

IN THE COUNTY COURT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CRIMES/MISDEMEANOR DIVISION

CASE No B22-2300 (HARRIS NELSON)

W
MB

STATE OF FLORIDA,

Plaintiff,

v.

CARLOS JULIO GIMENEZ,

Defendant.

_____ /

MOTION TO DEPOSE WITNESSES
AND INCORPORATED MEMORANDUM OF LAW

The Defendant, **CARLOS JULIO GIMENEZ**, by and through undersigned counsel, pursuant to Florida Rule of Criminal Procedure 3.220(h)(1)(D), moves this Honorable Court to permit him the opportunity to depose the witnesses listed by the State of Florida in their Discovery Exhibit, and as grounds therefore avers the following:

1. The State of Florida has listed twenty-five (25) law enforcement officers and five (5) "civilian" witnesses in their Discovery Exhibit. The non-law enforcement witnesses include Alex Diaz De La Portilla, Leonardo Vallejos,

Carlos Lago, Raul Nunez, and Humberto Dominguez. Stanley Paul-Noel, a city of Miami Police Officer who serves as Mr. De La Portilla's "sergeant-at-arms" is also listed.

2. With exception of Supplemental Reports prepared by Investigator Rosson and Investigator J.K. Cruz, an Arrest Affidavit and Incident Investigation Report authored by Investigator McKee (and W. Diaz) – none of the remaining law enforcement officers offer any written statement or report.
3. The non-law enforcement witnesses do provide brief bare-bones written statements – ranging from a single sentence to no more than four sentences. Four of these witnesses (the exception being Raul Nunez) provide brief recorded statements ranging from approximately one and one-half minutes to almost four minutes in length. Again, these statements are short and provide limited information.
4. Sergeant-at-arms Noel-Paul, apparently, never gave a recorded statement nor a written statement.
5. The alleged incident suggests that Alex Diaz De La Portilla, a sitting member of the Miami City Commission, while having lunch had his hair tousled by the accused (Mr. De La Portilla's own description in a statement to the media). Further, Mr. De La Portilla has described this incident as

being “personal” in nature. His lunch companions included Carlos Lago – a registered lobbyist who has pending more than one hundred (100) issues before the city of Miami; Raul Nunez, a businessman, with interests in the city of Miami; Humberto Dominguez, a convicted felon and disgraced former city of Miami commissioner.

6. Further, the tortured journey of this matter must be reviewed. The incident which gave rise to this case occurred over five months ago. Despite counsel’s best effort to seek a resolution no offer has been conveyed. Adding to the contorted nature of this matter is the course of conduct exhibited by law enforcement. In most all circumstances surrounding a simple battery the case is referred to the State Attorneys Office for review or a Notice/Promise to Appear is issued. Rarely to such episodes give rise to a physical arrest and incarceration. Even rarer does law enforcement seek to take custody of the arrestee away from the agency with jurisdiction. Here, Mr. Gimenez held in custody by the Coral Gables Police Department was escorted outside his holding cell and handcuffed by a Miami Police officer to be transported to the city of Miami for what reason one can only speculate (this action would not be allowed because of intervention by the Coral Gables chief of police).

7. Finally, there were cameras at a distance which captured the incident. A video of the interaction was produced and provided in the discovery exhibit. Unfortunately, the resolution and the angle of the cameras do not offer a definitive assessment of the incident.

In support of this motion, the undersigned provides the following:

I.
ARGUMENT SHOWING GOOD CAUSE

Under Florida Rule of Criminal Procedure 3.220, a trial court has authority to grant depositions in this case for “good cause shown.” Fla. Rule Crim. Pro. 3.220(h)(1)(d). To this end, Rule 3.220 instructs that a court “should consider the consequences to the defendant, the complexity of the issues involved, the complexity of the witness testimony, and the other opportunities available to the defendant to discover the information sought by deposition.” *Id.*

Good cause exists in this case for the following reasons: (a) none of the written statements nor recorded statements provided offer a detailed account of the circumstances of the interaction including where individuals were seated, the opportunity to observe the events, and what occurred afterwards; (b) the relationships amongst the participants at the lunch have not been revealed; (c) biases of the witnesses have not been disclosed, i.e., would lobbyist Lago skew his

testimony to curry favor with a commissioner who votes on his clients' desires or businessman Nunez who has properties within the city and subject to the whims of city officials want to assist a commissioner by providing favorable testimony; and, (d) given the tortuous and contrived nature of the of proceedings thus far – far outside the normal trek of similar cases – provides ample reason to allow for depositions to be taken.

