

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

STATE OF FLORIDA,
Plaintiff,

Case No.: CRC-1400216FAES

v.

Division: 1

CURTIS J. REEVES,
Defendant.

Spn 00683538

**RESPONSE TO STATE’S MOTION TO STRIKE PARAGRAPH 1.A. OF DEFENDANT’S
NOTICE OF RECIPROCAL DISCOVERY**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through Undersigned counsel, and responds to the State’s Motion to Strike Paragraph 1.A. of Defendant’s Notice of Reciprocal Discovery (“State’s Motion”), and as grounds therefore states as follows:

1. In the State’s Motion, the prosecution seeks to strike Paragraph 1.A. of the September 11, 2015 Defendant’s Notice of Reciprocal Discovery.
2. The State complains that in the September 11, 2015 Defendant’s Notice of Reciprocal Discovery “Defense counsel[] listed by name and address all 135 State’s witnesses.” (emphasis added).
3. As the Court is well aware, the prosecution had listed a whopping 135 individuals as Category A witnesses. Many of these witnesses are law enforcement officers. The exceptionally large number of listed Category A witnesses is the primary reason that the Defense has spent nearly two years conducting dozens of depositions of prosecution witnesses.
4. The State contends that “[i]n good faith, the Defendant can not [sic] ‘expect’ to call every witness listed on the State’s witness list.” In support of this allegation, the State cites to

Dufour v. State, 495 Sp. 2d 154, 162 (Fla. 1986).

5. The State does not make any particularized or specific allegation that the Defense has acted in bad faith.
6. The State's Motion is without merit, and should be denied.

MEMORANDUM OF LAW

The Rules of Criminal Procedure make clear that if a defendant, like Mr. Reeves, participates in reciprocal discovery “the defendant shall furnish to the prosecutor 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). Mr. Reeves, in good faith, complied with this rule of criminal procedure despite the fact that the State continues performing their investigation and the Defense has not completed their depositions of crucial prosecution witnesses (including expert witnesses).

The State apparently is upset or purportedly aggrieved that the witnesses that they claim possess material information relevant to the case, *see* Fla. R. Crim. P. 3.220(b)(A)(i), cannot under any conceivable circumstances be used by the Defense at a hearing or trial. In support of its tenuous contention, the State erroneously claims the holding of *Dufour v. State*, 495 So. 2d 154 (Fla. 1986) is that a defendant can never list the prosecution's entire list of witnesses as their own. This is an unambiguously incorrect interpretation of *Dufour*.

Dufour involved a serial killer listing his ex-paramour as a witness despite the fact that she only had incriminating testimony to provide. *Dufour*, at 156-157. All of this incriminating testimony was direct evidence of guilt. *Id.* The Florida Supreme Court held that the record makes clear that there were no set of circumstances where *Dufour*'s counsel would have called the ex-paramour to the stand because she only had incriminating testimony to offer. *Id.*, at 156-163.

Accordingly, the *Dufour* court ruled that under the facts of that case the defense attorney did not list the ex-paramour as a witness in good faith.

The State did not - and cannot - allege in good faith that any of the witnesses in this case are similarly situated to the ex-paramour in *Dufour*. Each and every witness listed by the prosecution has potentially useful information that the Defense can use to either negate Mr. Reeves' guilt or to otherwise challenge the State's evidence.

Further, given the circumstances of this case, the State is exhibiting a rare and unique level of temerity by alleging that it is the Defense that is acting in bad faith. It was the State that decided to list the 135 individuals as category A witnesses. This led defense counsel to go through the costly, time-consuming, and incredibly onerous process of deposing (nearly) all of the 135 witnesses to date.

It is noteworthy that since most of the witnesses are law enforcement officers, the State will presumably be able to secure their full cooperation without any court order or subpoena. Furthermore, there is no prohibition on either an agent for the State or a member of the Defense team from contacting a witness to seek information.

As undersigned counsel receives the deposition transcripts and summarizes the same, there may be occasions where certain individuals will be eliminated as cumulative witnesses. This determination cannot responsibly or reasonably be made today. This is because the State's investigation is on-going and the Defense continues to receive additional discovery.

For example, the State recently advised the Defense that lead Detective Proctor and Detective Smith have resumed their investigation into this case. The State in September 2015 obtained a court order to enter the premises of the movie theater where the underlying incident occurred to conduct some sort of experiments or tests. The prosecution recently further noticed the Defense of a yet-to-be named Federal Bureau of Investigation expert that will be performing an

unidentified forensic video analysis of the movie theater surveillance system footage. To date, the Defense has not received any such forensic video analysis.

Similarly, the Defense has started, but not yet completed, the deposition of the State's previously identified forensic video expert Agent Weyland. On the day of his originally scheduled deposition, Agent Weyland handed to the Defense videos the prosecution was previously required to give to the Defendant under Rule 3.220(b). The deposition could therefore not be completed, as the Defense needed to review and examine said videos. At this time, Agent Weyland is not available for completion of the deposition due to a reported illness.

Given the above, the State's Motion should be denied.

WHEREFORE, the Defendant, CURTIS J. REEVES, respectfully requests this Honorable Court to DENY the State's Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery/Facsimile to the Office of the State Attorney, Dade City, Florida this 22nd day of October, 2015.



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