

TO BE PUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TONY HULSTEIN,

Defendant.

No. CR09-4028-MWB

ORDER

The defendant has filed a motion (Doc. No. 91) to take the trial deposition of Bobby Smith of Guthrie, Oklahoma. He also asks permission to take the deposition by telephone to save the time and expense of traveling to Oklahoma for the deposition. According to defense counsel, Smith is undergoing cancer treatment and, therefore, is unable to travel to Iowa for the trial of this case. No affidavit from Mr. Smith was attached to the motion, but the court accepts as true the representation of defense counsel, as an officer of the court. *Cf. In re Fletcher*, 424 F.3d 783, 792 (8th Cir. 2005) (recognizing “the attorney’s role as an officer of the court that granted admission”).

Federal Rule of Criminal Procedure 15 provides, “A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice.” The court finds that the witness’s illness and inability to travel to Iowa for the trial are exceptional circumstances that warrant allowing the trial deposition to be taken in the interest of justice.

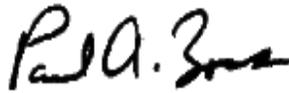
Rule 15 further provides that “a deposition must be taken and filed in the same manner as a deposition in a civil action. . . .” Fed. R. Crim. P. 15(e). Federal Rule of

Civil Procedure 30 gives the court discretion to grant a motion requesting “that a deposition be taken by telephone or other remote means.” Fed. R. Civ. P. 30(b)(4). The court finds the defendant has shown good cause to take the witness’s deposition by telephone.

Accordingly, the defendant’s motion is **granted**. He may take the deposition of Bobby Smith for purposes of trial, and the deposition may be taken by telephone.

IT IS SO ORDERED.

DATED this 3rd day of June, 2010.



PAUL A. ZOSS
CHIEF MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT