

LAW OFFICE OF THE PUBLIC DEFENDER
FOR THE COUNTY OF SAN JOAQUIN
102 S. San Joaquin Street, Room 1
Stockton, California 95202
Telephone: (209) 468-2730

Samuel Behar, State Bar No. 115435
Attorneys for Defendant

APR 16 2009

Filed
ROSA JUNQUEIRO, CLERK

By *James Joseph Henry*
DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN

-000-

11	The People of the State of)	No. SF111539A
12	California,)	
13	Plaintiff,)	ORDER SHORTENING TIME
14	v.)	
15	MELISSA CHANTEL HUCKABY,)	
16	Defendant.)	

Good cause having been shown,

IT IS HEREBY ORDERED that the time required for filing
defendant's request for the attached orders is hereby shortened
to April ²⁴ ~~16~~, 2009. *12/16/09*

Dated.

4/16/09

[Signature]
JUDGE OF THE SUPERIOR COURT

WILLIAM J. MURRAY, JR.

1 Law Office of the Public Defender
2 for the County of San Joaquin
3 102 S. San Joaquin Street, Room 1
4 Stockton, CA 95202
5 Telephone: (209) 468-2730

6 Samuel R. Behar, State Bar Number 115435
7 Nelson C. Lu, State Bar Number 208212
8 Attorneys for Defendant Huckaby

APR 16 2009

Filed
ROSA JUNQUEIRO, CLERK

By MONICA GONZALES-HENRY
DEPUTY

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN JOAQUIN

11 ---oOo---

12 The People of the State of California,
13 Plaintiff,
14 v.
15 MELISSA CHANTEL HUCKABY,
16 Defendant.

No. SF111539A

DECLARATION IN SUPPORT OF
SEALING DOCUMENTS RELATING
TO THE REQUEST FOR ORDERS

Date: April 16, 2009
Time: 2:00 p.m.
Dept.: 14

17
18 I, Samuel R. Behar, declare as follows:

- 19 1. I am an attorney licensed to practice law before the courts of the State of
- 20 California.
- 21 2. I am employed by the Office of the Public Defender for the County of San
- 22 Joaquin.
- 23 3. I represent Defendant MELISSA CHANTEL HUCKABY in the above-
- 24 entitled matter.
- 25 4. I am filing the attached documents in relation to orders that I am seeking on
- 26 Ms. Huckaby's behalf due to the sensitivity of the case and that exposure of
- 27 the assertions to public knowledge at this point will, I believe, jeopardize Ms.
- 28 Huckaby's constitutional rights to a fair jury trial, due process, and reliable

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

verdict. (U.S. Const., 5th, 8th, 14th Amends.; Cal. Const., art. I, §§ 7, 15, 16, 24.)

5. I will serve copies of the documents I file herein under seal, at the earliest practical opportunity after the hearing on the orders, on the family of the alleged victim, the funeral home involved, the San Joaquin County Sheriff's Office, and the County Counsel.

6. I will serve a copy of all documents I file herein under seal on the People at the earliest opportunity. I am not conceding that the People are a proper party to these proceedings, but I am serving them out of an abundance of caution.

I declare under penalty of perjury that the foregoing is true and correct, except as to matters declared upon information and belief and as to those matters, I believe they are true and correct, and that this declaration was executed on April 16, 2009, in Stockton, California.


Samdel R. Behar

1 Law Office of the Public Defender
2 for the County of San Joaquin
3 102 S. San Joaquin Street, Room 1
4 Stockton, CA 95202
5 Telephone: (209) 468-2730

