

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY  
CASE NO. 1400216CFAES

|                       |   |
|-----------------------|---|
| STATE OF FLORIDA,     | : |
|                       | : |
| Plaintiff,            | : |
| -VS-                  | : |
|                       | : |
| CURTIS JUDSON REEVES, | : |
|                       | : |
| Defendant.            | : |

PROCEEDINGS: MOTION TO COMPEL

BEFORE: HONORABLE PAT SIRACUSA  
Circuit Judge

DATE: May 29, 2015

PLACE TAKEN: Pasco County Government Center  
7530 Little Road  
New Port Richey, FL 34654

REPORTED BY: Maria A. Fortner, RPR  
Notary Public  
State of Florida at Large

Administrative Office of the Courts  
Court Reporting Department  
West Pasco Judicial Center  
7530 Little Road  
New Port Richey, FL 34654  
Tel. (727) 847-8156 Fax:  
(727) 847-8159

*Paula S. O'Neil  
Clerk & Comptroller  
Pasco County, Florida*

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**ORIGINAL**

A P P E A R A N C E S

APPEARING ON BEHALF OF  
THE STATE OF FLORIDA:

WILLIAM A. LOUGHERY, Assistant State Attorney  
Office of Bernie McCabe, State Attorney  
Sixth Judicial Circuit, Pinellas County, Clearwater, Fl

APPEARING ON BEHALF OF  
THE DEFENDANT, CURTIS REEVES:

RICHARD ESCOBAR, ESQUIRE  
DINO M. MICHAELS, ESQUIRE  
ESCOBAR & ASSOCIATES  
2917 W. Kennedy Boulevard  
Tampa, Fl 33609

P-R-O-C-E-E-D-I-N-G-S

THE COURT: You can be seated.

All right. We're here in the State of Florida vs. Curtis Reeves. Case Number 2014-216CFAES. Charged with murder in the second degree, a first-degree felony; and aggravated battery, a second-degree felony.

State is represented by Mr. Loughery. The defense is represented by Mr. Michaels and Mr. Escobar.

The defendant's presence was waived because it is purely a legal argument motion and he didn't have to be here if he didn't want to.

Of course, you gentlemen told him he could be here if he did want to, right?

MR. ESCOBAR: We did, Your Honor.

THE COURT: All right. We're here on a motion to compel disclosure on a number of different items. And, I guess, we should just go through them one at a time.

Defense, you want the left and right shoes Mr. Reeves wore while he was in the Cobb Grove Theater, and that's from January 13th of 2014.

It's my understanding that they were taken into evidence obviously, right?

1 MR. ESCOBAR: They were, Your Honor.

2 THE COURT: And you want to take possession of  
3 them within the chain of custody and take them some  
4 place other than looking at them at the evidence  
5 locker?

6 MR. ESCOBAR: Your Honor, what I told  
7 Mr. Loughery is that I'm going to just have the  
8 right shoe. I don't need the left and the right  
9 shoe. He can keep the left shoe. They're  
10 identical shoes except that one goes on the right  
11 foot; the other one goes on the left foot.

12 THE COURT: If you're just going to use them  
13 right, yes.

14 MR. LOUGHERY: That's right.

15 MR. ESCOBAR: So I'm just really seeking the  
16 right shoe at this point in time so that hopefully  
17 he can feel a bit more comfortable that an  
18 identical item is going to be kept in his  
19 possession.

20 THE COURT: Mr. Loughery, do you have any  
21 objection to letting him have the right shoe?

22 MR. LOUGHERY: Well, I do Judge.

23 THE COURT: Keeping in mind you'll still have  
24 the left shoe hostage, if you need it?

25 MR. LOUGHERY: I do. Only because we had a

1 discussion a couple days ago in trying to see if we  
2 can figure something out about this, and that was a  
3 negotiation perhaps at one point.

4 But when I felt it was useless to get over the  
5 hurdle that Mr. Escobar believes that we should  
6 just give all this evidence to them unsupervised,  
7 then I'm here today to object to that process. So  
8 I really don't want to parse it out.

9 THE COURT: You don't want to concede to any  
10 of it. I understand.

11 MR. LOUGHERY: Not at this point, I don't,  
12 Judge, no.

13 THE COURT: All right. Hold on a second.  
14 You all need to figure something out here?  
15 Come on, you can come up.

16 MR. LOUGHERY: Us?

17 THE COURT: No, no. This young lady has to do  
18 something. I'm not sure what she needs to do.

19 UNIDENTIFIED SPEAKER: I'm sorry.

20 THE COURT: Don't worry about it. If it  
21 wasn't already a week to remember, I'd be more  
22 concerned about it, but let's just get what you  
23 need done.

24 Are you ready? All right. Do you need to put  
25 something else someplace?

1 UNIDENTIFIED SPEAKER: Yes. We need it on.

2 THE COURT: Go ahead.

3 MR. LOUGHERY: While they're doing that,  
4 Judge, you've seen the motion and the response?  
5 Have you seen those?

6 THE COURT: I have seen their motion. I've  
7 not seen your response.

8 MR. LOUGHERY: We filed one a couple days ago.  
9 May I approach?

10 THE COURT: Yes, you can approach.

11 I didn't get a copy of your response, so I've  
12 not read it. I think they're going to fit you with  
13 a mike, Mr. Loughery.

14 All right. Here we go. Did you send this to  
15 Carolyn?

16 MR. LOUGHERY: I believe so. I didn't  
17 personally myself, but it was sent. You know, it  
18 could be in Dade City.

19 THE COURT: That's possible, yeah. Because I  
20 would have read this. It's only four pages, but I  
21 would have read it beforehand.

22 MR. LOUGHERY: Right. I think we filed it  
23 Tuesday afternoon.

24 THE COURT: Okay. Yeah, just call in the  
25 future and make sure Carolyn received it so that we

1 can get that done.

2 MR. LOUGHERY: Yes, sir.

3 THE COURT: Okay. I've had a chance to review  
4 your response.

5 All right. I guess, let's go next to why do  
6 you need -- I'm sorry. Which shoe did you say, the  
7 left shoe or the right shoe?

8 MR. ESCOBAR: The right shoe, Your Honor.

9 THE COURT: Why do you need the right shoe?

10 MR. ESCOBAR: Your Honor, if I could approach  
11 the Court and give you a packet.

12 THE COURT: Sure. I hope you're not going to  
13 expect me to read that?

14 MR. ESCOBAR: No. But I can direct you to  
15 certain portions of it. I'm going to make that  
16 part of the record, if we can, so that it would be  
17 clear as to the reasons.

18 Your Honor, initially, if you look through  
19 that document, you'll see that it starts off with  
20 an Orange County Sheriff's Office report. And this  
21 Orange County Sheriff's report is going to be for  
22 two items: Number one, the actual hard drives that  
23 were used in order to generate this examination and  
24 this test that was conducted by Orange County; and  
25 then obviously it is going to be important as well

1 concerning the shoe.

2 If you flip through to Page 2 of that Orange  
3 County report, and Page 5 -- and that's where the  
4 shoe issue starts -- you'll see that they have  
5 captured some pictures that attempt to show some  
6 lighting coming from Mr. Reeves's tennis shoes.

7 They go through Page 5 and through Page 10,  
8 and then they start again on the shoes on Page 17,  
9 Page 23, which is of great importance there,  
10 showing what they opine is a reflection.

11 Again Page 24, they've labeled that a  
12 reflection or reflective area; 25, a reflective  
13 area; 26, a reflective area; 27, a reflective area;  
14 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40.

15 THE COURT: All right.

16 MR. ESCOBAR: On and on. And so if you go  
17 further into the reports, it's at the very back of  
18 this stack, Your Honor, you'll see that there are a  
19 series of pictures of the actual shoe, and it  
20 starts with I would say the last 10 pages. And the  
21 first page of that exhibit is a bag that contained  
22 the shoes.

23 THE COURT: Ah, right.

24 MR. ESCOBAR: And then you'll see the next  
25 six, seven, eight pages, them being actual very



1 thorough pictures of the shoes themselves.

2 THE COURT: Yeah.

3 MR. ESCOBAR: And then there is an examination  
4 that they start doing about three or four pictures  
5 in where they're shining a light onto those shoes  
6 in an attempt to show a reflection.

7 THE COURT: Okay.

8 MR. ESCOBAR: And they adjust the intensity of  
9 the lighting in the room in order to try to get  
10 different aspects of that particular lighting. And  
11 you'll see in one of the last ones, they put that  
12 shoe on the floor shining a light on the shoe.

13 THE COURT: Okay.

14 MR. ESCOBAR: In an attempt to show a  
15 reflection.

16 THE COURT: Okay.

17 MR. ESCOBAR: So, likewise, we need one of  
18 those shoes in order to test, copy, examine that  
19 shoe in order to confront their theory that  
20 whatever light was emanating in that video.

21 The Court remembers the loop video that we  
22 presented early on in the bond motion in this case  
23 where it actually showed a rectangle light that we  
24 are suggesting to the Court and we suggested back  
25 then to the Court that it was nothing but

1 Mr. Oulson's phone that had been thrown by  
2 Mr. Oulson at Mr. Reeves while Mr. Reeves was  
3 seated in his chair.

4 Consequently, Your Honor, which I think  
5 corroborates that to a great extent, is the fact  
6 that that particular phone, Mr. Oulson's phone  
7 immediately after the shooting was found in between  
8 Mr. Reeves's two feet as he was seated.

9 If the Court recalls, Corporal Hamilton  
10 quickly came over to Mr. Reeves, saw the phone in  
11 between Mr. Reeves's legs; and the Court recalls  
12 also the testimony that between the row that  
13 Mr. Oulson was seated in and the row that  
14 Mr. Reeves was seated in, there's about an  
15 eight-inch upstep, which means that if Mr. Oulson  
16 by some reason had dropped the phone in his row,  
17 there's no way that that phone is going to climb up  
18 eight inches and get into Mr. Reeves's row.

19 So as you can imagine, their theory, at least  
20 what they're going to try to report to the jury, is  
21 that somehow that reflective light is coming from  
22 Mr. Reeves's shoe.

23 THE COURT: All right. Just to be clear, I've  
24 heard everything you're saying. I'm not  
25 necessarily saying that I agree with everything

1 you're saying, but I've heard everything you're  
2 saying.

3 It's only because I'm saying "okay" doesn't  
4 mean that I necessarily agree. My recollection of  
5 all of that testimony is exactly what you just  
6 said, but I understand what your position is.

