

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 ADDITIONAL
DISCOVERY RELATING TO DEFENSE EXPERT BRUCE E. KOENIG**

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 the below-identified material and as good cause would show:

1. On September 11, 2015 the Defendant filed his Notice of Reciprocal Discovery listing in paragraph B. expert witnesses he expects to call, including Bruce E. Koenig. Fla. R. Crim. P. 3.220(d)(1)(A). The notice failed to identify a report or a statement by Bruce E. Koenig. The notice also failed to identify the results of physical or mental examinations and of scientific tests, experiments, or comparisons. Fla. R. Crim. P. 3.220(d)(1)(B)(ii). Further, the notice failed to identify any tangible papers or objects the defendant intends to use in any hearing or trial. Fla. R. Crim. P. 3.220(d)(1)(B)(iii).
2. As has become the practice in Florida since Kidder v. State, 117 So.3d 1166 (Fla. 2nd DCA 2013), criminal defense attorneys are frequently asking defense expert witnesses not to complete reports. The State does not anticipate a report or statement from Bruce E. Koenig. The fact that no "report" will be forthcoming from him does not relieve the Defendant from providing the results of any physical or mental examinations and of any scientific test, experiments, or comparisons that would normally be summarized in his "report".
3. Through the discovery process, the Defendant has obtained a copy of the Cobb Theater DVR hard drives that contained digital surveillance video of the shooting of Chad Oulson inside Theater #10. Adam Sharp, E-Hounds, Computer Evidence Retrieval, was employed by the Defendant to make a copy of the DVR hard drives containing the surveillance video of the shooting of Chad Oulson. The Defendant also obtained a copy of the surveillance video that was downloaded onto a flash drive on January 14, 2014 by a Cobb Theater computer specialist employee and provided to law enforcement. The State reasonable believes that the Defendant has provided the copy of the DVR hard drives made by Adam Sharp of E-Hounds and possible the flash drive to Bek Tek, LLC,

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Forensic Audio/Image Specialists.

4. The State reasonable believes that one issue that will be material to the admission of the surveillance video is whether the surveillance video is an authentic, continues, unaltered video.
5. The Defendant obtained a court order to enter Cobb Theater to conduct his own examination of the crime scene. The State reasonable believes that Bruce E. Koenig or another representative from Bek Tek was present along with Michael Knox, Knox & Associates, Forensic Consulting or another representative from Knox & Associates and Dr. Philip Hayden. The State reasonable believes that the purpose was to conduct an on-site evaluation to record visual information of the theater, including the evaluation of equipment that cannot be removed from the theater (Infra-red cameras & DVRs). The State also reasonable believes that photographs, measurements, notes, sketches and videos were made and will be used by these experts to support their opinions or to create demonstrative aids the experts will use to explain their testimony to the court or to the jury.
6. The State anticipates Bruce E. Koenig, Senior Forensic Examiner of Bek Tek will be called by the Defendant as an expert in forensic analysis of video recordings. Prior to his testimony at any future hearing or trial in the above-styled cause, the State desires to take his deposition in order to learn the opinion(s) he is prepared to offer in support of the defense of the defendant and to determine if a Daubert hearing is necessary. The below-described material is necessary for the State to make a preliminary assessment of whether the reasoning and/or the methodology underlying his testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in this case. As a Video Forensic expert, he will certainly rely on various documents, results of examinations, scientific tests, experiments and comparisons he generated to support his opinion(s). Such documents would not contain legal research, opinions, theories or conclusions of the defense attorney or members of his legal staff, but the expert's specific findings or observations he obtained in formulating his ultimate opinion.
7. On a showing of materiality, the court may require such other discovery to the parties as justice may require. Fla. R. Crim. P. 3.220(f).
8. In this case, the forensic analysis of the hard drives from the DVRs at Cobb Theater will involve the use of scientific principles and methods. The validity of the underlying principles and methodology underlying the expert's testimony is for the court to determine prior to the admission of the expert's testimony. The below-described materials are material in determining whether the expert used valid principles and methods and had sufficient facts and data in arriving at his opinions or in the tangible items that he created for the Defendant.
9. Justice requires that the below-described material be provided to the State by the Defendant prior to the taking of the discovery deposition of defense expert Bruce E. Koenig.

