

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

STATE OF FLORIDA,

Plaintiff,

vs.

Case Number 14-216CFAES

CURTIS REEVES,

Defendant.

PROCEEDINGS: MOTION TO FILE DEPOSITIONS
MOTION TO REGULATE DISCOVERY
MOTION TO INTERVENE

DATE: August 10, 2015

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

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

REPORTER: Melinda McClain
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P R O C E E D I N G S

1
2 THE COURT: All right. Good afternoon,
3 everybody.

4 MS. SUMNER: Good afternoon, Judge.

5 THE COURT: What have we got, Mr. Martin?

6 MR. MARTIN: Good afternoon, Judge.

7 Glen Martin, State Attorney's Office.

8 THE COURT: And I think that's State of Florida
9 versus Curtis Reeves is the first one on my calendar.

10 MR. ESCOBAR: Good afternoon, Your Honor.

11 Richard Escobar for purposes of the record.

12 MS. SUMNER: Good afternoon.

13 MR. MICHAELS: Afternoon, Judge.

14 THE COURT: Hi, Mr. Michaels.

15 Oh, I didn't see this previously. Who's here
16 for a motion to intervene?

17 MR. JUNG: May it please the Court, Your Honor,
18 Bill Jung. I filed the paper electronically this
19 morning and I provided hand copies to the counsel.

20 THE COURT: Okay. All righty. Then, I guess
21 since you're seeking to intervene, we should address
22 that before we address anything else.

23 MR. JUNG: Well, thank you, Your Honor. And
24 just briefly and as noted in the motion, I got a call
25 this weekend from the Florida Court Reporters

1 Association, which is the group that represents
2 reporters in the state of Florida. And they -- they
3 request leave to intervene as amicus curiae on behalf
4 of the respondent to the motion or the defendant,
5 Mr. Reeves, and respectfully ask seven days in which
6 to file a brief.

7 It is their contention and their members'
8 contention that the administrative order is not
9 commonplace in this state, and it would have a
10 tendency in a private-paid case to defeat the court
11 reporter's contractual rights.

12 And they'd like -- if the Court please, they'd
13 like opportunity to address that in a pleading within
14 seven days at the max.

15 THE COURT: Mr. Martin?

16 MR. MARTIN: Judge, I'm going to object to
17 the -- to intervention. You can see by the State's
18 motion this is a very narrow focus matter. It deals
19 one issue and one issue only, the filing of original
20 transcripts with the clerk of court period. It
21 doesn't have anything to do with cost; it doesn't
22 have anything to do with free copies as what's -- is
23 in their motion to intervene.

24 This is a very specific issue before this Court.
25 The State is asking this Court to enforce the chief

1 judge's administrative order for originals to be
2 filed.

3 Now, once you have made your rule on that, there
4 may be some other litigation, but it is not
5 appropriate at this time to even talk about costs.
6 We have one issue and one issue only. So I'm going
7 to object at this time as far as the intervention.

8 THE COURT: Okay. I don't know -- I apologize.
9 I just saw this this moment, so I don't believe that
10 Defense really has a dog in that fight. It is
11 State's motion and a motion to intervene on that
12 issue. So --

13 MR. ESCOBAR: Your Honor, the only comment that
14 I would make is that specifically with this court
15 reporting agency, which is Independent Court
16 Reporters -- I've used them for many, many, many
17 years. I can tell you that it's my understanding
18 with them contractually that when I pay for my
19 particular original, that I shouldn't be giving that
20 copy to any other litigant in the case because that's
21 how they make their money. And so that has been a
22 common understanding for quite some time with
23 Independent. That's the only court reporting agency
24 that I use whenever I can, even when we're in Pasco
25 or Pinellas or what have you.

1 And so that would be the only thing that I would
2 add to it in that that is the basis of our agreement.

3 THE COURT: Okay. All right. Then, I'm going
4 to reserve, Mr. Jung, as to your motion to intervene.
5 And let's hear from Mr. Martin. It's his motion.
6 Let's get into some of the meat of it. You're here,
7 so you're not prejudiced by not knowing what's going
8 on.

9 So go ahead, Mr. Martin. It's your motion. I
10 did review it and I did review the response filed by
11 the Defense.

12 MR. MARTIN: Thank you, Judge.

13 And if it's all right with the Court, as far as
14 how we are to proceed, what I'd like to do is just
15 address the merits of my motion. I may or may not
16 respond to some of the -- of the Defense's response.
17 And I would like leave of the court to be able to
18 respond after they make their presentation if that's
19 acceptable to the Court. But if you want me to do it
20 all at one time, I'm prepared to do that too.

21 THE COURT: No, generally I allow argument and
22 response by non-movant and rebuttal by the movant.
23 So it's okay with me.