7 MR. ESCOBAR: So it's a material issue in this  
8 particular case.

9 THE COURT: Okay.

10 MR. ESCOBAR: And it's relevant to the issues  
11 that are going to be presented before the jury, and  
12 clearly the Rules of Criminal Procedure as well as  
13 our constitution in Florida.

14 And I disagree with Mr. Loughery. He makes a  
15 statement in his memorandum that there is no  
16 constitutional right to discovery; he cites a  
17 federal case with that.

18 And there may not be a federal constitutional  
19 right to discovery, but I can tell the Court that  
20 clearly under the case -- and I'll give this case  
21 to you. I cited it in my memo -- *State vs.*  
22 *Gonzalez*, it clearly says that there could be a due  
23 process violation for the denial of discovery,  
24 proper discovery in any criminal case. So that  
25 implicates the constitution, certainly the Florida

1 Constitution.

2 In looking, Your Honor, at the case law  
3 dealing with these particular issues, it's clear  
4 the rules say that we have a right to inspect and  
5 test evidence in this particular case that's going  
6 to be brought forth in a trial.

7 And I'm going to cite, first of all, *Kuntsman*,  
8 which is at 643 So.2d 1172. Most of these I've  
9 cited in my memo, but whatever the Court doesn't  
10 have, I'll be able to provide it, because I have  
11 the stack here for the State and for the Court.

12 We have to start off with understanding that  
13 Florida has one of the most liberal discovery rules  
14 in the entire country. There are four other  
15 jurisdictions besides Florida that has as liberal  
16 of a discovery rule as we have here.

17 Only four other states have depositions, five  
18 have depositions and liberal discovery rules, the  
19 rest are, you know, pretty strict.

20 THE COURT: All right. You're going to have  
21 to tell me what the four other states are or I'm  
22 not going to be able to refute it without looking  
23 it up.

24 MR. ESCOBAR: I can tell you Texas is one.

25 THE COURT: Okay.

1 MR. ESCOBAR: And I don't have the other ones  
2 right with me.

3 THE COURT: All right. I'm going to take your  
4 word for it. You know I'm going to have to look it  
5 up now.

6 MR. ESCOBAR: So we have to start there and  
7 realize that, hey, in Florida the legislature and  
8 our Supreme Court has decided that, hey, we're  
9 going to have liberal discovery rules in order to  
10 facilitate a fair trial.

11 And when you look at the case law, Your Honor,  
12 really fairness is the bottom line. And I'm going  
13 to cite *State vs. Coney*, which is located at 272  
14 So.2d, 553. And this is what it says:

15 "The underlying principles supporting the  
16 whole idea of criminal pretrial discovery as  
17 gleaned from all the cases and well reasoned  
18 commentaries is fairness."

19 And, you know, at this point the Government  
20 has had these shoes. They didn't call me up and  
21 say, "Hey, Rick, listen, I've got these shoes, and  
22 by the way, we're going to run some tests and I  
23 think it's only fair for you to be present when we  
24 do these tests because, you know, there may be some  
25 tampering or we may lose the shoes." They never

1 did that.

2 And so just like they have the ability to  
3 examine that particular shoe at their discretion,  
4 we should as well with reference to our experts and  
5 our staff.

6 And so I think that we're being more than  
7 fair, I think, by saying, "You keep the left; we  
8 take the right." They've documented this shoe  
9 considerably. They've taken every photo known to  
10 man about this shoe. They've given that shoe, I  
11 guess, to two experts.

12 One set of experts are the ones that took the  
13 photos that are at the very back of the packet that  
14 I just gave the Court; the other was the Orange  
15 County expert that examined that alleged reflection  
16 and opined that that was a reflection that needed  
17 to be considered in this particular case.

18 So they've exhausted everything that they can  
19 possibly do with this shoe. It's time to turn it  
20 over to the Defense now so that we can use that  
21 shoe in an effort to make our comparisons, our own  
22 tests, and our own theories about whether that shoe  
23 is, in fact, relevant in this case.

24 THE COURT: Well, if your expert examines the  
25 shoe, you're going to have to turn those expert

1 reports over to the State anyway, right?

2 MR. ESCOBAR: It all depends. And I know  
3 there's the Kidder case, Your Honor. I'm familiar  
4 with the Kidder case.

5 THE COURT: Strange you should mention that.  
6 I just read it today. June 12th, out of the Second  
7 DCA, in 2013, I believe.

8 MR. ESCOBAR: I am familiar with the Kidder  
9 case, and I'm prepared at some point in time to  
10 argue the issues of the Kidder case.

11 I think at this point in time, I would  
12 disagree. I don't think that every expert that  
13 works with me in this particular case and how I  
14 test those particular shoes and what I go by, the  
15 process I go by in testing those shoes  
16 automatically makes an expert that I've employed  
17 subject to discovery.

18 So I respectfully disagree with the Court that  
19 Kidder encompasses every particular expert that I  
20 may talk to. But, you know, that issue really is  
21 not for today because we're at this point in time  
22 not in a position to reveal our experts.

23 At some point in time, I'll be more than glad,  
24 Your Honor, because the one thing that we want to  
25 make sure is that no one violates the discovery

1 rules here.

2 So at some point in time if the Court wants to  
3 have a Kidder hearing, and we can in camera show  
4 you everything that we've done and you can  
5 determine whether Kidder applies, I'll be more than  
6 willing to do that, because it's not my intent by  
7 any stretch of the imagination to hide anything  
8 from the Government that I'm not entitled to hide.

9 But at this point in time we're talking about  
10 a shoe, we're talking about a test that they've  
11 done on that particular shoe that they're now  
12 opining is the reflection that we believe is a cell  
13 phone, and for that reason, Your Honor, I think  
14 we're entitled to it.

15 I can tell you I've got great language by many  
16 of the cases, some of them that I've cited in my  
17 brief, where the court is saying it is the absolute  
18 obligation of a lawyer -- it's what makes these  
19 trials fair -- it's the absolute obligation of the  
20 lawyer to test thoroughly all of the Government's  
21 evidence.

22 And I shouldn't have to give my work product  
23 up, my theories, my way of doing an analysis, my  
24 way of doing a comparison, we shouldn't have to  
25 give my work product up because the Government



1        somehow says -- it's totally speculative -- that I  
2        need to have a chain of custody, a continuous chain  
3        of custody.

4                As the Court well knows, the issues of chain  
5        of custody have changed back from when I started  
6        practicing law 32 years ago. The issues of chain  
7        of custody is very, very difficult in today's day  
8        and age to omit a piece of evidence from being  
9        introduced, unless I can show not by mere  
10       possibility but by probability that, in fact, that  
11       particular item has been tampered with.

12               And then there's another standard for custody,  
13       and that is a readily identifiable object. In  
14       other words, if you have a gun with a serial  
15       number, you don't have to worry about the chain of  
16       custody because it's readily identifiable.

17               And, in fact, if you've got someone that at  
18       the scene picked up that gun and saw that serial  
19       number as being double AA-123, and at trial you  
20       have someone that's introducing that gun double  
21       AA-123, that is sufficient chain of custody to  
22       introduce that particular gun.

23               And so I've got some arguments concerning that  
24       aspect of chain of custody in reference to the hard  
25       drives in this particular case and when it comes --

1 THE COURT: Let's just go one at a time and  
2 stay on the issues.

3 MR. ESCOBAR: Okay.

4 THE COURT: And I'm familiar with chain of  
5 custody. I have a copy of *Ehrhardt*. It's up here,  
6 and I've read *Peek vs. State*.

7 All right. Anything else on the shoes before  
8 I give the State the final response? No?

9 State, final response on the shoes? Why  
10 shouldn't he get the shoes?

11 MR. LOUGHERY: Well, because this whole  
12 argument is about his ability to test it.

13 We've never said he can't test it. We just  
14 don't want to turn it over unsupervised with no  
15 oversight as to what happens to these shoes.

16 Now, forget the chain of custody aspect for a  
17 second. That's very important, but we can't be  
18 forced to give up the chain of custody. If one of  
19 those shoes comes back altered and tampered with,  
20 we have no recourse.

21 Okay. On an aside, if the Defense lists an  
22 item of evidence, I really don't think the Court  
23 would say, "State, take it for a week and do what  
24 you want with it and then give it back to the  
25 Defense." The Defense would say, "Oh, my goodness,

1 Judge, no, we want to make sure the State doesn't  
2 mess that up, we want our expert there while the  
3 State looks at this," and you would grant that  
4 motion.

5 I have never, ever seen where our evidence is  
6 turned over unsupervised to the Defense to do what  
7 they want. Just like in a possession of cocaine  
8 case, as a Defense, "We need to test this. Can we  
9 have it for a week, please, before we give it back  
10 unsupervised?" You never do that.

11 We're not trying to stomp on their  
12 constitutional rights or procedural rights to do  
13 discovery. In fact, if you look at the response,  
14 we say, "Please come in and do it, but we're not  
15 going to give you the stuff that's potentially used  
16 in trial so it can potentially be altered or  
17 potentially tampered with."

18 Look, I'm not suggesting they're going to  
19 intentionally do that, but I don't have any  
20 recourse if that happens. I do have recourse if  
21 we're there and see what happens. It's not a work  
22 product issue.

23 We're not asking to stand over their shoulders  
24 and watch their reports and see the notes they  
25 write down.

1           And let me point to this so the record is  
2 slightly balanced here. Mr. Escobar talked about  
3 this reflection being the cell phone and now we're  
4 opining it's the shoe.

5           Now, you referred to the loop from the other  
6 day. Well, that's right, it was a loop. If you  
7 look at the whole tape, you will see Mr. Reeves's  
8 shoes reflecting as we walked down the aisle. He  
9 wasn't stepping on a cell phone.

10          Okay. And so it's a common sense thing, when  
11 you see the whole tape and you say, "Wait a minute.  
12 That's not a cell phone, that's his shoes."

13          So we've done this stuff. If they want to go  
14 look at the shoes and photograph the shoes and put  
15 them in different lighting, no problem; but we need  
16 somebody there to make sure that these things are  
17 not altered or tampered with in some fashion or  
18 there's some chain of custody issue.

19          So we're not trying to prevent them from  
20 testing them or inspecting them or making  
21 photographs of them, we're just saying we don't  
22 want you to do that without someone being present.

23          And I think that's the way it's always been  
24 done. I don't think there's any cases out there  
25 that I've seen that says a piece of evidence can

1 just be handed over to the defense to do whatever  
2 they want with for a whole week or however long and  
3 just bring it back when they want to.

4 We have the burden of proof; they don't. It's  
5 not like it's an equal thing here going on here.  
6 We have a different ethical responsibility than  
7 they have.

