

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CRC14-00216CFAES

STATE OF FLORIDA

V.

CURTIS J. REEVES

**MEMORANDUM IN SUPPORT OF
STATE'S MOTION TO COMPEL THE PRODUCTION
OF STATEMENTS IN DEFENDANT'S POSSESSION OF
WITNESSES DEFENDANT LISTE PURSUANT TO RULE 3.220(d)(1)(A)**

COMES NOW, BERNIE McCABE, State Attorney for the Sixth Judicial Circuit in and for Pasco County, Florida, by and through the undersigned Assistant State Attorney, hereby files its memorandum in support of its motion to compel the production of statements in the Defendant's possession or control and argues as follows:

Upon the filing of a notice of discovery, a defendant binds both the State and himself to the discovery process required by the rules. Fla. R. Crim. P. 3.220(a). As part of his discovery obligations,

“a defendant shall serve a written Discovery Exhibit which shall disclose to and permit the prosecutor to inspect, copy, test and photograph the following information and material that is in the defendant's possession or control: (i) the statement of any person listed in subdivision (d)(1)(A), other than that of the defendant; ... and (iii) any tangible papers or objects that the defendant intends to use in the hearing or trial.” Fla. R. Crim. P. 3.220(d)(1)(B)
(Emphases added.)

The term “statement” is defined is defined, in part, in Rule 3.220(b)(1)(B).

“The term “statement” as used herein includes a written statement made by the person and signed or otherwise adopted or approved by the person and also includes any statement of any kind or manner made by the person and written or recorded or summarized in any writing or recording.” (Emphases added.)

Paula S. O'Neill
Clerk & Comptroller
Pasco County, Florida

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The obligation to disclose this information continues as new information is unearthed.
Fla. R. Crim. P. 3.220(j).

The Florida Rules of Criminal Procedure were adopted in 1968; they provided for limited reciprocal discovery (reports, books, papers, documents and objects) that a defendant intended to use at trial along with witnesses a defendant intended to call. In re Fla. Rules Crim. Procedure, 196 So. 2d 124, 151-55 (Fla. 1967). In 1972, the Rules were amended to provide the current list of reciprocal discovery materials that a defendant had to disclose to the State. In re Fla. Rules Crim. Procedure, 272 So. 2d 65, 105-10 (Fla. 1972). This new rule removed the requirement that reciprocal discovery only applied to proof the defendant intended to use at trial. Id. In order to ensure that a defendant who participates in discovery fully reciprocates in the process, a notice of discovery provision was added to the rule. (Emphases added.) In re Amendment to Fla. Rule of Crim. Procedure 3.220 (Discovery), 550 So. 2d 1097, 1098 (Fla. 1989).

In this case, the Defendant elected to participate in reciprocal discovery. The Defendant's reciprocal discovery obligation required that within 15 days of receiving from the prosecutor the Discovery Exhibit (Here, Answer to Defendant's Demand for Discovery) he had to provide the State with a written list of the names and addresses of all witnesses whom the defendant expects to call as witnesses at the trial or hearing. Fla. R. Crim. P. 3.220(d)(1)(A) He failed to do so.

Instead, between January 24, 2014 and September 11, 2015, the defendant participated in the discovery process by taking over 100 depositions of witnesses listed by the State in its Answer to Demand for Discovery. Although the defendant did not file a "Notice of Discovery" as contemplated by Rule 3.220(a), the filing of a Demand for Discovery and the taking of deposition of State witnesses listed in subdivision (b)(1)(A) triggered Defendant's reciprocal discovery obligation. Fla. R. Crim. P. 3.220(a), 3.220(d)(1)(A).

It was not until September 11, 2015, approximately 18 months after he was initially obligated to provide reciprocal discovery to the State, the Defendant filed his Notice of Reciprocal Discovery. Defendant's notice listed "all State witnesses" as witnesses whom the defendant expects to call as witnesses at the trial or hearing. The Defendant also specifically listed by name and addresses 135 "State witnesses" as witnesses he expects to call at the trial or hearing. Fla. R. Crim. P. 3.220(d)(1)(A). Prior to filing his notice, the Defendant took the

deposition of over 100 State Witnesses. Ironically, they were also the specifically identified witnesses listed by the Defendant as persons he expects to call at trial or hearing.

The deposition transcripts, now in Defendant's possession are "statements" within the meaning of the rule. The witness' statement was recorded and transcribed by a court reporter. The witness adopted or approved the transcribed statement by either reviewing the transcript or by waiving the right to review the transcript. To date, the Defendant has failed to allow the State to "inspect, copy, test or photograph" the "statements" of any kind, including deposition transcripts, which is required under Rule 3.220(d)(1)(B)(i).

