

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 14-216CFAES

7 CURTIS REEVES,
8 Defendant.

9 SPN 00683538 /

10 PROCEEDINGS: Motion to Stay

11 DATE: September 22, 2015

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

15 PLACE: Robert D. Sumner Judicial Center
16 38053 Live Oak Avenue
Dade City, FL 33525

17 REPORTER: Melinda McClain
18 Registered Professional Reporter
Notary Public
State of Florida at Large

19
20 Office of Court Administration
Court Reporting Department
21 Robert D. Sumner Judicial Center
38053 Live Oak Avenue
22 Dade City, FL 33525
Telephone: (352) 521-4375 Fax: (352) 521-4118
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APPEARANCES

APPEARING ON BEHALF OF
THE STATE OF FLORIDA:

Manuel Garcia, Chief Assistant State Attorney
Stacey Sumner, Assistant State Attorney
Glen Martin, Assistant State Attorney
Office of Bernie McCabe, State Attorney
Sixth Judicial Circuit, Pasco County
38053 Live Oak Avenue
Dade City, Florida 33525

APPEARING ON BEHALF OF
THE DEFENDANT CURTIS REEVES:
Richard Escobar, Esquire
Escobar, Ramirez and Associates
2917 W. Kennedy Boulevard
Tampa, Florida 33609

1 PROCEEDINGS

2 THE COURT: All right. We are here on
3 State of Florida versus Curtis Reeves, defendant's
4 emergency motion to stay order.

5 MR. ESCOBAR: Your Honor, did the Court get my
6 reply as well?

7 THE COURT: I did. I did, but you see where
8 I've been, so I have -- I got the State's response
9 last night, yesterday afternoon, and I haven't --
10 I've glanced at both of them.

11 MR. ESCOBAR: Okay.

12 THE COURT: So --

13 MR. ESCOBAR: Judge, this is -- this is a issue
14 that I think I had advised the Court before that we
15 intended to, if the Court were to grant the State's
16 motion, that we intended to go up to the Second
17 District on a petition for a writ of certiorari. I
18 can tell the Court I have it here. You can review
19 it.

20 I can tell the Court I have it here. You can
21 review it. The petition for writ of certiorari is
22 completed with the exception of this hearing.

23 In my motion, I outlined for the Court the
24 likelihood of success by the Defense. And our
25 position has been very clear from the very beginning.

1 This administrative order was enacted in 1999. When
2 this administrative order was enacted in 1999, the
3 previous constitutional law that governed the payment
4 of money was quite different than in 2004 when things
5 changed. And before 2004, the judicial
6 administration of criminal justice was largely funded
7 by the county, not by the state.

8 So when this administrative order was signed by
9 the chief judge, this administrative order dealt with
10 the controlling of public lawyers, lawyers that were
11 publicly funded, to control their expenditure of
12 county funds.

13 The minute that the 2004 Constitutional
14 amendment was granted and became effective, which was
15 2004, that changed because now it was state funds
16 that were providing all of the funds for every aspect
17 of the criminal justice system with the exception of
18 buildings, I believe computer systems, telephone
19 systems. There was -- the Constitutional amendment
20 actually defines those minor areas that the county is
21 responsible for. Depositions is not one of them.

22 And so Mister -- the prosecution's argument that
23 somehow this administrative order is still valid is
24 without merit because of the fact, because of the
25 very simple fact that that administrative order can

1 no longer be used by Pinellas or Pasco because now
2 everything goes through JAC. And JAC has their own
3 procedures that have been enacted by the legislature.

4 And so for Mr. Martin to say today and
5 Mr. Garcia to say today that, you know, somehow this
6 administrative order is valid and enforceable against
7 private lawyers beyond its statutory interpretation
8 is without merit. So the likelihood of the Defense
9 success in a petition for writ of certiorari to the
10 Second District, I think, is quite high. This is an
11 issue that I think has to be decided by the appellate
12 courts because that I know of, Pinellas and Pasco is
13 the only county or counties that have taken this
14 position that private lawyers have to file
15 depositions in the entire state of Florida.

