

1           IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
2           OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY

3

4           STATE OF FLORIDA,

5                           Plaintiff,

6           vs.

Case Number 14-00216CFAES

7           CURTIS REEVES,

8                           Defendant.

9

10          PROCEEDINGS:           Status Conference

11          DATE:                   March 18, 2016

12          BEFORE:                HONORABLE SUSAN BARTHLE  
13                                   Circuit Court Judge  
14                                   Sixth Judicial Circuit  
15                                   Dade City, Florida

16          PLACE:                 Robert D. Sumner Judicial Center  
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APPEARANCES

APPEARING ON BEHALF OF  
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1 PROCEEDINGS

2 THE COURT: All right. Good afternoon,  
3 everybody. We're here on a status check on stand  
4 your ground motion on Curtis Reeves, Case Number  
5 2014-216.

6 What -- who wants to jump in?

7 MR. MARTIN: I'll start it off, Judge.

8 THE COURT: Okay.

9 MR. MARTIN: Judge, at the present time both the  
10 State and the Defense are continuing with our  
11 respective discovery obligations. Reciprocal  
12 discovery is being received and obtained from both  
13 sides. We're in the process of scheduling the  
14 depositions that remain to be taken.

15 We do have depositions set in Virginia in two  
16 weeks and we'll be going to Jacksonville to finish up  
17 another defense expert. Mr. Escobar has listed two  
18 other experts, one in the Jacksonville area, one in  
19 Tampa, that, hopefully, I will be able to take their  
20 depo in April.

21 We did do some additional work at Cobb Theater  
22 in December of last year. Those witnesses have been  
23 listed, the discovery materials out. I anticipate  
24 that by the last two weeks in April that whatever  
25 work I need to be -- I need to have -- done in

1 response to their crime scene reconstructionist  
2 expert, that I'm going to take his depo in  
3 Jacksonville in three weeks, that that work will be  
4 done and those depos will be ready to go. There's  
5 three from Pinellas.

6 We also have an expert regarding the phone on  
7 both sides. Their depos need to be taken. The work,  
8 I believe, has been completed. Of course, the State  
9 is not in receipt of any reports from the Defense and  
10 I don't expect to receive any. So those depos will  
11 have to go forth.

12 What I'm suggesting to the Court is that this  
13 Court continues about every six, seven weeks to  
14 monitor our progress and our efforts. I will assure  
15 the Court that both Mr. Escobar and I are working  
16 hard to get this case before you; however, both of us  
17 also have other cases and -- that are going on at the  
18 same time and we're really struggling --

19 THE COURT: Yeah, I can imagine.

20 MR. MARTIN: -- to get everything done, but this  
21 is a priority.

22 I will alert the Court that -- as I did  
23 before -- that I anticipate some motion practice --

24 THE COURT: Uh-huh.

25 MR. MARTIN: -- after the defense experts are

1 done.

2 As the Court recalls, I did file a motion to  
3 compel, prior to the depositions. You told me to go  
4 take their depositions, and you denied it without prejudice  
5 so during the depositions if I discovered certain items  
6 that I'm entitled to, then I could bring that back  
7 before the Court.

8 I also anticipate, quite possibly, maybe a  
9 *Daubert* hearing on one or two issues dealing with  
10 some of the aspects, but I can't make that  
11 determination until the depositions are done. So we may  
12 need time for that.

13 There will be some motion in limine dealing  
14 with some of the civilian witnesses that the State  
15 plans to run. Hopefully we can get that done during  
16 the month of May.

17 In a brief discussion with the Defense, I  
18 think -- and I'll let Mr. Escobar address this  
19 also -- but if we can set another status check the  
20 first or second week of May, we can advise you of all  
21 the depositions that are done and what we have left. I do  
22 not feel comfortable setting a hearing date yet.  
23 There's no reason to get subpoenas out and do all  
24 that until we know what it is.