Participation in the criminal discovery process provides many benefits for defendants. They are provided with liberal rules that grant them multiple categories of documents that are not available under other systems. But once a defendant chooses to participate in the discovery process, the defendant must participate fully - meaning the defendant must participate in reciprocal discovery. Reciprocal discovery requires the production of "the statement of any person listed in subdivision (d)(1)(A)" regardless of whether those documents are going to be used at trial and "any tangible papers or objects that the defendant intends to use in the hearing." Fla. R. Crim. P. 3.220(d)(1)(B)(i) & (iii). The defendant has to produce this information within 15 days of receiving the State's discovery and throughout the pretrial period. Thus, all statements, in any form, including statements in the form of discovery depositions transcribed in this case must be disclosed to the State and permitted to be inspected, copied, tested or photographed by the prosecutor.

In Kidder, the court held the Defendant to his discovery obligation in holding that a defendant who elected to participate in discovery had an obligation to disclose the results of a scientific test (report). Kidder v. State, 117 So.3d 1166, 1174 (Fla. 2nd DCA 2013)

"Ms. Kidder urges this court to interpret rule 3.220(d)(1)(B)(ii) to require disclosure of a scientific test only when a defendant intends to call the expert who conducted the test as a witness. We believe that this interpretation would be contrary to the plain language of the rule. See Scipio v. State, 928 So.2d 1138, 1144 (Fla.2006) ("Because full and fair discovery is essential to these important goals, we have repeatedly emphasized not only compliance with the technical provisions of the discovery rules, but also adherence to the purpose and spirit of those rules in both the criminal and civil context.")" Id. at 1169.

“Based on the plain language of rule 3.220(d)(1)(B)(ii), Ms. Kidder was required to disclose to the State the results of the scientific test Wuesthoff conducted on the blood sample.” *Id.* at 1170. (Emphases added.)

The reasoning in *Kidder* is applicable here. The plain language of rules 3.220(b)(1)(B) and 3.220(d)(1)(B)(i) triggers the Defendant’s obligation to disclose and permit the State to inspect, copy, test, and photograph “statements” of any kind or manner in the Defendant’s possession or control of witnesses that he has listed in subdivision (d)(1)(A). In *Kidder*, the Court explained its ruling by pointing out that

“Subsection (d)(1)(B)(i), by referencing subsection (d)(1)(A), requires a defendant to provide the State with the statements of any person the defendant plans to call as a witness. Subsection (d)(1)(B)(iii) also specifically states that a defendant must provide to the State any tangible papers or objects that the defendant intends to use in a hearing or trial. Conversely, subsection (d)(1)(B)(ii) does not restrict the disclosure of reports of experts to only those experts a defendant plans to call as a witness. We conclude that the rule is clear and unambiguous in requiring a defendant to disclose the results of a scientific test like the one at issue in the present case, regardless of whether the defendant anticipates calling the person who conducted the test as a witness. See *Weston TC LLLP v. CNDP Mktg. Inc.*, 66 So.3d 370, 375 (Fla. 4th DCA 2011) (“When a rule is clear and unambiguous, courts will not look behind the rule’s plain language or *1171 resort to rules of construction to ascertain intent.”) *Id.* at 1170-71. (Emphases added)

The plain language of the rule required the Defendant to permit the prosecutor to inspect, copy, test or photograph the “statements” of any kind or manner of persons he listed pursuant to subdivision (d)(1)(A), regardless of whether those “statements” are going to be used at the trial or hearing.

As pointed out in *Kidder*, citing *Scipio*, to conclude otherwise would be in violation of the technical provisions of the discovery rules and contrary to the purpose and spirit of the rules – full and fair discovery in the criminal context.

The following sanctions are available to the court once a discovery violation is brought to the attention of the court:

- may order the party to comply with the discovery rule or inspection of materials not previously disclosed or produced, ...
- prohibit the party ... introducing in evidence the material not disclosed, or
- enter such other order as it deems just under the circumstances. Fla. R. Crim. P. 3.220(n)(1).

CONCLUSION

The Defendant has a discovery obligation pursuant to Rule 3.220(d)(1)(B) to not only disclose to the State, but permit the State to inspect, copy, test, and photograph “statements” of any kind or manner in the Defendant’s possession or control of witnesses that he has listed in subdivision (d)(1)(A), regardless of whether those “statements” are going to be used at the trial or hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Memorandum in Support of State’s Motion To Compel The Production Statements In Defendant’s Possession of Witnesses Defendant Listed Pursuant to Rule 3.220(d)(1)(A) 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 / Hand / Facsimile this 9th day of September, 2016.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida


Glenn L. Martin, Jr.
Assistant State Attorney