6 Samuel R. Behar, State Bar Number 115435
7 Nelson C. Lu, State Bar Number 208212
8 Attorneys for Defendant Huckaby

APR 16 2009
Filed
ROSA JUNQUEIRO, Clerk
By MONICA GONZALES-HENRY
DEPUTY

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN JOAQUIN

11 ---oOo---

12 The People of the State of California,
13 Plaintiff,
14 v.
15 MELISSA CHANTEL HUCKABY,
16 Defendant.

No. SF111539A

DECLARATION IN SUPPORT OF
REQUEST FOR ORDERS

Date: April 16, 2009
Time: 2:00 p.,m.
Dept.: 14

17 I, Samuel R. Behar, declare as follows:

- 18 1. I am an attorney licensed to practice law before the courts of the State of
19 California.
20 2. I am employed by the Office of the Public Defender for the County of San
21 Joaquin.
22 3. I represent Defendant MELISSA CHANTEL HUCKABY in the above-
23 entitled matter.
24 4. My office was appointed to represent Ms. Huckaby on April 14, 2009.
25 5. Ms. Huckaby's case was assigned to me the following day, April 15, 2009.
26 6. Subsequent to our office's being appointed on Ms. Huckaby's case, I had a
27 conversation with Deputy District Attorney Thomas J. Testa, the prosecutor
28

1 assigned to the case. Mostly based on my conversation with Mr. Testa, but in
2 combination with other information that I already have, I believe and therefore
3 allege that:

4 a. On April 6, 2009, the body of the decedent in this case, Sandra Cantu, was
5 recovered by the Tracy Police and subsequently delivered to the San
6 Joaquin County Sheriff's Office (SJCSO), as the Sheriff of San Joaquin
7 County, Steve Moore, also serves as Coroner.

8 b. Subsequently, an autopsy was done on Ms. Cantu's body.

9 c. At the time of my conversation with Mr. Testa, Mr. Testa did not yet
10 possess a copy of the assigned coroner's report on the autopsy, and
11 therefore did not have a copy to give me.

12 d. However, Mr. Testa believed that the filing of the Penal Code section
13 190.2,¹ subdivisions (a)(17)(E) (lewd or lascivious act special
14 circumstance) and (a)(17)(K) (sexual penetration special circumstance)²
15 allegations were justified by the assigned coroner's belief that Ms. Cantu
16 had suffered genital trauma consistent with the acts there alleged.

17 e. On April 7, 2009, or shortly thereafter, at the direction of Ms. Cantu's
18 family, the SJCSO delivered her body to the Fry Memorial Chapel, a
19 funeral home in Tracy.

20 f. On or about April 11, 2009, the Tracy Police interrogated Ms. Huckaby.
21 Shortly thereafter, Ms. Huckaby was arrested.

22 g. At the time of my conversation with Mr. Testa, Mr. Testa did not yet
23 possess any reports or recordings on Ms. Huckaby's interrogation and
24 therefore had none to give me.

25
26 ¹ All further statutory references are to the Penal Code unless otherwise indicated.

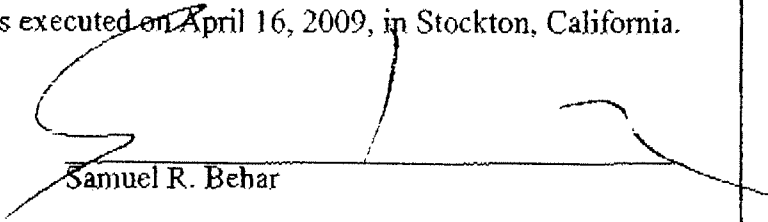
27 ² All further references to subdivisions are to subdivisions of section 190.2 unless otherwise
28 indicated.