8 And it's our evidence, if they want to inspect  
9 it and test it, please come and do it, but you have  
10 to do it so we can supervise it. That's not an  
11 outrageous request.

12 THE COURT: Okay. Mr. Escobar, I can tell you  
13 have a response.

14 MR. ESCOBAR: I do, Your Honor. Let's try to  
15 analyze this.

16 THE COURT: That's what we're doing today.  
17 Absolutely.

18 MR. ESCOBAR: They have photographed both  
19 shoes.

20 THE COURT: Yeah.

21 MR. ESCOBAR: They have taken minute detailed  
22 information from both shoes.

23 Mr. Loughery is saying, well, what if he loses  
24 the right shoe? If Mr. Escobar or his team should  
25 lose the right shoe, they have all of those photos,

1 all of those analyses that were done and preserved  
2 to give to the jury. It's not like the shoe is the  
3 analysis. The shoe is an item. The right shoe and  
4 the left shoe are items.

5 They can hand that left shoe to the jury and  
6 say, look, this is the shoe that Mr. Reeves was  
7 wearing, and you see all the stripes here on the  
8 side, you see these marks at the back of the heel,  
9 you see these marks here, these are reflective  
10 areas of the shoe; and, therefore, the jury can  
11 actually see the shoe, feel the shoe, touch the  
12 shoe, put the shoe in a dark room, shine a light if  
13 they want to, do all of those things, and he is not  
14 hampered in any way whatsoever.

15 So at worst case scenario, an absolute worst  
16 case scenario, he has the identical piece of  
17 evidence that he introduces to the jury that was  
18 analyzed by his experts and have opined as to  
19 whether or not they were relevant in this  
20 particular case.

21 But guess what? If they come to our  
22 facilities where we're going to be doing our thing,  
23 everything that I do with that shoe and my  
24 placement of the shoe here and there, that's my  
25 work product.

1           If my theory is that this shoe was seated in  
2           this position, that is my work product, and he's  
3           able to see all of my work product, all of my  
4           thoughts, all of my observations of contradiction,  
5           he's able to see.

6           I shouldn't have to give up my work product in  
7           order to do a test equally as his experts did in  
8           the defense of my client.

9           He's making the accusations, we should have  
10          equal right to make exhaustive tests and  
11          experiments with this particular shoe.

12          And he's not going to be damaged at all, and  
13          he can't tell you that he's going to be damaged at  
14          all. It's just a nonissue.

15          THE COURT: Okay. So that's the shoes.

16          Next item that was on for discussion was the  
17          firearm.

18          You want the firearm and each round of  
19          ammunition to be taken away from the evidence  
20          locker?

21          MR. ESCOBAR: I am going to be so reasonable,  
22          I'm just going to say the firearm.

23          THE COURT: Okay. So you just want the  
24          firearm?

25          MR. ESCOBAR: Just the firearm. Give me the

1 firearm.

2 THE COURT: All right. Firearm.

3 So this is the weapon that caused the death of  
4 Mr. Oulson, and you want to have exclusive  
5 possession of this weapon for five days?

6 MR. ESCOBAR: For five days.

7 THE COURT: Okay.

8 MR. ESCOBAR: If you look halfway through my  
9 packet, Your Honor, you will see that there is a  
10 ballistics report that was prepared by Jennifer  
11 Clark.

12 THE COURT: Halfway through which packet? The  
13 one that you just gave me?

14 MR. ESCOBAR: The one I just gave you, yes.

15 THE COURT: Oh, I thought that was just a shoe  
16 packet. It looked like you had other packets for  
17 other items over there.

18 MR. ESCOBAR: That is a packet of all of the  
19 supporting documents that we are supplying to the  
20 Court in this particular case.

21 And if you look halfway through, you'll see  
22 that there's an acknowledgment of additional  
23 tangible evidence that was supplied to the Defense  
24 on November the 19th of 2014, which was a full lab  
25 report concerning the examination and test-firing



1 of that particular gun.

2 THE COURT: I see that.

3 MR. ESCOBAR: I would ask the Court to go  
4 through all those pictures, because they have  
5 thoroughly examined and photographed every aspect  
6 of that gun, including the barrel, bullets, you  
7 know, shell casings.

8 Everything has been thoroughly documented,  
9 thoroughly examined. It's exhaustive that report,  
10 which it should be.

11 And so the only problems with that report is  
12 that if you start taking a look at the photos that  
13 were provided to the Defense --

14 THE COURT: Okay.

15 MR. ESCOBAR: -- those photos are of very poor  
16 quality.

17 And in speaking with our particular experts,  
18 we are in need of doing our own gunpowder test to  
19 determine the patterns at different distances.

20 THE COURT: Okay.

21 MR. ESCOBAR: We do not believe, Your Honor,  
22 that what was provided to us, at least for our  
23 purposes, is sufficient in order for my experts to  
24 testify before this Court and opine as to the  
25 distances of the muzzle of that gun and the various

1 parties that are alleged as victims in this matter.

2 They've test-fired the gun. They've used the  
3 bullets that were in the gun. And if the Court  
4 recalls, the Court was concerned that some of these  
5 items may be expended, and this was one of the  
6 items.

7 There was bullets in the gun, and they were  
8 going to do this distance testing, and they were  
9 probably going to use all of the bullets in the  
10 distance testing.

11 The bullets that you see that were seized from  
12 the car are not one and the same bullets that were  
13 used in this particular firearm.

14 THE COURT: A different box of ammunition?

15 MR. ESCOBAR: A different box of ammunition.

16 THE COURT: Okay.

17 MR. ESCOBAR: And so we were concerned.

18 Everybody was concerned. Mr. Garcia was concerned.  
19 And the Court actually inquired back in one of the  
20 hearings as to whether I was okay with them  
21 actually doing this test, and I said absolutely so.

22 THE COURT: I believe that was March of last  
23 year. I asked if you were going to have your  
24 expert present for them to discharge the firearm so  
25 that you could observe it at the same time, and

1       since there are a limited number of rounds in the  
2       magazine that was taken, that you might want to  
3       have your expert present.

4               Yes, I remember saying something like that.

5               MR. ESCOBAR: We knew that we had additional  
6       bullets of the identical type and so that was not  
7       going to be a problem for us.

8               Expending the bullets that were in that  
9       particular gun was not going to be problem for us  
10      at all because we have plenty more of that same  
11      bullet that came from that same box.

12              So I'm not concerned about that at all, but  
13      the quality of their photographing and the quality  
14      actually of their documentation of various aspects  
15      of that test I think are of very, very poor quality  
16      and hamper the Defense.

17              THE COURT: All right. Why can't your experts  
18      simply go to the FDLE range, though, and conduct  
19      that test right there?

20              Because this is a standard test, it's a test  
21      that's been used in ballistics now for going on I'm  
22      going to say 30 years, probably longer than that,  
23      and there's not that much mystery as to the  
24      clothing and apparel that was being worn.

25              So if you intend to replicate it, again it's

1 not like the State is not aware of what type of  
2 shirt Mr.~Oulson was wearing.

3 I don't know what the penetration point was,  
4 but all of that can be replicated.

5 And what your expert is going to do is not  
6 groundbreaking. He's not treading new ground,  
7 unless there's some new test that nobody is aware  
8 of yet that he's got.

9 So why can't you just do it at the FDLE's  
10 range?

11 MR. ESCOBAR: Your Honor, I can tell you in  
12 camera, absolutely.

13 I've got a good basis because it's my work  
14 product. I can tell you in camera as to why we  
15 need to do it away from FDLE. Without question,  
16 I'll be glad to do it on the record, sealed for the  
17 Court's consideration.

18 THE COURT: Mr. Loughery, do you have any  
19 objection to me hearing an in camera explanation as  
20 to why the standard gun test that's been used for  
21 more than 30 years probably now?

22 MR. LOUGHERY: I don't, Judge. I really  
23 don't, because I can't imagine what it could  
24 possibly be.

25 THE COURT: That's probably why he doesn't

1 want to tell you, if you can't imagine what it  
2 could be.

3 MR. LOUGHERY: Well, no, no, I understand  
4 that.

5 But, you know, I hate to be paranoid a bit,  
6 but I think I had mentioned this before. The way  
7 this whole thing seems to be setting up is I just  
8 can anticipate some sort of reenactment, "Using the  
9 real evidence, ladies and gentlemen, the real gun,  
10 the real shoe," and try to recreate this thing and  
11 then try to put it into a trial and have an  
12 argument in court about whether it's admissible or  
13 not.

14 And so I really think if that's going to be  
15 the in camera aspect of it, then I've got a real  
16 problem with that, because the whole thing smacks  
17 of some sort of recreation where they need the real  
18 stuff.

19 Because, otherwise, they can go and buy  
20 another gun, they can go out and buy similar shoes,  
21 and do all the tests they want. Okay. I mean this  
22 is something that has to have the exact same shoe.

23 And the cell phone issue we're not talking  
24 about today because --

25 THE COURT: That's okay. Don't skip ahead.

1           MR. LOUGHERY: Well, Mrs. Oulson filed a  
2 response to that.

3           THE COURT: I read that, but don't spoil the  
4 surprise. We still have that to come.

5           MR. LOUGHERY: Right. And so we've agreed  
6 that that's not an issue for you today, maybe on  
7 another day.

8           THE COURT: Okay.

9           MR. LOUGHERY: But the point is that the  
10 request for all that stuff, to have the original  
11 stuff and not just buy a replica of the same thing,  
12 makes me think they're going to do some sort of  
13 stage recreation of which I've yet to see that  
14 admissible; but, hey, it's national media, maybe  
15 we'll have a big show on that.

16          THE COURT: I don't know about that.

17           I do know that depending how long a firearm  
18 has been in use, depending on which batch it came  
19 out of, and if it's the same generation -- and even  
20 if it's the same generation and even if it's the  
21 same model of firearm, yes, they're supposed to be  
22 interchangeable; yes, all the parts are supposed to  
23 work, but as a firearm enthusiast, I can say that  
24 there is a difference in discharge.

25           And I've been to the range enough myself to

1 know there is a difference in discharge, even  
2 between -- I think Glock is one of the firearms.  
3 I've used them for many years, and even if you get  
4 the same Gen 3 Glock 22, it's going to discharge  
5 slightly different than another Gen 3 Glock 22.

6 MR. LOUGHERY: I don't necessarily disagree  
7 with that. My point is, to answer your question as  
8 to why it couldn't be done at the FDLE --

9 THE COURT: Yeah.

10 MR. LOUGHERY: -- okay, it makes me believe  
11 there's some sort of staging that they want to use  
12 it for where they can't do that at the FDLE. And  
13 so I'm just guessing what this in camera reason is,  
14 why most tests wouldn't be good and why they have  
15 to have this secret production done.

