

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

STATE OF FLORIDA,  
Plaintiff,

v.

Case No.: CRC-1400216FAES

Division: 1 (J. Barthle)

CURTIS J. REEVES,  
DEA00683538 Defendant.

**MOTION FOR IN CAMERA REVIEW OF CELLULAR PHONE DATA  
AND ORDER GRANTING FURTHER DISCOVERY  
PURSUANT TO FLA. R. CRIM. P. 3.220(b)(1)(K), (f) AND (m)**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through Undersigned counsel, and requests that the Court conduct an *in camera* review of pre-January 13, 2014 data on Chad Oulson's cellular phone pursuant to Fla. R. Crim. P. 3.220(m) and, if any of said data satisfies the requirements for disclosure, to issue an order allowing further discovery consistent with Fla. R. Crim. P. 3.220(b)(1)(K) and/or (f), and as grounds therefore states as follows:

**INTRODUCTION**

The purpose of this Motion is to request that this Court conduct an *in camera* review of specifically identified data obtained from the cellular phone Chad Oulson was using in the Cobb Grove Theater on January 13, 2014 (Cellular Phone Type: iPhone 5 (GSM); Model No. MD635; Serial No. DNPk2UU5DTTP) ("cellular phone"). This aforementioned data to be reviewed *in camera* are communications between the cellular phone and third-parties that, as explained below, are not subject to any claim of privacy or privilege. *Even if* any such rights existed, both Nicole Oulson and the Estate of Chad Oulson waived them when law enforcement was allowed unfettered access to the cellular phone data. In any event, the data/communications satisfy the materiality

requirements and under the rules of discovery are required to be disclosed to the attorneys for Mr. Reeves.

Said data/communications have not and cannot be disclosed to the attorneys and staff at Escobar & Associates, P.A. pursuant to this Court's February 18, 2016 Stipulated Order Amending Order on Defendant's Motion to Compel Disclosure ("Operative Order"). The Operative Order prohibits the Defenses' digital forensics expert Dr. Michael Antal ("Dr. Antal") from sharing any data that precedes January 13, 2014. *See Operative Order*, ¶ ix ("Dr. Antal shall not disclose any data from on or before January 12, 2014 to any attorney or employee of Escobar & Associates, P.A.")

The Defense and Dr. Antal have fully and thoroughly complied with all of the conditions of the Operative Order. Consistent with the Operative Order, undersigned counsel can represent to the Court that the Defense's digital forensic expert Dr. Michael Antal has verbally stated that there is data on the cellular phone that is potentially material for the purposes of creating an accurate and reliable timeline of the January 13, 2014 usage activity of the cellular phone.

Any cellular phone data that facilitates, helps, and/or enables either party to create a reliable and accurate timeline of the January 13, 2014 cellular phone usage activity is material. The imperative need for the Defense to accurately recreate the cellular phone usage activity from January 13, 2014 therefore compels the granting of this Motion.

Further, although there is a legal basis for the Defense to obtain an order granting full and unfettered access to any and all data on the cellular phone, in the interests of preservation of the time and energies of all of the parties and the Court, at this time the scope of the requested access rights to the cellular phone are voluntarily limited.

## STATEMENT OF FACTS

1. It is uncontroverted that on January 13, 2014 Chad Oulson was using his cellular phone.
2. After the incident in the movie theater, law enforcement officers from the Pasco County Sheriff's Office obtained custody and control of the cellular phone. Said cellular phone has been in the custody of the Pasco County Sheriff's Office since January 13, 2014.
3. Nicole Oulson subsequently gave law enforcement authorization to fully search and access *all of the data* stored on the cellular phone.
4. On May 21, 2015, the Defense filed a Motion to Compel Disclosure requesting, among other things, the data and usage history of the cellular phone. In its May 2015 Motion to Compel Disclosure the Defense contended that Florida Rules of Criminal Procedure 3.220(b)(1)(K) (defendant shall be permitted to inspect, copy, test, and photograph objects that the prosecuting attorney intends to use in the hearing or trial not obtained from the defendant) and 3.220(f) (the court may require other discovery to the parties as justice may require) compelled the granting of access rights to the cellular phone data.
5. On May 26, 2015 attorney T.J. Grimaldi filed a Response to Defendant's Motion to Compel Disclosure and Objection to Hearing Date on behalf of Nicole Oulson. Nicole Oulson contended that because she was both (i) a purported victim of the incident and (ii) the personal representative of the Estate of Chad Oulson, she had standing to request restriction on disclosure of the data on Chad Oulson's cellular phone.
6. Nicole Oulson's Response did not reference the fact that she had allowed law