24 MR. MARTIN: Thank you, Judge. If I may
25 proceed.

1 THE COURT: Go ahead.

2 MR. MARTIN: Judge, my name is Glen Martin. I'm
3 an Assistant State Attorney in the Sixth Judicial
4 Circuit in and for Pasco County. The State Attorney,
5 of course, is Bernie McCabe and I'm here on his
6 behalf.

7 In this particular case of State versus
8 Curtis Reeves, in Case Number CRC14-00216CFAES,
9 Mr. Reeves is charged with second-degree murder by
10 information. As I laid out in the State's motion
11 that I filed last week --

12 THE COURT: Mr. Martin, can I interrupt you just
13 one second? I'm sorry.

14 MR. MARTIN: Sure, Judge.

15 THE COURT: I want to get it clear on the
16 record, Mr. Reeves is not present. You have waived
17 his presence. I certainly don't need him here.

18 MR. ESCOBAR: Okay.

19 THE COURT: Mr. Escobar, you're indicating that
20 you --

21 MR. ESCOBAR: I have, Your Honor. I spoke or my
22 office spoke to your judicial assistant asking for
23 permission to waive --

24 THE COURT: Right.

25 MR. ESCOBAR: -- which has been commonplace on

1 these motions --

2 THE COURT: Correct.

3 MR. ESCOBAR: -- and we are waiving his
4 presence.

5 THE COURT: Okay. Very good. Just wanted that
6 on the record.

7 Sorry. Go ahead.

8 MR. MARTIN: No problem, Judge.

9 Judge, if I could refer you to the State's
10 motion and the very first page. And I won't read it.
11 Of course, I've laid out the fact that Mr. Reeves has
12 been, in fact, charged with second-degree murder.
13 And I think it's important to know that the Defense
14 team for Mr. Reeves has elected to participate in
15 discovery pursuant to Rule 3.220.

16 I also think it's important to point out to the
17 Court that in filing the State's witness list, the
18 State chose to list all the witnesses without any
19 type of category that is allowed pursuant to the
20 rule. So in compliance with Mr. Reeves request
21 through his attorney, we have provided discovery. We
22 have updated with the witness list.

23 Regarding the witnesses, the witnesses in this
24 case, the list is extensive. I have only been on
25 this case for -- this is my beginning of my third

1 week. So I understand that there's been over 100
2 depositions taken, and I believe there's about 20 or
3 30 more to do before we get ready for the Stand Your
4 Ground hearing.

5 What I have learned, though, in my very short
6 tenure with this case is that, since the inception,
7 Mr. Escobar has taken the position that the original
8 transcripts of the depositions will not be filed with
9 the clerk here in Pasco County.

10 It's my understanding and review of
11 Administrative Order 99-35, which I attached as an
12 exhibit, that since 1999 when Judge Susan Schaffer
13 was, in fact, the chief judge, this administrative
14 order was issued. And it was issued for the sole
15 purpose and the intent to provide the most effective
16 way in order for copies of depositions to be provided
17 to all parties who handle criminal cases in both
18 Pinellas and Pasco County.

19 Now, granted, there are some nuances in dealing
20 with the original filing with Pasco and Pinellas
21 County, but the tenure of the administrative order is
22 that in order to seek uniformity and how the
23 depositions are treated in this circuit -- and that's
24 important, the uniformity of how they are to be
25 treated in this circuit -- this procedure was set up.

1 And I bring out the fact that Judge Schaffer
2 intentionally used the word "uniformity." And it's
3 very clear and unambiguous that uniformity has to
4 include all. If you don't interpret the
5 administrative order to include uniformity to include
6 all of the parties, including private attorneys, then
7 there is no uniformity on how depositions and
8 transcripts are treated in this particular circuit.

9 Now, we all know that in 1998, there was an
10 Article 5, Section 14 of the Florida Constitution
11 that was amended and dealing with funding state
12 agencies within the state of Florida. And I bring
13 that to the Court's attention because this particular
14 administrative order was issued by Judge Schaffer
15 with the understanding of the changes of Article 5,
16 Section 14.

17 So it is not in conflict with the new
18 constitutional amendment regarding funding. It is a
19 separate and distinct order standing alone dealing
20 with a very specific item, the handling and the
21 filing of discovery depositions within the Sixth
22 Judicial Circuit.

23 When we look at the administrative order, Judge,
24 I think it's important that we look at it and we
25 interpret it so that the intent and the purpose is

1 given full effect. And, again, that brings us back
2 to the uniformity.

3 If you only include the State Attorney's Office
4 and exclude the private Bar from having to file the
5 original discovery deposition, then there is no
6 uniformity. And, in fact, it creates an unfairness
7 to the State by having to comply with that particular
8 requirement of B(1) in the administrative order and
9 the private attorneys not complying with that
10 particular provision.

