IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CRC14-00216CFAES

STATE OF FLORIDA

V.

CURTIS J. REEVES

## STATE'S RESPONSE TO DEFENDANT'S MOTION TO EXCLUDE PROOF AND TESTIMONY PERTAINING TO THE STATE'S FORENSIC VIDEO EXPERT ANTHONY IMEL

COMES NOW, BERNIE McCABE, State Attorney for the Sixth Judicial Circuit in and for Pasco County, Florida, by and through the undersigned Assistant State Attorney, hereby responds to the Defendant's *Motion To Exclude Proof And Testimony Pertaining To The State's Forensic Video Expert Anthony Imel* as follows:

## Summary of State's Position

- Adobe™ Photoshop resampling method "bicubic smoother" does not add "content" to the original image.

- Adobe™ Photoshop resampling method "bicubic smoother" **does not** result in an image that is manipulated to impermissibly alter the image.

- Adobe™ Photoshop resampling method "bicubic smoother" enhances the original "content" of the image possibly resulting in a greater ability by the viewer to perceive details.

- Adobe™ Photoshop resampling method "bicubic smoother" does not result in an enhanced image that is misleading to the fact finders.

- Adobe™ Photoshop resampling method "bicubic smoother" method meets *Daubert* requirements for reliability.

- Forensic video expert Anthony Imel properly applied Adobe™

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Photoshop's resampling method "bicubic smoother" method to the image, which accurately reproduced the original image in an enhanced version.

- Forensic video expert Anthony Imel properly applied Adobe™ Photoshop's resampling method "bicubic smoother" method to the images in order to avoid the introduction of artifacts that would add misleading information to the image or result in the loss of image detail that could lead to an erroneous interpretation.

- Adobe™ Photoshop's resampling method "bicubic smoother" method reliably resizes the image so that the content of the image is clearer to the viewer.

- Adobe™ Premier resizing method does not add "content" to the original video.

- Adobe™ Premier resizing method does not result in a video that is manipulated to impermissibly alter the video.

- Adobe™ Premier resizing method does not result in an enhanced video that is misleading to the fact finders.

- Adobe™ Premier resizing method meets *Daubert* requirements for reliability.

- Adobe™ Premier resizing method enhances the original "content" of the video possibly resulting in a greater ability by the viewer to perceive details.

- Adobe™ Premier resizing method reliably resizes the video so that the content of the video is clearer to the viewer.

- Forensic video expert Anthony Imel properly applied Adobe™ Premier resizing method to the video, which accurately reproduced the original video in an enhanced version.

- The Court will have the opportunity to view and compare the "original" video with the "enhanced" version before ruling on admissibility.

## Summary of State's Argument

Mere disagreement with the reasoning and methodology used does not warrant exclusion of expert testimony. Based on his specialized knowledge, training and experience, Mr. Imel's expert opinion was that the use of Adobe™ Premier, to resize the videos and the use of Adobe™ Photoshop, to resize the images was appropriate to achieve the goal of making the action of the participants in the videos and images clearer to the viewer. If the Defendant believes, as his motion makes clear, another method was more appropriate, he can make this apparent through cross-examination. It will then be for the jury to decide the credibility and weight that should be afforded to Mr. Imel's testimony. See, Longlois v. Stratasys, Inc., 88 F.Supp.3d 1058, 1064-65, and (D.Minn. 2015)

## Factual Summary

This offense occurred on January 13, 2014 inside Theater #10 at the Cobb Grove 16 Movie Theatres, 6333 Wesley Grove Blvd, Wesley Chapel, Pasco, FL.

The offense was captured on two infrared CCTV cameras.

The State and the defense have stipulated to the waiver of the best evidence rule as it relates to data from the theater's camera surveillance system. See Exhibit # 1, attached.

Forensic video experts for the State and the defense have examined the seized digital surveillance videos. Both experts used Adobe™ Premier and Photoshop to modify, enhance, highlight, and resize the digital videos and images extracted from the "original" digital video.

The State's expert, Mr. Imel chose to resize the digital videos using the proprietary algorithm of Adobe™ Premier.

The State's expert, Mr. Imel chose to resize the digital images using the proprietary algorithm of Photoshop 2014 known as "bicubic smoother".