- enforcement unfettered access to the contents of the cellular phone.
7. This Court has never ruled on the issue of whether Nicole Oulson and/or the Estate of Chad Oulson ha(ve) standing and/or privacy rights to the cellular phone data.
  8. This Court has also never ruled on the issue of whether Nicole Oulson's grant of authority to law enforcement to examine any and all of the cellular phone data constituted a *per se* waiver of any cognizable right of privacy.
  9. Rather, the Court approved a *stipulated* July 13, 2015 Order on Defendant's Motion to Compel Disclosure. This July 2015 Order allowed the Defense to, among other things, copy all of the January 13, 2014 data onto a separate storage device. The Defense would both have possession, care, and control of the separate storage device and take steps to ensure that the contents of said device are not disclosed to any third-parties.
  10. During the course of the Defense's subsequent investigation, it was discovered that the separate storage device did not contain all of the January 13, 2014 data. In order to accurately recreate the January 13, 2014 usage data, the Defense's digital forensic expert required access to all of the data.
  11. This Court subsequently approved the operative Stipulated Order Amending Order on Defendant's Motion to Compel Disclosure on February 18, 2016 ("Operative Order"). The Operative Order allowed the Defense's digital forensic expert Dr. Antal to maintain possession, care, and control of all of the cellular phone data, provided that any pre-January 13, 2014 data is not disclosed to the attorneys and staff of Escobar & Associates, P.A.
  12. After February 18, 2016, Dr. Antal has discovered pre-January 13, 2014 data (in the form of communications either transmitted or received by the cellular phone) that is

useful and/or relevant to establishing:

- i. the identities of the recipients/senders of communications transmitted on January 13, 2014;
- ii. the time of transmission of said January 13, 2014 communications; and/or
- iii. the mode of transmission for each of these referenced January 13, 2014 communications.

### **REQUESTED RELIEF**

13. Given the above and the disclosure restrictions in the Operative Order, the Defense therefore requests that the Court, pursuant to Florida Rule of Criminal Procedure 3.200(m), conduct an *in camera* review of the referenced pre-January 13, 2014 cellular phone data/communications and determine whether any or all of it should be disclosed to Mr. Reeves' attorneys.
14. The Defense proposes that Dr. Antal directly provide to the Court (under seal) printouts of screenshots of the data/communications he identified as being useful to establishing the identity of one or more recipient/sender, the time of transmission, and/or the mode of transmission of the communication(s).
15. The Defense also requests that the Court give both the State and the Defense a meaningful opportunity – in chambers, with a court reporter present - to be heard as to whether any or all of the referenced data/communications provided by Dr. Antal are to be disclosed to Mr. Reeves' attorneys.

## MEMORANDUM OF LAW

The rules of discovery compel the granting of this Motion. Florida Rule of Criminal Procedure 3.220(b)(1)(K) states that:

[T]he prosecutor shall serve a written Discovery Exhibit which shall disclose to the defendant and permit the defendant to inspect, copy, test, and photograph the following information and material within the state's possession or control... any tangible papers or **objects that the prosecuting attorney intends to use in the hearing or trial and that were not obtained from or that did not belong to the defendant.**

Here, the cellular phone is listed in a Notice of Discovery as an object that may be introduced or used at a future hearing or trial. Both the cellular phone and the data stored within it clearly did not belong to Mr. Reeves, and it is therefore subject to disclosure to the Defense.

Additionally, the referenced data/communications satisfy the materiality requirements. Florida Rule of Criminal Procedure 3.220(f) states that “[o]n a showing of materiality, the court may require such other discovery to the parties as justice may require.” In the discovery context “material means reasonably calculated to lead to admissible evidence.” *Siegel v. State*, 68 So.3d 281, 289 (Fla. 4th DCA 2011) (citation omitted).

These aforementioned communications are material because they may be utilized to create a timeline of the January 13, 2014 cellular phone usage activity. The timestamps on cellular phone data are normally reliable and accurate. Given this, establishing the exact times that communications were sent and/or received by the cellular phone user on January 13, 2014 can aid the Defense in demonstrating to the Court – with a high degree of accuracy – when the relevant events in the movie theater truly occurred.

This is a critical issue in the case, as multiple witnesses that were present within the movie theater at the time of the shooting told investigators that they heard Chad Oulson say, shortly before the shooting, that he was using the cellular phone to communicate with his then three (3)

year old daughter. Though the Defense's investigation has led undersigned counsel to believe that Mr. Oulson was not communicating with his daughter, there is a strong basis to believe that the cellular phone was used to transmit multiple messages to one or more third-parties on January 13, 2014. An accurate and reliable usage activity timeline will help determine when exactly Chad Oulson uttered the claim that he was text messaging with his daughter.