25 And so what I'm suggesting is that once we are

1 complete with our investigation, that we can very  
2 quickly set a hearing date in enough time in order to  
3 get subpoenas out and courtroom space and everything  
4 available to go. So that's where we're at as far as  
5 the State is concerned. Getting the depositions done is  
6 our first priority.

7 I also will inform the Court that the Second DCA  
8 dismissed Mr. Escobar's cert regarding the court  
9 order regarding the filing of the depositions. It's  
10 my understanding that as of Monday, 5:00, the Defense  
11 team filed a motion for rehearing. I would  
12 anticipate, within seven to ten days, we will know  
13 whether or not that will be summarily denied or if  
14 the Second DCA is going to require the State to  
15 respond.

16 So at the next status check, we'll know the  
17 status of that particular issue. As soon as that is  
18 resolved, we can discuss getting those depositions  
19 filed. I will be filing a motion for them to be  
20 immediately filed with the -- with the  
21 clerk's office, but I'm attaching all the appropriate  
22 documentation. So we'll probably need some hearing  
23 time for that.

24 Quite possibly, if we can all agree, maybe that  
25 can also just be done by phone and submit it

1           because -- I mean, the Second DCA has denied  
2           everything. Your order stands and there's no other  
3           argument; there's no other recourse remedy for  
4           Mr. Escobar at this time.

5                     So those are the things that are outstanding  
6           that we're working on.

7                     And you have any questions of me, Judge, about  
8           what the State is doing getting ready for this  
9           hearing?

10                    THE COURT: No, Mr. Martin. I have reviewed the  
11           latest notices and I see we do have depositions set out  
12           into June. And I anticipated many of the issues you  
13           addressed, *Daubert* hearing of some sort and the issue  
14           with the Second.

15                    I did see notice that you filed a motion for  
16           rehearing and I believe you're requesting a written  
17           order of some sort.

18                    MR. ESCOBAR: Your Honor -- we are, Your Honor.  
19           We requested a motion for rehearing en banc as well  
20           for a written opinion so that the Supreme Court of  
21           Florida would have jurisdiction to possibly hear that  
22           if I get a written opinion. So that's what we're  
23           hoping for.

24                    THE COURT: Okay. And, quite frankly, I kind of  
25           had hoped we might get a written order of some sort

1           on that, too. But I believe Mr. Martin is correct as  
2           far as any additional hearing. I think that would be  
3           it and my order would stand. There wouldn't be any  
4           more argument on it. So I guess that would have to  
5           be complied with.

6           MR. ESCOBAR: Judge, I think my only other  
7           option at that point in time would be to go to --  
8           because if they deny and don't give me a rehearing,  
9           then, in essence, they're saying that that  
10          administrative order is still a viable order. My  
11          only recourse would be to go before the chief judge  
12          and with the procedures that were outlined in that  
13          order --

14          THE COURT: Oh, that's correct. That's correct.

15          MR. ESCOBAR: -- to try to get relief from that  
16          chief judge. So I just --

17          THE COURT: Okay.

18          MR. ESCOBAR: -- I want everybody to know that  
19          that -- we have contemplated those particular issues  
20          and that would be my last resort. But after that --  
21          you're right, I guess.

22          THE COURT: Okay. Yeah, that's --

23          MR. MARTIN: And, Judge, we have -- we have  
24          fought hard to have that order in effect and  
25          enforced.



1 THE COURT: Uh-huh.

2 MR. MARTIN: And having said that, the State is  
3 not in the position to go forward with the hearing  
4 until we've had an opportunity to have those  
5 depositions filed as appropriate. And quite frankly,  
6 all those -- some of those depositions were provided  
7 to the defense experts and I still don't have the  
8 benefit of those. I have notes and, of course, I  
9 wasn't present, but I am going forward with those  
10 depositions. And, quite frankly, if there's  
11 something that came up in the depo that is -- touches  
12 upon what was said in the witness depositions  
13 reviewed or whatever, I may be retaking some depos.

14 So I think we need to get this resolved. We  
15 need to get those depositions filed with the  
16 clerk's office so that we can go forward with this.

17 MR. ESCOBAR: Judge, if I just may speak on  
18 that --

19 THE COURT: Uh-huh.

20 MR. ESCOBAR: -- because I think it's important.

21 THE COURT: Uh-huh.

22 MR. ESCOBAR: For -- and I say this respectfully  
23 to Mr. Martin: For the prosecution to make the point  
24 that somehow they can't afford to hire a court  
25 reporter that took the depos in this case, and pay

1           for their own depositions, is mind boggling, to be  
2           perfectly honest with you.

3           Certainly, I think that this circuit is the only  
4           circuit that I am aware of that has an administrative  
5           order that, in essence, has the court -- and I'm not  
6           saying, "this Court," but "the circuit court" --  
7           giving an advantage to the prosecution by saying, "by  
8           the way, the Defense has to pay \$100,000 in  
9           deposition costs. But you know what? I'm going to  
10          devise an order that allows you, Prosecutor, to get  
11          it for free." If that is not the circuit providing  
12          an advantage to the prosecution, I don't know what  
13          is.

14          And so, you know, respectfully, what we've done  
15          here is to attack an administrative order that really  
16          is no longer in effect because the entire funding  
17          process has been revamped in this particular circuit.

18          So, you know, I understand his argument, but his  
19          argument really has no weight because if he wanted  
20          those depositions, he could go to Mr. McCabe and say,  
21          "Mr. McCabe, I need those depositions. Give me the  
22          funds in order to pay for them." He's not entitled  
23          to them for free from the Defense.

24          And I don't believe that if the administrative  
25          order was written, I don't believe that the intent --

1 I can't believe that the intent would be -- and I  
2 know Judge Schaffer. I practiced in front of  
3 Judge Schaeffer. I cannot believe that  
4 Judge Schaeffer wanted to give a financial benefit to  
5 the prosecution in any criminal case in this circuit.

6 MR. MARTIN: Judge, we've -- we've ridden this  
7 horse around the block a couple of times. And the  
8 bottom line is, as you know, is the judge is the  
9 owner of the files. And if the circuit in this  
10 circuit wants the depositions in the files, it's your  
11 files. And that's where it's going. What agreement  
12 the State has with the respective clerk's office is  
13 none of Mr. Escobar's business, but the Court's  
14 business if they have a right to have their  
15 depositions in their file, because you are the keeper  
16 of the files for the court.

17 So that's what we have here. His argument is  
18 apples and oranges. It's not on point. But like I  
19 said, this horse has been ridden before and I don't  
20 plan to ride it anymore today.

21 Anything else from the Court for me? I'll be  
22 glad to sit down and let Mr. Escobar talk.

23 THE COURT: I think that's all, Mr. Martin.

24 Mr. Escobar?

25 MR. MARTIN: Thank you, Judge, for your time.

1           MR. ESCOBAR: Judge, I pretty much agree with  
2           Mr. Martin with reference to our status. We have  
3           received just recently about seven new witnesses from  
4           the government. We have about six to seven retakes  
5           that are forensic people that have now gone out and  
6           done some more work. They have digitized the movie  
7           theater and, I believe, a great part of those six or  
8           seven retakes are going to be individuals that  
9           participated in part of that -- of that process.

10           We have depositions scheduled -- and that's our  
11           depositions of their new witnesses that they have  
12           given us -- starting on April the 11th, the 12th,  
13           the 19th, May the 3rd, and June the 8th.

14           I will tell you that on two of those particular  
15           witnesses, one being the FBI that did the analysis of  
16           the video for them, as well as their expert that did  
17           the imaging and downloading of the cell phone, along  
18           with my expert -- they actually -- we had a process  
19           where they did it together in order to make it easy  
20           for both sides so that we would have the same data.

21           I can tell you that I have not received a report  
22           from the government concerning that work and I don't  
23           anticipate because I know that my expert on the phone  
24           has not finished his work either. So I put those two  
25           witnesses towards the end of my depo schedule in

1 hopes that we're going to be getting those reports  
2 way before that.

