

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
MAY 22 2015

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

2015 MAY 22 P 5:03

UNITED STATES OF AMERICA

v.

INGMAR GUANDIQUE

*
*
*
*
*

Case No. 2009-CF1-9230

J. Fisher

Evid. Hearing: 05/26/15

**NOTICE OF WITHDRAWAL OF GOVERNMENT'S OPPOSITION
TO DEFENDANT'S MOTION FOR NEW TRIAL**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully notifies this Court that it hereby withdraws its opposition to the defendant's request for a new trial.

Discussion

On November 22, 2010, a Superior Court jury found the defendant guilty of the first-degree felony murder (kidnapping) and first-degree felony murder (attempted robbery) of Chandra Levy, a young woman who had gone missing in May 2001, and whose remains were found in Rock Creek Park a year later. The Court sentenced the defendant to 60 years' imprisonment on each count, to be served concurrently, to be followed by 5 years of supervised release.

Approximately one year after the defendant was sentenced, the United States Attorney's Office for the District of Columbia (USAO-DC) was contacted regarding a request from the Fresno Police Department, which was attempting to locate one of the government's trial witnesses, Armando Morales. This office subsequently learned that the Fresno Police Department had discovered transcripts of two interviews that the Fresno County Sheriff's Office had conducted of Mr. Morales over a decade earlier, in June 1998, while Mr. Morales was

incarcerated at the U.S. Penitentiary in Atlanta, Georgia. The USAO-DC began an extensive examination of the potential issues raised by the information about Mr. Morales contained in these two transcripts, and in November 2012, this office sent a letter to the Court, detailing its findings to date and seeking the Court's guidance. At the Court's direction, the government disclosed the newly learned information to the defendant in December 2012. The investigation into this matter and related litigation has continued since that time.

As the Court knows, the government's post-trial investigation into this case has been of unprecedented scope and duration. Over the past three years, the government has gathered and produced to the defense thousands of pages of documents related to Mr. Morales, his criminal history, his interactions with state and federal law enforcement in California, and his incarceration in the Bureau of Prisons. Several days of evidentiary hearings were held in March, November, and December 2014, and in January 2015. The next phase of the evidentiary hearing is scheduled to proceed on Tuesday, May 26, Thursday, May 28, and Friday, May 29, 2015. In preparation for the May hearings, the government has also provided thousands of pages of USAO-DC emails and attachments to the defendant. Additional evidentiary hearing dates are already scheduled for June and July 2015, and more hearing dates are anticipated.

A key focus of the next phase of the evidentiary hearing will be on events that occurred during the pretrial phase of the case in 2009 and 2010. In preparing for this hearing, the government has come to the conclusion that the passage of time and the unique circumstances of this case will prevent the government from eliciting testimony that will sufficiently elucidate the disputed issues. The interests of justice will therefore best be served by the government's withdrawal of its opposition to the defendant's motion and affording him a new trial. This conclusion is consistent with our commitment to do justice in this and every case. See Berger v.

United States, 295 U.S. 78, 88 (1935) (“The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.”).

The government continues to believe that the jury’s verdict was correct. The government also believes that nothing in the thousands of pages of information that have been produced about Mr. Morales and the USAO-DC’s prosecution of the defendant, nor anything else revealed by the government’s comprehensive post-trial investigation, casts doubt on the defendant’s guilt of the murder of Chandra Levy. Accordingly, the government is preparing for a retrial of the defendant.

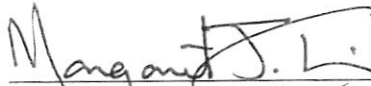
Conclusion

For the foregoing reasons, the government hereby withdraws its opposition to the defendant’s motion for a new trial, and requests that a status hearing be scheduled in two weeks, by which time the government will have completed an assessment of the time needed to prepare for a retrial in this case. The government also respectfully requests that defendant be detained pending the status hearing.

Respectfully submitted,

VINCENT H. COHEN, JR.
Acting United States Attorney

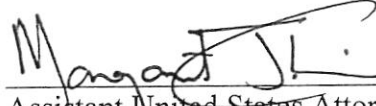
LESLIE ANN GERARDO
Assistant United States Attorney
Chief, Special Proceedings Division
D.C. Bar Number 419-823



DAVID J. GORMAN
ALESSIO D. EVANGELISTA
MARGARET J. CHRISS
Assistant United States Attorneys
555 4th Street, N.W.
Washington, D.C. 20530

Certificate of Service

I HEREBY CERTIFY that, this 22nd day of May, 2015, I e-mailed, a copy of the foregoing to Jonathan Anderson, Esq., James Klein, Esq., and Joshua Deal Esq., of The Public Defender Service for the District of Columbia, 633 Indiana Ave., N.W., Washington, D.C. 20004.



Assistant United States Attorney