People have expressed an intent not to ask Ms. Flores questions that would implicate her Fifth Amendment privilege. That, however, is not possible. In the presenting circumstances, the scope of the privilege is broad and comprehensive: *all questions that would be relevant to the pending charges* implicate the privilege because any question relevant to the charged offenses also represents a relevant (if not necessary) evidentiary predicate to any charges the People may decide to bring against Ms. Flores. Any questions, therefore, that the People characterize as being "outside the privilege" necessarily are *irrelevant* to the pending charges and therefore inadmissible. "No evidence is admissible except relevant evidence." **Evidence Code §350.**

The People previously have indicated the desire and intent to ask Ms. Flores about (1) statements made by Paul Flores in 1996, as well as his ostensible omissions in statements made to her, and (2) the timeline of Memorial Day weekend in 1996 and Ms. Flores' observations of Paul Flores and/or Ruben Flores over that period. Any answers to those questions reflect potential knowledge on the part of Ms. Flores that the People could use against her in any subsequent criminal prosecution. They also place Ms. Flores in locations or with persons that could have evidentiary value in the event of any potential future prosecution the People might decide to pursue against Ms. Flores for any offense related to the charges pending against Paul Flores and Ruben Flores. Again, if the People's intended questions are not relevant to those charges, the responses would be inadmissible in the trial and no basis would exist for even calling Ms. Flores as a witness.

Underscoring Ms. Flores' status as a potential "other suspect" is the fact that the family of Ms. Kristin Smart has initiated a civil suit against Ms. Flores accusing her of

conduct that potentially could subject her to prosecution as an accessory to Kristin Smart being murdered, as alleged. (*Stan Smart and Denise Smart v. Ruben Flores, Susan Flores, and Mike McConville, San Luis Obispo Superior Court case no. 21CV-0230.*) That case is currently stayed pending conclusion of the criminal action against Paul Flores and Ruben Flores. The Smart family and the People clearly identify Ms.Flores as a possible "other suspect." That's no secret.

Because of this, the People's subpoena of Susan Flores ought to be quashed. Ms. Flores has a right not to testify and answer questions that represent a potential or a perceived link in the chain of criminal jeopardy. On the other hand, there are in fact no questions whatsoever that can be posed of Ms. Flores that fall outside the scope of the privileges the Fifth Amendment confers and the answers to which would constitute evidence relevant to the pending charges. (Even offering testimony that Paul Flores is her son is a link Ms. Flores has no obligation to provide and every right not to.) As a trial witness, all prosecution inquiries would seek information legally irrelevant to the pending charges. The "*Power to quash subpoenas in criminal cases, where the witness could offer no relevant testimony, was established by case law before the 1976 amendments to the Code of Civil Procedure.* (See In re Finn (1960) 54 Cal. 2d 807, 813; People v. Rhone (1968) 267 C.A.2d 652, 657.)" **Fabricant v. Superior Court (1980) 104 C.A.3d 905, 915.** That power remains.

II

A PROMPT DECISION ON THIS MOTION IS NECESSARY

Ms. Flores' son, Paul, is being prosecuted for murder. Ms. Flores has every interest and desire to be present as her son sits in the dock. While designated a subpoenaed witness, though, she will be unable to do so. If the motion to quash is not addressed until such time as the People intend to call her to the stand, Ms. Flores will be unable to attend her son's case. If the motion is not considered until later in the proceedings and the subpoena ultimately quashed, Ms. Flores will have been needlessly and unfairly excluded from the courtroom, for no reason.

Respectfully submitted,

Dated: June 15, 2021

JEFFRY C. RADDING
Attorney for Susan Flores

Declaration of Jeffry C. Radding

I, Jeffry C. Radding, declare:

(1) I represent the interests of Susan Flores with respect to the prosecution against her son, Paul Flores, and against her son's father, Ruben Flores, now pending in the Monterey County Superior Court, case no. 22CR003712, as well as in other matters related to the events and circumstances underlying the case. I have done so for some twenty years.

