

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502008CA037319XXXXMB AB

B.B.,

Plaintiff,

-vs-

JEFFREY EPSTEIN,

Defendant.

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HEARING BEFORE THE HONORABLE  
DONALD HAFELE

PLAINTIFF'S MOTION FOR INSPECTION AND TO COMPEL  
DISCOVERY (PHOTOGRAPHS)

Monday, December 14, 2009  
Palm Beach County Courthouse  
West Palm Beach, Florida 33401  
8:32 - 8:43 a.m.

Reported By:  
Cynthia Hopkins, RPR, FPR  
Notary Public, State of Florida  
Prose Court Reporting

Original

PROSE COURT REPORTING AGENCY, INC.

1 APPEARANCES:

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## P R O C E E D I N G S

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3 THE BAILIFF: Everyone please rise.  
4 Circuit Court is now in session. The Honorable  
5 Judge Hafele presiding.

6 MR. KUVIN: Good morning.

7 MR. CRITTON: Morning.

8 THE COURT: Welcome. I have read the  
9 materials and motion to compel and inspect  
10 relative to photographs, Mr. Kuvin.

11 MR. KUVIN: Yes, Your Honor. Since Your  
12 Honor has read the motion, I will just add some  
13 additional issues, and we'll try not to repeat  
14 what is contained within the motion. With Your  
15 Honor's permission, if I could argue from here?

16 THE COURT: Sure.

17 MR. KUVIN: The issue here is whether or  
18 not a 14- or 15-year-old girl would know  
19 specifically what a 50-year-old man's genitalia  
20 looks like if for no other reason than illegal  
21 reasons in this case. The issue is just like  
22 in criminal court: If a victim or victims are  
23 able to identify a perpetrator's tattoo on an  
24 arm, then that perpetrator must stand up and  
25 show the tattoo to a jury or identify whether

1 or not that tattoo exists.

2 This is not a self-incrimination issue.  
3 This is not testimonial evidence. Therefore,  
4 it is intrinsically different than a scenario  
5 of testimonial evidence where someone is forced  
6 to testify against themselves. This is a  
7 marking or a distinguishing feature on their  
8 physical body.

9 With respect to the relevance issue,  
10 Defendant argues that it is irrelevant because  
11 BB has never said she has seen it. Well, the  
12 problem is twofold. And I would agree with  
13 Defendant on one point in that they have not  
14 even sought to depose my client yet.

15 This is a 2008 case and I would have hoped  
16 by now, by the time of this hearing which we  
17 had noticed months ago, that they would have  
18 noticed her for deposition so that we could  
19 find out exactly in her sworn testimony the  
20 evidence of what she did or did not see.

21 THE COURT: Let me just stop you for a  
22 moment.

23 MR. KUVIN: Sure.

24 THE COURT: It wasn't clear to me; I read  
25 through the probable cause affidavit and in

1 there there is a description that we have dealt  
2 with and we have heard about earlier relative  
3 to Mr. Epstein but of course with the names  
4 blacked out and no initials given within the  
5 probable cause affidavit, the descriptions that  
6 was provided was not provided by BB?

7 MR. KUVIN: That is correct, Your Honor, I  
8 will agree that the description in the probable  
9 cause affidavit specifically was not given by  
10 BB but another young lady, the identity of  
11 which frankly I do not know at this point as I  
12 stand here today because I have the same  
13 probable cause affidavit Your Honor has which  
14 is blacked out. But that is true that specific  
15 description in that probable cause affidavit is  
16 not her.

17 THE COURT: The other question I have is  
18 recognizing the delicate nature of the issue  
19 but at the same time understanding as I  
20 suggested pertaining to the discovery issues  
21 that were brought by Plaintiff's counsel in  
22 other cases, in this particular matter what I  
23 am having difficulty on and what was touched  
24 upon in Defendant's papers is the relevancy at  
25 this juncture juxtaposed by the potentiality

1 certainly at the very least once the deferred  
2 prosecution agreement has expired to obtaining  
3 the substantial equivalent by other means,  
4 request for admissions, interrogatories,  
5 depositions, once those things are handled.