16 It makes me believe that it has to do with  
17 some sort of recreation so they can tell the jury  
18 this is the exact gun that was used. Okay. So,  
19 therefore, asking to test it is not using it as a  
20 test, it's using it for some other purpose. You  
21 know, it's being used to strengthen this  
22 recreation, or whatever they're going to do  
23 potentially.

24 Again, I'm in the dark because I don't even  
25 know who his experts are a year later.

1 THE COURT: They're going to get to that soon.

2 MR. LOUGHERY: Yes. Everything has been  
3 controlled by these experts for the last year.

4 And so, again, I don't have a problem. I  
5 never object to someone talking to the Court in  
6 camera if it's legitimate.

7 THE COURT: All right. Then I will hear what  
8 it is in camera, I guess.

9 Why don't we do that at the end, though. I  
10 mean I can't do it in here. So I'll take you in --  
11 I don't know, we'll go to my chambers and you can  
12 give me the in-camera reason on the firearm test.

13 Are there any other not in-camera reasons,  
14 though, so that we can get everything that we can  
15 get out to the public out to the public?

16 MR. ESCOBAR: Your Honor, again it goes back  
17 to the argument he's concerned that somehow this  
18 gun is going to disappear, and that because somehow  
19 this gun is going to disappear, that he's going to  
20 be prejudiced.

21 We've got to go back on what they did with  
22 this gun. They've preserved this gun by photos.  
23 They've taken microscopic photos of every aspect of  
24 the gun.

25 THE COURT: Well, wait a minute. You've



1 already told me the quality of the photos of the  
2 gun were terrible.

3 MR. ESCOBAR: No, no. Those are of the actual  
4 distance, the actual gunpowder residue that was  
5 left on the screens.

6 When you look at the rest of the photos,  
7 they've done a very good job of -- and if you want  
8 to, I can actually point out to the ones that I'm  
9 talking about.

10 They've done a very good job of photographing  
11 the gun itself and the internal workings of the gun  
12 as well as the bullets.

13 That is not a problem. The problem is that  
14 when they did this distance testing, they didn't do  
15 a very good job of capturing the results.

16 And so I think my argument is very, very clear  
17 and that is -- and I'll try to get these for you,  
18 Your Honor, so that you can see what I'm talking  
19 about.

20 You can see the pictures of the actual bullets  
21 as they were received. They're crystal clear  
22 pictures of the bullets. That's not a problem.

23 You can see the actual contents of the  
24 gunpowder that they actually photographed. Not  
25 only the gunpowder, but the actual flatten balls

1 that were within the actual bullet itself. They've  
2 done a great job of photographing that.

3 They've also photographed the inner chamber of  
4 the gun itself, and they've done a great job of  
5 outlining all the grooves and all the  
6 particularities of that particular gun.

7 THE COURT: Okay.

8 MR. ESCOBAR: What they haven't done is they  
9 haven't captured the patterns that are so important  
10 to us.

11 And so let's take a look at that. They've  
12 documented the gun itself miraculously, every  
13 aspect, the front and the back. They've taken  
14 great pictures of the gun itself.

15 So in a jury trial what's the prosecution  
16 going to do with that gun? They're not going to  
17 let the jury fire that gun. They're not going to  
18 let the jury do their test with that gun, their own  
19 gun residue test on distances. All they're going  
20 to do is see the gun.

21 The serial number has been documented by  
22 photographs and by written memorandum, every aspect  
23 of the gun has been preserved, and so at worst case  
24 scenario, they can show the jury this is the gun  
25 that was used.

1           It is not in dispute that Mr. Reeves shot  
2 Mr. Oulson. That is not in dispute. It's never  
3 been in dispute. So how are they going to be  
4 prejudiced by my office and my experts testing that  
5 particular gun in order to get relevant evidence in  
6 order to prove our case in chief? How is it  
7 prejudice?

8           They're not prejudiced. By any stretch of the  
9 imagination they're not prejudiced. They've  
10 preserved it enough.

11           And remember, this is one of those chain of  
12 custody items that is easily self-identifiable.  
13 Why? Because guns have serial numbers. And that  
14 serial number is clearly photographed. That serial  
15 number is well documented.

16           So it's not like they're going to lose any  
17 evidence whatsoever, but they're giving the Defense  
18 a chance to use this gun in a proper way.

19           THE COURT: Okay. All right. The third item  
20 that's being discussed today?

21           MR. ESCOBAR: Your Honor, I think it was the  
22 cell phone of Mr. Oulson.

23           And what happened there, Your Honor, is that I  
24 spoke to Mr. Loughery, I spoke to Mr. Grimaldi.  
25 Mr. Grimaldi could not be here today.

1 THE COURT: Yeah.

2 MR. ESCOBAR: In an abundance of caution,  
3 because of the issue of privacy that was brought up  
4 by Mr. Grimaldi, we all agreed, all three of us  
5 agreed that probably it was a better time to do it  
6 when Mr. Grimaldi was here so that he could speak  
7 his voice on behalf of Mrs. Oulson.

8 And so sometime after today we're going to all  
9 join together on a conference call in order to try  
10 and get a date with your office that we can all  
11 agree on so that we can have the arguments on the  
12 cell phone.

13 I can tell you that probably the arguments on  
14 the cell phone are probably going to be a bit more  
15 lengthy. Certainly I think we've got, you know,  
16 considerable issues and case law that I think I  
17 would like the Court to consider, even beyond the  
18 case law in my motion, based upon the response that  
19 I got from Mr. Grimaldi.

20 So we are preparing a response or a reply to  
21 his response, and I think it will be quite  
22 thorough, dealing with the issues of privacy and  
23 our procedure that we think we're going to employ  
24 to safeguard all of it.

25 THE COURT: Okay. So let's forget the cell

1 phone for today.

2 All right. Does that work for you also,  
3 Mr. Loughery?

4 MR. LOUGHERY: Yes, sir.

5 THE COURT: All right. So that takes us to I  
6 think it was the hard drive for the Cobb Theater  
7 DVR. Is that something you still want?

8 MR. ESCOBAR: Yes, Your Honor. If you look at  
9 the first page of the Orange County Sheriff's  
10 Office report, this is so telling.

11 Let me read you the first paragraph and put  
12 that on the record. It's that important.

13 THE COURT: Okay.

14 MR. ESCOBAR: It says that "On 2/12 of 2014,  
15 at approximately 12:30 P.M., Investigator Neal  
16 Frailey dropped off a DVD disk for me to examine to  
17 determine if or what might have been shown at the  
18 time of the shooting at the theater." And that DVD  
19 is a DVD that I got as well.

20 It's actually a mirror of the hard drive that  
21 Detective Smith initially did when this case first  
22 started.

23 What they did was from the Cobb Theater they  
24 mirrored the hard drives not only through DVDs, but  
25 through thumb drives and through hard drives

1 themselves and then they provided the defense, if  
2 the Court recalls --

3 THE COURT: A big Seagate.

4 MR. ESCOBAR: Exactly. And so we got all of  
5 that.

6 THE COURT: Yeah.

7 MR. ESCOBAR: And so this DVD, which was a  
8 mirror of the hard drive, was provided to their  
9 experts in Orlando.

10 THE COURT: Yes.

11 MR. ESCOBAR: And this is what he says:

12 "The DVD contained a processed timeline video  
13 from several cameras. The video was not what I  
14 needed to fully, to fully examine the incident, so  
15 I requested the original videos from the Cobb  
16 Theater."

17 In other words, he requested, their expert  
18 requested the original hard drives from the Cobb  
19 Theater in order for their expert to do their  
20 analysis, and so that's exactly what was provided.

21 If you look at the paragraph right below,  
22 you'll see that Frailey went back and got the case  
23 that contained the hard drives and they examined  
24 those particular hard drives.

25 And you'll see that the hard drives -- and

1 this is particularly important for the Court I'm  
2 sure as well -- each hard drive has a serial  
3 number.

4 Now, one of the things that has not been  
5 documented in this Orange County report, not only  
6 does it have a serial number, but it has a tag  
7 number.

8 They provided discovery to us that not only  
9 has the serial number from each hard drive, but it  
10 has a tag number.

11 So there's two numbers that are peculiar and  
12 specific to that particular hard drive that  
13 identifies that particular hard drive.

14 And so as you can see here in this report, for  
15 every hard drive there's a serial number that is  
16 different from the other, and so what this expert  
17 did was he went ahead and examined every one of  
18 these particular hard drives.

19 Of concern to us, to be perfectly honest with  
20 you, because we have learned in the discovery  
21 process that really and truly these hard drives  
22 should not be empty, because what happens is that  
23 they tape over and over and over again, all the  
24 cameras tape over and over and over again.

25 And you'll see that on the original drive

1 DVR-4, it's listed in his report as being empty; on  
2 the original drive DVR-1, it's also listed as  
3 empty; on the secondary drive DVR-1, it's listed as  
4 empty; on the original drive DVR-5, it's listed as  
5 empty; and on the second drive DVR-3, it's listed  
6 as empty.

7 One of the things obviously that we want our  
8 experts to do is to really examine those hard  
9 drives, mirror those hard drives correctly, and to  
10 determine whether or, in fact, there's any more  
11 information in any of those hard drives that are  
12 going to be probative to our case; and not only any  
13 more information, but also give us a clearer  
14 picture of what actually happened.

15 When we received their mirrored hard drive,  
16 Your Honor, we believe that the process, the  
17 software that was used in order to mirror the hard  
18 drive to the Seagate that the Court recalls, we  
19 believe was not the appropriate process.

20 And so as a result, we don't think we have the  
21 clarity on our mirrored hard drive that we should  
22 have, which is I am sure, I am sure the reason that  
23 their expert said, "You know what? This CD is not  
24 working for me. I need the original hard drives  
25 for me to be able to get or capture those



1 particular pictures."

2 And so, likewise, my expert should have the  
3 benefit, as their expert had, of the original hard  
4 drives so that number one, we can examine those  
5 hard drives; number two, we can mirror those hard  
6 drives appropriately so that we can have them at a  
7 future time to present to court.

8 Now, just on that aspect of the case, remember  
9 they've mirrored the hard drive, they've exhausted  
10 everything that they need to do with those hard  
11 drives to preserve them.

12 So let's assume that every hard drive -- and  
13 by the way, the only hard drive that contains the  
14 cameras in Theater 10 are the second hard drive  
15 DVR-4, it's the very top. And you'll see there it  
16 says, Cameras 2, 3, 8, 9, 11 and 12.