- a. Current C.V. for Bruce E. Koenig and all other Bek Tek personnel who in any way provided any services of any kind regarding the work requested by the Defendant.
- b. Bek Tek Company Standard Operating Procedure manual – relating to work performed at the Defendant’s request, to include but not limited to SOP or best practice regarding:
 - i. Enhancements - lighter, contrast, brightness, pixel smoothing, averaging of frames
 - ii. Computer evaluations which can identify alterations and duplication processes. Computer process used to determine if the video is original, continuous and unaltered.
 - iii. Duplication process allow for copying of unique and specialized media to standard formats
 - iv. Procedures that produce video clips of interest in a designated display sequence, to include but not limited to transitions, looping, slow motion, zoom, magnification, and titling, digital procedures to improve the quality of the video image, including magnification, de-convolution, filtering, masking, zoo, slow motion, looping and gamma changes
 - v. Procedure for identifying, separating and adjusting the speed of the images from different cameras that were recorded the event in question resulting in a video that can be viewed as either real-time or as still images.
 - vi. Procedure that center, remove/reduce motion effects, and average multiple fields/frames of moving objects in video recordings that are difficult to discern due to time-lapse recording
- c. List of all software and respective versions used in performing any work or analysis, specifically used to determine that each event file is original, continuous and unaltered
- d. All material, including but not limited to reports, photographs, letters, correspondence, emails, submissions, sketches, diagrams, videos, crime scene mapping Bruce Koenig received from Adam Sharp, E-Hounds (Copied DVR hard drives), Michael Knox, Knox & Associates (Forensic Consulting) and/or Dr. Philip Hayden (Use of Force expert)
- e. All material, including but not limited to reports, photographs, videos, letters, correspondence, emails, submissions, sketches, diagrams Bruce Koenig sent to Adam Sharp, E-Hounds (Copied DVR hard drives), Michael Knox, Knox & Associates (Forensic Consulting) and/or Dr. Philip Hayden (Use of Force expert)
- f. All bench notes made, created contemporaneous with the performance of the analysis, to include but not limited to:
 - i. Lead in notes, listing: Date received; ID of item received – subject to analysis; Source of item; initial review of item – model, SN; Description –

what item purported to be, condition of item when received, chain of custody within company

- ii. Initial examination – number of frames within each event file, number of frames between compressed version and non-compressed version of each event file; date of analysis, description of analysis performed; person who performed analysis, hardware used; software used; calibration of hardware; documenting method used to determine if the video is original, continuous and unaltered
 - iii. Software log – changes as result of using software (non-destructive), action took with software, overlays determined or made; results / findings of analysis; what changes made during process; what frames altered or changed or modified by process; changes involving enhancements such as lighter, contrast, brightness, pixel smoothing, averaging of frames; changes by the process that center, remove/reduce motion effects, and average multiple fields/frames of moving objects in video recordings that are difficult to discern due to time-lapse recording; changes or modifications to improve the quality of the video image, including magnification, de-convolution, filtering, masking, zoo, slow motion, looping and gamma changes
 - iv. Demonstrative aids created - with data obtained from analysis
- g. All still frames created from event video files
- h. All still frames, video sequels or individual event files that were highlighted, zoomed, or slowed
10. Further, in order to be able to take a meaningful, economical discovery deposition of Bruce E. Koenig, the State is requesting the Defendant to provide to the State any tangible papers or objects that the defendant intends to use at any hearing or trial, including but not limited to the above-described items the State reasonably believes is specific and unique to defense expert Bruce E. Koenig. Fla. R. Crim. P. 3.220 (d)(1)(B).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the *State's Motion To Compel Additional Discovery Relating to Defense Expert Bruce E. Koenig* 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 10th day of October, 2015.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