6 But at this point particularly whereas  
7 here the Plaintiff herself has not implicated  
8 the Defendant's private parts as a material  
9 portion of her case, explain to me why at this  
10 juncture and prior to her deposition that it  
11 would be logical and would be relevant for  
12 discovery purposes recognizing, of course, that  
13 discovery is more liberal and to be more open  
14 than admissibility, but at the same time also  
15 noting that relevance for discovery purposes is  
16 defined as tending to lead to the discovery of  
17 admissible evidence, or relevancy for discovery  
18 purposes being calculated to discovery of  
19 admissible evidence.

20 I know I threw several questions at you at  
21 once.

22 MR. KUVIN: I was writing those down. I  
23 would like to address those points and I think  
24 they are good points and they need to be  
25 addressed.

1           The issue, first of all, I think Your  
2 Honor points out is what the Defendant, or  
3 excuse me, what BB may or may not have seen  
4 since she has not been deposed. And I am  
5 certainly not at liberty to discuss my  
6 conversations with her personally about what  
7 she may or may not have seen. I cannot share  
8 that at this time obviously with the Court  
9 until she is deposed. So absent that, if we  
10 set that aside --

11           THE COURT: Well, just a minute. I  
12 apologize for interrupting. What I want to say  
13 is certainly once an objection is logged, a  
14 statement or an affidavit to disclose at the  
15 very least why the substantial equivalent at a  
16 certain time could not be obtained by less  
17 intrusive means than to require a Defendant to  
18 have his private parts photographed and  
19 examined may not be necessarily a breach of any  
20 type of client confidence and that has not been  
21 demonstrated.

22           MR. KUVIN: It is true that BB has not  
23 said in any document right now whether it be  
24 probable cause affidavit or interview with the  
25 police that she has seen it. But I don't

1 believe frankly that is the issue.

2 The issue that we're looking at is, and  
3 Your Honor points out a very good example of  
4 why can't we defer this until such time as a  
5 less intrusive means may be utilized; the  
6 problem is, and frankly, I will agree to a  
7 stipulation today that if Mr. Epstein will  
8 respond to interrogatories and a request for  
9 admissions at a date certain which is  
10 reasonable in the future, then I have no  
11 problem in obtaining that through another  
12 means.

13 But I don't believe that Mr. Critton is  
14 prepared here today to say that he will ever  
15 respond to questions in a deposition, respond  
16 to interrogatories, or request for admission.  
17 And in fact during the three hours and a half I  
18 spent with him, he took the Fifth Amendment on  
19 every single question, literally almost every  
20 single question that was asked of him except  
21 for his name and some identity issues.

22 So, absent some stipulation that he will,  
23 in fact, answer those questions in the future  
24 to obtain that information in a least obtrusive  
25 way, I think that the Court has before it

1 obviously the issue now of the fact of a  
2 Defendant who is refusing to answer those  
3 questions with no hope in the future that there  
4 is a less obtrusive way to get it.

5 As to the issue of whether or not it's  
6 relevant to BB's claim though, there are two  
7 issues there: The first is is that we look to  
8 90.404(2) which is the issue of bad acts and  
9 whether character evidence is admissible in  
10 this proceeding. And this, I think, gets to  
11 the real heart of the issue of how this case is  
12 ultimately going to be tried and evidentiary  
13 issues that Your Honor is going to have to rule  
14 on later down the road.

15 If we look at the 90.404(2) I hate to do  
16 this, but back to law school it is a rule of  
17 inclusion, not exclusion. The rule says  
18 similar fact evidence of other crimes, wrongs,  
19 or acts is admissible. It never uses the word  
20 inadmissible in the rule. But nonetheless it  
21 is used in court as an inadmissibility rule.  
22 So the rules says it's admissible when relevant  
23 to prove a material fact at issue such as  
24 motive, opportunity, intent, plan, preparation,  
25 knowledge, identity, and the last one on our

1 list is absence of mistake.

2 Now, I can only suppose what Mr. Epstein  
3 is going to testify to, because as I said he  
4 has taken the Fifth to every question we have  
5 asked of him.

6 But we can glean through the interviews  
7 that his attorneys have given to the press,  
8 specifically Jack Goldberger who has stated to  
9 the press that Mr. Epstein took a polygraph  
10 exam on the issue of age of these young women  
11 and he never knew that they were underage.

