

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

STATE OF FLORIDA,
Plaintiff,

v.

CURTIS J. REEVES,
Defendant.

spn 00683538

Case No.: CRC-1400216FAES

Division: 1

MOTION TO COMPEL DISCLOSURE

COMES NOW, the Defendant, CURTIS J. REEVES, by and through his undersigned counsel, moves this Honorable Court to enter an order directing the State of Florida to provide the following discovery pursuant to its discovery obligation under Fla. R. Crim. P. 3.220, and as grounds therefore states as follows:

1. Defendant, CURTIS J. REEVES seeks to inspect, copy, test and photograph the following listed items in the control and possession of the State of Florida:
 - a. The left and right shoes Mr. Reeves wore when he was at the Cobb Grove Theater ("Cobb Grove Theater"), located at 6333 Wesley Grove Boulevard, Wesley Chapel, Florida, 33544, on January 13, 2014;
 - b. Mr. Reeve's firearm, which was discharged on January 13, 2014;
 - c. Each and every round of ammunition taken from Mr. Reeve's possession and control;
 - d. The cellular phone Chad Oulson was using in the Cobb Grove Theater on January

13, 2014; and

- e. The Digital Video Recorder (“DVR”) hard drive(s) for the surveillance cameras in both the interior of the movie theater showing “Lone Survivor” (movie theater 10) and the common areas of the Cobb Grove Theater from opening of business to close on January 13, 2014.
2. Undersigned counsel seeks to inspect, copy, test, and photograph the above-described items between the uninterrupted time period commencing on 9:00 AM on June 1, 2015 and ending at 3:30 PM on June 5, 2015.
 3. Undersigned counsel requests the above-listed items be provided to the defense for inspection, copying, testing, and photographing by Mr. Reeve’s experts outside the presence of any officers or agents of the State of Florida.
 4. The defense requires access to the above-items under these conditions because, among other things, it must effectively and adequately examine the evidence to properly challenge the opinions of various State experts. Said opinions are included in the discovery packet provided to the defense and the Court.
 5. The defense anticipates, among other things, to inspect, copy, test, and/or photograph:
 - a. the functioning of Mr. Oulson’s cellular phone;
 - b. the data and usage history on Mr. Oulson’s phone;
 - c. the data from the DVR hard drives to review and enhance the quality of the video surveillance footage from the Cobb Grove Theater;
 - d. Mr. Reeve’s left and right shoes to contest the State’s theory delineated in the discovery packet; and

- e. Mr. Reeve's firearm and the ammunition.
6. The applicable law does not require the defense to disclose further information on why the Defendant requests the relief requested herein. In the event the Court requests further information pertaining to the reasons for these requests, however, undersigned counsel will disclose additional details on an ex parte basis. *See generally* Fla. R. Crim. P. 3.220(g)(1); 3.220(m)(1)-(2).
7. Undersigned counsel previously requested the above-listed items from the State for inspection, copying, testing, and photographing by its experts under the conditions described above.
8. On April 30, 2015 undersigned counsel received a written communication from Assistant State Attorney Manuel Garcia stating the State of Florida would not make said items available to the defense without a motion filed before this Court.

MEMORANDUM OF LAW

Florida Rule of Criminal Procedure 3.220(f) states that “[o]n a showing of materiality, the court may require such other discovery to the parties as justice may require.” In the discovery context “material means reasonably calculated to lead to admissible evidence.” *Siegel v. State*, 68 So.3d 281, 289 (Fla. 4th DCA 2011) (citation omitted).

It appears that the State is going to present, among other things, expert testimony against Mr. Reeves. Said expert testimony appears to be based on examination and testing of Mr. Oulson's cellular phone, Mr. Reeve's firearm and ammunition, and the Cobb Grove Theater video surveillance footage. In particular, it appears that the State's experts have concluded that a light visible in the surveillance footage of Cobb Grove Theater is emanating from Mr. Reeve's shoes.