(2) In July 2021, the San Luis Obispo Superior Court conducted the preliminary hearing in this matter. For that hearing, the People subpoenaed Ms. Flores as a witness. In response, Ms. Flores brought a motion to quash on the same grounds that are currently advanced. The motion was granted; accordingly, Ms. Flores was not called to the stand and was permitted to attend the preliminary hearing proceedings notwithstanding the witness exclusion order.

(3) I also represent Ms. Flores in San Luis Obispo Superior Court case no. 21CV-0230, a civil case in which Stan Smart and Denise Smart are suing Susan Flores as well as Ruben Flores and Mike McConville accusing them of being accessories to the crimes alleged in the pending case captioned above. By court order, the civil case is now stayed until the conclusion of the criminal proceedings.

(4) Upon the arrest of Paul Flores and Ruben Flores in April of 2021, District Attorney Dan Dow conducted a press conference on April 14th of that year. That press conference was broadcast and remains accessible and viewable online in its entirety at https://www.facebook.com/watch/live/?v=824873421720742&ref=watch_permalink). In response to a question at a press conference District Attorney Dan Dow stated,

"So the evidence is that, the question is are we going to be charging Susan Flores or any other family members. At this point, the evidence implicates Paul Flores in murder and Ruben Flores to accessory to murder. We don't have evidence sufficient to charge anyone else at this time, but as I said the investigation is ongoing. If it were to lead to other suspects, we will follow the evidence when that becomes available."

(5) I have advised Ms. Flores to exercise her constitutional prerogatives and decline to testify. Ms. Flores intends to follow my advice.

(6) DDA Peuvrelle and I have met and conferred about the issues this motion raises, including fifth amendment privileges, District Attorney Dow's press conference, my advice to Ms. Flores to exercise her constitutional privilege, the exclusion of prospective witnesses from the courtroom, Ms. Flores' interest in attending the prosecution proceedings against her son, and the need to address these issues at the outset of the evidentiary proceedings. Included in our discussions was DDA Peuvrelle's expectation to question Ms. Flores on topics he felt did not involve fifth amendment privileges and my assessment that such an approach was not possible for the reasons set forth in this motion. Ultimately, DDA Peuvrelle and I agreed the best approach was to submit the matter to the court for determination, resulting in this motion.

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

Dated: June 30, 2022

JEFFRY C. RADDING

11/17/2021 10:48 AM

JEFFRY C. RADDING
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Electronically
FILED: 11/17/2021
San Luis Obispo Superior Court
By: Miller, Victoria

Attorney for: Susan Flores and Mike McConville, defendants

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

STAN SMART and DENISE SMART, Plaintiff, *vs.* RUBEN FLORES, SUSAN FLORES, MIKE McCONVILLE, and Does 3 to 10, Defendants.	Case no. 21CV-0230 STIPULATION AND ORDER FOR STAY OF PROCEEDINGS

Whereas, in this action plaintiffs Stan Smart and Denise Smart have sued defendants Ruben Flores, Susan Flores, and Mike McConville for intentional infliction of emotional distress; and,

Whereas, in this action, plaintiffs Stan Smart and Denise Smart allege, inter alia, that defendants Ruben Flores, Susan Flores, and Mike McConville, "removed the remains of Kristin Smart to avoid having those remains at 710 White Court in the event

EXH "A"

of an additional search of the property," and that they did so, "knowing that Plaintffs' daughter had been killed by Paul Flores and with knowledge that Defendant Ruben Flores had previously transported the body of Kristin Smart from the Cal Poly dorm room of Paul Flores to the initial burial site at the home of Defendant Ruben Flores;" and

Whereas, defendant Ruben Flores currently is being prosecuted in San Luis Obispo Superior Court case no. 21F-02402 for an alleged violation of Penal Code §32, accused of being an accessory-after-the-fact of an alleged homicide of Kristin Smart for which Paul Flores is being prosecuted in the same case, the same alleged events upon which Plaintiffs here base their action; and,

Whereas, defendant Ruben Flores has a constitutional right not to testify about matters related to the criminal prosecution; and,