II.
CONSEQUENCES TO CARLOS JULIO GIMENEZ

The crime for which MR. GIMENEZ is charged is one that carries significant and severe penalties. In addition to a criminal record, as well as the corresponding stigma which attaches to such a record, MR. GIMENEZ faces significant fines, the potential suspension of his law license, and possible imprisonment. For this particular Defendant's professional and personal life, the effects of such penalties would be devastating. As a result of the above-mentioned consequences, depositions are requested for the following reasons:

1. Without authorization to take the above depositions, the Defendant will be unable to prepare the case for trial and will be denied a fair trial and due process of law.

2. The above listed witnesses are essential witnesses and have first-hand knowledge as to the facts of the instant matter. Furthermore, the Defendant would be deprived of valuable discovery and the right to take the depositions of the above listed persons.

3. This Honorable Court has discretion in deciding which depositions can be taken in misdemeanor cases.

4. It would be an abuse of discretion for this Honorable Court to deny the Defendant the right to take the depositions of the above listed witnesses.

5. The discovery supplied by the state does not put the Defendant on notice of enough of the essential facts of the *instant* case so that the Defendant can prepare a defense. The arrest form and police reports are very brief and contain very few facts.

6. Moreover, the Miami-Dade State Attorney's Office has suggested that where counsel interviews a witness, and then attempts to impeach that witness by use of their prior inconsistent statements, counsel must withdraw from the case in order to become a witness.

7. Moreover, the standard operating procedures for many Dade County police departments prohibit police officers from speaking to defense counsel without the granting of a deposition. This is detrimental to defense counsel in light

of the fact that the circumstances giving rise to MR. GIMENEZ'S charges are complex, and counsel has no other opportunity available to discover the nature and extent of involvement of the listed witnesses other than by taking their deposition.

8. Finally, if the witnesses listed above are deposed before trial, unnecessary pretrial hearings or even the ultimate trial of this cause may be avoided. Although the Defendant could, if forced to do so, defend the case at trial without the depositions, a better procedure would be to allow the defendant to take the pre-trial depositions and be better prepared for a trial.

9. The filing of this motion shall not be construed as a waiver of the Defendant's right to a speedy trial under the Florida or United States Constitutions or Fla. Crim. P. 3.191. The Defendant does not agree to waive his rights to speedy trial by taking pretrial depositions and discovery. If the state or Court decides that the filing of the instant motion should be construed as a waiver of the Defendant's right to a speedy trial, then such issues should be discussed on the record, after counsel has been advised of the court's impression of the speedy trial issue brought about by the filing of the instant motion.

10. Therefore, in the interest of judicial economy and avoiding unnecessary waste of scarce judicial resources, it is urged that this Honorable

Court find "good cause" exists to support the deposition of the witnesses listed above.

MEMORANDUM OF LAW

Florida Rules of Criminal Procedure 3.220 (h)(1)(D) restricts defendants from taking depositions in misdemeanor cases and criminal traffic offenses, unless good cause is shown to the trial court. In determining whether to allow the defendant to take a deposition of a witness, the court should consider the consequences to the defendant, the complexity of the issues involved, the complexity of the witnesses' testimony, and the other opportunities available to the defendant to discover the information sought by deposition.

WHEREFORE, for good cause shown, the Defendant, **CARLOS JULIO GIMENEZ** prays this Honorable Court will grant the foregoing motion, thereby permitting him to depose the witnesses named by the state herein.

MICHAEL R. BAND, P.A.
1224 Alfred I. DuPont Building
169 East Flagler Street
Miami, FL 33131
Tel: 305.372.8500
Fax: 305.372.8504

Email: michael@bandlawfirm.com

/s/ Michael R. Band

Michael R. Band
Florida Bar № 228338

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was eFiled through the Portal to the Office of State Attorney, on this 14th day of July 2022.

/s/ Michael R. Band
Michael R. Band