17 If you've ever been to that theater, Camera  
18 11 --

19 THE COURT: I have. Remember, I went and  
20 checked it out?

21 MR. ESCOBAR: Yes, sir. Camera 11 is the  
22 camera that as you're going in is on your right.

23 THE COURT: Yes.

24 MR. ESCOBAR: Camera 12, as you're going, is  
25 on your left.

1 THE COURT: Okay.

2 MR. ESCOBAR: You will see that there's some  
3 problems with what was provided to us we believe  
4 both on Camera 11, but even more significant Camera  
5 12. And when you flip through these pictures,  
6 you'll see what we're talking about as far as  
7 quality.

8 But let's assume, let's assume that the  
9 original hard drives, they belong to the Cobb  
10 Theater. I've been talking to Tim Davis. They  
11 issued a subpoena to Tim Davis, which I didn't have  
12 at that point in time the power to do, but they  
13 issued a subpoena after this case to Tim Davis and  
14 they went and retrieved those hard drives from  
15 out-of-state.

16 They mirrored them, they preserved them,  
17 they've done everything that they needed to do to  
18 have allegedly accurately duplicated them. So now  
19 it's my turn to be able to get those hard drives in  
20 order to download them and see what information  
21 we're able to glean from it.

22 One thing that I'd like the Court to focus on,  
23 if you look at Page 21.

24 THE COURT: Yeah.

25 MR. ESCOBAR: I know you've had a hard day,

1 Your Honor, a long one.

2 THE COURT: That's okay. They aren't  
3 numbered.

4 MR. ESCOBAR: Yes. They're on top.

5 MR. MICHAELS: They're on top.

6 MR. ESCOBAR: At the very top.

7 THE COURT: Okay.

8 MR. LOUGHERY: They're under the Sheriff's  
9 Office thing.

10 THE COURT: All right. So it's the big  
11 stapled packet, the first one.

12 All right. Page 21. I got it.

13 MR. ESCOBAR: You'll see what it says at the  
14 bottom. And this is, by the way, Camera 12. It  
15 says, "This camera does not show each image of the  
16 incident. There is a skip in time between 0283 and  
17 0286 that prevents seeing more images as normally  
18 were recorded on this camera."

19 So of particular importance is for my  
20 experts -- and I told you Camera 12 was of even  
21 greater importance to me than Camera 11, although  
22 both of them I think are of great importance.

23 But you can see that there are problems with  
24 what this expert may have been seeing and whether  
25 this expert himself, in mirroring -- because he had

1 to mirror these hard drives, the expert from  
2 Orlando -- whether he himself mirrored these hard  
3 drives correctly in order to get the proper  
4 findings.

5 Well, they've done what they've done. It's  
6 time for us to allow my experts to do that. And  
7 I'm bringing my experts from out-of-state to do  
8 that.

9 And I think, again, there's no harm to the  
10 Government. Because guess what? They've got  
11 mirrored hard drives that they're fully confident  
12 with. They've got mirrored hard drives that they  
13 are fully confident with.

14 So give me the original hard drives and let me  
15 properly mirror those hard drives. I'll give him  
16 back the original hard drives once we're done with  
17 them, and, you know, he can do whatever else he  
18 wants he wants to do with them.

19 Mirroring a hard drive is not going to hurt  
20 the hard drive, it's not going to damage the hard  
21 drive if it's done properly by a professional.

22 THE COURT: Yes. Now, a question. Why can't  
23 you just do it at the FDLE lab or at the evidence  
24 locker at the Sheriff's Office? What's the problem  
25 with mirroring it right there?

1           MR. ESCOBAR: Well, Your Honor -- and I think  
2 Mr. Loughery would agree with me because of  
3 Detective Smith -- it takes an enormous amount of  
4 time to mirror all these hard drives. It's not a  
5 15-minute ordeal. It could be a day's ordeal.

6           And so in order for my expert to have total  
7 custody and control while the mirroring is taking  
8 place, he's going to have to have those hard  
9 drives, and the process of mirroring it, with him  
10 at all times.

11           I don't want a mirroring process to take place  
12 without him totally supervising that process, and  
13 so it may take, you know, some time; and I think it  
14 took the State some time to mirror these hard  
15 drives. So that's one reason.

16           But you're right, if I could do this in 15  
17 minutes, I would concede with the Court that, hey,  
18 listen, I can bring my expert down, we can take a  
19 look at the actual hard drives through a computer  
20 system, determine what the hard drives look like,  
21 and then mirror the hard drives to something that's  
22 functional for us.

23           But it's going to take time. We've got to  
24 look at every single hard drive, every single piece  
25 of film on those hard drives, to see if there's

1 anything of value. And then after we look at the  
2 hard drives themselves, we've got to then mirror  
3 every hard drive. So it's a time-consuming  
4 process.

5 Again, when you balance these things in its --  
6 all the case law deals with balance and fairness.  
7 What is unfair about them giving me the hard drives  
8 at this point in time? They've preserved, they  
9 have mirrored, they have preserved the original  
10 hard drives.

11 Those hard drives really belong to Tim Davis,  
12 and he could care less. I asked him, "Could you  
13 care less if I get the hard drives? Yeah, I could  
14 care less who gets the hard drives." Because they  
15 have mirrored it.

16 So I need those hard drives so that my experts  
17 can work with. We can view every single hard drive  
18 before we mirror them, mirror them, and then use  
19 them extensively in our presentation.

20 THE COURT: Okay. State, any response?

21 MR. LOUGHERY: Well, again, I don't think that  
22 explains it besides going through the same rhetoric  
23 about why they need this and why they can't do it  
24 at that location.

25 I just have a hard time taking things into

1 evidence and giving it to the Defense to do what  
2 they want with it.

3 I don't know if something gets altered, if  
4 something gets tampered.

5 If something like that does happen, I have no  
6 recourse. It becomes a credibility issue for the  
7 jury. It doesn't need to exist. There's a simple  
8 way to deal with it as it's always been dealt with.

9 You know, I guess he's acting like we're on  
10 equal footing here. Well, the State has the burden  
11 of proof, number one. They don't have any  
12 obligation to give us anything that might damage  
13 their client.

14 So let's say they find that one of these  
15 things isn't really empty, okay, and somehow it is  
16 bad for their client. They don't have to give that  
17 to us and you all know that. They have no  
18 reciprocal discovery as far as that goes.

19 And so, you know, it's kind of like, I guess,  
20 they don't trust that the mirroring has been done,  
21 so they want to do their own testing to make sure  
22 we haven't kept something from them.

23 Well, do it at the FDLE. Do it where both  
24 parties are.

25 Does their expert want to wear a mask so we

1 can't tell who he is? I mean is that what it  
2 really is, that these people are out there that we  
3 might find out who they are?

4 I mean I don't know; but, again, we're going  
5 back to the mystery of these experts that have been  
6 controlling this trial for a year that's in play.

7 So I would just ask that the normal procedures  
8 go by that normally happen, there's some  
9 supervision to our evidence. That's been my  
10 argument on all this stuff.

11 THE COURT: Okay.

12 MR. ESCOBAR: Your Honor, somehow Mr. Loughery  
13 seems to think that we're not on equal footing,  
14 that somehow the State has some special privilege  
15 in this case.

16 MR. LOUGHERY: It's the burden of proof.

17 MR. ESCOBAR: I would strongly disagree that  
18 they do.

19 Let me read to the Court something that came  
20 from the Department of Justice just recently, and  
21 it was posted in the Washington Post.

22 It says, "The Justice Department and the FBI  
23 had formally acknowledge that nearly every examiner  
24 in the elite FBI forensic unit --"

25 MR. LOUGHERY: Objection, Judge.



1           This has nothing to do with this. This is  
2 just pandering for the media.

3           THE COURT: Hold on a second.

4           MR. ESCOBAR: "-- gave flawed testimony."

5           THE COURT: Mr. Escobar, why are you reading  
6 to me from the Washington Post?

7           MR. ESCOBAR: Your Honor, I'm reading that  
8 because they had done all these tests and nobody is  
9 worried that somehow the Government, just like the  
10 FBI did over decades --

11          MR. LOUGHERY: I've said they can test it.  
12 I'm not stopping them from testing. I'm just  
13 saying it should be supervised. It's that simple.

14          MR. ESCOBAR: They tested it with no  
15 supervision. So he is comparing the State's  
16 process, completely different from the State's  
17 process, and it should be equal.

18          The Government shouldn't have any greater  
19 right to analyze and test a piece of evidence than  
20 the Defense, especially when we know that there was  
21 a recent report that says that the FBI for decades  
22 has testified falsely concerning hair samples, for  
23 decades, wrongfully convicting many individuals.

24          So they're not bulletproof. They're not  
25 perfect. They sit in the same shoes that we do,

1 and, therefore, we should have an equal right in  
2 testing independently every piece of evidence.

3 That's what due process is in an effort to  
4 confront the Government's evidence.

5 THE COURT: All right. Well, I think he was  
6 just suggesting that he has the burden of proof  
7 beyond a reasonable doubt.

8 I understand where you're coming from. It's  
9 just 4:53 on a Friday afternoon. I don't need to  
10 read the Post. I already read it occasionally.

11 So do you want to come in the back and tell me  
12 your in camera reasoning and we'll go from there.

13 All right. So for the in camera review, what  
14 we'll do is I'll have the court reporter, and  
15 Mr. Escobar and, of course, Mr. Michaels also, if  
16 he wants to, come back, come back and tell me.

17 And I'll order that it will be transcribed,  
18 sealed, and placed in the court file?

19 MR. ESCOBAR: Yes, Your Honor.

20 THE COURT: Do we agree?

21 Okay. And then I'll come back in and I'll  
22 give you your rulings.

23 Do we have anything else that we have to  
24 handle this afternoon before we pack up and go back  
25 there?

1 MR. LOUGHERY: I don't believe so.

2 MR. ESCOBAR: Your Honor, the only thing that  
3 happened, and I think they're going to correct it,  
4 but we had depositions today that when we got  
5 there, there were again reports missing.

6 THE COURT: Seriously?

7 MR. ESCOBAR: Mr. Michaels, he was there.

8 So, Mr. Michaels, why don't you please at  
9 least tell the Court what's happening.

10 MR. MICHAELS: There were some emergency  
11 medical technicians that were listed, members of  
12 the firearm department, who responded and treated  
13 both Mrs. Oulson and Mr. Oulson.

14 The State was unaware of any reports that my  
15 understanding that were generated by that contact  
16 and by that visit.