11 It has been -- in the administrative order --
12 and I keep referring to the administrative order
13 99.35 is the one we're talking about and attached as
14 Exhibit Number 1. The preamble does state, "In order
15 to provide for the uniform treatment throughout the
16 circuit of transcripts of depositions and other
17 proceedings in a criminal case; and" -- another part
18 of the preamble -- "In order to provide copies of
19 depositions and other transcripts in criminal
20 proceedings at a reasonable rate when the cost is
21 paid with either county funds" -- public funds,
22 however you want to look at it.

23 But when we go down to the filing of the
24 transcripts, it is clear that when you look at the
25 plain language, which is B(1), filing transcripts.

1 "The original transcripts of a deposition or other
2 proceeding in a criminal case shall be filed in the
3 court file." There's a comma there, but let me just
4 stop right there.

5 That is absolute plain language. It's all
6 encompassing. "The original transcripts of a
7 deposition or other proceeding in a criminal case
8 shall be filed in the court file." It doesn't
9 delineate between private attorneys and public
10 attorneys. It simply states that it has to be filed.

11 And that is the crux of the State's motion.
12 That is the focus of the State's motion, that
13 Mr. Escobar, by choosing not to file the original
14 transcripts, is not in compliance with the local
15 rules of the Sixth Judicial Circuit.

16 In 1999, that administrative order was properly
17 promulgated to be a local rule in this particular
18 circuit, and it has stood this test of time for the
19 past 15 years. Fifteen years. It hasn't been
20 superceded by any administrative order from Judge
21 Rondolino down to Judge McGrady to Judge Baird.

22 It hasn't been rescinded at all nor is in
23 conflict with any of the statutes that were
24 promulgated subsequent to the amendment of the
25 Florida Constitution in the year 2000 and the

1 subsequent amendments to those statutes up to date.

2 So there is no conflict in the law. There is no
3 conflict with the Florida Constitution. It was
4 promulgated full knowing the extent and the nature of
5 the Florida Constitution, and it is standing alone
6 specifically for a very, very specific purpose.

7 And I bring that to the Court's attention
8 because some of the subsequent administrative orders
9 that have come from our chief judge do deal with
10 court reporters. But when you look at them, you will
11 see that they apply to court proceedings and court
12 hearings. They do not apply to depositions.

13 There's not a single administrative order out
14 there that applies to criminal depositions, only
15 99.35. Everything else has dealt with the types of
16 the court reporters that the judges are encouraged to
17 have in front of their courts in order to do the
18 Court's business and nothing else so they are not in
19 conflict whatsoever.

20 The only way to achieve the goal set forth in
21 Administrative Order 99.35 is to interpret it so that
22 it is fair to all; that there is uniformity; and both
23 the private Bar and the public-funded attorneys have
24 to file the original depositions with the clerk
25 file -- in the clerk's file.

1 What the State is asking this Court to do to
2 enter its order -- and I would very respectfully
3 suggest to the Court that this is an order from the
4 chief judge; that the interpretation should be clear.
5 It should be enforced by the trial court judges in
6 this circuit.

7 And I very respectfully suggest that you should
8 enter an order indicating that in order to achieve
9 the goal and the purpose of the administrative order,
10 to have uniformity within the Sixth Circuit, to
11 provide for the most effective way, the most
12 effective way to deal with discovery depositions is
13 what's set forth in Administrative Order 99.35. To
14 enter an order directing Mr. Escobar to file the
15 originals with the clerk of court immediately, and
16 those transcripts that are subsequently transcribed
17 to file with the clerk of court in Pasco County
18 within five days.

19 Judge, in a very succinct manner, that is the
20 very narrow focus of the State's motion. And as the
21 Court indicated, I would like an opportunity, if I
22 feel it's appropriate, to respond to Mr. Escobar.

23 Thank you.

24 THE COURT: Thank you.

25 Mr. Escobar?

1 MR. ESCOBAR: May it please the Court,
2 Mr. Martin.

3 Your Honor, I find it odd that Mr. Martin
4 initially comes up here to tell this Court that this
5 has nothing to do with the State Attorney's Office
6 budget. And I will tell this Court as an officer of
7 the court that it's just the opposite. In fact, he
8 had a conversation before he filed this motion with
9 me, I think the very same week, telling me that, you
10 know, he, with 120 depositions that were being taken,
11 that it was going to cost the State Attorney's Office
12 an enormous amount of money.

13 And he even went so far as to ask my staff
14 through me to call the court reporter to see how
15 much, you know, their copy was going to cost them so
16 that he could calculate a benefit cost analysis to
17 this particular process. And then shortly
18 thereafter, he filed this particular motion.

