

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

STATE OF FLORIDA,

Case No.: CRC-1400216FAES

v.

Division: 1

CURTIS J. REEVES,
Defendant.

Spn 00683538

/

**REPLY TO STATE'S RESPONSE TO DEFENDANT'S EMERGENCY
MOTION TO STAY ORDER GRANTING STATE'S MOTION TO
COMPEL**

Defendant, CURTIS J. REEVES, by and through the undersigned counsel, replies to the State's Response to Defendant's Emergency Motion to Stay Order Granting State's Motion to Compel ("State's Response") as follows:

1. In filing this Reply, the Defendant's primary objective is to persuade this Court to exercise caution, restraint, and prudence by granting a stay pending certiorari review of the relevant orders by the Second District Court of Appeal.

2. In the State's Response, the prosecution, among other things: (i) asked for application of an administrative order that has been invalidated by a constitutional revision; (ii) contended that said invalid and void administrative order is consistent with the Rules of Criminal Procedure; (iii) then incorrectly claimed that the discovery provisions of the Florida Rules of Criminal Procedure require the filing of deposition transcripts; (iv) misdefined "general law" and then used this erroneous definition to support its otherwise untenable position on the operative issue before this Court; and (v) failed to recognize or acknowledge that the Florida Supreme Court's warnings in *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 381-383 (Fla. 1987) regarding the consequences of making criminal deposition transcripts available to the public are

squarely applicable to Mr. Reeves and this case.

3. The Defendant is compelled to correct the State's numerous legal and definitional errors. Undersigned counsel must take every possible step to ensure that this Court does not accept, rely upon, or otherwise utilize any of the State's erroneous conclusions or assertions.

ARGUMENT AND MEMORANDUM OF LAW

REVISIONS TO THE FLORIDA CONSTITUTION INVALIDATED THE ADMINISTRATIVE ORDER

The State's assertion that Administrative Order No. PA/PI-CIR-99-35 ("Administrative Order" or "AO") applies to Mr. Reeves and compels him to file all of his deposition transcripts with the Clerk of Court is without merit. The plain language of the AO makes clear that it is obsolete and invalid, and for reasons explained below, the State knows of this fact.

The reason this AO is no longer valid is because it was repealed by implication by a constitutional revision that went into effect in 2004. In 1999, when this AO was issued, county governments paid for deposition transcripts requested by the State, PD's office, and other attorneys being paid by taxpayer funds. Between 1972 and 2004, the previous version of section 14, Article V of the Florida Constitution placed majority responsibility for funding of the judicial branch on local governments. *City of Ft. Lauderdale v. Crowder*, 983 So.2d 37, 39 (2008). This changed:

[i]n 1998 [when] a new provision (known as Revision 7) was submitted to the electorate by the Constitution Revision Commission substantially and significantly revising judicial branch funding. The new plan for funding the judicial system primarily placed the burden on the state, with the share of the counties greatly reduced. The principal source of funding was to be general revenues and user fees and costs. It was adopted by the electorate in 1998 and became fully effectuated by 2004. *Id.*

The Florida Supreme Court explained that the post-2004 version of Article V, Section 14(c) specifies that:

the counties are required to fund certain overhead costs (communication services, information systems, construction or lease of facilities, maintenance, utilities, and security of facilities) for ‘the trial courts, public defenders’ offices, state attorneys’ offices, and the offices of the clerks and the circuit and county courts performing court-related functions.’ *Lewis v. Leon County*, 73 So.3d 151, 154 (Fla. 2011).

Consistent with the above, sections 29.008 and 29.0081, Florida Statutes, delineate the type and nature of the costs for which county governments are responsible. Deposition transcripts are not among the costs for which county governments are responsible.

A basic reading of the Administrative Order reveals that it addresses situations where county governments pay for deposition transcripts. The Preamble unambiguously states that the Administrative Order is meant to “provide copies of depositions and other transcripts in criminal proceedings at a reasonable rate when the cost is paid with **county funds**.” Paragraph (A)(1) further states that “[n]o transcript of a deposition for which Pasco or Pinellas County may be obligated to expend funds shall be ordered by a party unless it is ordered by the Court on a showing that the deposed witness is material or on showing of good cause.” Similarly, Paragraph (C)(1) also pertains to circumstances when county funds are used for transcripts.