3 I would suggest to the Court that we set a  
4 status not in May because we still have depositions running  
5 up until June. I would ask the Court to give us a  
6 status immediately after our June 8th deposition so  
7 that we can then tell the Court where we're at, you  
8 know, with our depositions.

9 I can tell the Court -- and I think I've told  
10 the Court this before on numerous occasions -- I've  
11 got a trial that's starting in Knoxville, Tennessee.  
12 It's a federal trial that starts on June the 14th.  
13 Lately, in the last few weeks, we've had some  
14 rumblings that maybe the prosecution's coming closer  
15 to where, you know, we want to be in that particular  
16 case and maybe we could avoid a trial. But if we  
17 can't, that is going to be a two-month trial. It's  
18 got over two terabytes of information. It's a money  
19 laundering and pill mill case that's the largest ever  
20 in the history of Tennessee. And so I will be in  
21 trial for two months if, unfortunately, we have to  
22 try that case.

23 So I think if we can do maybe a status before or  
24 after the 8th, but before the 14th, I'll be able to  
25 give the Court a lot more information as to, you

1 know, where we're at. And then, hopefully, you know,  
2 on that date, you know, we can give the Court some  
3 projections about when to set the stand your ground.

4 I would suggest to the Court, because we've done  
5 this before when Judge Siracusa was on the bench and  
6 we realized the nightmare that, you know, setting  
7 this can cause, whenever we have that last status, we  
8 probably ought to have another status within 30 days  
9 of that status so that we can go out, talk to our  
10 witnesses, talk to our experts, find out when  
11 everybody is going to be ready for that stand your  
12 ground motion, and then come back and set it because  
13 especially -- I can tell you from my experts that are  
14 all over the country, they're traveling a lot. And I  
15 need to give them at least 90 days of notice as to  
16 when we're going to be needing them here so that they  
17 can put that in their calendars. And so I just tell  
18 the Court that so that we can kind of, you know, have  
19 a formula to go -- to go forward.

20 I am -- I am seriously hoping that we can set a  
21 stand your ground in this case for sometime late  
22 September, early October or sometime in October,  
23 period, is what I'm thinking, realistically, we're  
24 looking in.

25 And I spoke to Mr. Martin about that a couple of

1 weeks ago as to what possibly we thought would be a  
2 realistic date. So assuming, you know, that my trial  
3 doesn't go for two months, I think that, you know, we  
4 can really shoot for that.

5 I think that's it. I think we're -- you know,  
6 we're exchanging information; we're doing everything  
7 that we're supposed to be doing, so I think it's  
8 going smoothly.

9 THE COURT: All right. I tend to agree after  
10 reviewing the file. Obviously, I'm not privy to  
11 pretty much the nature of all of these witnesses, but  
12 I am starting to get a little anxious in reviewing  
13 the names and addresses and titles of some of the  
14 witnesses.

15 How long is this stand your ground going to  
16 take?

17 MR. ESCOBAR: Your Honor, I -- I still think  
18 that we can do it within, you know, that five-day  
19 period that we talked about. You know, obviously the  
20 witnesses are going to be scaled down, you know,  
21 considerably --

22 THE COURT: Yeah.

23 MR. ESCOBAR: -- for -- from the Defense point  
24 of view. I would imagine that the same is going to  
25 be for the government's case.

1           I can tell you that there are a great deal of  
2 motions in limine that we're going to be filing  
3 concerning government witnesses that I think if we  
4 prevail, it's going to, you know, shorten their  
5 witness list considerably. So I still think that,  
6 you know, we should be able to do it within that time  
7 frame.

8           THE COURT: All right. Typically -- and I've  
9 done probably -- I don't know -- six or eight stand  
10 your ground motions, maybe more. It's usually, you  
11 know, about the immediate folks involved and that's  
12 about it.