12 If, in fact, we can prove that of these  
13 girls -- and right now we know through the  
14 testimony of Chief Reiter, Chief of Police for  
15 Palm Beach, that we're looking at at least 12  
16 to 15 girls -- if, in fact, we can prove that  
17 through those other women there was an absence  
18 of mistake issue, in other words, he didn't  
19 mistakenly think these girls were underage, he,  
20 in fact, knew it, and he knew it very clearly,  
21 then obviously evidence of all of these other  
22 women become relevant to this case in chief.

23 THE COURT: Well, that may be true.

24 MR. KUVIN: That's point one.

25 THE COURT: What I am concerned about, and

1 I appreciate the point, and I certainly will  
2 give you a couple of minutes to wrap up, but  
3 what I am concerned about is the issue of  
4 impeachment on a collateral matter. And one  
5 may say, well, wait a minute, you know, this  
6 type of evidence is certainly germane to the,  
7 at least "lay" eye, or the public eye. But is  
8 it germane legally at this juncture? That's  
9 the issue.

10 And really again as important as this may  
11 seem to the general public perhaps because it  
12 carries with it some type of prurient interest,  
13 is it germane legally and is it not at this  
14 juncture when utilized in conjunction with  
15 404(2) which is reputation, character, and the  
16 like, is it at this juncture not grounds or at  
17 least fodder for impeachment on a collateral  
18 issue relative to BB who has not, number one,  
19 indicated in the PCA that Mr. Epstein's private  
20 parts were a germane portion of her complaint  
21 or had any relevance to her complaint.

22 MR. KUVIN: Two key points Your Honor  
23 mentions at this juncture. Obviously the issue  
24 is whether or not she has been deposed, and as  
25 Your Honor is well aware as I mentioned, she

1 has not, so we don't know her sworn testimony  
2 at this point. We can't obviously get into  
3 that.

4 So if Your Honor is inclined to defer this  
5 ruling, then we defer to that issue at least  
6 until her deposition is taken, if Your Honor's  
7 belief is in that regard.

8 But as to the primary claim, this is not  
9 impeachment on a collateral source. This is  
10 not impeachment at all. This is in fact  
11 exactly what 90.404(2) talks about. It is the  
12 identity issue of the Defendant and whether or  
13 not he can be identified but not only by BB but  
14 the other victims of the crime. And therefore  
15 if identity is an issue, it is to go to prove a  
16 primary issue in the case, absence of mistake  
17 primarily of Mr. Epstein with respect to the  
18 ages of these young girls.

19 Therefore, it is to go to prove a primary  
20 allegation in the complaint which is that he  
21 was having sexual relationships with underage  
22 women and not impeachment on a collateral  
23 issue. It is not collateral. It is a primary  
24 issue in this case.

25 But once again if there is a less

1 obtrusive means and Mr. Critton will stand up  
2 here today and say to Your Honor, yes,  
3 Mr. Epstein will answer questions from  
4 Mr. Kuvin on X-date in the near future, then I  
5 agree that that is a much less obtrusive means  
6 to obtain this discovery. I do not think that  
7 he is prepared to stipulate to that today.

8 THE COURT: All right. Thank you,  
9 Mr. Kuvin. Mr. Critton?

10 MR. CRITTON: May it please the Court.  
11 One is, first of all, Judge, is 90.404(2) was  
12 argued. It was never part of the motion.

13 90.404 was argued, similar acts, that was  
14 never part of the motion that was filed and  
15 therefore we haven't responded. These are  
16 completely new issues that have been raised  
17 this morning.

18 Thirdly, there was reference to Chief  
19 Reiter, that was not in his motion.

20 Fourth, I think that the Court is probably  
21 correct at this point in time at least there is  
22 nothing that Mr. Kuvin said on behalf of his  
23 client that is as to what the physiology of  
24 Mr. Epstein's private parts is in any way,  
25 shape, or form germane at this time.