- 1 7. I am informed, believe, and therefore allege that since the delivery of Ms.
2 Cantu's body to the FMC, Ms. Cantu's body has been placed in a casket,
3 which was sealed.
- 4 8. I am informed, believe, and therefore allege that Ms. Cantu's casket was then
5 placed in a crypt above ground.
- 6 9. On April 15, 2009, my office retained Dr. Terri Haddix to serve as the defense
7 pathologist in this case.
- 8 10. Dr. Haddix informed me, and I have no reason to doubt, that, if given the
9 proper access to Ms. Cantu's body, she would be able to complete an
10 examination in no more than a week.
- 11 11. I believe and allege such an examination is extremely crucial and material to
12 Ms. Huckaby's defense. Ms. Huckaby is accused of special circumstances
13 under subdivisions (a)(17)(E) and (a)(17)(K) apparently because of allegations
14 that Ms. Cantu had suffered genital trauma. Ms. Huckaby's defense team
15 should be allowed to examine Ms. Cantu's body to discern alternative
16 explanations for the assigned coroner's observation of alleged genital trauma,
17 so that Ms. Huckaby can defend herself against those allegations. Further, as
18 no discovery has been provided to my office, not only can I not rule out the
19 possibility, but I think it is quite likely that Dr. Haddix's examination would
20 also be material to any defenses as to the subdivision (a)(17)(B) (kidnapping
21 special circumstance) allegation, as well as the underlying section 187 charge
22 itself.
- 23 12. I am informed, believe, and allege, that the condition of Ms. Cantu's body will
24 deteriorate as time goes by, and that without immediate intervention to have
25 the body preserved in the closest possible state to when the assigned coroner
26 examined the body, an examination by Dr. Haddix of Ms. Cantu's body would
27 have progressively diminishing value.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. I therefore believe and alleged that the attached proposed orders are necessary and crucial for a proper defense of Ms. Huckaby.

I declare under penalty of perjury that the foregoing is true and correct, except as to matters declared upon information and belief and as to those matters, I believe they are true and correct, and that this declaration was executed on April 16, 2009, in Stockton, California.



Samuel R. Behar

1 Law Office of the Public Defender
 2 for the County of San Joaquin
 3 102 S. San Joaquin Street, Room 1
 4 Stockton, CA 95202
 5 Telephone: (209) 468-2730

6 Samuel R. Bihar, State Bar Number 115435
 7 Nelson C. Lu, State Bar Number 208212
 8 Attorneys for Defendant Huckaby

9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF SAN JOAQUIN

11 ---oOo---

12 The People of the State of California,

No. SF111539A

13 Plaintiff,

ORDER TO PRESERVE AND
 SURRENDER BODY

14 v.

15 MELISSA CHANTEL HUCKABY,

16 Defendant.

17
 18 On application of the Public Defender and good cause appearing therefor, IT IS
 19 HEREBY ORDERED that the Fry Memorial Chapel, its director Matt Simpson, and/or any
 20 designated employees/subordinates of Mr. Simpson's:

- 21 1. Remove the casket of Sandra Cantu from the crypt that it is currently in.
- 22 2. Preserve the casket of Ms. Cantu in its current state until members of the San
- 23 Joaquin County Sheriff's Office (SJCSO) arrive to take possession of Ms.
- 24 Cantu's body.
- 25 3. Upon the arrival of the appropriate SJCSO personnel, unseal the casket of Ms.
- 26 Cantu.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Surrender the custody of Ms. Cantu's body to the custody of the appropriate SJCSO personnel.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 Law Office of the Public Defender
2 for the County of San Joaquin
3 102 S. San Joaquin Street, Room 1
4 Stockton, CA 95202
5 Telephone: (209) 468-2730

6 Samuel R. Behar, State Bar Number 115435
7 Nelson C. Lu, State Bar Number 208212
8 Attorneys for Defendant Huckaby

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN JOAQUIN

11 ---oOo---

12 The People of the State of California,

13 Plaintiff,

14 v.

15 MELISSA CHANTEL HUCKABY,

16 Defendant.

No. SF111539A

ORDER TO TAKE CUSTODY OF
AND PRESERVE BODY FOR
FURTHER EXAMINATION

17
18 On application of the Public Defender and good cause appearing therefor, IT IS
19 HEREBY ORDERED that the San Joaquin County Sheriff's Office (SJCSO), Sheriff Steve
20 Moore, and/or any designated deputies of his, in his capacity as Sheriff and Coroner of San
21 Joaquin County:

