

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, STATE OF FLORIDA  
CRIMINAL DIVISION  
Case No.: CRC-1400216FAES

Filed For Record  
Pasco County, Florida  
2022 JAN 31 PM 2:08  
Nikki Alvarez-Sowles  
Clerk & Comptroller  
Pasco County, Florida

STATE OF FLORIDA,

v.

CURTIS J. REEVES

**MOTION TO DESIGNATE DAVID BRYANT AS A WITNESS  
IDENTIFIED WITH AN ADVERSE PARTY UNDER §90.612(3), AND  
TO ALLOW THE STATE TO QUESTION HIM WITH LEADING QUESTIONS**

COMES NOW, BRUCE BARTLETT, State Attorney, in and for Pasco County, Florida by and through the undersigned Assistant State Attorney, and pursuant to Florida Statute § 90.612(3) moves this Honorable Court to designate David Bryant as a witness identified with an adverse party and to allow the State to question him with leading questions, and as good cause would show:

**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 phenomenon, 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. d 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 (5<sup>th</sup> Cir. 1979), 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 defendants' girlfriend. In *United States v. Brown*, 603 F.2d 1022, 1025-26 (1st Cir. 1979), a prosecutor was allowed to lead a witness who was a close friend of the defendant and a participant in the crime. The above-cited cases make clear that there is any number of ways to be deemed a witness identified with an adverse party.

### **DAVID BRYANT IS IDENTIFIED WITH THE STATE OF FLORIDA UNDER SECTION 90.612(3)**

Here, David Bryant is sufficiently identified with the Defendant so as to allow him to be questioned with leading formatted questions during direct examination.

He worked with the Defendant at Tampa Police Department.

On February 1, 2013, he was the range master for the Defendant's LEOSA firearm proficiency test.

His business card was in the Defendant's wallet at the time of his arrest. The logical inference is the Defendant will call him in January 2014 for his annual LEOSA firearm proficiency test.

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 David Bryant is sufficiently identified with the Defendant, and that the State is entitled to question him with leading questions.

This motion consists of the exact language of the motion previously filed by the Defendant to declare Nicole Oulson an adverse witness, which was granted by this Court on January 20, 2022.

### **CONCLUSION**

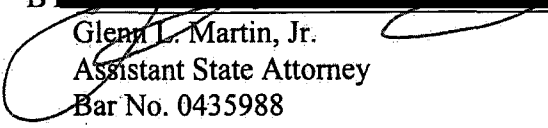
Given all of the above, David Bryant is identified with the Defendant under section 90.612(3). When the State calls him to the witness stand, it is respectfully requested that the Court grant the State permission to ask him leading questions.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the State's Motion To Designate David Bryant As A Witness Identified with An Adverse Party Under §90.612(3), And To Allow The State To Question Him With Leading Questions was furnished to Richard Escobar, Esq., Escobar & Associates, P.A., 2917 West Kennedy Blvd., Ste 100, Tampa, FL 33609, Attorney for the Defendant by U.S. Mail /personal service/email rescobar@escobarlaw.com this 31<sup>st</sup> day of January 2022.

BRUCE BARTLETT, State Attorney  
Sixth Judicial Circuit of Florida

BY 

  
Glenn L. Martin, Jr.  
Assistant State Attorney  
Bar No. 0435988

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