13           In this case I'm sensing we're going to have  
14 discussion of the movie theater construction, all  
15 kinds of geometric discussions and witnesses and  
16 experts in areas that I never would have dreamed  
17 possible.

18           Am I wrong or -- because that's my concern, that  
19 we're -- if we're going to be involved in that kind  
20 of expert testimony, it's been my experience that  
21 those experts really aren't -- I mean, they take a  
22 while.

23           MR. ESCOBAR: Judge, I don't anticipate that.  
24 In fact, you know, our -- my expert that went in  
25 there, into the theater, and did all the



1           measurements, did some very simplistic measurements.  
2           And the digitizing that they did of this movie has  
3           not changed those measurements. So, you know,  
4           ours -- ours is not going to be very difficult as far  
5           as, you know, the presentation of the measurements,  
6           which are going to be important in this particular  
7           case.

8           I can tell you, my video experts are not going  
9           to be complicated witnesses either. I think they  
10          actually have reviewed all of my experts' videos.  
11          And Glen told me last week, "Hey, everything that  
12          your experts, you know, have provided to me, appear  
13          to be, you know, correct." So I don't think we're  
14          going to have a problem with, you know, the video.

15          We're going to have Dr. Hayden, who is a "use of  
16          force" expert. He's going to be a witness that's  
17          going to testify about use of force. So I don't  
18          anticipate -- unless the government, you know,  
19          decides to do some glamor shots in here -- I don't  
20          anticipate that it's going to be all that difficult.  
21          It's going to be, you know, pretty routine witnesses.

22          THE COURT: Okay. You concur, Mr. Martin?

23          MR. MARTIN: I'm afraid not, Judge. You have to  
24          understand that in this particular case, that it is  
25          the -- Mr. Escobar and the Defense burden to prevail

1 in the immunity hearing, which means that I just  
2 can't sit back and be a potted plant. The standard  
3 is low. I basically have to prove that everything  
4 that they're saying is absolutely wrong and I'm  
5 prepared to do that and that's going to take some  
6 time.

7 I have gone through this with a fine-tooth comb.  
8 I am going to be putting on a case just like I was a  
9 prosecutor, and I'm the lead in it, after Mr. Escobar  
10 is done, because that's the only way that this Court  
11 can make an informed decision as to whether or not he  
12 has not met his burden, for me to prove every aspect,  
13 every aspect, that he's touting in front of this  
14 Court is absolutely wrong and. That's what I'm  
15 prepared to do. So I don't agree that five days is  
16 going to get it.

17 THE COURT: Well, at some point I'm going to  
18 need a pretty fair idea and -- and estimate of the  
19 length of time -- you know, we're going to have -- I  
20 guess, obviously, it will have to be done after any  
21 motions in limine are heard so we can know pretty  
22 much exactly how many witnesses we've got and the  
23 gist of their testimony, each one, and, you know, so  
24 we can get a good grip on how long this takes.

25 So it's been a while since I was in the civil

1           division, but I recall many trials with multiple  
2           experts and, boy, they can eat up the clock. So I --  
3           I just want to be prepared. This is going to really  
4           put a hit on my whole calendar for, you know, the  
5           rest of the year, before and after it's going to be  
6           scheduled. So I'd really like to have a good grasp  
7           and I don't want -- I don't want to -- well, I don't  
8           want to waste time; I don't want my time to be for  
9           naught, whatever time I set aside. And I don't want  
10          to have to come back and continue it piecemeal  
11          either. So I really -- that's one of my big goals.  
12          That's why I've really been looking in the file just  
13          to try to get an idea, but there's -- there's just a  
14          humongous number of witnesses right now.

15                 MR. ESCOBAR: Judge, just so you know,  
16          Mr. Martin and I have been talking about some of  
17          those issues. And we have agreed we're going to get  
18          together to get rid of all these chain of custody  
19          issues and -- that really mean nothing in this case.

20                 Him and I have, you know, taken extensive depositions  
21          and we're going to continue to take extensive depositions.  
22          I think we're going to, you know, be able to  
23          streamline some of that --

24                 THE COURT: Okay.

25                 MR. ESCOBAR: -- nonsense that doesn't need to

1 be presented.