16 And so what they're trying to do -- and I don't
17 believe that the Chief Judge's intent when she issued
18 this administrative order, I can't believe -- I've
19 practiced in front of Judge Schaffer. I know for
20 certain in my heart that at no point in time did she
21 sign this administrative order wanting to give the
22 State Attorney's Office some financial benefit that
23 the Defense did not have. That was not the intent of
24 Judge Schaffer in signing this administrative order.

25 But I will tell you, if it was or if it has the

1 effect of providing the State Attorney's Office with
2 a \$60,000 windfall that they don't have to pay the
3 depositions that I'm paying, then I will tell this
4 Court that that violates the judicial canons because
5 the judicial canons are clear in that one -- the
6 judge presiding over the circuit or the judge
7 presiding over the case cannot show bias in favor of
8 any party.

9 And so if that administrative order is
10 interpreted in that fashion and the chief judge is
11 saying, "You know what? We're going to give the
12 prosecution a benefit over the Defense. We're going
13 to -- we're going to give them all the depositions
14 free, but the Defense -- the defendant has to pay
15 \$60,000 worth of transcripts." That was not Judge
16 Schaffer's intent I am certain. But if it was or if
17 it has the effect of that, it would violate a
18 judicial canon. So the likelihood of success in my
19 opinion is in favor of the Defense.

20 The other issue that the Court needs to really
21 address in this motion to stay is the likelihood of
22 harm if this Court were not to grant this stay. I
23 think that all of us in that room -- all of us in
24 this room, we want to apply the right law. We want
25 to make sure that if any law is being applied to any

1 criminal defendant throughout the state of Florida,
2 that the right laws apply.

3 And so the harm that Mr. Reeves would get -- the
4 Second District in the appellate case that we took in
5 order to get him out on bond, the appellate court
6 said, "This is a case of great public concern."

7 I think the fact that we have a website that
8 virtually puts everything that is filed in this
9 circuit for everybody to see, and based upon a ruling
10 by Judge Siracusa that this was a case of great
11 public importance, indicates that the public is going
12 to have access to all of these deposition transcripts
13 that contain thousands and thousands and thousands of
14 pages of questions to very private information of the
15 citizens of Pasco County, law enforcement, and lay
16 people that would never be admissible in a trial in
17 this case. And some of those questions and some of
18 those answers can be prejudicial and are very
19 prejudicial.

20 Mr. Martin was not at those depositions, but
21 Mr. Garcia and the prosecution was always at those
22 depositions. And many of those particular answers I
23 think are prejudicial to Mr. Reeves. And so to go
24 against the Florida Supreme Court decision that
25 clearly within the body of the West Palm Beach says

1 it is not appropriate to file depositions of criminal
2 cases in the court file because of this very issue.

3 Not only does it prejudice a defendant to having
4 a fair trial by having the general population of
5 which we're going to be selecting a jury, the general
6 population find out information that may not be true,
7 but they read it and they now believe it to be true
8 is so prejudicial that that harm effect, Your Honor,
9 is clearly on the side of the Defense.

10 And even furthermore, that West Palm Beach case
11 says one more very important thing. It says these
12 depos shouldn't be filed. And the reason they
13 shouldn't be filed is because it provides now a
14 chilling effect to defense attorneys like myself to
15 ask any question that I can ask in a deposition
16 because if I ask any of those questions and if I get
17 an answer that is prejudicial to my client, then I've
18 done some wrong to my client. And that's in the
19 Florida Supreme Court's adoption of the Seattle case.
20 It's very, very clear that the prejudicial harm to my
21 client would be great should the Court deny the
22 State.

23 So the third thing for the Court to consider
24 that one of the courts addressed was, are we wasting
25 the time and effort and money of a party or of the

1 Court by not granting the stay? And obviously I've
2 got 120 depositions that I would have to file in this
3 particular case. And so I think that's in our favor
4 as well because we're the ones that are going to be
5 doing all the work in order to meet the Court's
6 order.