19 So this motion is about money, completely about
20 money for the State Attorney's Office. They don't
21 want to expend the monies that my client has expended
22 at 4.75 a page in order to properly prepare the case.

23 I think that it's -- it's important when we get
24 started with the analysis of this particular case
25 that we take a look at the year that this

1 administrative order was signed. It was 1999. I
2 will tell the Court, and I think the Court well
3 knows, that the funding process back in 1999 is quite
4 different than the funding process today.

5 The funding process today gives the state
6 attorney as well as all of the -- the public defender
7 what they call "due process" monies. And it's quite
8 a lump of money for each of the different departments
9 that they get. And that due process money is divided
10 for a segment of it to go to the judiciary to pay for
11 those particular common expenses that are incurred by
12 the judiciary in transcribing depositions and what
13 have you that are required of every proceeding that
14 takes place in this courtroom.

15 And so when you look back at the date that this
16 particular order was issued, I really do believe that
17 when you look and you interpret this case, this order
18 with the rules of construction that we've all known
19 for many, many, many years, you will see that
20 Judge Schaffer signed this particular order in order
21 to facilitate a process of uniformity for individuals
22 that were going to require the expenditure of public
23 funds in application.

24 And what does that mean? Let's take a look at
25 the order and we'll see how that -- how that applies.

1 And, again, we've got to take a look at, before we
2 even start applying this, the rules of statutory
3 construction. And that is, that you don't take a
4 line from a two-page document and you read that in
5 isolation.

6 I think that the Court read my extensive
7 memorandum and motion in response where I cited a
8 Florida Supreme Court case that clearly outlines how
9 we're supposed to interpret, you know, laws within
10 the state of Florida. And this order is nothing more
11 than a law. The administrative functions of a judge
12 is nothing different than legislating but for the
13 court proceedings.

14 And so we first have to look at that rule of
15 construction and say, no, listen, when we're -- when
16 we're looking at that one particular line, we've got
17 to read all of the lines within that order and
18 determine what the true intent of that one particular
19 line may be.

20 So let's take a look at it. When you look at
21 Administrative Order 99.35, the very first paragraph
22 of that order says that, "Because transcriptions of
23 all depositions in criminal cases are not necessary
24 in order for counsel for the defendant and counsel
25 for the State to proceed through a criminal

1 prosecution."

2 That's how --

3 THE COURT: (Indicating.)

4 MR. ESCOBAR: I'm sorry. You're right. I'm
5 very, very fast and I apologize, Your Honor. And
6 just remind me when I get too quick.

7 My apologies.

8 That first line is significant. And why is that
9 first line significant? Because the Court is telling
10 everyone that has any interest in this order that,
11 hey, listen, we're going to go through a process
12 where you are first going to have to apply to the
13 Court in order to get permission for the Court to
14 expend those particular funds.

15 And so if you look at the issue of uniformity,
16 which I think is the third paragraph or the second
17 paragraph, actually it says, "In order to provide the
18 uniform treatment throughout the circuit of
19 transcripts of depositions and other proceedings."

20 What the Court is saying, hey, listen, we have
21 to have a system where there's going to be an
22 application to the Court for you to show that the
23 witness is material for me then to order myself, as
24 the Court, that deposition transcript. And that's
25 the uniformity that the Court is talking about

1 because clearly, it can't be private counsel, because
2 I'm not obligated to apply to any court in order to
3 expend funds to get a deposition transcript. So
4 that's not the uniformity that the intent of this
5 administrative order deals with.

6 I know that, you know, that Mr. Martin came up
7 here and told you what Judge Schaffer's intent was,
8 but frankly, he can't do that. All he can do is read
9 the order, and through statutory construction, then
10 make the argument of what he perceived her intent
11 was.

12 But it is very, very clear that the uniformity
13 that they were talking about was not uniformity with
14 the private Bar. It was uniformity with those type
15 of cases where a court-appointed counsel would have
16 to apply to the Court in order to get the funds in
17 order to have that depositions transcribed. And
18 that's all in what we call the preamble of the actual
19 order.

20 You then go to the ordered and adjudged section
21 of the order which is the most important, and that
22 is: How do we read the different sections? Do we
23 read them in isolation? Absolutely not.

24 When you read this order, you can tell that one
25 section precedes the other for a reason because you

1 have to have first, the transcription of that
2 particular court-appointed depo before you can get to
3 the filing of that particular depo.

4 And so you go to the transcription and it says,
5 "No transcription of a deposition for which Pinellas
6 and Pasco County may be obligated" -- may be
7 obligated, and obligated is a very important word --
8 "to expend funds shall be ordered by a party unless
9 it is ordered by the court on a showing that the
10 deposed witness is material."

11 That doesn't apply to the private Bar in any
12 way, shape, or form. The private Bar orders when the
13 private Bar wants to order.