1           Next point with regard to Mr. Kuvin's  
2 references to sexual relationships with  
3 underage women, we have deposed a number of the  
4 individuals. None of those people have any  
5 type of, quote, unquote, sexual relationships,  
6 intercourse, oral sex, or anal sex with  
7 Mr. Epstein, and nor did BB in this instance.

8           Now, getting actually to the motion that  
9 he filed, I think that the Court, a couple of  
10 things: I have, as the Court knows, there is  
11 both State and Federal court cases. This Court  
12 has all of the state court cases. This is the  
13 only case, BB has no sworn testimony, nor did  
14 she show up at this -- again, this motion has  
15 been filed for three, four, five months at this  
16 point. At any point BB could have come forward  
17 through Mr. Kuvin and given an affidavit to the  
18 Court that said I either saw Mr. Epstein's  
19 private parts, or I didn't see them, or that in  
20 some fashion shows that they are either  
21 relevant or material or that goes to a material  
22 issue in this case.

23           In fact, the complaint as the Court knows  
24 from the motion or the response that we filed,  
25 the compliant in this instance merely says that

1 Mr. Epstein came into the bathroom, told the  
2 girls to remove their clothes, they undressed  
3 themselves. He placed a washcloth over his  
4 private parts. They rubbed lotion on his body,  
5 and then he began masturbating.

6 At no time does the complaint, nor is  
7 there any sworn testimony in front of this  
8 Court that BB ever saw his private parts. I  
9 would also represent to the Court at least what  
10 I have, what Mr. Kuvin has represented to me  
11 and what he has represented to Mike Pike --  
12 again I don't want to hold him to that -- but I  
13 would be surprised if there is any sworn  
14 testimony by the Plaintiff in this particular  
15 instance that she saw Mr. Epstein's private  
16 parts.

17 Again BB is not part of the probable cause  
18 affidavit. Not only does she not reference the  
19 shape or any physiology associated with it,  
20 she's not even one the people that were  
21 interviewed by the police to the best of my  
22 knowledge. And I am almost 99.9 percent,  
23 100 percent confident of that.

24 BB is a one-time person. That is she  
25 showed up one time to Mr. Epstein's home.

1           It's not relevant. It's not material.  
2           There is no issue at least at this point in  
3           time in front the Court, and I don't want to  
4           belabor what the Court has already raised nor  
5           what is set forth in our motion, but if she  
6           didn't see his physiology, it's not relevant or  
7           material.

8           And then the Court -- it can't be relevant  
9           or material because it doesn't go to any  
10          material issue in the case.

11          The Court also addressed the issue of is  
12          there a less obtrusive manner in which to  
13          obtain whatever his physiology is. In this  
14          instance I think three or four of the  
15          Plaintiffs have been deposed.

16          THE COURT: I am not sure the words are  
17          synonomous, but the terminology I used was less  
18          intrusive.

19          MR. CRITTON: And I said obtrusive.

20          THE COURT: So did Mr. Kuvin.

21          MR. CRITTON: He is obtrusive.

22          THE COURT: I want to make sure that the  
23          terminology I used was --

24          MR. CRITTON: Less obtrusive.

25          THE COURT: -- different than the two of

1           you.

2           MR. CRITTON: One of the ways to do that  
3           is a number of the females have been deposed in  
4           particular instance. On more than one  
5           occasion, I know I have asked, you know, what  
6           was, was there anything unusual about  
7           Defendant's physiology, and they have  
8           testified.

9           Mr. Kuvin's office gets notice of  
10          everyone's deposition and, in fact, he or  
11          anyone else can ask or inquire of any of the  
12          Plaintiffs as they are deposed, was there  
13          anything unusual about Mr. Epstein's  
14          physiology, his private area, separate and  
15          apart from, you know, the other 4 billion  
16          people. I guess only 2 billion would be males.

17          But at this point in time, I believe it's  
18          premature, it's not relevant, it's not  
19          material, and I will stand on our motion. And  
20          also I would like the opportunity to depose the  
21          Plaintiff first.

22          Again we're going to get another amended  
23          complaint apparently. So at some point we'll  
24          take her deposition, and if it, if it is  
25          somehow relevant, then the issue can be brought

1 back in front of the Court.

2 THE COURT: Kindly remind me when the  
3 deferred prosecution agreement is set to expire  
4 presuming no further, or no breach of that  
5 agreement occurs.

