

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

Case No: CRC1400216CFAES

Division: 1

vs.

CURTIS J. REEVES,
Defendant.

FILED IN OPEN COURT
THIS 23 DAY OF February 2017
PAULA S. O'NEIL, CLERK & COMPTROLLER
PASCO COUNTY, FLORIDA

BY [REDACTED] D.C.

**MOTION TO DESIGNATE NICOLE OULSON AS A WITNESS IDENTIFIED WITH AN
ADVERSE PARTY UNDER §90.612(3), AND TO ALLOW THE DEFENSE TO
QUESTION HER WITH LEADING QUESTIONS**

The Defendant, CURTIS REEVES, by and through undersigned counsels, hereby files this Motion to Designate Nicole Oulson as a Witness Identified with an Adverse Party Under § 90.612(3), and to Allow the Defense to Question Her with Leading Questions, and as grounds in support states as follows:

INTRODUCTION TO SECTION 90.612(3)

The plain language of section 90.612(3) authorizes defendants to ask leading questions of certain categories of witnesses on direct examination. The law states, in pertinent part, that “[w]hen a party calls a hostile witness, an adverse party, or a **witness identified with an adverse party**, interrogation may be by leading questions.” § 90.612(3), Fla. Stat. (2013) (emphasis added). As noted by Professor Ehrhardt, “[a]n inherent incentive exists in an adverse party... to provide self-serving testimony by avoiding the question or slanting the answer.” Charles W. Ehrhardt, Florida Evidence § 612.1 at 727-28 (2016) (emphasis added).

In addressing this problematic phenomena, in 1995 the Florida Legislature amended section 90.612(3) so that “witness[es] identified with an adverse party” called to the witness stand may be interrogated with leading questions. § 90.613(3). After the amendments were

implemented, once a witness is identified with an adverse party, **“leading questions are automatically permitted during direct examination.”** *Ehrhardt*, at 728 (footnotes and internal quotations omitted) (emphasis added).

The 1995 amendments were modeled on Federal Rule of Evidence 611(c)(1)-(2), which allows hostile witnesses, adverse parties, and witnesses identified with adverse parties to be subjected to leading questioning. 1995, Fla. Laws ch. 95-179, § 1, 1647 (codified as amended at Fla. Stat. § 90.612(3) (1995)). Because the “Florida evidentiary rule is patterned after its federal counterpart, federal cases interpreting comparable provisions are persuasive and routinely looked to for interpretative guidance.” *L.L. v. State*, 189 So. 3d 252, 255 (Fla. 3d DCA 2016) (citations and internal quotations omitted).

Federal courts have had the opportunity to identify a number of circumstances when a witness is deemed to be sufficiently identified with an adverse party so as to allow them to be subjected to leading questioning on direct examination. In *Haney v. Mizell Memorial Hosp.*, 744 F.2d 1467, 1477-78 (11th Cir. 1984), a nurse employed by defendant-hospital was determined to be identified with the party. In *Perkins v. Volkswagen of Am., Inc.*, 596 F.2d 681, 682 (5th Cir. 1979)¹ an employee of a party was identified with the party for the purposes of Rule 611(c)(2). In *Stahl v. Sun Microsystems, Inc.*, 775 F.Supp. 1397, 1398 (D. Colo. 1991), the district court allowed a plaintiff to ask leading questions of defendant's *former* administrative secretary. In *Ellis v. City of Chicago*, 667 F.2d 606, 613 (7th Cir. 1981), a plaintiff was allowed to ask leading questions of police officers who worked closely with defendant police officer. In *United States v. Hicks*, 748 F.2d 854, 859 (4th Cir. 1984), a plaintiff asked leading questions of the defendant's girlfriend. In *United States v. Brown*, 603 F. 2d 1022, 1025-26 (1st Cir. 1979), a prosecutor was allowed to lead

¹ Decisions from the Court of Appeals for the Fifth Circuit preceding October 1, 1981 are binding on the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981).

a witness who was a close friend of the defendant and a participant in the crime.

The above-cited cases make clear that there are any number of ways to be deemed a witness identified with an adverse party.

**NICOLE OULSON IS IDENTIFIED WITH THE STATE OF FLORIDA
UNDER SECTION 90.612(3)**

Here, Nicole Oulson is sufficiently identified with the State of Florida so as to allow her to be questioned with leading formatted questions during direct examination. She is both an alleged victim and widow of an alleged victim. She and her representatives have made statements clearly establishing that she deeply desires the State Attorney's Office to secure a conviction against Mr. Reeves. To that end, she has willingly cooperated with the State Attorney's Office to aid their investigation and prosecution of Mr. Reeves.

In reviewing the case law above, where - for example girlfriends, *Hicks*, 748 F.2d at 859, and former employees, 775 F.Supp. at 1398 - have been deemed sufficiently identified with an adverse party, it is clear that all that is required under the statute are some facts establishing an alignment of interests between the witness and an adverse party under section 60.612(3). The facts and circumstances of this case clearly establish that Nicole Oulson is sufficiently identified with the State of Florida, and that the Defense is entitled to question her with leading questions.

CONCLUSION

Given all of the above, Nicole Oulson is identified with the State of Florida under section 90.612(3). When undersigned counsel(s) call her to the witness stand, it is respectfully requested that the Court grant the Defense permission to ask of her leading questions.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this Motion to Designate Nicole Oulson as a Witness Identified with an Adverse Party Under § 90.612(3), and to Allow the Defense to Question Her with Leading Questions, has been furnished by Hand Delivery to the Office of the State Attorney for the Sixth Judicial Circuit, c/o Glenn Martin, Esq; and by hand-delivery to the Honorable Susan Barthle, 38043 Live Oak Avenue, Courtroom D, Dade City, Florida 33523; this 23rd day of February 2017.

/s/:Richard Escobar

Richard Escobar, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
rescobar@escobarlaw.com
Florida Bar No. 375179
Attorney for Defendant

/s/:Dino M. Michaels

Dino M. Michaels, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
dmichaels@escobarlaw.com
Florida Bar No. 526290
Attorney for Defendant

/s/:Rupak R. Shah

Rupak R. Shah, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
rshah@escobarlaw.com
Florida Bar No. 112171
Attorney for Defendant