The State Attorney’s Office for the Sixth Judicial Circuit, along with every other SAO and Public Defender’s Office in the State of Florida, knows that any legal provision that directs a county government to pay for deposition transcripts is invalid. This is because for roughly ten years the Justice Administration Commission (i.e. the state government) has been processing payments for deposition transcripts.

The Defendant, as with the other issues addressed in his Emergency Motion to Stay Order

Granting State's Motion to Compel and in this Reply, asks that this Court grant a stay pending appeal so that these arguments can be properly brought before the Second DCA.

THIS ADMINISTRATIVE ORDER IS INCONSISTENT WITH THE DISCOVERY PROVISIONS OF THE RULES OF CRIMINAL PROCEDURE

The State's claims that this Administrative Order is consistent with the Rules of Criminal Procedure are also without merit. First and foremost, a probing and exhaustive search of the Rules of Criminal Procedure will not uncover any language stating that defendants participating in reciprocal discovery must file their deposition transcripts with the clerk of court. Simply put, the Florida Supreme Court never created or imposed such a rule.

To avoid the fact that the Rules of Criminal Procedure do not require either the filing or the sharing of deposition transcripts, the State makes yet another disingenuous claim. Namely, it claims that "[o]nce a defendant files a notice of discovery, he is obligated to participate in reciprocal discovery. Fla. R. Crim. P. 3.220 (a). **This includes discovery depositions.** Fla. R. Crim. P. 3.220 (h)(2)." State's Response, at 3 (emphasis added). To supplement this incorrect legal argument, the State further claimed that "[t]he discovery deposition rule¹ requires that no transcripts of a deposition for which the state may be obligated to expend funds shall be ordered by a party unless it is in compliance with **general law.**" *State's Response*, at 3 (emphasis added). Further, the State asserted that "the **general law** requires the filing of the original transcript of a deposition in the court file, unless upon an attorney's request the chief judge authorizes otherwise." *State's Response*, at 2-3 (citation to the Administrative Order) (emphasis added). These arguments are predicated on a failure to consider the plain language of the Rules of Criminal

¹ It appears that the "discovery deposition rule" is the phrase the State assigns to the purported (but unidentified) provision within the Rules of Criminal Procedure that supposedly compels Mr. Reeves to file all of his deposition transcripts.

Procedure and a wholly incorrect definition of “general law.”

Florida Rule of Criminal Procedure 3.220 (h)(2) states that “[n]o transcript of a deposition for which the state may be obligated to expend funds shall be ordered by a party unless it is in **compliance with general law.**” (emphasis added). The Florida Supreme Court long ago held that:

“A general law operates universally throughout the state, or uniformly upon subjects as they may exist through the state, or uniformly within permissible classifications by population of counties or otherwise, or is a law relating to a state function or instrumentality.” *Florida Dept. of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.*, 967 So. 2d 802, 807 (Fla. 2007) (quoting *State ex. rel. Landis v. Harris*, 120 Fla. 555, 163 So. 237, 240 (Fla. 1934).

The basic language of Rule 3.220 (h)(2) therefore directs that if the state (i.e. the State of Florida) is going to pay for a transcript, any such request must be in compliance with general law. A general law to which Rule 3.220 (h)(2) refers would be, for example, § 29.005 (2), Florida Statute (“For purposes of implementing s. 14, Art. V of the State Constitution, the elements of the state attorney’s offices to be provided from state revenues appropriated by general law [includes]... [r]easonable court reporting and transcription services necessary to meet constitutional or statutory requirements, **including the cost of transcribing and copying depositions of witnesses...**”) (emphasis added). The State instead opted to claim that the Administrative Order was a “general law.” It is an argument without any merit.

Given these crucial flaws in the State’s legal reasoning, undersigned counsel respectfully requests this Court to grant him a stay to address this issue with the Second DCA before being forced to file all of the deposition transcripts with the Clerk of Court.