6 MR. CRITTON: My best information, sir, is  
7 sometime in the latter part of 2010.

8 THE COURT: All right. Thank you,  
9 Mr. Critton.

10 Mr. Kuvin, anything else you want to add?

11 MR. KUVIN: Just two things. Mr. Critton  
12 points out that the motion has been on file for  
13 three to four months, but they have chosen not  
14 to depose BB despite this issue being before  
15 this Court. He has had the opportunity to  
16 depose my client on the issue and they have  
17 chosen not to.

18 Secondly, which I didn't raise before and  
19 Mr. Critton alludes to it, we have filed an  
20 amended complaint as of Friday last week. It  
21 is a motion to amend the complaint and add a  
22 count for RICO violations as far as a  
23 conspiracy. This is a sexual conspiracy that  
24 Mr.-- an enterprise that Mr. Epstein had  
25 developing on Palm Beach Island for some period

1 of time. And as part of that enterprise,  
2 obviously, this evidence would go directly to  
3 that claim.

4 Now, the Court has not ruled on the motion  
5 to amend yet, so I don't think it is properly  
6 before the Court right now. But I just  
7 obviously would not want anything to hinder our  
8 ability to come back before the Court if and  
9 when that is part of our complaint before Your  
10 Honor.

11 Finally, the last point Mr. Critton raises  
12 is the issue of other girls' description of his  
13 genitalia. Obviously other girls' discretions  
14 and memories are different than what it  
15 actually looks like and whether or not these  
16 girls are, in fact, remembering exactly what  
17 this odd-shaped genitalia looks like.

18 THE COURT: All right. I want to thank  
19 both counsel for their excellent presentations  
20 as well as the written materials. It's very  
21 much appreciated by the Court.

22 I am going to deny the motion at this  
23 time. The denial is without prejudice to, if  
24 and when as it concerns BB, the movant,  
25 Mr. Epstein's private parts become material to

1 her claim.

2 At this stage the Court finds that any  
3 such request which is, in fact, significant and  
4 significantly intrusive, would not be relevant  
5 as it pertains to discovery noting the  
6 difference between what may be relevant at the  
7 discovery stage and what may be relevant for  
8 admissibility at trial. But despite the  
9 difference, the Court finds that without at  
10 least some legal underpinnings to require this  
11 type of intrusive request, the Court is without  
12 legal authority to do so.

13 Again, the motion is denied without  
14 prejudice, and if this particular issue does  
15 become legally relevant, the Court will  
16 re-address the matter at some point in the  
17 future.

18 Again, I thank you both for your  
19 professionalism, your courtesies, and your  
20 presentations.

21 Thank you, Madam Court Reporter as well.

22 MR. KUVIN: Thank you, Your Honor. I do  
23 have just one housekeeping matter I discussed  
24 with Mr. Critton. He has an order that is  
25 perfectly fine with me.

1 MR. CRITTON: May I approach?

2 MR. KUVIN: We filed a motion to amend for  
3 punitive damages on Friday. In conjunction  
4 with that were the responses to BB's  
5 interrogatories which includes the signature  
6 page.

7 I discussed a procedure with Mr. Critton  
8 removing the signature page which may identify  
9 BB and substituting in a blacked-out page. I  
10 just want to make sure that we have an order on  
11 file to allow the clerk to remove that  
12 signature page and just reinsert a blacked-out  
13 page.

14 THE COURT: Any objection?

15 MR. CRITTON: No, sir, not under that  
16 procedure.

17 MR. KUVIN: Thank you, Your Honor.

18 THE COURT: Do you want to send an order  
19 then in on that?

20 MR. KUVIN: I will send an order on that  
21 issue and so direct the Court's clerk.

22 THE COURT: All right. Thank you both.

23 MR. KUVIN: Thank you, very much.

24 THE COURT: Have a good rest of the week.

25 (The hearing was concluded.)

C E R T I F I C A T E

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STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, Cynthia Hopkins, Registered Professional Reporter and Florida Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 28th day of December, 2009.

*Cynthia J. Hopkins*  
Cynthia Hopkins, RPR, FPR

