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.
_____/

Case No.: CRC-1400216FAES

Division: 1

MOTION TO DESIGNATE NICOLE OULSON AS A WITNESS IDENTIFIED WITH AN ADVERSE PARTY UNDER §90.612(3), AND TO ALLOW THE DEFENSE TO QUESTION HER WITH LEADING QUESTIONS

COMES NOW, the Defendant, CURTIS J. REEVES, by and through undersigned counsels, and pursuant to Florida Statute § 90.612(3) and moves this Honorable Court to designate Nicole Oulson as a witness identified with an adverse party and to allow the Defense to question her with leading questions, and states as follows:

INTRODUCTION TO SECTION 90.612(3)

The plain language of section 90.612(3) authorizes defendants to ask leading questions of certain categories of witnesses on direct examination. The law states, in pertinent part, that "[w]hen a party calls a hostile witness, an adverse party, or a **witness identified with an adverse party,** interrogation may be by leading questions." § 90.612(3), Fla. Stat. (2013) (emphasis added). As noted by Professor Ehrhardt, "[a]n inherent incentive exists in an adverse party ... to provide self-serving testimony by avoiding the question or slanting the answer." Charles W. Ehrhardt, Florida Evidence § 612.1 at 727-28 (2016) (emphasis added). In addressing this problematic phenomenon, in 1995 the Florida Legislature amended section 90.612(3) so that "witness[es] identified with an adverse party" called to the witness stand may be interrogated with leading

questions. § 90.613(3). After the amendments were implemented, once a witness is identified with an adverse party, **"leading questions are automatically permitted during direct examination."** *Ehrhardt,* at 728 (footnotes and internal quotations omitted) (emphasis added).

The 1995 amendments were modeled on Federal Rule of Evidence 611(c)(l)-(2), which allows hostile witnesses, adverse parties, and witnesses identified with adverse parties to be subjected to leading questioning. 1995, Fla. Laws ch. 95-179, § l, 1647 (codified as amended at Fla. Stat. § 90.612(3) (1995)). Because the "Florida evidentiary rule is patterned after its federal counterpart, federal cases interpreting comparable provisions are persuasive and routinely looked to for interpretative guidance." *L.L. v. State,* 189 So. d 252, 255 (Fla. 3d DCA 2016) (citations and internal quotations omitted).

Federal courts have had the opportunity to identify a number of circumstances when a witness is deemed to be sufficiently identified with an adverse party so as to allow them to be subjected to leading questioning on direct examination. In *Haney v. Mizell Memorial Hosp.,* 744 F.2d 1467, 1477-78 (11th Cir. 1984), a nurse employed by defendant-hospital was determined to be identified with the party. In *Perkins v. Volkswagen of Am., Inc.,* 596 F.2d 681, 682 (5th Cir.1979)[1] an employee of a party was identified with the party for the purposes of Rule 611 (c)(2). In *Stahl v. Sun Microsystems, Inc.,* 775 F. Supp. 1397, 1398 (D. Colo. 1991), the district court allowed a plaintiff to ask leading questions of *defendant's former* administrative secretary. In *Ellis v. City of Chicago,* 667 F.2d 606, 613 (7th Cir. 1981), a plaintiff was allowed to ask leading questions of police officers who worked closely with defendant police officer. In *United States v. Hicks,* 748 F.2d 854, 859 (4th Cir. 1984), a plaintiff asked leading questions of the defendant's

1 Decisions from the Court of Appeals for the Fifth Circuit preceding October 1, 1981 are binding on the Eleventh Circuit. *Bonner v. City of Prichard,* 661 F .2d 1206 (11th Cir. 1981).

girlfriend. In *United States v. Brown,* 603 F.2d 1022, 1025-26 (1st Cir. 1979), a prosecutor was allowed to lead a witness who was a close friend of the defendant and a participant in the crime. The above-cited cases make clear that there is any number of ways to be deemed a witness identified with an adverse party.

