

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

**STATE'S MOTION TO COMPEL THE PRODUCTION
OF STATEMENTS IN DEFENDANT'S POSSESSION OF
WITNESSES DEFENDANT LISTED 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 respectfully request this Honorable Court to enter an order compelling the Defendant to immediately provide to the State copies of statements in his possession or control and as good cause would show:

1. The Defendant elected to participate in Discovery pursuant to Fla. R. Crim. P. 3.220. On January 24, 2014, the Defendant filed his Demand for Discovery. On January 31, 2014 the State charged the Defendant, Curtis Reeves by Information with Second Degree Murder and Aggravated Battery. On February 3, 2014 the State filed its Answer to Defendant's Demand for Discovery disclosing materials, documents and a list of names and address of all persons known to the prosecutor to have information that may be relevant to the crime charged. Fla. R. Crim. P. 3.220(b)(1)(A).
2. 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.
3. 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).
4. 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

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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.

5. The Defendant individually listed by name and addresses 135 State witnesses identified by the State as of September 11, 2015 as “all persons whom the Defendant expects to call as witnesses at the trial or hearing¹. Fla. R. Crim. P. 3.220(d)(1)(A). Reciprocal discovery requires the Defendant to produce:
 - a. the “statement of any person listed in subdivision (d)(1)(A), other than the Defendant”. 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
 - b. “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)(i) & (iii).
6. The Defendant by specifically listing by name and address 135 witnesses he expects to call at the trial or hearing invoked the reciprocal discovery obligation to permit the prosecutor to inspect, copy, test, and photograph:
 - a. “the statement of any person listed in subdivision (d)(1)(A)” Fla. R. Crim. P. 3.220(d)(1)(B)(i) and
 - b. “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)(iii).
7. The defense discovery deposition transcripts are a “statement” of any person listed in subdivision (d)(1)(A), and subject to reciprocal discovery to the prosecution. Fla. R. Crim. P. 3.220(d)(1)(B)(i).
8. The Defendant has a discovery obligation to permit the prosecutor to inspect, copy, test, and photograph the “statements” in the form of defense discovery depositions, regardless of whether those documents are going to be used at trial. Fla. R. Crim. P. 3.220(d)(1)(B)(i).
9. Further, the defense discovery deposition transcripts are “any tangible papers or objects that the defendant intends to use in the hearing.” Fla. R. Crim. P. 3.220(d)(1)(B)(iii). The depositions taken pursuant to Rule 3.220 may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. Fla. R. Crim. P. 3.220(h). Also depositions can be used to refresh the memory of a witness. Ch. 90.613, FSS.

¹ Since the Defendant’s initial notice of discovery, the State has listed an additional 8 State witnesses.

10. The Defendant has failed to allow the State to “inspect, copy, test or photograph the “statements” in any form, including deposition transcripts in his possession or control, which is required by Fla. R. Crim. P. 3.220(d)(1)(B).
11. The Defendant indicated in his second notice of reciprocal discovery that “a copy can be obtained at the cost of \$3.00 a page from Independent Reporting Service ...”. Indicating how the State can obtain the information or material that is subject to reciprocal discovery does not comply with the rule. The State is entitled to “copy” material that is in the Defendant’s possession or control, not in the possession of a third party. Fla. R. Crim. P. 3.220(d)(1)(B). It is the Defendant’s obligation to comply with discovery rules, not the independent third party who provided the material to the Defendant.
12. Further, obtaining a recorded statement in the form of a deposition prior to listing the deponent as a defense witness he expects to call at the trial or hearing **does not** relieve the Defendant from his obligation to provide the State with reciprocal discovery. The Defendant has a continuing duty to disclose additional witnesses or material that he would have been under a duty to disclose or produce at the time of the previous compliance in the same manner as required under the initial discovery rules. Fla. R. Crim. P. 3.220(j). Here, the Defendant has an obligation to provide the State with “statements” of the witnesses he listed pursuant to subdivision (d)(1)(A) and with 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).

WHEREFORE, the State respectfully requests this Honorable Court to enter an order directing the Defendant, through defense counsel, to immediately permit the State to inspect, copy, or photograph the previously undisclosed or produced “statements” in any form, including discovery deposition transcripts in his possession. Fla. R. Crim. P. 3.220(n)(1).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the 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