- 22 1. As quickly as practically possible, but no later than 5:00 p.m. on April 17,
23 2009, send appropriate personnel to Fry Memorial Chapel to take custody of
24 Sandra Cantu's body.
25 2. Have the said personnel employ proper procedures to best preserve Ms.
26 Cantu's body in its current state.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. Have the said personnel deliver Ms. Cantu's body to the coroner's office with all due haste.
- 4. Have appropriate personnel at the coroner's office take custody of Ms. Cantu's body and thereafter carry out proper procedures to preserve her body in its current state to prevent further deterioration, until the examination referred to below can be carried out.
- 5. Allow defense counsel Deputy Public Defender Samuel R. Behar, defense pathologist Terri Haddix, and/or any additional Public Defender personnel as Mr. Behar might consider appropriate, to have access to Ms. Cantu's body so that Dr. Haddix may conduct an examination of Ms. Cantu's body.
- 6. Deliver Ms. Cantu's body back to the Fry Memorial Chapel or any other persons as might be designated by Ms. Cantu's family members, after completion of the examination.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 Law Office of the Public Defender
 2 for the County of San Joaquin
 3 102 S. San Joaquin Street, Room 1
 4 Stockton, CA 95202
 5 Telephone: (209) 468-2730

6
 7
 8 Samuel R. Bchar, State Bar Number 115435
 9 Nelson C. Lu, State Bar Number 208212
 10 Attorneys for Defendant Huckaby

11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN JOAQUIN

---oOo---

The People of the State of California,
 Plaintiff,
 v.
 MELISSA CHANTEL HUCKABY,
 Defendant.

No. SF111539A
 ORDER

On application of the Public Defender and good cause appearing therefore, IT IS
 HEREBY ORDERED that Public Defender Peter Fox, Deputy Public Defender Samuel R.
 Bchar, and/or other Public Defender personnel or retained expert:

1. Conduct, at their earliest practical opportunity, the examination that the Public
 Defender seeks to conduct on Sandra Cantu's body, in a proper manner, but in
 any case to be concluded no later than April 24, 2009.
2. As soon as the examination is complete, inform the appropriate San Joaquin
 County Sheriff's Office personnel that the examination is complete, so that
 Ms. Cantu's body may be delivered with due haste to the Fry Memorial
 Chapel or any other person designated by Ms. Cantu's family.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 Law Office of the Public Defender
2 for the County of San Joaquin
3 102 S. San Joaquin Street, Room 1
4 Stockton, CA 95202
5 Telephone: (209) 468-2730

6 Samuel R. Behar, State Bar Number 115435
7 Nelson C. Lu, State Bar Number 208212
8 Attorneys for Defendant Huckaby

Filed APR 16 2009
ROSA JUNQUEIRO, CLERK
By MONICA GONZALES-HENRY
DEPUTY

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN JOAQUIN

11 ---oOo---

12 The People of the State of California,
13 Plaintiff,
14 v.
15 MELISSA CHANTEL HUCKABY,
16 Defendant.

No. SF111539A

POINTS AND AUTHORITIES IN
SUPPORT OF REQUEST FOR
ORDERS

Date: April 16, 2009
Time: 2:00 p.m.
Dept.: 14

17
18 Defendant MELISSA CHANTEL HUCKABY respectfully requests the Court to
19 consider the following in deciding whether to issue the orders that Ms. Huckaby has attached:

20 I.

21 PROCEDURAL AND FACTUAL SUMMARY

22 To the best of defense counsel's knowledge, the relevant events in this case occurred
23 as follows:

24 On April 6, 2009, the body of the alleged victim, Sandra Cantu, was recovered by the
25 Tracy Police. The body was subsequently delivered to the San Joaquin County Sheriff's
26 Office (SJCISO), and SJCISO personnel assigned under Sheriff Steve Moore's role as Coroner
27 subsequently conducted an autopsy. During the autopsy, the assigned coroner opined that
28 Ms. Cantu had suffered genital trauma consistent with forcible penetration. Subsequently, on

1 or about April 7, 2009, the SJCSO, at the instruction of Ms. Cantu's family, delivered Ms.
2 Cantu's body to the Fry Memorial Chapel, a funeral home in Tracy. Thereafter, Ms. Cantu's
3 body was placed in a casket. The casket was sealed and then placed in a crypt above ground.