NICOLE OULSON IS IDENTIFIED WITH THE STATE OF FLORIDA UNDER SECTION 90.612(3)

Here, Nicole Oulson is sufficiently identified with the State of Florida so as to allow her to be questioned with leading formatted questions during direct examination. She is both an alleged victim and widow of an alleged victim. She and her representatives have made statements clearly establishing that she deeply desires the State Attorney's Office to secure a conviction against Mr. Reeves. To that end, she has willingly cooperated with the State Attorney's Office to aid their investigation and prosecution of Mr. Reeves.

In reviewing the case law above, where - for example girlfriends, *Hicks,* 748 F.2d at 859, and former employees, 775 F. Supp. at 1398 - have been deemed sufficiently identified with an adverse party, it is clear that all that is required under the statute are some facts establishing an alignment of interests between the witness and an adverse party under section 60.612(3). The facts and circumstances of this case clearly establish that Nicole Oulson is sufficiently identified with the State of Florida, and that the Defense is entitled to question her with leading questions.

This motion was previously filed by Defendant and was granted by the Court on February 23, 2017. *See* Exhibit A.

CONCLUSION

Given all of the above, Nicole Oulson is identified with the State of Florida under section 90.612(3). When undersigned counsel(s) call her to the witness stand, it is respectfully requested

that the Court grant the Defense permission to ask her leading questions.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this has been furnished by electronic delivery to the Office of the State Attorney for the Sixth Judicial Circuit, c/o Glenn Martin, Esq., at glenmartin@co.pinellas.fl.us and via U.S postal service at P.O. Box 5028, Clearwater, Florida 33758 on this 30th day of June 2020.

/s/:Richard Escobar
Richard Escobar, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
rescobar@escobarlaw.com
Florida Bar No. 375179
Attorney for Defendant

/s/:Dino M. Michaels
Dino M. Michaels, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
dmichaels@escobarlaw.com
Florida Bar No. 526290
Attorney for Defendant

/s/: Nicole N. Sanchez
Nicole N. Sanchez, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
nsanchez@escobarlaw.com
Florida Bar No. 107402
Attorney for Defendant

Exhibit A: Circuit Court Event Form February 23, 2017

Circuit Court Event Form SAO: MARTIN, GLENN

STATE OF FLORIDA
VS
REEVES, CURTIS

Case No(s): 2014CF000216AXES

Court Date: 02/23/2017

Defense Attorney: ESCOBAR, RICHARD

Hearing Type: STAND YOUR GROUND MTN

Charges(s): CT 1 - MURDER IN THE 2ND DEG, 1F; CT 2 - AGG BATT, 2F

Lesser(s): F.S.

☐ Victim Present

Next Court Date: reconvene at Cobb theatre on 2/24/17 @ 8:30 am, def's pres wvd at theatre return to courthouse around 10:15 am WST

Court Appointed:
☐ PD
☐ RC
☐ Conflict

☐ HSNR
☐ **Failed To Appear**
☐ Estreat Bond
☐ Surety ☐ Cash
☐ Revoke ROR
☐ Issued Capias
Amount:$____
Count(s)____
Amount:$____
Count(s)____

☐ Recall Capias
☐ Reinstate ROR
☐ Reinstate Bond
☐ Surety ☐ Cash

Plea of:
☐ Guilty
☐ Not Guilty
☐ No Contest
☐ Admit to VOP
☐ Viol. Cond(s):

Verdict Of:
☐ Guilty
☐ Not Guilty
☐ By court
☐ By jury
☐ VOP dismissed

Motion for:
☐ Granted ☐ w/ Prejudice
☐ Denied ☐ w/o Prejudice
☐ Take Under Advisement
☐ Withdrawn

