

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT- CRIMINAL DIVISION

People of the State of Illinois,)
Plaintiff)

vs..)

Wayne Weinke, Jr.,)
Defendant)

NO. 06CR-24436

**REPLY TO DEFENDANT’S OBJECTION TO PEOPLE’S
MOTION TO ADMIT**

Now come the PEOPLE OF THE STATE OF ILLINOIS by their attorney, RICHARD A. DEVINE, State’s Attorney of Cook County, by his assistants, Sherie L. DeDore and Guy Lisuzzo, and reply to defendant’s objection to People’s previously filed Motion to Admit. In support thereof, the People state the following:

1. In an attempt to exclude the videotaped evidence deposition of Gloria Weinke, defendant incorrectly cites Crawford v. Washington, 541 U.S. 36, 158 L.Ed.2d 177, 124 S. Ct. 1354 (2004) regarding the use of out of court testimony. The Supreme Court in Crawford v. Washington stated that “[w]here testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.” Id. at 68. In accordance with the principles of Crawford v. Washington and the Sixth Amendment, the People seek to introduce Gloria Weinke’s evidence deposition. During her evidence deposition, Gloria Weinke was cross-examined by defendant without limitation. Gloria Weinke died on October 2, 2006 and is therefore unavailable.

2. Defendant claims that the defendant was denied the opportunity to investigate the scene, review medical records, and effectively cross-examine Gloria Weinke. The United States Supreme Court has explained that the “Confrontation Clause guarantees only ‘an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.’” United States v. Owens, 484 U.S. 554 at 559, 108 S. Ct. 838 at 842 (1987); see also People v. Redd, 135 Ill. 2d 252 at 310-11, 553 N.E.2d 316 at 342 (1990); People v. Lewis, 223 Ill. 2d 393, 402-5, 860 N.E.2d 299, 305-6 (2006).

3. A review of the relevant cases makes it clear that defendant’s position that he was denied an opportunity for effective cross-examination is erroneous and not based on the law. It is a well established legal principle that a witness’ preliminary hearing testimony against the same defendant, subject to cross-examination by that defendant, is an exception to the confrontation clause if the witness is unavailable. See People v. Tennant, 65 Ill. 2d 401 (1976); People v. Smith, 275 Ill. App. 3d 207 (1st Dist 1995); People v. Bell, 132 Ill. App. 3d 354 (1st Dist. 1985); People v. Behm, 49 Ill. App. 3d 574 (1st Dist. 1977); see also People v. Rice, 166 Ill. 2d 35 (1995) and People v. Brown, 374 Ill. App. 3d 726 (1st Dist. 2007) (discusses purpose of the proceeding in which testimony was taken). Gloria Weinke’s evidence deposition contained more safeguards for the Defense than a preliminary hearing. Indeed, during a preliminary hearing cross-examination of a witness may be somewhat limited by the court to issues relating to probable cause. In Gloria Weinke’s evidence deposition, defendant had the opportunity for full and lengthy cross-examination.

4. Defendant claims error regarding notice of the deposition based upon Supreme Court Rules 217 and 414. Defendant was present in court and represented by counsel on July 21, 2008, when Judge Hanlon granted People's Emergency Motion requesting a videotaped evidence deposition of Gloria Weinke. The standard of review for granting an evidence deposition is abuse of discretion. People v. Winfield, 113 Ill. App. 3d 818, 447 N.E.2d 1029 (1983) The fact that Gloria Weinke died less than 2 ½ months after her deposition refutes any claim that it was an abuse of discretion to have granted the evidence deposition. Additionally, Supreme Court Rule 211(a) states that as to notice "[a]ll errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice." Defendant was present and represented by counsel of his choice at Gloria Weinke's evidence deposition on July 21, 2006. Moreover, counsel actively participated in the evidence deposition and thoroughly cross-examined her. Consequently, defendant has waived any errors or irregularities as to notice that he now complains of over two years later.

5. Defendant seeks to bar the introduction of the videotaped evidence deposition of Gloria Weinke based upon it not being read and signed by Gloria Weinke. The People are seeking to admit Gloria Weinke's **videotaped evidence deposition** into evidence based upon Supreme Court Rule 206. The videotape and transcript of Gloria Weinke's evidence deposition was promptly filed in compliance with Rule 206. (A copy of the Notice of Filing is attached to the sealed evidence deposition in the court file.) Rule 206 (g) (6) provides that the videotape of a deposition may be presented at trial in lieu of reading from the stenographic transcription of the deposition. As Rule 206 was fully complied with, the Court should allow Gloria Weinke's videotaped evidence deposition to be presented at trial.

6. Even if the People did seek to read the transcript, as opposed to presenting the videotape of Gloria Weinke's deposition, defendant fails to make a valid objection. On October 30, 2006, the People sent a copy of the videotape and certified transcript of evidence deposition of Gloria Weinke to defendant by way of certified mail, prior to its filing with the court. Defendant failed to object promptly after receiving the transcript and notice of filing of Gloria Weinke's evidence deposition, and therefore has waived any errors that he now claims. [See Supreme Court Rule 211(d)] Further, Supreme Court Rule 207(b) states that if the testimony is transcribed, that the officer shall certify that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the deponent. Rule 207(b) further states that a "deposition so certified requires no further proof of authenticity." The transcript of Gloria Weinke's evidence deposition filed with the Court on November 16, 2006 does in fact comply with Rule 207.

7. Defendant attempts to expand the scope of the exclusionary rule based upon Supreme Court Rule 416, which covers procedures in a capital case. In an effort to bar the admission of Gloria Weinke's deposition, defendant raises the fact that at the time of her evidence deposition his attorney was not capital bar certified. Rule 416(d) states that in all cases wherein the State has filed notice of its intention to seek death, which means a capital **murder** case, the Court shall insure that private counsel is a member of the Capital Litigation Trial Bar. At the time of the taking of Gloria Weinke's deposition, defendant was only charged with Attempt Murder and other lesser charges. Defendant's position is absurd. An evidence deposition could not be taken of a victim in a capital murder case as that victim, obviously, would be deceased.

[Supreme Court Rule 701(b) prohibits a person from appearing as lead or co-counsel in a capital case unless they are a member of the Capital Litigation Trial Bar provided for in Rule 714. The committee comments of Rule 701(b) clearly show that the requirements apply only after notice has been filed or the deadline passes in an actual capital case. The comments further clarify that an attorney should not take a potential death case if not certified, but this clearly refers to a case in which the State could seek death.]

8. The statements made in the videotaped evidence deposition of Gloria Weinke are offered as evidence of material facts. They include testimony by Gloria Weinke regarding the motive and circumstances of defendant throwing her over a stairway railing to a basement landing in her home. Gloria Weinke's injuries as a result of that fall led to her death approximately 2 ½ months later.
9. The testimony elicited in Gloria Weinke's evidence deposition is more probative on the points for which they are offered than any other evidence which the People can procure through reasonable efforts. Gloria Weinke is the only eyewitness to the defendant's actions, which led to her death. Consequently, her evidence deposition is the most probative evidence that relates to the charges against defendant.
10. The general purposes of Section 115-10.4 and the interests of justice will best be served by admission of the statements into evidence.

WHEREFORE, the People of the State of Illinois respectfully request that Gloria Weinke's videotaped evidence deposition taken pursuant to Supreme Court Rule 206 be admitted into evidence at trial. The People maintain that the victim's prior statements should be admitted under the hearsay exception regarding a deceased witness (725 ILCS 5/115-10.4).

Respectfully submitted,
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