2 THE COURT: All right. And I'm sure we'll weed  
3 out a lot of issues in the motions in limine. Even  
4 if we don't weed out any witnesses, I'm sure we'll  
5 get a good earful of -- or at least I will -- of what  
6 we're looking at. So -- all right.

7 How about for a status check -- I have -- I did  
8 see that the last depo I saw a notice of was  
9 June 8th. That is a Wednesday. I have -- I have  
10 court on June 10th. I don't think that's one of my  
11 trial weeks. That's a Friday. If you want to do a  
12 status check at 1:30 that afternoon, I'd be open to  
13 that. Yeah, that's a regular -- regular week,  
14 nontrial week for me.

15 How's that look? It's before your trial and  
16 after the depositions.

17 MR. ESCOBAR: Judge, I'm good. Is it possible  
18 to do it in the morning?

19 THE COURT: I have VOPs in the morning and  
20 they're very cumbersome. Sometimes I run straight  
21 through lunch. Today was a nice day. I got done at  
22 about 11:00. So I could probably do it maybe at  
23 11:30.

24 MR. MARTIN: Judge, could I have just a moment  
25 with Mr. Escobar?

1 THE COURT: Uh-huh, certainly.

2 (Attorney conference.)

3 MR. ESCOBAR: Judge, can we do it at the end of  
4 May?

5 MR. MARTIN: Because you want a morning, right?

6 MR. ESCOBAR: I would love a morning and I would  
7 love not a Friday only because we are working day and  
8 night on this other case. And Friday is a great day  
9 for us to be in the office and really get some stuff  
10 done.

11 THE COURT: I'm out the last week of May, for  
12 vacation, starting the 27th, into the first week of  
13 June, but I have regular -- I think a regular  
14 calendar right up to the 26th.

15 MR. ESCOBAR: Can we do that on the 26th?

16 THE COURT: Let me see. That's a Thursday.  
17 Sure, I think that will be okay. That is -- we can  
18 do it at 11:00 on that day.

19 MR. ESCOBAR: That's perfect.

20 THE COURT: All right. I have private pretrials  
21 on Thursdays. I'm usually done by about that time.  
22 May 26th at 11:00.

23 All right. And as far as any decision by the  
24 Second DCA, again, I would certainly welcome whatever  
25 they have to say, but they've already denied so --

1           MR. MARTIN: If it's just denied, then maybe  
2 Mr. Escobar and I can agree on an order and send you  
3 a cover letter of the proposed orders agreed upon by  
4 the parties and have it make the file.

5           MR. ESCOBAR: Judge, should we not prevail on  
6 these latest motions, I can tell this Court that  
7 within ten days of that order, I will be filing a  
8 motion before the chief judge --

9           THE COURT: Okay.

10          MR. ESCOBAR: -- for consideration. And I'm  
11 sure the chief judge is going to make a decision  
12 relatively soon. I think Mr. Martin and I will be  
13 probably before the chief judge in that regard.

14          THE COURT: I -- I agree. I anticipate that.  
15 And this -- the order does contemplate that so --  
16 that remedy. I'm sure Judge Rondolino will be  
17 thrilled to decide that. So we'll --

18          MR. ESCOBAR: I'm sure he's looking forward to  
19 it.

20          THE COURT: Absolutely. I'm sure he's hoping  
21 the Second will say something, too, but --

22          MR. ESCOBAR: Exactly.

23          THE COURT: All right. Then short of that  
24 issue, we'll reconvene on Thursday, May 26th, at  
25 11:00 a.m.

1                   MR. ESCOBAR: Thank you, Your Honor.

2                   THE COURT: Thank you, everybody.

3 (Proceedings concluded.)

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STATE OF FLORIDA     )  
                                  )  
COUNTY OF PASCO     )

I, Melinda McClain, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

DATED this 10th day of May, 2016.