7 I -- that's my argument, Your Honor. I think
8 it's very clear. And I will challenge the
9 prosecution to one thing. Have the prosecution tell
10 you today under all of us in front of us here that
11 any deposition that the State Attorney's Office buys
12 is paid with county funds. He won't be able to do it
13 because the truth of the matter is, they're not.
14 They're paid with State funds. And they have a
15 budget that's based upon a budget for them, a budget
16 for the public defender's office that they can use in
17 order to purchase depositions, in order to purchase
18 experts, in order to do a variety of things that they
19 may need for a case.

20 And so for Mr. Martin to come in here and say,
21 "Well, you know, this order still is valid," I don't
22 think he's going to be able to tell you that. But I
23 will challenge him to that particular issue.

24 THE COURT: Thank you.

25 Mr. Martin?

1 MR. MARTIN: Judge, you've heard all my previous
2 arguments regarding the validity of the
3 administrative order. As we sit here today, the
4 administrative order has not been rescinded by the
5 chief judge of this circuit; therefore, it's
6 incumbent upon this Court to follow that particular
7 administrative order.

8 I would also point out to the Court that you
9 have already entered an order indicating that
10 Mr. Escobar needs to file immediately the depositions
11 in this particular case. And that was done pursuant
12 to that particular administrative order.

13 In order for Mr. Escobar to be successful on a
14 cert, he's going to have to show an abusive
15 discretion on your part, a very high standard in a
16 cert, and I do not believe he will be able to meet
17 that burden.

18 This particular Court entered an order pursuant
19 to a valid administrative order that's still in
20 effect within the Sixth Circuit. You did not abuse
21 your discretion. And that is the standard by which a
22 petition to cert is either granted or denied and a
23 remedy placed by the Second DCA. You did not abuse
24 your discretion. You actually acted upon an
25 administrative order that's still in effect. So the

1 likelihood of Mr. Escobar succeeding on a cert is
2 weak at best.

3 What we're talking about is we're talking about
4 an administrative order that says they should be
5 filed. What happens after they're filed is none of
6 Mr. Escobar or the defendant's business. The
7 administrative order is simply to file them, that's
8 it. He has no standing whatsoever to object to
9 anything that happens after that as far as what
10 happened by the State.

11 Now, in dealing with the harm issue, I tried to
12 articulate to the Court in my response exactly what
13 Burk stands for in the Seattle case. And it is
14 absolutely clear that we're talking apples and
15 oranges.

16 In the Burk case, we are dealing with a criminal
17 case where the media wanted to sit in depositions
18 prior to depositions being transcribed and available
19 to the parties. And the whole purpose of that
20 particular ruling was that it was a balance between
21 the First Amendment right of the press and the right
22 to privacy of individuals. And the Court did that
23 balance that said no, there is no First Amendment
24 right for the media to have access to those
25 deposition information collective before the parties

1 had an opportunity to redact or file any type of
2 protective order in an order to take out whatever
3 information that would not be admissible.

4 In this particular case, there's been over -- I
5 don't know how many depositions have been taken. No
6 protective orders have been requested by any of the
7 witnesses. The defendant in this case will never
8 ever be deposed unlike the Seattle case where it was
9 two civil litigants and there was a question as to
10 whether or not the civil litigants could, absent
11 court authorization, disclose pertinent information
12 regarding each other's private lives, if you will,
13 involved in the civil case. And that's how that
14 language in the Burk case came about because they
15 quoted the Seattle case and said no, it's not going
16 to be disseminated.

17 Again, we're talking apples and oranges. We're
18 talking a criminal case here where there is an issue
19 regarding the transcripts and when they can be
20 ordered and whether they can be purchased. And this
21 Court issued a valid order based on a valid
22 administrative order in this circuit. And so the
23 likelihood of being successful on a cert is not --
24 it's just not that great and does not warrant a stay.

