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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

v.

Case No.: CRC-1400216FAES

Division: 1

CURTIS J. REEVES, SPN 00683538
Defendant.
_____ /

DEFENDANT'S RESPONSE TO STATE'S MOTION TO ENFORCE THE COURT'S ORDER OF SEPTEMBER 8th, 2015 TO FORTHRIGHT FILE ALL DEFENSE DISCOVERY DEPOSITION TRANSCRIPTS WITH THE PASCO COUNTY CLERK OF COURT

COMES NOW, the Defendant, CURTIS J. REEVES, by and through Undersigned counsels, and responds to the State's Motion to Enforce the Court's Order of September 5th, 2015 to Forthright File All Defense Discovery Deposition Transcripts with the Pasco County Clerk of Court ("State's Motion"), and as grounds therefore states as follows:

On March 18, 2016, this Court specifically held that the Defense may file a motion with the Chief Judge for authorization to not file the deposition transcripts within ten (10) days of any denial of its then-pending motion in the Second District Court of Appeal. On April 29, 2016 – within the time frame specified by this Court – Mr. Reeves filed his Motion to Chief Judge Requesting Authorization to Not File Deposition Transcripts. Mr. Reeves' Motion is currently pending before the Chief Judge.

The State now claims in its Motion that despite this Court's unambiguous March 18, 2016 ruling, Mr. Reeves is legally precluded from pursuing his Motion with the Chief Judge. The State's Motion, however, is predicated on a number of legal errors. The State's Motion should therefore

be denied in its entirety.

First, the State claims that the interrelated law of the case doctrine and principle of res judicata applies to dismissals of petitions for a writ of certiorari. The State is wrong. "**A simple denial of certiorari without opinion is not an affirmance and does not establish the law of the case.**" *Don Mott Agency, Inc. v. Harrison*, 362 So. 2d 56, 58 (Fla. 2d DCA 1978) (emphasis added).

The law of the case doctrine holds that "questions of law actually decided on **appeal** must govern the case in the same court and the trial court, through all subsequent stages of the proceedings." *State v. McBride*, 848 So. 2d 287, 289 (Fla. 2003) (also quoted in the State's Motion (emphasis added). A petition requesting a writ of certiorari, however, is not an "appeal".

The distinction between an appeal and a certiorari petition is clearly established. "District Courts of Appeal in Florida have jurisdiction to review certain nonfinal orders of trial courts by *appeal* and, at the same time, to review other non-final orders by separate *certiorari* jurisdiction." *Bared & Co., Inc. v. McGuire*, 670 So. 2d 153, 155 (Fla. 3d DCA 1996) (emphasis in original). The Rules of Appellate Procedure also delineate the differences between the two. *Compare* Fla. R. App. P. 9.030(b)(1)(A)-(C) (three grounds of mandatory "[a]ppeal jurisdiction" of the district courts of appeal) *with* Fla. R. App. P. 9.030(b)(2) (two grounds of discretionary "[c]ertiorari jurisdiction" of the district courts of appeal).

In explaining the critical distinctions between appeal and certiorari jurisdiction, the *McGuire* Court noted that "[t]he drafters of the [R]ules [of Appellate Procedure] explained the policy behind this dual jurisdiction as follows:

> The advisory committee was aware that the common law writ of certiorari is available at any time and did not intend to abolish that writ. However, because that writ provides a remedy only if the petitioner meets the heavy burden of showing that a clear departure from the essential requirements of law has resulted in

> otherwise *irreparable* harm, *it is extremely rare that erroneous interlocutory rulings can be corrected by resort to common law certiorari.* It is anticipated that *because the most urgent interlocutory orders are appealable under this rule, there will be very few cases in which common law certiorari will provide relief.*" *McGuire*, at 155 (emphasis in original).

The fact that certiorari review is discretionary therefore precludes the application of the principle of res judicata. As the Second District held, "[a] simple denial of certiorari without opinion is not an affirmance and does not establish the law of the case… [and] [s]uch a denial **cannot** be construed as passing upon any of the issues in the litigation . . . and would not be res judicata as to the issues raised in the petition for certiorari." *Harrison*, 362 So. 2d at 58 (citations and quotations omitted) (emphasis added).