To Prep Order:
☐ Court
☐ SAO
☐ Defense Atty
☐ FIOC
☐ SIOC

Adjudication: ☐ Guilty ____ Count(s) ☐ Withheld ____ Count(s) ☐ Departure
☐ YO ☐ HVO ☐ PRR ☐ Waive PRR ☐ Min/Man ____ yr(s) as to count(s) ____
☐ VOP ☐ Reinstate ☐ Modify ☐ New term ☐ Revoke and Term
Sentenced To: ____ ☐ PCDC ☐ DOC ☐ as to count(s)____
☐ time served as to count(s) ____ ☐ Credit T/S ____ days
☐ ____ mos / yr(s) ☐ CC ☐ Prob. ☐ DOPO ☐ Sex Off. ☐ MM ☐ as to count(s)____
As to count (s) ____ ☐ Concur. ☐ Consec.
☐ ____ mos / yr(s) ☐ DOC ☐ PCDC ☐ CC ☐ Prob. ☐ DOPO ☐ Sex Off. ☐ MM
☐ F/B: ____ mos / yr(s) ☐ CC ☐ Prob. ☐ DOPO ☐ Sex Off.
☐ Concur. ☐ Consec. ☐ Co-Term. w/ ☐ any active case
☐ w/ ____

Conditions:
☐ SA Evaluation
☐ Psych Evaluation
☐ Anger Management
☐ BIP
☐ within ____ Days
☐ Random UA
☐ Waive THC for 30 Days
☐ Waive Search & Seizure
☐ No Alcohol
☐ No bars, est. where primary purp is sale alcohol
☐ Curfew 10PM-6AM
Except: ____
☐ NCWV ____
☐ No contact w/Co Def.
☐ Report to P&P:____
☐ No Mind Alt. subs, drugs
☐ No poppy seeds
☐ DL susp/rev. for ____
☐ All prev. cond. remain
☐ Standard pharm. Cond.
☐ Employed FT or 8hr c/s Per week
☐ No driving w/o valid DL

☐ Remanded to PCDC
☐ until bed space available
☐ @ ____
☐ Enter & complete 1st time
☐ Including aftercare
☐ F/B trans. housing
☐ Early Term ____
☐ Early Rollover ____
☐ Auto Term ____
☐ No Early Term
☐ Complete ____ hrs. C/S
☐ @ rate ____ hrs. per
☐ Week ☐ Month (Min)
☐ Waive COS while in & Waiting for program
☐ May Transfer To: ____
☐ Ignition Interlock ____
☐ Victim impact panel ____
☐ Appear for all status cks
☐ Forfeit Weapon to PCSO
☐ DUI School ☐ Advanced
☐ 2 sober support meetings Per week

Court Costs:
☐ Standard $550
☐ Lessor $500
☐ COP - $100
☐ Attorney fee $ ____
☐ PD ☐ RC ☐ Conflict
☐ PD Indigent Fee $50
☐ COI - $ ____ to:
☐ PCSO ☐ NPRPD ☐ FHP
☐ PRPD ☐ DCPD ☐ ZPD
☐ DV $201
☐ RAPE CRISIS $151
☐ Minor $151
☐ FDLE $100
☐ DNA - $7
☐ State Radio $3
☐ Crim. Use of ID $1,001
☐ Trafficking fine & SC
☐ $ ____

☐ Restitution $____
To ____
☐ Pay min $____
Per mos beg. ____
☐ Costs Imposed as Lien
☐ C/S opt. $8.05 hr
☐ O/S Costs as Lien
☐ Conc w/____
☐ Consec ____
☐ Pay Costs
Within ____
☐ $1 per mos. 1st Step
☐ Pay: ____
@ ____
☐ C/S In Lieu of ____
☐ Fine/ SC ____
☐ ____

Other Conditions:

FILED FOR RECORD
PASCO COUNTY, FLORIDA
2017 FEB 23 PM 3:48

Notes:

mtn to designate Anthony Bossone & each & every listed witness employed by the PCSO as witnesses identified w/ an adverse party - Granted
mtn to designate Nicole Oulson as a witness identified w/ an adverse party - Granted.