

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

**Authority In Support of State's
Motion To Compel Additional Discovery**

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 files this list of Authority In Support of State's Motion To Compel Additional Discovery of facts and data from defense experts in the above-styled cause:

The State may rely on the following case law in support of its position:

Kidder v. State, 117 So.3d 1166 (Fla. 2nd DCA 2013)

Bailey v. State, 100 So.3d 213 (Fla. 3rd DCA 2012)

State v. Clark, 644 So.2d 556 (Fla. 2nd DCA 1994)

Additionally, in support of its request for the defense to provide to the State copies of all depositions that were provided to defense experts, the State adopts the below argument as set forth in the State's response to Petition For Writ of Certiorari regarding the filing of defense discovery depositions.

**The Defense has no Standing to Challenge the Prosecutor's
Motives:**

Some of the defense's arguments both here and below were dedicated to accusing the prosecutor of attempting to save money by forcing the defense to file transcripts so the State would not have to order their own. As the prosecutor pointed out, they have no standing to challenge what might happen after filing. The rule only compels filing the deposition with the clerk. The rule neither allows nor prohibits what an individual prosecutor might request

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from the clerk at a later time. Whether the law requires the prosecutor to pay for their own copy of a deposition, or whether they can acquire one other ways, is immaterial to the issue at hand. Further, this would not create a miscarriage of justice *to the defense* and is thus a red herring.

The administrative order in this case simply requires the transcript to be filed with the clerk. In short, Defendant has no standing to complain about whether the State is trying to save money. The law does not prohibit the prosecutor from seeking copies from the clerk, if this actually what they plan to do. Whether that seems “fair” is not relevant to this discussion of certiorari.

As an academic matter, this court should be aware that in Florida there is no law granting court reporters copyrights over their transcripts, nor is there any rule requiring all parties to acquire their own “paid for” copies of depositions. The two articles cited below explain that deposition transcripts are not copyrightable. This is why court reporters charge a higher fee for the initial transcription (first copy) and they also charge a fee for attending the deposition. Court reporters know they must cover their costs up-front and cannot anticipate future copy fees, because they have no right to them.

A Florida Bar article has noted that attorneys sometimes photocopy and disseminate depositions after purchasing them. “This is the same as an agreement to share depositions to reduce the costs of litigation. **Court reporters frown upon the practice but there is nothing in the rules which holds to the contrary.** In other words, once a deposition is purchased, an attorney is free to disseminate it at will. Unlike a case involving copyrighted materials, no one would ever suggest that a witness’s statement can be ‘patented.’” See “Deposition Potpourri or Helpful Hints to Avoid Deposition Fatigue,” by Steven G. Mason and William J. Sheaffer, *The Florida Bar Journal*, June 2001, *available at* https://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/e900996aa4e86f8385256b110068f704!OpenDocument&Highlight=0,* (last accessed Oct. 17, 2015).

For an additional article noting that transcripts are not copyrightable and that court reporters must seek other remedies for unsanctioned copying of transcripts, either by lobbying the legislature or by simply devising fair up-front compensation for the work they do, see also “Who owns the Transcript?” by Mona Savino, *Journal of Court Reporting*, March 2003 Issue, *available at*

<https://www.ncra.org/files/MCMS/D41C50BD-7F4D-4F9A-A89B-A7D59B9372CA.pdf> (last accessed Oct. 17, 2015).

The defense has no standing to complain on behalf of a court reporter who might prefer the prosecutor to order official copies. A court reporter's preference does not support a manifest injustice to the *Defendant's* right to achieve a fair trial, nor would this be a departure from the essential requirements of law. Similarly, Petitioner has no standing to claim that the potential disclosure of the depositions to the public violates the "privacy interests" of the individual witnesses who were deposed, an argument he also did not make below. (See Petition, p.23).

It is also worth noting that the administrative order operates both ways, and thus it requires the prosecutor to file any original transcripts in this case, if they order and pay for one. There may be numerous defense witnesses in this case, and it will be the prosecutor who ends up deposing any defense witnesses or experts. Thus, any State-ordered original deposition transcripts of defense witnesses will also have to be filed by the prosecutor. The rule applies equally to all, so the prosecutor was not abusing it.

Petitioner did not Exhaust his Remedies Below:

The administrative order also allows Defendant to make a request to the chief judge to ask to exempt himself from the requirement. Because Defendant did not even attempt to exercise this remedy, he has not exhausted his remedies below and he cannot say there was a miscarriage of justice that only certiorari can correct. Indeed, even if this court denies certiorari, it appears this remedy would still be available to him under the rule. The existence of some other present and adequate remedy may prevent injury from being legally irreparable and thereby preclude common law certiorari. *Hawaiian Inn of Daytona Beach Inc. v. Snead Const. Corp.*, 393 So. 2d 1201, 1202 (Fla. 5th DCA 1981).

As noted above, the above argument was made by the State in its response to petitioner's writ of certiorari regarding the filing of depositions with the clerk of court pursuant to Adm. Order. 99-35. The State anticipates during the hearing regarding State's motion to compel additional discovery defense counsel will make similar arguments and objections as he did in his objection to the filing of defense depositions, therefore the State adopts the above-argument in support of its request for defense counsel to provide the State with copies of all depositions defense provided to the defense experts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Authority In Support Of State's Motion To Compel Additional Discovery 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 11th day of October, 2015.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