Whereas, it is recognized that the pendency of criminal and civil proceedings impose an unfair dilemma on a defendant subject to both actions and a detriment to the exercise of a constitutional right, in that there exists (1) the impossibility of anticipating the full scope of evidence which provides prosecutors with some "link in the chain" needed for the criminal case, Hoffman v. United States (1951) 341 U.S. 479, 486, and; (2) disadvantages in the civil action the defendant will suffer by asserting the Fifth Amendment. *See, e.g.,* London v. Patterson (9th Cir. 1972) 463 F.2d 95, 97-98, cert. denied, 411 U.S. 906); and,

Whereas, also pending in the San Luis Obispo Superior Court are related lawsuits involving the many of the same underlying evidence and circumstances and many of the same parties, case no. CV02-0315 (*Stan Smart and Denise Smart v Paul Flores*) and case no. CV05-0355 (*Dennis Mahon v. Mike McConville and Susan Flores*

/ Mike McConville and Susan Flores v. Dennis Mahon, Denise Smart, and Stan Smart), which have been consolidated for the limited purpose of addressing a common discovery issue involving the investigation records of the San Luis Obispo County Sheriff's Department; and,

Whereas, as a result of the objection of the San Luis Obispo County Sheriff's Department to releasing its records as the investigation remained active, case nos. CV02-0315 and CV05-0355 have been stayed by court order, with the stay order subject to annual review of the status of the investigation; and,

Whereas, the annual review of the stay order relative to case nos. CV02-0315 and CV05-0355 was most recently undertaken on July 28, 2021 and was renewed for another year, per stipulation of all parties, and scheduled for a further annual review on July 27, 2022 at 9:00 a.m. in Department 2 of the San Luis Obispo Superior Court;

Therefore, the parties hereto stipulate as follows:

(1) Based on the pendency of the criminal proceedings in case no. 21F-02402 relative to defendant Ruben Flores, and based upon the discovery stay orders issued relative to case nos. CV02-0315 and CV05-0355, all proceedings in the above-captioned matter shall be stayed.

(2) The matter shall be set for a Case Management Conference in conjunction with the scheduled annual review of the stay orders issued relative to case nos. CV02-0315 and CV05-0355, on July 27, 2022 at 9:00 a.m. in Department 2.

(3) The stay orders issued hereunder in the above-captioned case shall expire upon the occurrence of the following events: (a) the dissolution of the stay order relative

to case nos. CV02-0315 and CV05-0355, *and* (b) either the dismissal of case no. 21F-02402 as to Ruben Flores or, if a conviction occurs, upon the sentencing of Ruben Flores.

(4) For good cause, and prior to the expiration of the stay orders to be issued hereunder, any party may petition to terminate the stay order issued hereunder or to extend its duration.

DATED: ~~August~~ Nov. 10, 2021

JAMES R. MURPHY, Jr.
Attorney for Stan Smart and Denise Smart
Plaintiffs

DATED: ~~August~~ Nov. 16, 2021

JEFFRY C. RADDING
Attorney for Susan Flores and Mike McConville
Defendants

DATED: ~~August~~ Nov. 15, 2021

HAROLD MESICK
Attorney for Ruben Flores
Defendant

ORDER FOR STAY OF PROCEEDINGS

The Court having considered the stipulation of the parties, and good cause appearing therefor,

IT IS ORDERED as follows:

(1) Based on the pendency of the criminal proceedings in case no. 21F-02402 relative to defendant Ruben Flores and based upon the discovery stay orders issued relative to case nos. CV02-0315 and CV05-0355, all proceedings in the above-captioned matter are stayed.

(2) The matter is set for a Case Management Conference in conjunction with the scheduled annual review of the stay orders relative to case nos. CV02-0315 and CV05-0355, on July 27, 2022 at 9:00 a.m. in Department 2. All other currently scheduled court dates are vacated.

(3) The stay orders issued herein shall expire upon the occurrence of the following events: (a) the dissolution of the stay order relative to case nos. CV02-0315 and CV05-0355, *and* (b) either the dismissal of case no. 21F-02402 as to defendant Ruben Flores or, if convicted, upon the sentencing of Ruben Flores.

(4) For good cause, and prior to the expiration of the stay order issued herein, any party may petition to terminate the stay order or to extend its duration.

DATED: November 17, 2021

RITA COYNE FEDERMAN
Judge of the Superior Court