

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. HAYDEN DURING HIS 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. Hayden During His 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. Philip Hayden 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 a list of cases in which Dr. Hayden testified as an expert, including the style of the case and the case number, the date(s) testified or gave a deposition, name of hiring attorney, and the location or the jurisdiction of the case. If such a document must be provided in this case, then in any future criminal prosecution the defense attorney may compel (for example) any listed FDLE expert to prepare and produce a list (at the State’s expense) of each and every case or proceeding in which they testified. FDLE analysts frequently testify at hundreds of depositions, hearings, and trials throughout their career. Is every expert witness, from this point forward, going to be subjected to the requirement of preparing a comprehensive list of all of the cases in which (s)he has testified? Consider also that if an expert, like an FDLE analyst, fails to include a case or proceeding on said list, 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.

Given the above, the Court should:

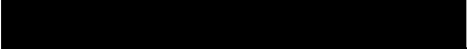
- DENY the State's request for copies of the completion certificates from classes sponsored by the Force of Science Institute and the Americans for Effective Law Enforcement. The rules of discovery do not compel an expert to produce documentary proof that they completed a specific educational program. The rules of discovery do not compel expert witnesses to expend time, energy, and the funds of their client to compile and provide such materials for the use and benefit of the opposing party.
- DENY the State's request for copies of the course material for these aforementioned classes sponsored by the Force of Science Institute and the Americans for Effective Law Enforcement. The rules of discovery do not compel expert witnesses to expend time, energy, and the funds of their client to compile and provide such materials for the use and benefit of the opposing party.
- DENY the State's request for a copy of Dr. Hayden's doctoral thesis. The rules of discovery do not compel expert witnesses to expend time, energy, and the funds of their client to locate and provide such materials for the use and benefit of the opposing party.
- DENY the State's request for copies of two magazine articles that Dr. Hayden published. The rules of discovery do not compel experts to expend time, energy, and the funds of their client to compile and provide their previous publications and writings for the use and benefit of the opposing party.
- DENY the State's request for a list of cases in which Dr. Hayden testified as an expert, including the style of the case and the case number, the date(s) testified or gave a deposition, name of hiring attorney, and the location or the jurisdiction of the case. The rules of discovery do not compel expert witnesses to expend time, energy, and the funds of their client to compile and provide such lists for the use and benefit of an opposing party.
- DENY the State's request for a list of cases in which Dr. Hayden testified as an expert and opined as to whether or not a shooting was justified or reasonable. The rules of discovery do not compel expert witnesses to expend time, energy, and the funds of their client to compile and provide such lists for the use and benefit of an opposing party.
- DENY the State's request for an unsigned fee schedule used by Dr. Hayden. The rules of discovery do not compel expert witnesses to expend time, energy, and the funds of their client to gather and provide such an item for the use and benefit of the opposing party.
- DENY the State's request for a list of materials he reviewed in this case.

Lastly, the Defense voluntarily agreed to provide to the State a signed fee schedule and Dr. Hayden's updated curriculum vitae. Further, the Defense in its October 6, 2015 Second Notice of Reciprocal Discovery voluntarily provided to the State a list of the items Dr. Hayden reviewed in this case. The Defense objects to the disclosure of all of the other items requested by the State. The State should be obligated, just as the Defense has been, to obtain such items through their own investigative efforts regardless of whether this expert witness was voluntarily willing to provide them.

WHEREFORE, the Defendant, CURTIS J. REEVES, respectfully requests this Honorable Court to DENY the State's Motion, and rule that the prosecution's request for a signed fee schedule, Dr. Hayden's curriculum vitae, and a list of items Dr. Hayden reviewed in this case is DENIED because it is moot.

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.


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