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UNITED STATES OF AMERICA

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12)
13 Plaintiff,)
14)
15 v.)
16 JOHN ALAN CARMAN (1),)
17)
18 Defendant.)
19)

CRIM. CASE NO. 07CR0835-H
DATE: September 19, 2007
TIME: 9:00 a.m.
GOVERNMENT'S MOTION TO RECONSIDER
SUPPRESSION OF SOI'S STATEMENTS ON
TAPE-RECORDED CONVERSATIONS WITH
DEFENDANT

20 COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
21 KAREN P. HEWITT, United States Attorney, and Joseph S. Green, Assistant United States Attorney,
22 hereby files the Government's Motion to Reconsider Suppression of SOI's Statements on the Tape-
23 Recorded Conversations with Defendant.

24 I
25 **STATEMENT OF FACTS**

26 A. Court's Ruling on Motion In Limine
27 On August 31, 2007 the Government filed its Motions in Limine. Among other things, the
28 Government moved for the admission of three recorded telephone calls between the SOI and Defendant.

1 In Defendant's Opposition to the Government Motions In Limine, filed September 6, 2007, Defendant
2 opposed the admission of the tape-recorded calls based, in sum, upon the expected unavailability of the
3 SOI for trial. At a hearing on September 11, 2007, the Court ruled that the Defendant's statements in
4 the recorded calls were admissible but that the SOI's statements in the calls were inadmissible under
5 Davis v. Washington, 126 S. Ct. 2266, 547 U.S. ___ (2006) and Federal Rule of Evidence 403.

6 B. Availability of SOI

7 On the evening of Thursday, September 13, 2007, the FBI succeeded in contacting the SOI. The
8 SOI informed Special Agent Lombardi, FBI, that he was willing to make himself available to testify at
9 the trial scheduled to begin on September 19, 2007. On Friday, September 14, 2007, the Government
10 notified Defendant's attorney that the FBI had resumed contact with the SOI and expected him to be
11 available to testify at trial. The Government also informed Defendant's attorney that the SOI was
12 willing to speak with him in a teleconference on Monday, September 17, 2007.

13 **II**

14 **DISCUSSION**

15 In short, the availability of the SOI will provide Defendant with the opportunity to confront the
16 SOI at trial, thereby alleviating any prohibition against the introduction of the recorded calls under
17 Crawford v. Washington, 541 U.S. 36, 69 (2004) and Davis v. Washington, 126 S. Ct. 2266, 547 U.S.
18 ___ (2006).^{1/} At the September 11, 2007 motion hearing, the Court indicated that the Government could
19 cure the problem with the admissibility of the SOI's statements on the tape-recorded conversations by
20 finding and bringing in the SOI for trial. The Government has located the SOI and expects that he will
21 be available to testify at trial on September 19, 2007. The SOI will also be available for an interview
22 with Defendant's attorney on September 17, 2007.

23 In light of the changed circumstances, the Government requests that the Court admit in limine
24 the three tape-recorded conversations between the SOI and Defendant in their entirety.

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27 ^{1/} The Government does not concede that the availability of the SOI is a prerequisite to the
28 proper admission of the SOI's statements in the tape recorded conversations between the SOI and
Defendant.

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III

CONCLUSION

For the foregoing reasons, the United States requests that the Government's Motion to Reconsider Suppression of SOI's Statements on the Tape-Recorded Conversations with Defendant be granted.

DATED: September 15, 2007.

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

/s/ Joseph S. Green
JOSEPH S. GREEN
Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
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 v.)
)
 JOHN ALAN CARMAN (1),)
)
 Defendant.)
)
 _____)

Case No. 07cr0835-H

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, JOSEPH S. GREEN, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of Government's Motion to Reconsider Suppression of SOI's Statements on the Tape-Recorded Conversations with Defendant on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

- 1. KNUT JOHNSON, ESQ.

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

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

Executed on September 15, 2007.

/s/ Joseph S. Green
JOSEPH S. GREEN