

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

STATE OF FLORIDA,
Plaintiff,

Case No: CRC-1400216CFAES

vs.

CURTIS J. REEVES,
Defendant.

Division: 1

MOTION TO PRESERVE PHYSICAL EVIDENCE

Defendant, CURTIS J. REEVES, by and through undersigned counsel, moves this Honorable Court to order the Office of the State Attorney, Pasco County, the Pasco County Sheriff's Office and Cobb Grove 16 Theater to preserve and protect from destruction and spoliation surveillance video both in the theater showing the movie "Lone Survivor" and of the common areas of the building for the entire day of January 13, 2014.

In support of this motion defendant states that:

1. The defendant was arrested on January 13, 2014, charged with 2nd degree murder as the result of an alleged confrontation in a theater at Cobb Grove 16 Theater.
2. That the alleged confrontation took place in a theater at showing the movie "Lone Survivor" on January 13, 2014.
3. That the State Attorney's Office is aware of video surveillance system which records common areas as well as within the theater itself.
4. That it is common for businesses to preserve surveillance videos for only a certain period of time.

Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida
2014 JAN 27 PM 3:27

FILED FOR RECORD
PASCO COUNTY, FLORIDA

5. Video of the event, and/or any interactions preceding the event, and/or any actions taken after the event would be the best evidence of what took place (of both the event and of the ensuing investigation).
6. Since it is unknown at this time who is in actual possession of the video requested, the defendant moves this court to order the State Attorney, the Sheriff of Pasco County and Cobb Grove 16 Theater to preserve the above-described surveillance video.

MEMORANDUM IN SUPPORT

1. The right of the accused to examine tangible objects in the possession of the Government is guaranteed by Fla. R. Crim. P. 3.220, the Confrontation Clause of the Sixth Amendment of the U.S. Constitution and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. *See Barnard v. Henderson*, 514F.2d 744 (5th Cir. 1975); *Johnson v. State*, 249 So. 2d 470 (Fla. 3d DCA 1971); *Ansley v. State*, 302 So. 2d 797 (Fla. 1st DCA 1974).
2. The right of the defendant to examine physical evidence creates a correlative duty on the part of the prosecution to preserve physical evidence in its actual or constructive possession. *Arizona v. Youngblood*, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988); *Louissaint v. State*, 576 So. 2d 316 (Fla. 5th DCA 1990); *Jones v. State*, 360 So. 2d 1293 (Fla. 3d DCA 1978). If evidence in this case is not preserved the accused will be precluded from exercising the fundamental right to examine that evidence.

3. This court has the authority to order preservation of potential evidence. *Vancas v. State*, 377 So. 2d 1000 (Fla. 4th DCA 1979).

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, the Pasco County Sheriff's Office and Cobb Grove 16 Theater, 6333 Wesley Grove Boulevard, Wesley Chapel, Florida this _____ day of January, 2014.

Dino M. Michaels, ESQUIRE
Escobar & Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
Attorney for Defendant
Florida Bar No. 0526290