25 I will also explain to the Court that in the

1 event that this Court issues a stay -- and this is a
2 stay solely for the purpose of Mr. Escobar not having
3 to file the depositions -- that this cert will drag
4 out for four, six, eight months. Who knows when the
5 Second DCA is going to get around. Talk about a
6 chilling effect.

7 Basically it's taking the Judge's order and
8 putting it in the -- on the back burner. It will
9 never, never happen. We will go forward with the
10 stand your ground hearing and a trial with that
11 languishing in the Second DCA. And when all of this
12 is over, that cert will never be prosecuted and be
13 withdrawn.

14 That is the effect of granting the stay in this
15 particular case. It's not an emergency to the
16 Second DCA to rectify a discovery issue in the
17 Sixth Circuit. This is not a writ of habeas corpus
18 where someone is in jail or someone is languishing
19 and their liberty is taken away. It is going to be
20 heard in the order of the stack that it is put in.
21 And so we could never hear this until after the case
22 is heard.

23 Now, Mr. Escobar can request the Second DCA for
24 a stay if you deny the stay. He can go to the
25 Second DCA and ask for a stay. But it's not

1 warranted by Your Honor based on the representations
2 and the emergency motion for stay by Mr. Escobar.

3 As far as the harm, when we talk about the
4 prejudicial and the chilling effect, that is pure
5 speculation on the part of Mr. Escobar. There's no
6 founded basis for that. It's simply a hypothesis and
7 a speculation. He hasn't pointed to any evidence,
8 any part of any single deposition. As an example,
9 this one thing right here is so prejudicial if it
10 came out, there's no way we could get a fair trial in
11 Pinellas County. He hasn't done it.

12 So I would suggest to the Court and I'll rely on
13 my previous arguments before this Court regarding the
14 validity of the administrative order and my response
15 to the motion to stay and ask the Court to deny the
16 stay at this time.

17 MR. ESCOBAR: All right. If I just -- just
18 briefly.

19 Your Honor, I didn't hear him at all respond to
20 what my question to him was, is for him to tell this
21 Court that the county still pays for any depositions
22 for the State Attorney's Office because he can't.
23 And so I think that certainly solidifies my argument
24 to this Court that this is an issue that is of great
25 public importance and not only to Mr. Reeves' case.

1 This -- this issue is of great public importance
2 to every single defendant in Pinellas and Pasco
3 County because it doesn't happen elsewhere. It
4 happens here. And I can think of every single
5 defendant that he has prosecuted in Pinellas and
6 Pasco County that are prejudiced by the fact that
7 depositions are file. And when the media gets ahold
8 of that, you know, they're going to report that. And
9 when that gets into the ears of the general public,
10 it's prejudicial because that's -- the general
11 public, especially in this particular county, is
12 where we're going to be selecting our jurors.

13 This Court, in my opinion, should make the right
14 decision now. And that right decision, Your Honor,
15 and I say this respectfully, should be that hey, we
16 have got to find out what the law is here. And if
17 the Section District -- I've got -- I don't believe
18 that this Second District by any stretch of the
19 imagination is going to take three or four months to
20 hear this. That's ridiculous. I don't believe.
21 They know this case. They've handled the bond
22 hearing on this case.

23 I think when we file this petition, they're
24 going to hear it expediently. It's not going to be 4
25 or 5 -- I would -- I would doubt that it's going to

1 be more than 30 days. But that decision has got to
2 be made and it's got to be made right. Because you
3 know what? We can't make mistakes in this case where
4 Mr. Reeves' life is going to be jeopardized because
5 of that. It is way too delicate of an issue.

6 And clearly the Court can see, the only sentence
7 that they're gravitating to is one sentence of an
8 administrative order that is no longer applicable in
9 Pinellas and Pasco County. That's what he's saying.

10 He's saying well, you know, Judge -- because
11 this is how he started his argument. He says, "Well,
12 since the chief judge hasn't rescinded with an order,
13 that administrative order, we're going to gravitate
14 to that one sentence because Mr. Escobar is right.
15 Nothing else in that order applies to us. We're
16 going to gravitate to that one sentence and we want
17 to use it in order to save 50- or \$60,000 of public
18 funds that he's already been given in order to
19 prosecute his cases. He wants to get it for free
20 from the clerk's office. That's -- that's the
21 position that we have now.