14 "Motions to transcribe shall be in a timely
15 manner." That doesn't apply to the private Bar or to
16 a private court reporter. We don't have to file a
17 motion.

18 Number three -- this is very important -- "No
19 court contract reporter shall transcribe a deposition
20 taken in a criminal case."

21 They're not talking about Independent Court
22 Reporting that's a private entity. They're talking
23 about a division, a contractually-awarded court
24 reporter, that has certain contract rights with the
25 Court. Private court reporters don't have that in

1 the form of when you transcribe and how much you
2 charge.

3 The filing of the transcriptions. Mr. Martin
4 takes that first section that says, "The original
5 transcript of a deposition or other proceeding in a
6 criminal case shall be filed with the court."

7 And they're talking about the original
8 transcript. Not all original transcripts. Not every
9 criminal deposition transcript in Pinellas County and
10 Pasco County must be filed. They're talking about
11 the original transcript that they were talking about
12 in the proceeding section, which is Section A. You
13 have to read those two sections together in order to
14 make any sense of the order itself.

15 And then it says, "At the time of the filing of
16 the original deposition" -- at the time of the filing
17 of the original deposition -- "or other transcript in
18 a criminal case filed in Pasco County."

19 The court contract court reporters providing
20 services. Doesn't say there the private court
21 reporting agency of Independent Court Reporters
22 because it applies to a funded court reporter, a
23 publically-funded court reporter.

24 And it says the same thing for Pinellas County
25 that the clerk in Pinellas County is going to provide

1 a copy of the actual deposition.

2 Part C. Does Part C deal with Part B and A? Of
3 course, it does. There's a transgression there from
4 Part A to Part C where they're talking about the same
5 formula, the same process. And here they talk again
6 about, number one, when the costs are paid with
7 county funds, the court contract court reporters, not
8 private reporters, the court contract court reporters
9 and so on.

10 So in just reading the statute initially and
11 using the most basic of statutory construction that
12 we've all learned from law school through our career,
13 it is clear that that particular order does not apply
14 to private counsel and does not apply to private
15 court reporters.

16 Now, let's examine some problems should this
17 particular administrative order apply to private
18 attorneys. What is an administrative order? First
19 of all, a chief judge just can't sign any order.
20 It's got to be a particular-tailored order. And I'm
21 going to read to the Court that definition that's
22 within the judicial rules of what an administrative
23 order is.

24 And so what is an administrative order? It's a
25 directive necessary to administer properly the

1 court's affairs. Now, what are the court's affairs
2 in filing private depositions? How is that part of
3 the court's affairs?

4 The only time that a deposition becomes part of
5 the court affairs is if the Defense attorney or the
6 prosecution were to place an issue that's within a
7 deposition at issue with the Court. And then the
8 Court may need that particular transcript in order to
9 make a decision. Otherwise, the filing of
10 depositions in Pinellas and Pasco nor through any
11 other jurisdiction in Florida is part of the court
12 affairs.

13 In fact, I don't know of any other jurisdiction
14 other than Pasco that is trying to interpret this
15 particular administrative order or any administrative
16 order in that fashion. And the reason being is that
17 they can't. It would be an illegal administrative
18 order if the Court were to find that that was the
19 intent of this order. And so one important part of
20 that rule says a directive necessary to administer
21 properly the court's affair, but not inconsistent
22 with the Constitution or court rules or the
23 administrative orders of the Supreme Court.

24 Now, I would point out, Judge, just in passing
25 real quickly, that that administrative order says

1 nothing about when the actual transcripts have to be
2 filed. It is completely silent to that. There may
3 be a reason for that, and I'm going to be arguing
4 that to the Court at a later point in time, but I
5 think that it would have to do with a constitutional
6 issue that is raised any time a deposition is filed
7 with the Court because that becomes then public
8 record and it does infringe upon the constitutional
9 rights of any defendant. Not just Mr. Reeves, but
10 any defendant.

11 And I would argue to the Court -- and I'm
12 arguing now for myself because it's a private -- a
13 private defendant, a private attorney, and a private
14 court reporter. But if this order were to make even
15 Public Defenders and court-appointed counsel file
16 those depositions, grave constitutional ramifications
17 would take place. And I'm going to argue those a
18 little bit later.

19 But I believe that maybe one of the reasons that
20 Judge Schaffer, in her wisdom, thought I'm not going
21 to put down exactly when this particular deposition
22 needs to be filed because there are circumstances
23 where we don't want that deposition filed so that the
24 general public has it, and then the defendant doesn't
25 get a fair trial because of that process.

1 We start with the basic premise, Your Honor,
2 that in the administrative order, as the Court has
3 seen, is it's a Court that actually orders the
4 transcript. It's not the prosecutor, it's not the
5 court-appointed lawyer, it's the Court that orders
6 the transcript. And so there are some inherent
7 rights that the Court, I think, gets with ordering
8 the transcript. They own the transcript.

