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Filed SEP 24 2009
ROSA JUNQUEIRO, CLERK

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DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN JOAQUIN

10 ---oOo---

11 The People of the State of
12 California,

13 v.

14 MELISSA HUCKABY ,
15 Defendant.

No. SF112495A

NOTICE OF MOTION AND MOTION,
POINTS AND AUTHORITIES, AND
AFFIDAVIT IN SUPPORT OF
CONDITIONAL EXAM (PC SECTION
1335)

MOTION TO SEAL

Date: 9/25/09

Time: 8:30a.m.

Department: 14

16 PLEASE TAKE NOTICE that Deputy Public Defender, Samuel Behar,
17 counsel for the Defendant, MELISSA HUCKABY, on September 25, 2009, will
18 move the court for a conditional exam of the following witnesses: [REDACTED]

19 [REDACTED], [REDACTED], and [REDACTED]

20 [REDACTED]. Further, DEFENDANT requests that this motion be
21 sealed in compliance with earlier rulings of this court and to protect the anonymity
22 of juvenile witnesses.
23
24

25 This motion will be based upon this notice of motion, motion, points and
26 authorities in support, and declaration of counsel, and on such arguments and
27 evidence as may be presented at the hearing on motion.
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3 STATEMENT OF FACTS

4 On March 27, 2007, SANDRA CANTU, the victim in this case, resided with
5 her mother MARIA CHAVEZ, and her sister [REDACTED]
6 [REDACTED], [REDACTED]. After coming home from
7 school on the 27th, SANDRA went to play with a neighbor. [REDACTED] saw her
8 sister both when she came home and again later when she was playing at the
9 neighbor's. [REDACTED] is therefore a witness to SANDRA'S whereabouts at about
10 3:00 p.m. that day at different locations within the trailer park. SANDRA is seen
11 again at 3:54 p.m. walking south bound on Cherry past her trailer and toward space
12 [REDACTED]. [REDACTED] was playing in Space [REDACTED] at that time and she was in a position to
13 see her sister. This time is critical because it is the last time that SANDRA is seen
14 alive.

15 At the same time that SANDRA was walking on Cherry St., MELISSA
16 HUCKABY had her car parked in front of her trailer, [REDACTED]. MELISSA was taking
17 items from the trailer to her car. [REDACTED], SANDRA'S sister, was
18 inside MELISSA'S trailer at that time and is also a witness to DEFENDANT'S
19 activities. Minutes later, at 4:02 p.m. MELISSA's car is seen leaving the trailer
20 park. Based on my review of the grand jury transcript, I believe that it is the
21 People's theory that DEFENDANT drove SANDRA out of the park to a nearby
22 church where MELISSA HUCKABY murdered SANDRA CANTU sometime
23 between 4:00 and 5:30 p.m.

24 [REDACTED] is uniquely situated to testify to the whereabouts,
25 activities and demeanor of both the DEFENDANT and the VICTIM immediately
26 prior to the crime alleged.

27 [REDACTED] lived in the same trailer park and went to the same
28 school with SANDRA CANTU. On the 27th, [REDACTED]

1 [REDACTED] saw SANDRA CANTU in school and SANDRA told [REDACTED] that she
2 was going to run away. Later that day, back at the trailer park, SANDRA again told
3 her friend that she was going to run away; her mother had hit her with a hanger for
4 getting two citations. This conversation was within one hour of the time SANDRA
5 was last seen alive. This information is inconsistent with the statements of others
6 that SANDRA would never leave the trailer park without permission or
7 supervision.

8 [REDACTED] can testify about SANDRA'S whereabouts as well as her
9 demeanor, motive and intention to run away. This information is inconsistent with
10 the People's theory that SANDRA was taken by force and against her will by
11 DEFENDANT.

12 Counts 3 and 4 allege a crime on a separate victim, [REDACTED]
13 [REDACTED]). On 01/17/09, [REDACTED] was tested and had benzodiazepnes in
14 her system. Earlier that day, [REDACTED] had been at the park with MELISSA
15 HUCKABY. [REDACTED] recollection of the events of 01/17/09 are the basis for
16 the prosecution's case.

17 POINTS AND AUTHORITIES

18 The defendant may have witnesses examined conditionally "when a
19 defendant has been charged with a public offense triable in any court." (Penal Code
20 Section 1335) The purpose of this section (and chapter) is to preserve testimony
21 that might otherwise be lost if delayed till trial. Penal Code Section 1336 sets out
22 those individuals that establish ground for application: A witness that is about to
23 leave the state, a witness that is so sick or infirm that there is reasonable ground to
24 fear that he or she will be unable to attend trial, a person whose life is in danger, or
25 a person 65 years of age or older, or a dependent adult. "Dependent adult" include
26 persons whose "mental abilities have diminished because of age."

27 While not specifically listed, children are a group whose mental ability is
28 diminished because of age. Specifically, their ability to recall and retell events is

1 less than that of adults. The prosecution expressed this precise concern and a
2 conditional exam is the most expedient way to memorialize their testimony.

3 AFFIDAVIT IN SUPPORT OF MOTION FOR CONDITIONAL EXAM

4
5 I, Sameul Behar, declare and state as follows:

6 1) I am an attorney with the San Joaquin County Public Defender's Office
7 representing MELISSA HUCKABY in the above entitled case.

8 2) DEFENDANT is charged by indictment as follows:

9 a) 187

10 b) 288.7

11 c) 273a (a)

12 d) 347 (a)(1)

13 e) 347 (a)(1)

14 3) The matter is presently set for trial setting.

15 4) The witnesses [REDACTED], [REDACTED], AND

16 [REDACTED] are material witnesses who, because of their age, may
17 suffer diminished memory before trial.

18
19 I declare under penalty of perjury that the foregoing is true and correct, and that
20 this declaration was executed on September 24, 2009 in Stockton, California.


21
22 CONCLUSION

23 A conditional exam as to those witnesses is the best mechanism to preserve
24 both the DEFENDANT'S and the People's right to a fair trial. While the
25 prosecution is not entitled to a conditional exam in death penalty prosecutions (see
26 Penal Code Section 1335) DEFENDANT waives that protection in the interest of
27 fairness and truth.

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DATED: September 24, 2009

OFFICE OF THE PUBLIC DEFENDER
PETER FOX, Public Defender

By 
Samuel Behar
Deputy Public Defender
Attorney for Defendant