4 On or about April 11, 2009, Ms. Huckaby was interrogated by the Tracy Police. She
5 was arrested shortly thereafter. At that time, she was not represented by counsel, and no
6 counsel accompanied her at the interrogation.³

7 On April 14, 2009, Complaint No. SF111539A was filed, accusing Ms. Huckaby of
8 one felony count of violating Penal Code section 187 (murder).⁴ The Complaint also alleged
9 that the offense was committed with the special circumstances under section 190.2,
10 subdivisions (a)(17)(B) (kidnapping special circumstance), (a)(17)(E) (lewd or lascivious
11 act), and (a)(17)(K) (sexual penetration).⁵ The special circumstance allegations thus make
12 Ms. Huckaby eligible for the death penalty. Later on the same day, Ms. Huckaby was
13 arraigned on the Complaint. The Public Defender of San Joaquin County was appointed to
14 represent Ms. Huckaby, and Deputy Public Defender Ellen S. Schwarzenberg accepted the
15 appointment on behalf of the Public Defender. The People were represented by Deputy
16 District Attorney Thomas J. Testa.

17 On April 15, 2009, Public Defender Peter Fox assigned the case to Deputy Public
18 Defender Samuel R. Behar. Mr. Behar subsequently had a conversation with Mr. Testa.
19 During the conversation, Mr. Testa indicated that the filing of the subdivisions (a)(17)(E) and
20 (a)(17)(K) special circumstances were based on the assigned coroner's opinion that Ms.
21 Cantu had suffered genital trauma. He also indicated that he had not received any coroner's
22 reports on Ms. Cantu's autopsy or any reports or recordings of Ms. Huckaby's interrogation
23 and therefore had none to give Mr. Behar.

24
25 ³ The Public Defender had previously been appointed on another case of Ms. Huckaby's, but
26 his office was not notified to accompany Ms. Huckaby to her interrogation, nor was it notified
27 of her arrest.

28 ⁴ All further statutory references are to the Penal Code unless otherwise indicated.

⁵ All further references to subdivisions are to subdivisions of section 190.2 unless otherwise
indicated.

1 Ms. Huckaby now respectfully requests the Court to issue the orders that her defense
2 requests, attached herewith.

3 II.

4 A PROMPT EXAMINATION OF MS. CANTU'S BODY IS MATERIAL AND
5 CRUCIAL TO MS. HUCKABY'S DEFENSE.

6 In seeking these orders from this Court, Ms. Huckaby believes that these orders are
7 necessary to preserve her federal and state constitutional rights to due process, effective
8 assistance of counsel, confrontation, and reliable death verdict, and rights against self-
9 incrimination. (U.S. Const., 5th, 6th, 8th, 14th Amendments; Cal. Const., art. I, §§ 7, 15, 24.)

10 The California case law on the issue of orders to preserve the bodies of alleged
11 homicide victims is sparse. The most relevant treatment appears in *People v. Roehler* (1985)
12 167 Cal.App.3d 353 [213 Cal.Rptr. 353] (*Roehler*). The *Roehler* court rejected the assertion
13 of prior court: that "a human body differs so greatly from other kinds of material evidence
14 that special rules devolve upon disposition of same[]" -- rather, it indicated that it believed
15 that the same standard for the preservation of evidence applies to human bodies as it does for
16 other evidence. (*Id.* at p. 384, citing *People v. Vick* (1970) 11 Cal.App.3d 1058 [90 Cal.Rptr.
17 236] (*Vick*) and *People v. McNeill* (1980) 112 Cal.App.3d 330 [169 Cal.Rptr. 313].)

18 In this case, Ms. Cantu's body is of such material evidence and that, without
19 immediate intervention by this Court, her defense will be prejudiced. Ms. Huckaby faces
20 special circumstance allegations that expose her to the death penalty, and those allegations
21 involve alleged injuries suffered by Ms. Cantu. If the defense pathologist is not permitted to
22 examine the body, the defense will be forever denied the opportunity to refute the People's
23 case. She earnestly requests that this Court grant the orders.

24 Dated: April 16, 2009

25 OFFICE OF THE PUBLIC DEFENDER
26 PETER FOX, Public Defender

27
28 By: Samuel R. Behar, Deputy Public Defender
Attorney for Defendant