17 When we were there to take the depositions,  
18 sure enough the EMT had in his hands a couple of  
19 reports.

20 And even though the State tried to elicit  
21 them, you know, Ms. Sumner asked for them when she  
22 sent the subpoena, for some reason didn't get them.

23 And now we understand that there is an  
24 additional witness that they weren't aware of,  
25 after talking a little bit to this EMT about

1 somebody else that was on the scene, and so we had  
2 to reset those depositions.

3 There were also a couple of fire engines that  
4 reported to the scene. One of the individuals may  
5 have treated Mr. Reeves at the scene for an eye  
6 injury. So we don't have that report yet. So  
7 there are some reports that are out there that  
8 we're still in the process of getting.

9 So, you know, this isn't a procedure that's  
10 being dragged down by mysterious experts, but we're  
11 still getting reports, and, you know, we are over a  
12 year into it.

13 MR. ESCOBAR: And, Judge, just to make it  
14 clear.

15 THE COURT: Yeah. But I don't understand how  
16 we can be missing EMTs and fire department.

17 I mean there were like a dozen cameras out in  
18 the parking lot of the movie theater, there were  
19 helicopters flying overhead taking a video of all  
20 these trucks. So we should be able to spot the  
21 numbers on the trucks and make sure that everybody  
22 that was on the trucks provides their reports.

23 Can we make sure that we go through it one  
24 more time, Mr. Loughery, just so that we don't have  
25 anybody else show up with a report that we haven't

1           gotten. Just make the phone calls.

2           MR. ESCOBAR: Judge, just so the Court knows  
3           what I'm going to do. I am going to prepare a  
4           complete discovery packet of everything that I've  
5           gotten -- and I had spoken to Mr. Garcia about  
6           this -- a complete discovery packet of everything  
7           that I've received, I'm going to send it over to  
8           him so that he can make sure that there is -- that  
9           maybe his file may contain more things.

10          I can tell you both Mr. Garcia and all the  
11          prosecutors, Mr. Loughery -- they are all trying to  
12          get us whatever they can as quickly as possible.

13          I think it's the huge volume of this case.  
14          There was literally every Sheriff's officer from  
15          the Pasco County Sheriff's Office, you know, there  
16          at some point in time.

17          And so I just wanted to bring that to the  
18          Court's attention, because the last time, Your  
19          Honor, I got the impression that somehow the Court  
20          thought that I was dragging my feet, and I think  
21          Mr. Loughery will tell you that that's just the  
22          opposite.

23          We are in contact with that office constantly.  
24          Just about every date that they give us, and I mean  
25          just about every date, we take.

1 I even had DeeAnn Athan doing depositions in this  
2 particular case, not only just myself and  
3 Mr. Michaels, and it's difficult when she's not  
4 heavily involved.

5 THE COURT: I was going to say.

6 You say that like DeeAnn isn't one of the best  
7 attorneys --

8 MR. ESCOBAR: DeeAnn is a wonderful lawyer.  
9 She's a wonderful lawyer, but she hasn't been  
10 entrenched in this case from the very beginning.

11 So I just wanted to bring that to your  
12 attention.

13 THE COURT: Okay. Yeah, let's all imagine  
14 what this will be like when every deputy that was  
15 in that parking lot is wearing a body camera when  
16 trying to do discovery on a homicide. Is it going  
17 to be possible to get a homicide tried in less than  
18 five years under those circumstances?

19 I can't imagine what's going to happen next,  
20 but that's for another -- well, that's for next  
21 year to worry about.

22 All right. Why don't you come back and we'll  
23 get this in camera discussion.

24 \* \* \* \* \*

25 (Thereupon, an in camera hearing was reported in

1 chambers and is not part of this transcript.)

2 \* \* \* \* \*

3 OPEN COURT:

4 THE BAILIFF: Court is back in session.

5 THE COURT: All right. So having concluded  
6 the in camera review, one thing is still on my  
7 mind, and I want to give the Defense a chance to  
8 tell me about it.

9 Mr. Escobar, can you think of or tell me about  
10 any situation where any circuit or county court has  
11 given the defense unfettered access to and/or  
12 absolute possession of an item of evidence to be  
13 introduced in a criminal trial?

14 MR. ESCOBAR: Your Honor, I can certainly try  
15 to find some.

16 But I can tell you that there have been cases  
17 in the testing of narcotics where as long as you  
18 have a lab that is certified to receive narcotics,  
19 you can have that narcotic sent to that particular  
20 lab without the Government by the way peering over  
21 anyone's shoulder, and you can have that tested and  
22 analyzed and what have you.

23 So I know that Mr. Loughery's position is  
24 "Well, you know, we don't do it in Pinellas  
25 County."

1           THE COURT: Well, that's why I'm asking  
2 anywhere in the state of Florida.

3           And I'm familiar with narcotics and DNA under  
4 certain circumstances are both sent out, and I've  
5 signed DNA orders ordering that they be sent to the  
6 lab in Virginia that does the really special  
7 testing.

8           But I'm trying to think of any occasion that  
9 I've either participated in, seen, heard of any  
10 item like a shoe, a gun, a bullet being given to  
11 the Defense in the state of Florida, and I'm not  
12 familiar with one.

13          Do you have anything like that?

14          MR. LOUGHERY: Your Honor, probably because  
15 maybe that hasn't been appealed by the Government  
16 as a discovery violation of some sort or a Writ of  
17 Prohibition with the circuit court.

18          I am not aware of a particular case at this  
19 point in time. If the Court wants me to do  
20 additional research, I'll be more than glad to do  
21 so.

22          But I can tell you in other states I believe  
23 that I have seen cases where pieces of items have  
24 been turned over to the Government for testing.

25          In fact, there was a case dealing with a



1 firearm, and in the middle of trial the defense  
2 counsel was objecting because he had not gotten to  
3 do that same ballistics test with the distance  
4 test.

5 And what the court said there -- and I may  
6 have given the case here. What the court said here  
7 is, "Hey, listen, we're going to give you whatever  
8 time you need in the middle of trial to do that  
9 test and then you can come back and present your  
10 evidence."

11 And the court reasoned in that particular case  
12 that because of the fact that that had been done --  
13 let me see if I can find it quickly for Your Honor.

14 THE COURT: Okay. No rush.

15 MR. ESCOBAR: But I believe that I have that  
16 case somewhere.

17 MR. LOUGHERY: And, Judge, while he's looking  
18 for that, in my response there's an improper cite  
19 only that it said the Second DCA when, in fact,  
20 it's the Third DCA.

21 THE COURT: Which case?

22 MR. LOUGHERY: *Siegel vs. State*, which I have  
23 a copy, if you'd like. And I have one for the  
24 Defense as well. 68 So.3d, 281.

25 But just to balance what Mr.~Escobar said, I

1 would suggest there's no case law because no judge  
2 has ever done that, no judge has ever given the  
3 Defense evidence to take unsupervised for a whole  
4 week, because they are the safeguards we've always  
5 used, which is to do it supervised so we won't  
6 create problems.

7 MR. ESCOBAR: Your Honor, I don't have that  
8 case here, but I remember reading a case dealing  
9 with that particular issue.

10 MR. LOUGHERY: Well, no, the issue is not  
11 whether they had the right to test it during trial.  
12 The issue is whether they have the right to test it  
13 without any supervision.

14 We keep muddling the lines there. He can test  
15 these things. He can examine them and copy them.  
16 It's just the unsupervised aspect.

17 THE COURT: I understand what you two are  
18 saying. I promise I'm listening very carefully to  
19 what each of you are saying.

20 MR. LOUGHERY: I know.

21 THE COURT: And I even listened the second and  
22 third time that you repeat what you're saying. So  
23 I promise I'm listening.

24 MR. ESCOBAR: Your Honor, even the rule says  
25 that the Court has broad discretion; not unbridled

1 discretion, but broad discretion to fashion certain  
2 rules that would make this Court comfortable.

3 However, the case law and all the case law  
4 that I presented to the Court is pretty clear to  
5 say that before the Government can really object to  
6 a proposal that I am making for testing, copying  
7 and obtaining that particular evidence, they've got  
8 to show some prejudice. They haven't.

9 Every piece of evidence they have is either  
10 mirrored or perfectly copied. There is no  
11 detriment whatsoever in us receiving that piece of  
12 evidence and the Government still having a mirrored  
13 hard drive, they're having a fully photographed  
14 firearm.

15 They have every single item that we're asking  
16 for thoroughly, thoroughly documented and  
17 photographed. So there really is no prejudice.

18 For some reason because of the fact that maybe  
19 there's not a case out there that was taken on a  
20 Writ of Prohibition by a prosecutor, that somehow  
21 that's wrong.

22 If we read the rule, it is clear that I'm  
23 entitled to test it. It doesn't say in the rule  
24 the defense can only test it in a government  
25 facility.

1           And when we're reading the plain language of  
2           the rule, we can't go elsewhere to try to interpret  
3           anything more than what the rule says, and that  
4           says that I have the right to test it. It doesn't  
5           say I have the right to test it in the presence of  
6           this prosecutor.

7           And so if they want to take a Writ of  
8           Prohibition, if the Court grants my motion, have  
9           them take it. It may be a good case for us to  
10          decide in the Second District Court of Appeal as to  
11          whether this Court has fashioned the appropriate  
12          remedy.

13          I can tell you that I think I've got a very  
14          solid basis in what I've given to the Court in  
15          documents.

16          And I want to make this part of the record,  
17          that we are safeguarded by the fact that, hey,  
18          they've done everything that they needed to do with  
19          these particular items, and they're not going to be  
20          damaged. They can't show prejudice.

21          And when you look at the balancing test, Your  
22          Honor --

23          MR. LOUGHERY: Judge, I'm going to object.  
24          We've heard this seven times now. Can we please  
25          get to the --

1           THE COURT: Overruled. He wants to be  
2           comprehensive. He's allowed to be comprehensive.  
3           I'm not going to stop him.

4           MR. ESCOBAR: 3.220(e), Restricting  
5           Disclosures, states that "The court on its own  
6           initiative or on a motion of counsel shall deny or  
7           partially restrict disclosures authorized by this  
8           rule if it finds that there is a substantial risk  
9           to any person of physical harm, intimidation,  
10          bribery, economic reprisals, or unnecessary  
11          annoyance or embarrassment resulting from the  
12          closure, that outweighs, that outweighs any  
13          usefulness of the disclosure to either party."  
14          It's as simple as that.

15          They have shown no prejudice whatsoever, other  
16          than, you know what, we're the State, and because  
17          we're the State, we should be present when you're  
18          doing your examination.

19          Your Honor, that is patently unfair. They had  
20          their day without us looking over their shoulder.  
21          We should have our day.