The purpose of the State's enhancements was to make the actions of the participants contained in the videos and images clearer to the viewer. Mr. Imel chose an enhancement method

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that was appropriate to achieve that goal. During the enhancement process, Mr. Imel, based on his specialized knowledge, training and experience balances the enhancements of resizing, brightness and contrast to ensure that the now larger enhanced videos and images accurately represents the original videos and imagery with greater visible detail allowing the trier of fact to weigh the video/image evidence and its relevance to the case. Mr. Imel was not trying to enhance the videos and images in order to make a "forensic comparison analysis". There is simply not enough detail in the original videos and images to conduct such an analysis. Here, Mr. Imel's reasoning was properly applied to the facts of the case.

The defense expert, Koenig chose to resize the digital images using a proprietary algorithm of Adobe™ Photoshop known as "nearest neighbor".

Based on the methods used by the defense expert, the State speculates that the purpose of the enhancements was an attempt to enhance a very small, specific point of interest in the video and images in order to make a "forensic comparison analysis", i.e. is the point of interest consistent with an iPhone.

## Argument

### Authentication of Enhanced Surveillance Video and Photographs

The admissibility of enhanced videos or images is contingent on the authentication of the original video or image. In this case the State and the defense have stipulated that the best evidence rule is waived. The stipulation states that both parties may introduce un-enhanced and/or enhanced videos/images generated from duplicate versions of the date from the Cobb Grove Theater camera surveillance system. See Exhibit #1, attached.

Enhance duplicates of videos/images are admissible after the video examiner testifies about the nature of the enhancements to the original. In Bryant, the court stated

> "The state's expert also testified about the
> nature of the enhancements to the original,
> time lapse videotapes. Such testimony was a
> necessary component of the state's effort to
> prove the foundation necessary for admission
> of the edited, fully enhanced excerpt. In

effect, the state offered the edited, fully enhanced excerpt as a duplicate of the original, time lapse videotapes. A duplicate is defined as:

> A counterpart produced by the same impression as the original, from the same matrix; by means of photography, including enlargements and miniatures; by mechanical or electronic rerecording; by chemical reproduction; or by equivalent technique that accurately reproduces the original....
>
> § 90.951(4) (a), Fla. Stat. (2000); *see Van Den Borre v. State,* 596 So.2d 687, 690 (Fla. 4th DCA 1992) (holding that a " 'FAX' and a photocopy are duplicates"); *Garcia v. Lopez,* 483 So.2d 470, 471 & n. 1 (Fla. 3d DCA 1986) (discussing whether an unsigned copy of an agreement is a duplicate); *see also United States v. Beeler,* 62 F.Supp.2d 136, 148 (D.Me.1999) ( "[R]erecordings that are enhanced so that the images are clearer to depict [sic] are also 'duplicates' so long as the tapes accurately reproduce the original images on the tape. *See Fountain v. United States,* 384 F.2d 624, 631 (5th Cir.1967)....")." Bryant v. State, 810 So.2d 532, 537 (Fla. 1st DCA 2002)

"Digitally-enhance images are images that have been **altered** in such a way as to reveal a part or parts of an image that previously were not discernible to the human eye. … [T]estimony establishing the reliability of the process used to enhance the photo or image is necessary to lay the foundation." Charles W. Ehrhardt, *Florida Evidence* § 403.3a, pg.200 (2020 Ed.)(Emphasis added)

> In Dolan, "[t]he Fort Lauderdale police sent the tape to a video laboratory for forensic video analysis. The process, which was the subject of detailed step-by-step testimony by the forensic video analyst at trial, resulted in a computer-enhanced image which was "bigger, brighter, and better." The process began with identifying the best video recording machine for playback,

playing the tape on that machine, and transferring the image electronically to computer as a digital image. Digital images are composed of millions of tiny dots, referred to as "pixels." Next, the most relevant frames of the video images were selected, and computer software used to add, enlarge, darken or lighten pixels in the now-digitized picture in order to clarify and focus the image. Once each image was computer-enhanced, still prints were made. These prints were admitted into evidence at trial.

The forensic video analyst testified that the still prints were a fair and accurate representation of what was on the videotape. The analyst's testimony established that she did not edit the image, and that the pictures contained only the images which were originally on the videotape. The analyst was subjected to cross-examination on the process. The jury had the original videotape for comparison of the tape with the prints, as well as the explanation of the process for its consideration." Dolan v. State, 743 So.2d 544, 545 (Fla. 4$^{th}$ DCA 1999)

"Once the tape is authenticated and the forensic analyst explains the computer enhancement process and establishes that the images were not altered or edited, then the computer enhancements become admissible as a fair and accurate replicate of what is on the tape, provided the original tape is in evidence for comparison. The weight accorded to those computer-enhanced prints is determined by the jury. A jury possesses sufficient common sense to compare the images." Id. at 546.