9 Here, I own the transcript. The Court has no
10 property rights over my transcript that I pay \$4.75 a
11 page on. And the Court -- if for some reason I've
12 got an issue before the Court and I don't want to
13 place that particular depo as part of the record,
14 that's my problem, not the Court's problem. So I
15 think we've got to -- we've got to start there.

16 Beyond that, Your Honor, I think that the most
17 egregious -- and I put this at the very end of my
18 memorandum because I really thought that this portion
19 was the one that carried incredible weight despite
20 the fact that I think everything before that, based
21 upon statutory construction, would win.

22 When you start applying the constitutional
23 rights of my client against this particular
24 administrative order, you will see that the balancing
25 of the Government's right to have free depositions

1 versus my client's right to have a fair trial are
2 greatly outweighed. And the Court knows and has
3 read, I'm sure, the *West Palm Beach* case.

4 And the *West Palm Beach Publishing* case is a
5 case that really, really thoroughly examines, not
6 only through its own decisions, but also examines a
7 great number of decisions dealing with these
8 particular types of things with reference to
9 depositions, with reference to motions to suppress,
10 with reference to pretrial hearings. And on some of
11 them they side in favor of the press, but on the
12 issue of depositions, they have sided squarely
13 between the First Amendment right that the newspaper
14 had and the defendant's right to a fair trial. And
15 they have sided without question with the defendant.

16 So if we're applying that balancing test here
17 and we're saying, well, Mr. Martin, your interest
18 here, Mr. Martin, is that you get these depositions
19 for free. But we've got to worry about Mr. Reeves,
20 who having these particular depositions filed with
21 the court makes them public record. And it's not
22 only Mr. Reeves, but it's all the witnesses that
23 we've deposed and all of the sensitive information
24 that we've obtained that may not be even admissible
25 in a court of law because in a discovery deposition,

1 we are asking every question known to man that can
2 lead to reliable and useful information.

3 What about all those witnesses that have been
4 deposed that have no voice? It's -- it's a pretty
5 treacherous situation, not only for Mr. Reeves and
6 the perception out there by the public, but for all
7 those witnesses as well.

8 And I'd like to read you, Your Honor, if I can,
9 a section of *Palm Beach Newspaper*, which was not
10 included in my memo --

11 THE COURT: Mr. Escobar, let me -- I'm going to
12 have to cut you off here pretty soon. This was set
13 for 30 minutes. We're already 40 minutes in and I do
14 have other matters. And I have other reasons for
15 cutting you off.

16 Mr. --

17 MR. ESCOBAR: I can probably close up,
18 Your Honor --

19 THE COURT: Okay.

20 MR. ESCOBAR: -- in about 20 seconds if the
21 Court would like.

22 THE COURT: All right. Yeah, wrap it up
23 because, you know, I know where you're going and what
24 needs to be done, but it's not going to be done
25 today.

1 MR. ESCOBAR: Okay. I understand.

2 THE COURT: All right.

3 MR. ESCOBAR: Your Honor, one of the sections
4 that I didn't mention in the *Palm Beach* case, which I
5 think is very powerful, talks about the chilling
6 effect that having, for example, these depositions
7 filed in court, the chilling effect that it would
8 have on criminal defense lawyers, because in
9 depositions we ask questions that may, in fact, harm,
10 at the end of the day if someone reads that
11 deposition, our client.

12 And the Court extensively -- by the Supreme
13 Court of Florida extensively talks about that and
14 makes it almost paramount in their decision that we
15 can't have that because it would provide such a awful
16 chilling effect that our client would -- it would
17 result in our client not having a fair trial. The
18 Court knows the pretrial publicity that this case has
19 had. It has been more than monumental.

20 In my opinion, Your Honor, a clear reading of
21 the statute or the order through statutory
22 construction clearly indicates this is limited to
23 court-appointed counsel and publicly-funded lawyers,
24 not to private lawyers. And even if this Court were
25 to opine that the reading applies to private lawyers,

1 it would be in violation of the Constitution.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. MARTIN: May I have three minutes?

5 THE COURT: Yes, three minutes.

6 MR. MARTIN: All right. Thank you.

7 Judge, I'm going to start backwards with the --
8 with the argument and the presentation. The very
9 last thing that Mr. Escobar talked about was the
10 *Palm Beach Newspaper* case. When you read that case,
11 that case dealt with the press wanting to sit in on
12 depos and having access to unfiled depos. We're
13 talking apples and oranges. Apples and oranges.

