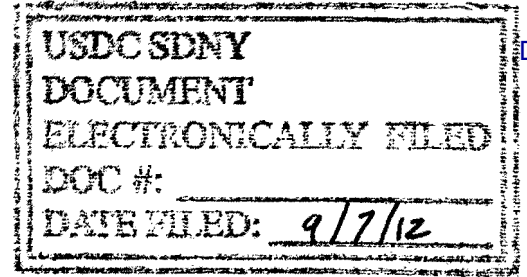


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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MONIQUE CLARKE, :

Plaintiff, : 10 Civ. 6330 (HBP)

-against-

DET. JOSEPH CASTRO, : OPINION

Defendant. :

-----X

PITMAN, United States Magistrate Judge:

Defendant Detective Joseph Castro's application dated August 31, 2012 for a protective order precluding plaintiff from calling six non-party witnesses -- Sergeant Angel Bones, Detective Brian O'Hanlon, Detective Eric Andreoli, Detective Sean Casey, Retired Detective Francine Defeo and Retired Detective Raymond Mieleles -- is granted. Defendant's request for a protective order as to two other non-party witnesses, Retired Detective Tanya Venero and Police Officer Nicholas Coumbouris, is denied, without prejudice.

Bones, O'Hanlon, Andreoli, Casey, Defeo and Mieleles have submitted affidavits in which each attests that he or she has no independent recollection of the circumstances surrounding plaintiff's arrest or of her arrest itself. They also attest

that when shown a photograph of plaintiff, that they did not recognize her and did not remember her arrest.

Federal Rule of Evidence 401 provides that "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."

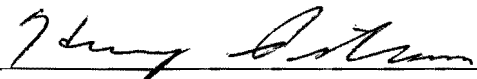
Testimony from Bones, O'Hanlon, Andreoli, Casey, Defeo and Mieles that each has no memory of the events in issue does not make either plaintiff's or defendant's version of the facts any more or less probable. Rather, these witnesses' lack of recollection has no impact on the case and will neither corroborate nor contradict plaintiff or defendant. In other words, these witnesses will not be able to provide any testimony that would inform, support, or refute either plaintiff's or defendant's version of events because they have no independent recollection one way or the other. Accordingly, defendant's application for a protective order as to Bones, O'Hanlon, Andreoli, Casey, Defeo and Mieles is granted.

Finally, as to the two witnesses, Retired Detective Venero and Officer Coumbouris, for whom defendant has not provided affidavits, there is no basis for a protective order. Accordingly, defendant's application for a protective order

precluding plaintiff from calling Retired Detective Venero and Officer Coumbouris is denied, without prejudice to renewal.

Dated: New York, New York
September 7, 2012

SO ORDERED


HENRY PITMAN
United States Magistrate Judge

Copies Transmitted To:

Alexandra Corsi, Esq.
Philip Frank, Esq.
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, New York 10007

Joshua P. Fitch, Esq.
Cohen & Fitch LLP
225 Broadway
Suite 2700
New York, New York 10007