22          THE COURT: Okay. State, here we go.

23          The shoes, is there any reason to believe that  
24          the left shoe is any different from the right shoe  
25          or the right shoe is any different from the left

1 shoe as it relates to anything other than you wear  
2 one on your right foot and one on your left foot?

3 MR. LOUGHERY: Well, the only thing I would  
4 say, to put this all into context, okay, if the  
5 real meat and potatoes of this is the State's  
6 argument that the reflection that is seen when the  
7 shooting occurs is the defendant's shoe, not the  
8 victim's cell phone, okay, that's the bone of  
9 contention and what it's going to be.

10 And when we talk about the cell phone, we can  
11 talk about do those cell phones actually light up  
12 when they strike a subject or you're stepped on.  
13 That's a whole other issue. Okay.

14 THE COURT: Okay.

15 MR. LOUGHERY: So in that regard, that camera  
16 that takes that picture, it's probably the right  
17 shoe that we're seeing light up.

18 And I'm sure that's why he asked for the right  
19 shoe as opposed to the left shoe, because the  
20 reflection shoes argument seems to be off his right  
21 shoe.

22 So that would be the only distinction that I  
23 would suggest to the Court is that one camera angle  
24 is probably showing the right shoe more often than  
25 the left shoe.

1           And I don't know if the wear patterns on the  
2 shoes are such that some reflections are better on  
3 one side than the other side. I can't answer the  
4 Court about that.

5           THE COURT: So are you saying you'd rather  
6 have me give him the left shoe, if I was going to  
7 give him a shoe?

8           MR. LOUGHERY: To answer that question, yes,  
9 but I still think --

10          THE COURT: You don't want me to give him  
11 either shoe.

12          But if you have to give up a shoe, it would be  
13 the left shoe?

14          MR. LOUGHERY: Yes.

15          THE COURT: Okay. Is there any reason he  
16 shouldn't have the left shoe rather than the right  
17 shoe, Mr. Escobar?

18          MR. ESCOBAR: Your Honor, because we believe  
19 that the right shoe may -- it is what it is. Your  
20 Honor, I think I've exhausted my point in this  
21 matter.

22          THE COURT: I understand.

23          I'm just trying to figure out whether you'd be  
24 satisfied with the left shoe or you really want the  
25 right shoe and that's the only one you want?

1 MR. ESCOBAR: I really want the right shoe.

2 If the Court is not going to give me any shoe,  
3 I'd rather take the left shoe. But I think I'm  
4 entitled to the right shoe, and that's what I'm  
5 asking for.

6 MR. LOUGHERY: Judge, if I might. And this is  
7 something I suggested to Mr. Escobar when were  
8 talking about this this week.

9 I mean because of the nature of what we're  
10 doing here, this is in evidence and they want it  
11 unsupervised that we talked about, which is, in my  
12 opinion, highly unusual -- there's not been a case  
13 on that -- is what prevents the Defense from  
14 getting a similar pair of shoes and doing their  
15 testing with dozens of pairs of those shoes -- the  
16 left shoe, the right shoe, whatever?

17 And then once they've done their top secret  
18 testing, and if they just determine there's some  
19 reason why they now have to look at the actual  
20 shoes in evidence, okay, that they come back to the  
21 Court and then at that moment we decide whether or  
22 not we're going to take the move of giving them the  
23 actual evidence to look at, and then does it have  
24 to be unsupervised at that point.

25 It just seems to me that this is just folly to



1 be giving evidence up when there's alternative  
2 safeguards that can be established.

3 THE COURT: Okay. Yes, Mr.~Escobar?

4 MR. ESCOBAR: Your Honor, is Mr. Loughery  
5 saying that if we go out in the market and get --

6 THE COURT: Another pair of Salomans?

7 MR. ESCOBAR: -- another pair of shoes, that  
8 he is not going to object when my expert testifies  
9 concerning the reflection of that shoe?

10 THE COURT: No. I think what he's saying is  
11 that he wants you to go look at a similar portion  
12 of those shoes and do your super secret test first,  
13 and then if it's insufficient, then he wants you to  
14 use the actual shoes.

15 I don't know why he'd want you to repeat the  
16 step, but that's what he's saying.

17 MR. ESCOBAR: This is the problem. Mr. Reeves  
18 is not a millionaire. Every time that I bring my  
19 experts to do something, it is an incredible  
20 expense on Mr. Reeves.

21 I can't be bringing experts just to bring them  
22 over to do three steps before the step that needs  
23 to be taken just because Mr. Loughery thinks that  
24 somehow someone is going to steal his shoe or  
25 damage his shoe. We're going to do neither of

1       them.

2               And as I've been telling the Court right now,  
3       you can impose any order, any sanction on me and  
4       Mr. Michaels to preserve the shoe, the DVR, the  
5       gun, everything.

6               If you want me to hold it 24 hours a day  
7       during the period that I have it, that's exactly  
8       what I'll do. If you want my investigator to hold  
9       it 24 hours a day during that period, we will. And  
10      we will be subject to sanctions by this Court if we  
11      fail to follow those rules.

12              I have no problems with that. It's that  
13      important to our case.

14              THE COURT: All right. Maybe I should go the  
15      other way.

16              We'll start with the hard drive. As it  
17      relates to the hard drive, Mr. Escobar, I'm going  
18      to deny your motion for unfettered access without  
19      the supervision of the State.

20              Where is it being held?

21              MR. LOUGHERY: I think we have it in Pasco.

22              THE COURT: It's the big fingerprint out there  
23      by the jail, the big fingerprint building?

24              MR. LOUGHERY: I believe so, Judge.

25              THE COURT: Okay. You're not a hundred

1 percent positive it's not at FDLE?

2 MR. LOUGHERY: I'm not. Yes, I'm pretty sure  
3 that FDLE doesn't have it. But where in Pasco it  
4 is, I can find that out.

5 Again, this motion being filed when it was and  
6 no notice to the Sheriff's Office, I didn't bother  
7 to go and do those things, not knowing what the  
8 Court's ruling would be.

9 THE COURT: All right. Here's what I'll rule.

10 MR. LOUGHERY: Okay.

11 THE COURT: I'll rule that Mr. Escobar's  
12 expert is to have uninterrupted access that is  
13 supervised in an environment conducive to doing the  
14 computer testing that he wants to do.

15 And if they need to run a simulation or a  
16 mirroring program that takes overnight, put it in a  
17 secure room, run your mirroring program overnight,  
18 and then you'll walk away with everything that's in  
19 the hard drive.

20 And I'm sure your expert will take down the  
21 number on the hard drive so that he can get the  
22 factory specs on it and be able to do everything  
23 that he needs to do without actually taking the  
24 hard drive off the site.

25 If for some reason, and if your expert does

1 that, you come to me and say there is something  
2 that he couldn't do in the 24 hours or 36 hours or  
3 however much time he had with it over at the big  
4 fingerprint building, or the environment was too  
5 hot or the environment was too cool, if he had  
6 something like that, and you can show me some  
7 actual prejudice to you, then I'll reconsider the  
8 motion.

9 But for right now he can mirror the hard drive  
10 at the big fingerprint or at the FDLE, if they're  
11 holding it at FDLE; but you have to follow the  
12 procedures that are already in place for testing at  
13 those facilities.

14 They'll make space available for you. If for  
15 some reason they say they won't make space  
16 available so that he can set up his computers to do  
17 his tests and run his mirror program, that's a  
18 whole different story.

19 But I want you to at least give them the  
20 chance to accommodate you on the site, because  
21 there's no reason for me to allow the chain of  
22 custody tampered with on the hard drives.

23 The next item up, the firearm. Considering  
24 the argument made in court, as well as considering  
25 the argument made in camera, I will allow testing

1 of the firearm only at the FDLE lab or only at the  
2 Sheriff's Office with a caveat that -- I'm trying  
3 to figure out how to phrase it without revealing  
4 what was relayed to me in camera.

5 I'll make accommodations for redeposition, if  
6 necessary, before and after, so that you can  
7 schedule the testing of the firearm at a point  
8 before and after any deposition and then do a  
9 redeposition on that particular issue.

10 I know that sounds like I'm talking in code,  
11 but does that make sense to you, Mr.~Escobar, what  
12 I've explained?

13 MR. ESCOBAR: It does.

14 THE COURT: Okay. So that way it will  
15 preserve what you wanted to protect, at the same  
16 time it will give the State an opportunity to  
17 maintain control over arguably what is a key piece  
18 of evidence in the case.

19 Finally, the shoe. I don't understand why you  
20 can't do the testing on the shoe at the facility,  
21 Mr.~Escobar.

22 If you need to take the shoe out of the  
23 facility and take it someplace else in order to do  
24 the testing, I'm just going to order that you  
25 follow the rules that the facility already has in

1 place for taking a piece of evidence out of the  
2 facility for testing.

3 So if you want to check a piece of evidence  
4 out and you want to take it to a different lighting  
5 situation to take photos, or if you have to take it  
6 to -- I don't know where you're going to have to  
7 take it to do a different type of a photo shoot  
8 with it.

9 But if you want to take it someplace, they're  
10 just going to have a detective go with you to  
11 wherever you want to take it, whether you're going  
12 to take it in a theater or you want take it on a  
13 stage. Wherever you want to take it, you can take  
14 it there to have it photographed.

15 I'd be inclined, and I was ready to say, you  
16 can take the left shoe and they'll hold the right  
17 shoe, because they're the same shoes from the same  
18 batch of shoes, made in the same factory --  
19 probably in China. I don't know where Salomon  
20 makes their shoes -- so it has all the same  
21 qualities, but now I understand that there is a  
22 distinction specific to the right shoe.

23 MR. ESCOBAR: Your Honor, I'll take the left  
24 shoe, because what I can possibly do -- and I don't  
25 know if this is going to work or not -- but I can

1 possibly get another shoe of the same make and  
2 model and year and compare it, have my experts  
3 compare it to the light reflection on the left  
4 shoe.

5 THE COURT: Okay.

6 MR. ESCOBAR: And so if I can have the left  
7 shoe, I'll take the left shoe.

8 THE COURT: That's fine. Over the State's  
9 objection, then, I'm going to give you the left  
10 shoe.

11 And my reasoning of this, Mr. Loughery -- and  
12 I'm not trying to open a can of worms here where  
13 I'm giving away evidence to the Defense  
14 unsupervised, but it's akin to sending DNA to a lab  
15 for testing. You still have some of the DNA, so  
16 you send a small portion of it.

17 You still have the right shoe that you told me  
18 is the primary shoe of importance, so you still  
19 have that shoe. So I'm not taking your primary  
20 piece of evidence away from you.