14 That *Palm Beach Bert* (phonetic) case is
15 absolutely not on point what we have here. So that's
16 my first comment on the *Patterson*. Read the
17 *Patterson* case. You see that we're talking apples
18 and oranges.

19 The second part is -- or the other comment,
20 Judge, we're dealing with the administrative order,
21 the paragraph B(1). The issue before this Court is
22 the filing of the depos. What happens after they're
23 filed is not before this Court.

24 I have narrowed my issues strictly to B(1),
25 originals are to be filed. If we wanted to have

1 another hearing some other time about what happens
2 after they're filed, well, so be it. The State is
3 asking this Court to enter its order saying they have
4 to be filed pursuant to B(1).

5 As far as when they are filed, this Court has
6 the inherent authority to regulate discovery. And
7 even though the criminal rules may not apply, this
8 Court can enter a case management order. It can
9 regulate discovery in the manner that it feels
10 necessary in order to be effective in making sure
11 that this case comes before the Court in a timely
12 fashion. And the most effective way to do that is
13 for this Court to regulate the discovery by having
14 those original depositions filed and filed in a
15 timely fashion. So this Court does have the
16 authority to do that.

17 And with that, Judge, I thank you for the three
18 minutes.

19 THE COURT: Thank you, Mr. Martin.

20 All right. The State is -- as we know, I'm not
21 going to repeat. Everybody heard what everybody
22 said. State's relying on the plain language of B(1).
23 Defense is arguing that this administrative order as
24 a whole does not apply to private attorneys.

25 Both arguments are well-taken by this Court.

1 The issues that I have to wrestle with is the fact
2 that it is an administrative order. Some language is
3 clear. B(1) is clear. And while the Defense's
4 argument that this AO does not apply to private Bar
5 is well-taken, I can't just ignore an administrative
6 order either.

7 So what -- and then we've also got Mr. Jung with
8 their interest. All of these issues are clearly ripe
9 for a lot of discussion and consideration. It's not
10 for a 30-minute hearing.

11 And in light of my position where I'm at right
12 now, it would -- what I've got, I am going to grant
13 State's motion to compel the filing of original
14 deposition transcripts.

15 I am not setting a time when those need to be
16 filed. And I'm also reminding -- I'm doing so
17 without prejudice to Defense's remedy of requesting
18 the chief judge to authorize otherwise. And at that
19 point, if Defense chooses to go that route, I would
20 expect that Mr. Jung's brief would be entertained and
21 perhaps all of the issues that have been addressed
22 could be addressed.

23 I'm not the one to do that. I have to -- you
24 know, I need to follow administrative orders. And
25 I'm not in the position in a 30-minute hearing to

1 impose my opinion and my thoughts to something
2 that -- there is some plain language here and I don't
3 want to be the one to interpret it. If a new AO is
4 in order, then we'll let Chief Judge Rondolino
5 address any requests you may have and it will go its
6 course there.

7 MR. ESCOBAR: Your Honor, if I may understand
8 this correctly --

9 THE COURT: Uh-huh.

10 MR. ESCOBAR: -- so you're granting the motion,
11 but not requiring us to file because you set no time
12 limit for that. So when it becomes ripe, then we'll
13 deal with that issue.

14 THE COURT: Correct.

15 MR. ESCOBAR: And --

16 THE COURT: And that is without prejudice to
17 your request to the chief judge to not file.

18 MR. ESCOBAR: Or if we decide to go up on a
19 writ, we can do that as well. We just want to be
20 able to -- once the Court makes that final
21 determination as to when depositions will have to be
22 filed, just that we get enough time to be able to
23 pursue those --

24 THE COURT: Uh-huh.

25 MR. ESCOBAR: -- courses. Right now, since

1 we're not obligated to file them, there's no need for
2 us to pursue anything.

3 THE COURT: Right. I mean, I'm not setting a
4 time limit. Obviously, that would give you the
5 opportunity to address your request with the chief
6 judge, so --

7 MR. MARTIN: Judge, if I could, I will draft the
8 order for the Court. I'm trying to grapple with the
9 language. The State's motion is granted in part and
10 denied in part. I get that part.

11 Granted in part in that the originals have to be
12 filed.

13 THE COURT: Correct. And in doing so, because
14 that is in the plain language of the AO.

15 MR. MARTIN: You're just not setting -- you're
16 not setting a schedule --

17 THE COURT: It does not -- the original AO does
18 not require such. And -- and that argument by the
19 Defense was well-taken, also. There -- for many
20 reasons, that is -- well, their argument's
21 well-taken.

22 And, again, it's not specified. I am relying on
23 the very clear language of Paragraph B(1) that says
24 the original transcript of a deposition or other
25 proceeding in a criminal case shall be filed in the

1 court file unless, upon an attorney's request, the
2 chief judge authorizes otherwise.