If the defense is granted the opportunity to analyze the above-listed items under these requested conditions, it is likely that additional admissible expert testimony will be available at a future hearing or trial. This additional, admissible expert testimony will likely rebut the State's theories and proof. This is because, in part, the defense believes said light is emanating from Mr. Oulson's cellular phone, which was likely thrown at Mr. Reeves in the moments before the shooting.

Undersigned counsel further notes that a request for inspection, examination and independent testing of the specific items set out above is essential to ensure a defendant's rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 16 (a) of the Florida Constitution are adequately protected. Defense attorneys have a "professional obligation to investigate critical prosecution evidence," and their failure to effectively do so can constitute a "breakdown in the adversarial process that our system counts on to produce just results." *Elmore v. Ozmint*, 661 F.3d 783, 861-862 (4th Cir. 2011) (citing *Strickland v. Washington*, 466 U.S. 668, 696 (1984)).

In this respect, the purpose of discovery is quite broad, because:

[T]he very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To insure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense. *State v. Gonsalves*, 661 So.2d 1281, 1282 (Fla. 4th DCA 1995) (citations omitted).

The defense therefore also submits that "justice requires" that the relief requested herein be granted. Fla. R. Crim. P. 3.220(f).

The Defense is Permitted to Inspect, Copy, Test and Photograph Objects Obtained from or Belonging to Mr. Reeves

The state has an affirmative duty, upon demand, to furnish full discovery. *McDowell v. State*, 903 So.2d 290, 292 (Fla. 4th DCA 2005) (citation omitted). This affirmative duty, in part, requires that:

[T]he prosecutor shall serve a written Discovery Exhibit which shall disclose to the defendant and permit the defendant to inspect, copy, test, and photograph the following information and material within the state's possession or control... **any tangible papers or objects that were obtained from or belonged to the defendant.** Fla. R. Crim. P. 3.220(b)(1)(F) (emphasis added).

Simply put, this rule requires that the State of Florida allow a defendant (like Mr. Reeves) who elects to participate in discovery the right to inspect, copy, test, and photograph the (i) left and right shoes worn by Mr. Reeves on January 13, 2014, (ii) the firearm in his possession on January 13, 2014, and (iii) the ammunition. *See also Weston TC LLLP v. CNDP Mktg. Inc.*, 66 So.3d 370, 375 (Fla. 4th DCA 2011) (“When a rule is clear and unambiguous, courts will not look behind the rule's plain language or resort to rules of construction to ascertain intent”).

The Prosecution is Required to Allow the Defense to Inspect, Copy, Test and Photograph Objects Not Obtained from Mr. Reeves

The Florida Rules of Criminal Procedure further provide that:

[T]he prosecutor shall serve a written Discovery Exhibit which shall disclose to the defendant and permit the defendant to inspect, copy, test, and photograph the following information and material within the state's possession or control... **any tangible papers or objects that the prosecuting attorney intends to use in the hearing or trial and that were not obtained from or that did not belong to the defendant.** Fla. R. Crim. P. 3.220(b)(1)(K) (emphasis added).

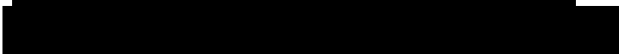
Here, the cellular phone of Chad Oulson and the hard disks of the DVRs from the interior of movie theater 10 and the common areas of the Cobb Grove Theater are “objects” that did not belong to Mr. Reeves.

It appears from the discovery provided by the State that it intends on introducing said items at a future hearing or trial. Therefore, the defense should be allowed inspection, copying, testing, and photographing rights to these specified items under the terms and conditions listed above.

WHEREFORE, the Defendant, CURTIS J. REEVES, respectfully requests this Honorable Court issue an order directing the State of Florida to provide the above-requested items during the times and under the conditions listed in this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery/Facsimile to the Office of the State Attorney, Dade City, Florida this 21st day of May, 2015


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