Also material to this case are the identities of the individuals with whom Chad Oulson communicated on January 13, 2014. The law acknowledges that communications that reflect an individual's statement of mind or emotions can be admitted at a hearing or trial. *See, e.g.* § 90.803(3)(a), Fla. Stat. (2014). Given that they were among the last people to communicate with the decedent, these referenced individuals may have material and/or admissible testimony to provide as to why Chad Oulson attacked Mr. Reeves.

Consistent with this, the Defense has a reasonable basis to believe that the very content of the last presumed cellular phone communications are probative as to *why* Mr. Oulson violently responded to Mr. Reeves's basic and innocuous request that he stop using the cellular phone. On these alternative bases, the data/communications also satisfy the materiality requirements.

Not only are there multiple bases upon which this Court can grant this Motion, there are also no bars to the requested relief. Nicole Oulson on behalf of herself and the Estate of Chad Oulson waived any and all privacy rights in the cellular phone data. "Before the right to privacy attaches, there must exist a legitimate expectation of privacy." *Nucci v. Target Corp*, 162 So. 3d 146, 153 (Fla. 4th DCA 2015), *citing Winfield v. Div. of Pari-Mutuel Wagering, Dep't of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985). Whether an individual has a legitimate expectation of privacy is determined by considering all of the circumstances, particularly objective manifestations of that expectation. *City of N. Miami v. Kurtz*, 653 So. 2d 1025, 1028 (Fla. 1995). It

is abundantly clear that allowing one party (i.e. the State of Florida) unfettered access to the contents of the cellular phone resulted in the waiver of any legitimate expectation of privacy. For both herself and as the personal representative of the Estate of Chad Oulson, Nicole Oulson has waived any right of privacy to the contents of the cellular phone.

The fact that this Motion is seeking further disclosure of *communications* also weighs against any purported claim of privacy. Florida courts, for example, have held that data either transmitted to third-parties and/or posted on social networking sites have limited to no privacy protections. *See Nucci*, 162 So. 3d at 153-54 (citing cases and examples). Individuals “lose a legitimate expectation of privacy in an e-mail that had already reached its recipient[.]” because an “e-mailer would be analogous to a letter-writer, whose expectation of privacy ordinarily terminates upon delivery of the letter.” *United States v. Lifshitz*, 369 F.3d 173, 190 (2nd Cir. 2004) (citing *Guest v. Leis*, 255 F.3d 325, 333 (6th Cir. 2001)). Likewise, individuals “would logically lack a legitimate expectation of privacy in the materials intended for publication or public posting.” *Id.* Given this, the *communications* contained on the cellular phone could not be exempted from reciprocal discovery - even if Nicole Oulson had rejected law enforcement’s request for full and unfettered access to the data.

Notwithstanding this, the Defense is voluntarily restricting the parameters of the requested scope of access rights to the cellular phone in the interests of preserving judicial resources and the time, energy and funds of the parties. Further, this Motion does not request that the *attorneys and staff* of the law firm of Escobar & Associates, P.A. have unfettered access to the cellular phone data. Rather, at this time the Defense requests the Court to allow our digital forensic expert, Dr. Antal, the opportunity to accumulate and disclose to the defense attorneys the referenced



data/communications in order to create an accurate and reliable timeline of the January 13, 2014 cellular phone usage.

In ruling on this Motion, it is imperative to consider that Defense attorneys have a “professional obligation to investigate critical prosecution evidence,” and their failure to effectively do so can constitute a “breakdown in the adversarial process that our system counts on to produce just results.” *Elmore v. Ozmint*, 661 F.3d 783, 861-862 (4th Cir. 2011) (citing *Strickland v. Washington*, 466 U.S. 668, 696 (1984)). In this respect, the purpose of discovery is quite broad, because:


[T]he very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To insure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense. *State v. Gonsalves*, 661 So.2d 1281, 1282 (Fla. 4th DCA 1995) (citations omitted).

The Defense therefore also submits that “justice requires” that the relief requested herein be granted. Fla. R. Crim. P. 3.220(f).

WHEREFORE, the Defendant, CURTIS J. REEVES, respectfully requests this Honorable Court issue an order amending the February 18, 2016 Stipulated Order Amending Order on Defendant’s Motion to Compel Disclosure and allow the Defense’s digital forensics expert to disclose, to the attorneys and staff at Escobar & Associates, any communications found on the cellular phone that will aid Dr. Antal in creating a timeline of the January 13, 2014 cellular phone usage activity.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and accurate copy of this Motion to for In Camera Review of Contents of Cellular Phone has been furnished by United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758; Honorable Susan Barthle, 38043 Live Oak Avenue, Room 106A, Dade City, Florida 33523; this 8th day of November, 2016.

  
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