For these reasons, the extensive (but clearly erroneous) legal arguments in the State's Motion regarding the law of the case doctrine and the preclusive effect of a ruling on the merits have no relevancy or applicability to this proceeding. *State's Motion*, at 2-4. Mr. Reeves has every legal right to pursue and litigate his pending Motion to Chief Judge Requesting Authorization to Not File Deposition Transcripts.

Second, the State inexplicably claims that Mr. Reeves "waive[d] his ability to seek an exemption from the Chief Judge of the circuit and seek the exemption from the trial court by arguing that said administrative order does not apply to him." *State's Motion*, at 4. Again, the State is wrong.

As noted above, this Court already held on March 18, 2016 that the Defense could file its (now pending) Motion with the Chief Judge within the above-referenced time period. In its Motion, the State neglected to mention, much less rebut, this crucial fact. And to borrow from the State's arguments, the law of *this* case is that this Court already ruled that Mr. Reeves has a right to request relief from the Chief Judge.

Further, *Tucker v. State*, 417 So. 2d 1006, 1009 (Fla. 3d DCA 1982) and *Bundy v. State*, 455 So. 2d 330, 339 (Fla. 1984), to which the State cited in its Motion, do not support the prosecution's claim that Mr. Reeves waived his right to request relief from the Chief Judge. Rather, these two cases pertain to the contemporaneous objection requirement for appellate review. *See, e.g. Daniels v. State*, 121 So. 3d 409, 417 (Fla. 2013) (""The salient purpose of the rule of contemporaneous objection is to place the trial judge on notice that error may have been committed and [to] provide the court with an opportunity to correct the error at that time.")

In *Tucker*, the Florida Supreme Court held that a defendant waives appellate review if he fails to make a timely objection in the trial court that his indictment was defective because it failed to properly allege venue. *Tucker*, at 1009. Similarly, in *Bundy* the defendant filed a motion to change venue - which was granted - but then following his conviction complained to the Florida Supreme Court that he was never tried in the jurisdiction where the crimes occurred. The Supreme Court held that he was not entitled to appellate relief, as he "did not raise this issue in the court below [and] never invoked his right to be tried in the county where the crimes were committed." *Id*. at 339.

As this Court is well aware, it is a *trial* court, not an appellate one. *Tucker* and *Bundy* therefore have no bearing on the issues before this Court.

Lastly, the irony of the State's position is stunning. The State had previously contended that the Administrative Order applies to Mr. Reeves. Under the State's contradictory reasoning, it therefore waived its right to claim that Mr. Reeves cannot invoke Section (B)(1) of the Administrative Order and request authorization from the Chief Judge to not file deposition transcripts. The State should not be allowed to have it both ways.

It is clear that the State's contentions regarding waiver are also without merit and should be

rejected by this trial Court.

CONCLUSION

Given this Court's March 18, 2016 ruling, the inapplicability of the law of the case doctrine, and the absence of any meritorious legal or factual reason that Mr. Reeves waived his right to request relief from the Chief Judge, the State's Motion should be denied in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this Defendant's Response to State's Motion to Enforce the Court's Order of September 8th, 2015 to Forthright File All Defense Discovery Deposition Transcripts with the Pasco County Clerk of Court has been furnished by United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758; Honorable Susan Barthle, 38043 Live Oak Avenue, Room 106A, Dade City, Florida 33523; Honorable Anthony Rondolino (Chief Judge), 545 First Avenue North, Room 400, St. Petersburg, FL 33701; this 6th day of May, 2016.

[redacted]
Richard Escobar, Esq.
FBN: 375179
Escobar & Associates, P.A.
2917 West Kennedy Blvd.
Tampa, Florida 33609
(813) 875-5100 (office)
(813) 877-6590 (Facsimile)
rescobar@escobarlaw.com

[redacted]
Rupak R. Shah, Esq.
FBN: 0112171
Escobar & Associates, P.A
2917 West Kennedy Blvd.
Tampa, Florida 33609
(813) 875-5100 (office)
(813) 877-6590 (Facsimile)
rshah@escobarlaw.com