21 If there was, you know, a kilo of cocaine that  
22 was going to be tested and they said, "We want an  
23 ounce of cocaine from that kilo," I would give them  
24 an ounce of cocaine from that kilo to send to their  
25 lab unsupervised.

1 I'm giving them an ounce of a left shoe to go  
2 and test wherever you want it. That shoe still has  
3 to be brought back, and it can't be -- no cutting  
4 it in half, no rubbing oils on it, no -- I'm trying  
5 to think what else an expert might do.

6 MR. ESCOBAR: We're not going to alter the  
7 shoe, Judge.

8 THE COURT: You're not going to alter the  
9 shoe. So no rubbing oils on it, no cutting it in  
10 half, or letting dogs bite it, no anything like.  
11 Let's just keep it the same shoe that you take away  
12 as the same shoe you bring back.

13 How many days do you want the shoe for?

14 MR. ESCOBAR: Judge, if I could have it Monday  
15 through Friday.

16 THE COURT: That's fine.

17 MR. ESCOBAR: And I'll have my investigator be  
18 able to pick it up.

19 THE COURT: All right. Which Monday through  
20 which Friday? This Monday through this Friday?

21 MR. ESCOBAR: No, Your Honor. I'm going to  
22 have to contact my experts now and see where we're  
23 going to be able to --

24 THE COURT: Then I want a very specific order  
25 releasing the very specific shoe by identification.



1           And I want you to run that order past  
2           Mr. Loughery before you submit it to me to sign to  
3           make sure that it both comports with my oral  
4           pronouncement and whatever the rules are over at  
5           PCSO evidence if somebody is going to pick  
6           something up, and then also give Mr. Loughery a  
7           chance to object to the language if the language  
8           for some reason is out of bounds from what I just  
9           ruled.

10           I'll give it to you from Monday through Friday  
11           unsupervised, the left shoe only. No damaging it.  
12           Okay?

13           MR. ESCOBAR: Yes, Your Honor.

14           THE COURT: All right. So we still have the  
15           cell phone to talk about, but that will be for  
16           another day. And I think we've covered everything  
17           we can cover.

18           We won't be back to see each other until  
19           June 30th, is my recollection, at 4:00 o'clock.  
20           It's going to be over in Dade City next time,  
21           unless somebody set something between now and then.

22           Yes, Mr. Loughery.

23           MR. LOUGHERY: Judge, the only thing -- I  
24           understand the shoe issue -- the timeframe as far  
25           as the DVR and the firearm, it's not going to be

1 next week? Is that right, Mr. Escobar?

2 THE COURT: Yes. He said it's not going to be  
3 next week.

4 MR. LOUGHERY: So you'll get with me and we'll  
5 figure out when that's going to be so I can get  
6 those guys?

7 THE COURT: So they can realize that  
8 somebody's coming to get the shoe.

9 MR. LOUGHERY: Yes. Okay. I was wondering  
10 where we were at with that.

11 THE COURT: Take the shoe out for five days of  
12 unsupervised visitation.

13 MR. LOUGHERY: Right. No running with the  
14 shoe.

15 THE COURT: Okay. So the one thing that I had  
16 on my agenda that was not calendared by either side  
17 that I figured I'd explain and let you know is over  
18 the weekend I'm going to start to write my pretrial  
19 order for June 30th. I have to say I've written  
20 more pretrial orders in this case than every other  
21 case combined.

22 But in the pretrial order, I'm going to be  
23 pointing out that a trial has been set in this  
24 case, and that the only way that that trial is  
25 going to be moved is if somebody files a written

1 motion to continue outlining the reasons why I  
2 cannot get my trial done, because I consider this  
3 my trial, since I brought it with me from Dade  
4 City, and I've got to get this case tried.

5 And I wanted it tried in August. I felt like  
6 we all talked about it and came up with a game  
7 plan. I understand that people believe it's not  
8 going to work. But if somebody wants to continue  
9 it, it needs to be a written motion to continue,  
10 and I'm going to outline that in my pretrial order.

11 I don't want to just spring it on you and you  
12 think, well, Judge never said anything about this  
13 and now he's coming at us with you've got to file a  
14 written motion to continue.

15 Right now this case is set for trial  
16 August 24th. Unless somebody files a written  
17 motion to continue laying out a good reason why it  
18 needs to be changed and when they believe it can be  
19 tried.

20 Because I have already promised Judge Babb  
21 that I will not mess up the Dade City courthouse in  
22 the month of October, because she has a giant med  
23 mal with five attorneys on every side, and the  
24 courthouse is already going to be swamped, and it  
25 isn't a big courthouse.

1           So that means if I'm getting this tried this  
2 year, you all have to clear your experts for either  
3 November, or if you want to really try to do this  
4 in December, December of this year.

5           And obviously December is a terrible idea,  
6 because you're looking at putting jurors in the box  
7 for three weeks, at least.

8           So that means you've got November, if it's  
9 going to be tried in 2015. Otherwise, we're going  
10 to January.

11          Actually, you're going to miss it, aren't you?  
12 You're not even going to be here. Are you going to  
13 be here?

14          MR. LOUGHERY: I don't think so, Judge.

15          THE COURT: No.

16          MR. LOUGHERY: I haven't officially said  
17 anything.

18          THE COURT: I understand.

19          MR. LOUGHERY: Yes. I think it's fair to say  
20 that I probably will not be here.

21          MR. ESCOBAR: Judge, I can tell you we're  
22 going to be filing a motion.

23          Would you like us to file it sooner rather  
24 than later?

25          THE COURT: No, no. I mean let's just get it

1 filed well in advance of the June 30th pretrial.

2 Now, I haven't written my order. I looked at  
3 it this week and thought I need to start writing  
4 that pretrial order.

5 And then I thought I need to spend three hours  
6 this week reading and rereading and rereading the  
7 rules of discovery again so that I can be ready for  
8 this motion.

9 So I just never got around to writing it  
10 because I thought I'd spring it on you here, but it  
11 just didn't come together in my mind last night as  
12 I was reading.

13 MR. ESCOBAR: Would you like it set on the  
14 30th or set before the 30th?

15 THE COURT: No. Let's set it on the 30th.

16 MR. ESCOBAR: Okay.

17 THE COURT: If you want to move to continue,  
18 since we already have it cleared with everybody's  
19 calendar and we'll all be here, let's do that on  
20 that day, if, in fact, that's what you want to do.

21 But remember, I want you all to get together  
22 and talk about realistic opportunities for another  
23 time. Because if you're proposing for me to move  
24 this, I took the time in January to go through a  
25 timeline with you, and I broke out three weeks of

1 my calendar; and I broke out three days for a  
2 stand-your-ground motion, if that were to come to  
3 fruition.

4 So now, you know, as I look at my calendar,  
5 November is the only place I see it could happen.  
6 When you look at November, of course, Thanksgiving  
7 is in there.

8 So if we didn't start in the first week of  
9 November on the 2nd, I'm not sure how it is  
10 possible that we could assure those people that  
11 they would be out by Thanksgiving.

12 I'm not baking a turkey dinner for jurors.  
13 That's not going to happen.

14 MR. ESCOBAR: Judge, one of the things, and I  
15 think Mr. Loughery will agree with this and  
16 Mr. Garcia as well, the real problem here is  
17 getting enough dates.

18 Mr. Garcia is in a two-week murder trial in  
19 July.

20 THE COURT: I know.

21 MR. ESCOBAR: He couldn't give me any dates  
22 in July at all for depositions, and so Mr. Loughery has  
23 given us some dates in July.

24 In May I have got very few dates, because it's  
25 no fault of them. They have other cases, other

1 trials, other depositions.

2 So I want the Court to know that we are, our  
3 firm is taking every available date that they give  
4 us.

5 THE COURT: I understand.

6 MR. ESCOBAR: Okay. I just don't want you to  
7 think we're dragging our feet.

8 THE COURT: I understand.

9 But you also see where I'm sitting on a case  
10 that came in January 13th of 2014, and the way that  
11 I'm starting to look at my calendar, I'm starting  
12 to get concerned that if there was a motion to  
13 continue, that I wouldn't be able to accomplish the  
14 task of trying this case in 2015.

15 That doesn't sit well with me. I think that  
16 with the quality of representation on both sides,  
17 we should be able to get a homicide tried in 20  
18 months.

19 MR. ESCOBAR: Judge, we will do everything we  
20 can.

21 You know, one of the things that's concerning  
22 to me in this push to try to get it done in August,  
23 for example, is that this is a complicated case, it  
24 has a lot of very unique factors. I can't tell you  
25 how many witnesses we've deposed that have given a

1 variety of issues for us to consider.

2 And it's not as simple as just taking a  
3 deposition. You've got to prepare for the  
4 deposition, then you've got to take the deposition,  
5 then you've got to summarize the deposition, then  
6 you've got to prepare that deposition for trial.

7 It is a monumental event. I can tell you that  
8 Dino and I, for every weekend, we're doing  
9 summaries after summaries of all the depositions that we  
10 receive.

11 So it's a big monster. It's not easy. It's  
12 not like taking a deposition and saying, well, I'm not  
13 going to worry about reading and summarizing, when  
14 the witness gets up there, I hope that I can  
15 remember what I asked him.

16 THE COURT: I was a lawyer. I remember what  
17 it is to do this stuff. So that's why I try to  
18 provide as hospitable an environment for you all to  
19 try your cases and do your bond hearings and  
20 everything else you need to do, but I'm also now  
21 not a lawyer but a judge responsible and tasked  
22 with moving the cases along.

23 I don't want to prejudice anybody's rights or  
24 rush anybody in to making mistakes, but at the same  
25 time I've got to put a reasonable timeframe on this



1 stuff.

2 So that's why I'm going to have to be a  
3 stickler about a written motion to continue that  
4 includes within that motion to continue a plan for  
5 us to get to the goal, which is a fair trial for  
6 your client and a fair trial for the People of the  
7 State of Florida.

8 So let's make sure that plan includes how  
9 we're going to accomplish this in 2015, if that's  
10 what going to happen. Okay?

11 All right. Great. Everybody, good luck.  
12 Have a good weekend.

13 MR. LOUGHERY: Thank you, Judge. You too.

14 THE BAILIFF: Court stands in recess.

15 (HEARING CONCLUDED.)

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CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA     )  
                              )  
COUNTY OF PASCO     )

I, MARIA FORTNER, Registered Professional  
Reporter for the Sixth Judicial Circuit, do hereby  
certify that I was authorized to and did  
stenographically report the foregoing proceedings and  
that the transcript is a true and correct record.

DATED this 5th day of June, 2015.