In Beeler, "Mr. Hunter explained that to produce the enhanced version (Government's Exhibit Three), he copied certain specific frames from the original tape to a computer and, using a computer program called Image Lab, enhanced the quality of those images by adjusting the contrast and brightness of those images and enlarging portions of the still frames that

depict the suspect. Tr. at 20, 33-37. Mr. Hunter testified that he did not modify the actual images, but only added shading so that the images could be seen better. Tr. at 19-22. Mr. Hunter recorded the changes to the images as they were being made. Tr. at 37. Furthermore, he testified that the images in the second and third versions of the videotape were not altered. The Court viewed all three versions of the Mobil Mini-Mart videotape at the hearing and is satisfied that they depict the same images and have not been manipulated to impermissibly alter the images." Id. at 149.

"After hearing the testimony of Mr. Hunter regarding the techniques of video enhancement, the Court is satisfied that the enhanced version of the videotape is an accurate representation of the images portrayed in the original surveillance videotape. The enhanced version is different only in that extraneous frames are no longer present and the images are larger, clearer, and easier to view." Id. at 149.

"The edited and enhanced versions of the Mobil Mini-Mart surveillance videotape are admissible because they have been proven accurate and serve to present the substance of the original videotape in a more easily understood form which is in accord with the spirit of the best evidence rule." Id. at 150.

"Admission of photographic evidence is an exercise of the trial court's discretion, and its decision will not be overturned without a showing of abuse. *See Thompson v. State,* 565 So.2d 1311 (Fla.1990)" Dolan v. State, 743 So.2d at 546.

Here, Defendant argues that the method State expert Imel used to resize the videos and images does not meet Daubert requirements because the proprietary algorithm of Adobe™ Premier and Adobe™ Photoshop adds pixels to the videos or images that never existed in the original videos or images, therefore the enhance / resized videos or images do not fairly and accurately depict the scene.

The objective of forensic video/image enhancement is to clarify or enhance the events as they occurred by making changes that increase the ability to more clearly see action in the videos and images. This is done using non-destructive techniques

to preserve the video evidence integrity, and pixel quality. Clarifying or enhancing the events as they occurred assists the trier of fact to weigh the video evidence and its relevance to the case.

Video/Image enhancement is any process intended to improve the visual appearance of an image. It may include the following:

- Use of brightness adjustment when the image is to bright or too dark.
- Use of cropping to remove that portion of the video/image that is outside the area of interest.
- Use nonlinear contrast adjustments to adjust the contrast in selected brightness ranges within the video/image. This enhancement can be used to bring out details in the shadow area of an image without affecting the highlight areas.
- Use of scaling/pixel interpolation which re-sizes or scales an image or video to a larger resolution
- Use of speed reduction of the original playback of the video to view the events as they occurred in more detail.

All of the above-described procedures make changes that do not alter the "content" of the original video or image.

Lisa and Brad Dayley in their book Adobe Photoshop CC discuss "changing the image size". In the section "Understanding resizing algorithms in Photoshop" they explain:

"An important concept that you need to understand when resizing images is what is happening with the pixels during resizing. When you reduce the size of an image by one-third, Photoshop has to take a block of 9 × 9 pixels and turn them into a block of 6 × 6 pixels while displaying the same content. When you increase the size of an image by one-half, Photoshop has to take a block of 6 × 6 pixels and turn them into a block of 9 × 9 pixels to display the same content.

The point is that when resizing an image, Photoshop has to make an intelligent determination of how to combine pixels when reducing the image and how to fill in the missing holes when increasing the size of the image. To do this, Photoshop uses complex algorithms to calculate what the resulting pixels in the new

image should be. These algorithms are known, as *resample methods.*

Photoshop provides five algorithms to resample images. Each algorithm has advantages over the others, and they all produce slightly different results. The following list describes (three of) these algorithms and when to use them:

• **Nearest Neighbor**. This method is the simplest and fastest for resizing an image. This option works by simply looking at the pixels surrounding the selection and **averaging them** to create the pixel in the new image. It's fast, but it produces the worst overall results, especially in images that have highly contrasting tones next to each other. (Emphasis added)

