

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.: CRC-1400216FAES

v.

Division: 1

CURTIS J. REEVES,
Defendant.

Spn 00683538

**DEFENDANT'S RESPONSE TO STATE'S MOTION TO COMPEL THE PRODUCTION
OF MATERIAL IDENTIFIED BY DR. COHEN DURING HER DEPOSITION THAT
ARE AVAILABLE FOR REVIEW BY THE STATE**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through Undersigned counsel, and responds to the State's Motion to Compel the Production of Material Identified by Dr. Cohen During Her Deposition That Are Available for Review by the State ("State's Motion"), and as grounds therefore states as follows:

The State requests an order from this Court directing the Defense's expert Dr. Donna Cohen to expend time and energy (*at the Defendant's expense*) gathering course material, documents, and other items for the *use and benefit of the State*. The State failed to cite to any legal authority that supports or compels its requested relief¹. The State's omission is to be expected, because the rules of discovery do not authorize a trial court to force one party's expert to do the bidding of the opposing party. *Cf. Northup v. Acken*, 865 So. 2d 1267, 1272 (Fla. 2004).

Defense attorneys have a serious ethical obligation to challenge and rebut the prosecution's evidence. *Elmore v. Ozmint*, 661 F.3d 783, 861-862 (4th Cir. 2011) (citing *Strickland v. Washington*, 466 U.S. 668, 696 (1984)). This ethical obligation often requires the hiring of expert

¹ In its Motion, the State did not cite to any Rule of Criminal Procedure, case law, or other legal authority.

witnesses. *See Hinton v. Alabama*, 134 S. Ct. 1081, 1087 (2014) (“Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence.”) (citation omitted). In Florida, if and when an expert witness is retained by a Defendant, they become members of the “legal staff”. *See Thomas v. State*, 191 So.3d 500, 501 (Fla. 3d DCA 2016).

The fact that an expert is a member of a defendant’s legal staff compels the denial of the State’s Motion. Staff members of a legal team work for the benefit of their clients, and should not be compelled by court order to gather information for the benefit of the opposing party.

The Court should also consider the long-ranging adverse implications of granting the State’s Motion. To illustrate: here, the State requests items that Professor Cohen used during the course of providing instruction to other professionals. If such documents must be provided in this case, then they would be subject to disclosure in future criminal prosecutions as well. Under the State’s reasoning, any expert witness could be compelled to compile teaching materials (for disclosure to the opposing party) that they had utilized at some point in their career. And if curriculum-related items are to be disclosed, then the expert could also be compelled to gather copies of past quizzes, exams and homework assignments, presentations, and other items. Is every expert witness, from this point forward, going to be subjected to the requirement of compiling materials relating to their previous teaching? Consider also that if an expert omits providing one or more course-related materials, then the trial court can reasonably anticipate conducting a *Richardson* hearing based on an alleged discovery violation. This Court should not allow this disturbing, but foreseeable scenario to become a reality.

Here, the State would rather create an onerous litigation burden on the legal system so that they can avoid expending their own investigative resources. The State can obtain the requested items through the same investigative techniques that the Defense has been compelled to employ at

Mr. Reeves' expense. The State, notably, has an order of magnitude greater level of resources than Mr. Reeves, who is a retired law enforcement officer receiving a government pension.

Undersigned counsel also notes that the State has already been provided a copy of Dr. Cohen's contract for services. Further, though under no legal obligation to do so, the Defense voluntarily provided to the State six (6) different journal articles that the Professor had provided to undersigned counsel. It is clear that after voluntarily providing these aforementioned items, the State has opted to request that this Court compel the Defense to continue to provide disclosure of items not otherwise subject to reciprocal discovery.

The State should be obligated to conduct its own investigation to obtain needed items in the case, regardless of whether undersigned counsel and/or this expert witness was previously voluntarily willing to provide them.

WHEREFORE, the Defendant, CURTIS J. REEVES, respectfully requests this Honorable Court to DENY the State's Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery and/or Facsimile to ASA Glenn Martin, Office of the State Attorney, Clearwater, Florida this 26rd day of September 2016.



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