3 There is no time limit. There's nothing in
4 there. So I'm again at where I'm not inclined to
5 impose any opinions I may have as to what was meant.
6 I'm also not going to impose something that's not
7 there.

8 MR. MARTIN: All right. So as far as the order,
9 granted in part in that the original transcript, the
10 ones that are currently and the ones in the future,
11 that is granted. Denied in part -- and I assume,
12 Judge, without prejudice because --

13 THE COURT: Correct.

14 MR. MARTIN: -- it's a hollow court ruling to
15 say they have to be filed. But if I can't come back,
16 you know, in September, when we have the Stand Your
17 Ground argument in November saying, Judge, it's time
18 to regulate discovery, set it. You know what I'm
19 saying. It's a hollow order --

20 THE COURT: It is.

21 MR. MARTIN: -- unless I have a way to enforce
22 it. So --

23 THE COURT: Correct.

24 MR. MARTIN: -- right now you're denying a time
25 frame --

1 THE COURT: Uh-huh.

2 MR. MARTIN: -- for the originals and futures to
3 be set without prejudice to be taken up at a later
4 time by this Court. Is that accurate for the order?

5 THE COURT: That would be correct. As I
6 indicated, the granting is also without prejudice for
7 them to seek redress with the chief judge.

8 As it says in Paragraph B -- I'm just mirroring
9 the language there.

10 MR. MARTIN: Right, because whether we set
11 that -- by granting that order, it's implicit in the
12 administrative order that they have a right to seek
13 that. So --

14 THE COURT: Uh-huh.

15 MR. MARTIN: -- do you want me to put in there
16 without prejudice to that effect or is that just
17 inherent in the order? See what I'm saying? The
18 administrative order already gives them that right.
19 So if it's -- if it's granted in part --

20 THE COURT: All right.

21 MR. MARTIN: -- that would be transcribed -- I
22 mean, that they are to be filed --

23 THE COURT: Uh-huh.

24 MR. MARTIN: -- is denied in part without
25 prejudice for the State to seek additional remedy

1 regarding the timing of the filing of the
2 depositions. Then, Mr. Escobar and his team can rely
3 on the administrative order to go before the chief
4 judge and seek the affection because you've already
5 granted an order that they must be filed.

6 THE COURT: Okay.

7 MR. MARTIN: Is that -- is that --

8 THE COURT: That --

9 MR. MARTIN: I'm just trying to get the language
10 of the order.

11 THE COURT: For all intents and purposes, that
12 it will have the effect that I'm trying to impose.

13 MR. ESCOBAR: Your Honor, just -- if he could
14 just pass that order to me whenever --

15 MR. MARTIN: Oh, ab --

16 THE COURT: Correct.

17 MR. ESCOBAR: -- so that we can at least --

18 THE COURT: Uh-huh.

19 MR. ESCOBAR: -- hopefully agree to the
20 verbiage.

21 THE COURT: Correct.

22 MR. MARTIN: Right, absolutely. I'm just trying
23 to get the parameters for the Court so I may draft it
24 for you.

25 THE COURT: Okay. All right. Yes, that should

1 be sufficient.

2 I don't think we have any other matters set for
3 today, so we'll -- wait a minute. What -- do we
4 have -- has there been a motion, Stand Your Ground
5 motion filed?

6 MR. ESCOBAR: No, Your Honor. There was a
7 schedule that Judge Siracusa had set --

8 THE COURT: Uh-huh.

9 MR. ESCOBAR: -- back some time ago. I know
10 we've got a pretrial conference, I believe, on the
11 28th of this month.

12 THE COURT: Okay. You're correct.

13 MR. ESCOBAR: And so I think, you know, we've
14 been taking depositions, myself and Mr. Martin. There's a
15 slew of witnesses that have just come up, brand new
16 witnesses as part of the discovery process.

17 THE COURT: Okay.

18 MR. ESCOBAR: And so I think that come the 28th,
19 we'll discuss with the Court what our thoughts are
20 and how things are going and --

21 THE COURT: Okay. You concur with that?

22 MR. MARTIN: Yes.

23 THE COURT: While you're new on the case, too,
24 but --

25 MR. MARTIN: I'm trying to get up to speed as

1 fast as I can, Judge.

2 THE COURT: Ms. Sumner?

3 MS. SUMNER: That's -- that's accurate, Judge.

4 THE COURT: Okay. All right. Very good. Then
5 we'll see everybody back on the -- August 28th.

6 You're welcome always to waive your client's
7 presence.

8 MR. ESCOBAR: Even for the pretrials?

9 THE COURT: Absolutely.

10 MR. ESCOBAR: Thank you, Your Honor. I
11 appreciate that.

12 THE COURT: All right. Thank you.

13 (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 18th day of August, 2015.


Melinda McClain, RPR