• **Bicubic**. This method applies a convolution algorithm that **uses a weighted set of numbers that are applied to the pixels in the old image to determine the value of the pixel in the new image**. This option is not as fast as the nearest neighbor or bilinear methods. However, the bicubic method typically preserves finer detail. A downside of the bicubic method is that it often results in ringing artifacts (a repeating pattern around edges where there is high contrast in the image — for example, white next to black). (Emphasis added)

• **Bicubic Smoother**. This is the same as the bicubic method, except that it applies a smoothing filter to the set of pixels at the same time to help smooth abrupt edges when enlarging an image. The bicubic smoother algorithm provides the best overall results when enlarging an image." L. Dayley and B. Dayley, Adobe™ Photoshop CC Bible, 227-229 (2014)(Emphasis added)

Adobe™ Premier, used to enhance videos does not give the operator a choice of algorithms to resize the video.

Once the original video is properly admitted, here by stipulation, the next question is whether the method used to enhance the videos and images reflect distorted or altered images to the extent the admission would mislead the jury.

The Defendant argues that this Court should use the factors identified in Daubert to determine if the enhanced videos and images in this case fairly and accurately represent the original videos and images. The State disagrees. When dealing with video enhancements that are ultimately based on the examiners professional observations supported by his/her specialized knowledge, training and experience, the most appropriate method is to visually compare the original videos and images with the produced enhanced videos and images. This is how the fact finder would determine what weight, if any they would give to the enhanced media. If the human eye cannot discern a difference, then the enhanced videos and images will not mislead the jury and result in an improper interpretation of the videos and images. See, Quite Technology DC-8, Inc. v. Hurel-Dubois UK LTD., 326 F.3d 1333, 1341 (11th Cir. 2003)

## Daubert Standard

In July, 2013 the Florida Legislature enacted 90.702, FSS setting forth the Daubert standard to govern the admissibility of both expert scientific testimony and opinions and lay opinions. F.S.A. Section 90.702, Amended by Laws 2013, c. 2013-107, Section 1, eff. July 1, 2013.

Florida Courts have recognized that The Federal Rules of Evidence may provide persuasive authority for interpreting the counterpart provisions of the Florida Evidence Code. *See Sikes v. Seaboard Coast Line R.R.,* 429 So.2d 1216, 1221 (Fla. 1st DCA 1983) (citing Charles W. Ehrhardt, *A Look at Florida's Proposed Code of Evidence,* 2 Fla. St. U.L.Rev. 681, 682-83 (1974)). Yisrael v. State, 993 So.2d 952, n.7 (Fla. 2008)

The federal courts have long used the Daubert standard to govern the admissibility of scientific testimony and opinions. In federal Court, Federal Rule of Evidence 702 governs the admissibility of exert testimony in federal courts. Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993): Kumho Tire Co., Ltd. V. Carmichael, 256 U.S. 137, 119 S.Ct. 1167 (1999). Under Daubert, a federal district court applying Rule 702 is charged with the gate-keeping role of ensuring that scientific evidence is both relevant and reliable. 509 U.S. at 589-95.

The helpfulness standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility. 509 U.S. at 591-92. Thus if the proposed

scientific evidence is not helpful in that the proposed science does not advance the inquiry in question, then the evidence does not meet the helpfulness standard. Reliability, on the other hand is grounded in the methods and procedures of science. 509 U.S. at 590.

The trial judge is to consider "whether the reasoning or methodology underlying the testimony is scientifically valid" and "whether that reasoning or methodology properly can be applied to the facts in issue." *Id.* at 592-93. In making this determination, the following factors are considered: (1) "whether it can be (and has been) tested," (2) "whether the theory or technique has been subjected to peer review and publication," (3) "the known or potential rate of error," and (4) "general acceptance" in the "relevant scientific community." *Id.* at 593-94. Although this is a flexible inquiry, the trial judge's focus "must be solely on principles and methodology, not on the conclusions that they generate." *Id.* at 594-95. When determining the admissibility of expert testimony, "[t]he district court is not obligated to hold a *Daubert* hearing." *Clay v. Ford Motor Co.*, 215 F.3d 663, 667 (6th Cir.2000).