THE ACTUAL OR IMMINENT IRREPARABLE HARM MR. REEVES WILL FACE UPON THE FILING OF ALL OF THE DEPOSITION TRANSCRIPTS WAS CONTEMPLATED AND CAUTIONED AGAINST BY *PALM BEACH NEWSPAPERS, INC. V. BURK*

The State claims that the holding of *Palm Beach Newspapers, Inc.*, 504 So. 2d at 380-383 is inapplicable to this case. The State further claimed that the Florida Supreme Court's citations to the United States Supreme Court decision of *Seattle Times Co. v. Rhinehart* was dicta. *State's Response*, at 4-6. The State fails to see or acknowledge the very serious constitutional concerns that Mr. Reeves faces. These concerns, however, were expressly recognized by the Florida Supreme Court.

The Florida Supreme Court held in *Palm Beach Newspapers, Inc.*, at 383, that the press does not have a First Amendment right to be present at discovery depositions in a criminal proceeding or to obtain copies of depositions which have not been filed with the court because a defendant's right to a fair trial is of far greater importance. The Florida Supreme Court proceeded to explain that:

Our conclusion that the press does not have a first amendment right to be present at discovery depositions or to obtain copies of depositions which are not filed with the court **finds support** in *Seattle Times Co. v. Rhinehart* [citation omitted]. In *Seattle Times*, Rhinehart brought a defamation action against, inter alia, the Seattle Times. The Seattle Times sought extensive discovery which Rhinehart opposed on the grounds that the discovery violated first amendment rights to privacy, freedom of religion, and freedom of association. The trial court granted a motion to compel discovery but also issued a protective order prohibiting the Seattle Times from publishing, disseminating, or using the information in any way except where necessary to prepare for and try the case. The order did not apply to information which the Seattle Times might gather outside the discovery process. On review, the United States Supreme Court upheld the protective order. We appreciate that Seattle Times, unlike the present case, involved a civil suit and that it dealt with the validity of a protective order. **Nevertheless, we believe the rationale of Seattle Times is applicable to criminal prosecutions and to the issue of access by nonparties to discovery proceedings and is consistent with** [prior decisional law from the United States Supreme Court]. *Palm Beach Newspapers, Inc.*, at 383 (emphasis added).

The *Seattle Times* rationale that the Florida Supreme Court applied to the State of Florida was as follows:

The discovery rights of parties under modern practice is very broad. Discovery may be had on any non-privileged matter which is relevant to the subject matter of the pending action. It is not limited to evidence which will be admissible at trial so long as the information sought is reasonably calculated to lead to the discovery of admissible evidence. There is no distinction drawn between private information and that to which no privacy interests attach. Discovery rules permit extensive intrusion into the affairs of both parties and non-parties and discovery may be judicially compelled. Liberal discovery produces information which may be irrelevant to the trial and which, if publicly released, would be damaging to the reputation and privacy of both parties and non-parties. The parties are granted discovery rights as a matter of legislative or judicial grace. Non-parties do not possess discovery rights and cannot compel the disclosure of information. There is no independent right outside the trial process to the information sought. Society in general, and the courts specifically, has a substantial interest in preventing abuse of judicially compelled discovery. Deposition proceedings are not public components of a trial unless made so by the parties. Such proceedings were not open to the public at common law and, as a matter of modern practice, are normally conducted in private. Thus, restrictions on discovered information which has not been admitted at trial are not restrictions on a traditionally public source of information. *Id.* at 382.

The Florida Supreme Court further held that:

The rationale of *Seattle Times* suggests that public access to discovery information at the moment it is first discovered presents unacceptable hazards to other constitutional rights because of uncertainty as to the nature and content of the information. The purpose of depositions is to develop evidence by discovering what potential witnesses may know about the subject of the trial. It is not possible beforehand to know with any degree of certainty what information will be discovered. In this respect, a deposition proceeding is unlike a pretrial suppression hearing or a preliminary hearing on probable cause where the parties and the court know beforehand what will be discussed. Thus, it is not feasible for a potential witness, for example, to seek a protective order in advance of the deposition and it is too late to do so if the information becomes public knowledge. The often irrelevant and inadmissible evidence discovered during a deposition has the substantial potential of hazarding the right to a fair trial, the privacy rights of both parties and non-parties, and the right to a trial in the venue of the alleged crime. Aside from the impracticability of seeking protective orders beforehand, seeking

