

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

STATE OF FLORIDA

VS.

CASE NO.: CRC1400216CFAES

DIVISION: 1

CURTIS JUDSON REEVES,  
Defendant.

\_\_\_\_\_  
SPN 00683538

MOTION FOR PROTECTIVE ORDER REGARDING  
DEPOSITION OF COLONEL JEFF HARRINGTON

COMES NOW, Jeff Harrington, Colonel of the Pasco County Sheriff's Office, by and through the undersigned counsel, and files this Motion for Protective Order Regarding Deposition of Colonel Jeff Harrington<sup>1</sup>, pursuant to Fla. R. Crim. P. 3.220(1)(1), requesting that this Court prohibit the taking of the Colonel's deposition for good cause shown, as follows:

1. On or about August 4, 2014, undersigned counsel received correspondence from Defendant's Attorney Richard Escobar consisting of a Notice of Taking Depositions. Said Notice included the proposed deposition of Colonel Jeff Harrington, scheduled for August 15, 2014 at 9:00 a.m. A copy is attached hereto as Exhibit A.

2. According to the Assistant State Attorney assigned to this case, the State Attorney's Office has not listed Colonel Harrington as a witness in this case. Furthermore, it is undersigned counsel's understanding that the State Attorney's Office does not intend to call the Colonel at the trial of this matter and the Colonel has no first-hand knowledge of the facts forming the basis for any of the criminal charges in this case.

<sup>1</sup>The Notice was issued with the incorrect rank of "Corporal Jeff Harrington."

3. Pursuant to Fla. R. Crim. P. 3.220(h), after the filing of the charging document a party may take the deposition of any person authorized under this rule. However, there is no provision in Fla. R. Crim. P. 3.220(h) allowing for the Defendant to take a deposition of someone not listed as a witness by the prosecution.

4. Fla. R. Crim. P. 3.220(l)(1) allows this Court to issue a protective order, on a showing of good cause, to restrict or exempt certain matters from discovery.

5. In the case at bar, objection is made to producing the Colonel for deposition because the Colonel can offer no testimony at the trial of this matter that would be relevant under Florida Statute 90.401, or would tend to prove or disprove any material fact related to Defendant's pending criminal charges of Murder. Additionally, objection is made to the deposition because requiring the Colonel to be deposed in this case would cause annoyance, undue burden, and expense.

6. Pursuant to Florida Statute 90.401, evidence that is outside the scope of pertinent issues is objectionable and should be excluded as irrelevant. *See e.g. Erp v. Carroll*, 438 So.2d 31 (Fla. 5<sup>th</sup> DCA 1983). In this case, the Defendant has no basis to allege that the Colonel can provide any evidence at trial that would be admissible under Florida Statute 90.401. "Mere knowledge or awareness of information that may be helpful if discovered is insufficient." *US v. Wal-Mart*, 2002 WL 562301, \*2 (D. Md. 2002). Accordingly, the Colonel should not be subject to deposition in this case.

7. There is well-settled case law discouraging the practice of calling government officials as witnesses. *See e.g. In re United States of America*, 985 F.2d 510 (11<sup>th</sup> Cir. 1993) (Noting that because of time constraints and multiple responsibilities of high officials, courts discourage parties from calling them as witnesses and require exigent circumstances to justify

request for their testimony). Defendant has made no showing that such circumstances exist in this case.

8. In similar cases, Florida courts have generally held that heads of agencies cannot be compelled to give deposition testimony unless it has been established that the testimony to be elicited is necessary, relevant, and unavailable from other sources. *Horne v. School Board of Miami-Dade*, 901 So.2d 238 (Fla. 1<sup>st</sup> DCA 2005); *State, HRS v. Brooke*, 573 So.2d 363 (Fla. 1<sup>st</sup> DCA 1991). “To hold otherwise would...subject agency heads to being deposed in virtually every...proceeding, to the detriment of the efficient operation of the agency in particular and state government as a whole.” *Dept. of Agriculture v. Broward*, 810 So.2d 1056, 1058 (Fla. 1<sup>st</sup> DCA 2002). The Defendant in this case has made no such showing.

9. Colonel Harrington has no first-hand knowledge or relevant information regarding the events that transpired at the scene of Defendant’s arrest. Furthermore, there are other law enforcement witnesses who do have personal knowledge and firsthand recollections of the events in this matter that gave rise to the pending criminal case against Defendant. Several of the law enforcement witnesses have been noticed for deposition by the Defendant:

Detective Richard Scilex	Set for deposition August 15, 2014
Detective Pete Federico	Set for deposition August 15, 2014
Detective Monte Schuler	Set for deposition August 15, 2014
Sergeant James Sessa	Set for deposition August 15, 2014
Sergeant Gary Raulerson	Set for deposition August 15, 2014
Sergeant Charles Troy	Set for deposition August 15, 2014


10. Additionally, “the indiscriminate depositions of high-ranking governmental officials would be unduly burdensome upon said officials and would likely discourage them from accepting positions as public servants.” *US v. Wal-Mart*, 2002 WL 562301, \*3 (D. Md.

2002). *See also US v. Morgan*, 313 U.S. 409 (1941); *Energy Capital v. US*, 60 Fed.Cl. 315 (U.S. Court of Federal Claims 2004).

11. Furthermore, there are numerous pending criminal prosecutions in the Sixth Judicial Circuit where the Pasco Sheriff's Office was the investigating agency. It would cause the Pasco Sheriff's Office and the Colonel great inconvenience, annoyance, undue burden, and expense to set a precedent that the Colonel is subject to deposition in each of those cases simply because he is Chief Deputy of the Sheriff's Office.


12. Therefore, because the Colonel is not a witness in this case and he has no testimony relevant at the trial of the Defendant's criminal charges, good cause has been shown to prohibit his deposition. Accordingly, this Honorable Court should use its authority under Fla. R. Crim. P. 3.220(1)(1), to grant this Motion for Protective Order Regarding Deposition of Colonel Jeff Harrington, and enter an Order prohibiting the Defendant from taking the deposition of the Colonel in this matter.

WHEREFORE, Colonel Jeff Harrington, Colonel of the Pasco Sheriff's Office, respectfully requests that this Honorable Court enter a protective order prohibiting the taking of his deposition as scheduled by the Defendant's Notice of Taking Deposition, together with such further orders as justice demands.

  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. mail to: Richard Escobar, Esq., Attorney for the Defendant, 2917 W. Kennedy Boulevard, Tampa, Florida 33609; and Manuel Garcia, Esq., Office of the State Attorney, 38053 Live Oak Avenue, Dade City, Florida 33523, this 5<sup>th</sup> day of August, 2014.

  
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Lindsay Faroni Moore, Esq.