22 So think about that balancing test. The State
23 Attorney's office willing to save 50 or \$60,000
24 versus Mr. Reeves' constitutional right to a fair and
25 impartial trial. It's a no brainer. It's like this

1 (indicating). Mr. Reeves is here (indicating), the
2 State is way down here (indicating) in the balancing
3 act.

4 So I would respectfully ask the Court to grant
5 our motion to stay. And if Mister -- I -- I don't
6 want this Court to think by any trick of the
7 imagination that I want to create any unfair
8 advantage from the Defense to the State.

9 If what he is saying, stay the proceedings,
10 because if I'm wrong and the Second District tells
11 me, "You know what, Mr. Escobar? You've got to file
12 those particular depositions, then he's entitled to
13 them with a reasonable period of time in order to be
14 able to use them." So stay the entire proceedings so
15 that we can have a valid decision from the Second
16 District of great public importance and we can go on
17 with this case.

18 THE COURT: All right. This is an issue that's
19 been -- we've been going back and forth for months
20 now. And I have yet to have completely convincing
21 arguments from either side or guidance that
22 definitively answers this question of whether or not
23 the transcripts must be filed.

24 It would seem in the interest of reciprocal
25 discovery that they would be filed, but I am -- as

1 I've mentioned before, I'm not convinced that the
2 1999 administrative order is entirely applicable here
3 either.

4 The -- quite frankly, the best and -- and most
5 frequent repeating underlying issue here is that
6 we've always done it that way. They've always been
7 filed. The depositions, the transcripts are always
8 filed.

9 Yeah, they are, but I'm not -- when I have
10 someone challenge that procedure, I like to point to
11 a reason why or why not. I have yet to have anyone
12 provide me with that simple guidance. Show me where
13 the Second or the Supreme have said yea or nay. No
14 one has done that. I have been unable to discover
15 anything on my own in -- in research. And so let the
16 Second decide.

17 I'm going to grant the defendant's motion and I
18 will stay the motion to compel.

19 MR. ESCOBAR: Your Honor, I've got a proposed
20 order that I will pass to the prosecution for their
21 review.

22 (Complying.)

23 MR. ESCOBAR: Your Honor, so the Court knows,
24 based upon the Court's first ruling in this case --
25 and we're going to -- we're going to adhere to the

1 first ruling for time periods because I got 30 days
2 from the Court's first order, that expired on Friday
3 so we will be filing our petition for a writ of cert
4 by Friday.

5 THE COURT: All right. And -- and just a little
6 further, I do -- I did review the -- both the
7 response and everything that was filed briefly. I'm
8 well aware of the issues and I know the standard for
9 the request.

10 So as far as the potential harm or prejudice to
11 either party, I did find -- it is my finding that the
12 Defense -- the prejudice to the Defense would be
13 significant in the event that my order was incorrect
14 and the Second disagrees.

15 So I find that the prejudice to the State in
16 granting this stay is far less irreparable than the
17 alternative.

18 MR. ESCOBAR: Your Honor, the only other thing
19 that I need, and it's a matter with the court
20 reporter, since I need to file my petition by Friday,
21 I would like at whatever cost it is to have this
22 transcript tomorrow.

23 THE COURT REPORTER: Okay.

24 MR. ESCOBAR: Can we do that?

25 THE COURT REPORTER: Yes.

1 MR. ESCOBAR: Okay.

2 THE COURT: All right. Are there any other
3 matters we need to address today?

4 MR. ESCOBAR: No, Your Honor.

5 THE COURT: All right. Thank you, everybody.

6 MR. ESCOBAR: Thank you, Your Honor.

7 THE COURT: We'll be in recess until our next
8 meeting.

9 (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 22nd day of September, 2015.

