

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, "The Hobbit: The Destruction of Smaug" and of the common areas of the building for the date of December 28, 2013 from opening until closing.

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 complex.
2. That the at First Appearance, the State Attorney's Office made reference to an allegation that a moviegoer had a confrontation with the defendant over cell phone usage prior to or during the above-referenced movie. The moviegoer alleged that this interaction continued outside of the theater and into the common areas.
3. That the State Attorney's Office argued that the alleged event of December 28, 2013

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Paula S. O'Neil
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Pasco County, Florida

is somehow relevant in determining whether the defendant should be considered a danger to the community as it pertains to the court's determination of whether or not to grant bond.

4. That the State Attorney's Office is aware of a video surveillance system which records common areas as well as within the theater itself.
5. That it is common for businesses to preserve surveillance videos for only a certain period of time.
6. Video of the alleged event, and/or any interaction preceding the event, and/or any action taken after the event would be the best evidence of what took place. The video may also prove conclusively that the alleged event did not take place.
5. The defense moves that the video surveillance for the entire day of December 28, 2013 of the common areas and the theater showing "The Hobbit: The Destruction Of Smaug" be preserved.

Since it is unknown at this time whether the State Attorney's Office or the Sheriff's Office is in possession of the video surveillance, the defense moves, in the alternative, that this court order Cobb Grove 16 Theater, 6333 Wesley Chapel, Florida 33544 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 33544 this 27th day of January, 2014.



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