such orders “would necessitate burdensome evidentiary findings and could lead to time-consuming interlocutory appeals.” *Seattle Times*, 467 U.S. at 36, n. 23, 104 S.Ct. at 2209 n. 23. The effect such a procedure would have on the speedy trial rights of the accused and public is obvious. Moreover, it would not serve the purpose of criminal discovery assisting in the trial or resolution of criminal charges and would carry us even farther from the central aim of a criminal trial-trying the accused fairly. We hold there is no first amendment right of public access to criminal deposition proceedings or to unfiled depositions in criminal prosecutions. *Id.* at 383 (emphasis added).

Given the above language, undersigned counsel is at a loss as to how the State can meritoriously contend that the Florida Supreme Court’s citations to *Seattle Times* was mere “dicta.” *State’s Response*, at 6. The Florida Supreme Court expressly held that it was adopting the “rationale of *Seattle Times*.” *Id.*

The State’s utter lack of concern for the consequences of the filing of all the deposition transcripts should not sway this Court. What is most important is that the **Florida Supreme Court** already held that public access to deposition transcripts in criminal cases gives rise to numerous risks and harms, particularly to criminal defendants and their right to fair trials. *Palm Beach Newspapers, Inc.* at 380-383. A basic recognition that the Florida Supreme Court’s concerns are of greater importance than the State’s contentions on these issues should compel this Court to grant the Defendant’s Emergency Motion to Stay.

THE STATE’S ARGUMENTS CONCERNING THE ABSENCE OF HARM TO MR. REEVES ARE WITHOUT MERIT

The State’s position is that Mr. Reeves cannot demonstrate any harm from the filing of the deposition transcripts with the Clerk of Court, and that he should not be entitled to a stay pending appeal. *State’s Response*, at 4-5. The State’s position on this issue is untenable on a number of grounds.

First, as explained above, the Florida Supreme Court already held that public access to

deposition transcripts in criminal cases causes and gives rise to various types of harm to defendants and the privacy rights of the deposed individuals. The best way for this Court to follow the Florida Supreme Court's ruling is to grant a stay pending appeal and allow the Second DCA to review the claims brought by Mr. Reeves and the State. *Palm Beach Newspapers, Inc.*, at 383.

Second, the State's assertion that "Defendant Reeves cannot show that the substance of depositions [sic] contains material that is not already available to the media or the public through other sources already available to them" presupposes that there is no useful information in the transcripts. If that was true, the State would presumably not be litigating this matter. On the contrary, it is far more reasonable to conclude that the over 120 depositions revealed information not known to the public or media. Of course, to disprove the State on this issue the Defendant would have to cite to the deposition transcripts and provide them to this Court. The State's argument on this issue appears to be an attempt to place the Defendant in a catch-22 and to accomplish its objective of getting the deposition transcripts for little to no cost, regardless of the consequences to Mr. Reeve's constitutional rights to a fair trial.

Lastly, the State's assertion that it will be harmed if the deposition transcripts are not immediately filed with the Clerk of Court ignores a rather obvious remedy. They can order the transcripts from the court reporter and pay for them just like every other attorney. Instead, the State - under the purported guise of concern about "uniformity" of treatment of deposition transcripts - has invoked an invalid and clearly inapplicable Administrative Order that enables it to avoid substantial financial expenditures for deposition transcripts of its own witnesses. The Defendant's concerns about protecting his ability to select an impartial jury is clearly more important than saving the State Attorney's Office money.

Undersigned counsel hopes that this Court accepts that the just, proper, prudent, and

responsible course of action is to grant a stay pending appeal.

CONCLUSION

For the reasons stated in the Emergency Motion to Stay Order Granting State's Motion to Compel and this Reply, this Court should grant a stay pending appeal and allow Mr. Reeves and the State to bring all of their arguments and claims to the Second District Court of Appeal.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Office of the State Attorney, P.O. Box 5028, Clearwater, FL 33758-5028, on this, 22nd day of September, 2015.

Respectfully submitted,



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