In <u>Quite Technology DC-8, Inc.</u>, the court stated

> "In ascertaining the reliability of a particular scientific expert opinion, we consider, to the extent possible: (1) whether the expert's theory can be and has been tested; (2) whether the theory has been subjected to peer review and publication; (3) the known or potential rate of error of the particular scientific technique; and (4) whether the technique is generally accepted in the scientific community. *McCorvey*, 298 F.3d at 1256 (citing *Daubert*, 509 U.S. at 593-94, 113 S.Ct. at 2796-97). Notably, however, these factors do not exhaust the universe of considerations that may bear on the reliability of a given expert opinion, and a federal court should consider any additional factors that may advance its Rule 702 analysis. *See Kumho Tire*, 526 U.S. at 150, 119 S.Ct. at 1175.

> In the end, although "[r]ulings on admissibility under *Daubert* inherently require the trial court to conduct an

exacting analysis of the proffered expert's methodology," *McCorvey,* 298 F.3d at 1256, it is not the role of the district court to make ultimate conclusions as to the persuasiveness of the proffered evidence. Indeed, as we said in *Maiz,* "[a] district court's gatekeeper role under *Daubert* 'is not intended to supplant the adversary system or the role of the jury.' " 253 F.3d at 666 (quoting *Allison v. McGhan* 184 F.3d 1300, 1311 (11th Cir.1999)). Quite the contrary, "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert,* 509 U.S. at 596, 113 S.Ct. at 2798." Quite Technology DC-8, Inc. v. Hurel-Dubois UK LTD, 365 F.3d at 1341.

Here, the enhanced videos and images allow the juries to more clearly identify the action of the participants in the videos and images.

The Proponent of expert testimony has the burden to prove the foundation by *preponderance of the evidence.* 509 U.S. at 592, n.10.

Here, Imel will rely on his specialized knowledge, training and experience to conduct his analysis of the data/facts and to subsequently render his opinions. The "gatekeeping" function identified in Daubert applies equally to expert opinions based on specialized knowledge, training and experience. 509 US at 589.

In Kumho Tire, the Supreme Court further held that gate-keeping obligation extends not just to scientific testimony, but also to technical or other specialized knowledge, including testimony base on an expert's own experience. Kumho Tire Company, LTD, 526 U.S. 137, 149 119 S.Ct. 1167 (1999)

"In *Daubert,* this Court held that Federal Rule of Evidence 702 imposes a special obligation upon a trial judge to "ensure that any and all scientific testimony ... is not only relevant, but reliable." 509 U.S., at 589, 113 S.Ct. 2786. The initial question before us is whether this basic gatekeeping obligation applies only to "scientific" testimony or to all expert

testimony. …

For one thing, Rule 702 itself says:

> "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

> This language makes no relevant distinction between "scientific" knowledge and "technical" or "other specialized" knowledge. It makes clear that any such knowledge might become the subject of expert testimony. In *Daubert,* the Court specified that it is the Rule's word "knowledge," not the words (like "scientific") that modify that word, that "establishes a standard of evidentiary reliability." 509 U.S., at 589–590, 113 S.Ct. 2786. Hence, as a matter of language, the Rule applies its reliability standard to all "scientific," "technical," or "other specialized" matters within its scope. We concede that the Court in *Daubert* referred only to "scientific" knowledge. But as the Court there said, it referred to "scientific" *148 testimony "because that [w]as the nature of the expertise" at issue. *Id.,* at 590, n. 8, 113 S.Ct. 2786. 526 U.S. at 147-48.

"We conclude that *Daubert*'s general principles apply to the expert matters described in Rule 702. The Rule, in respect to all such matters, "establishes a standard of evidentiary reliability." 509 U.S., at 590, 113 S.Ct. 2786. It "requires a valid ... connection to the pertinent inquiry as a precondition to admissibility." *Id.,* at 592, 113 S.Ct. 2786. And where such testimony's factual basis, data, principles, methods, or their application are called sufficiently into question, see Part III, *infra,* the trial judge must determine whether the testimony has "a reliable basis in the knowledge and experience of [the relevant] discipline." 509 U.S., at 592, 113 S.Ct. 2786." U.S.

at 149.

"Sometimes the specific *Daubert* factors will aid in determining reliability; sometimes other questions may be more useful. As a result, "the trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable." *Id.* at 152, 119 S.Ct. at 1176. Exactly *how* reliability is evaluated may vary from case to case, but what remains constant is the requirement that the trial judge evaluate the reliability of the testimony before allowing its admission at trial. *See* Fed.R.Evid. 702 advisory committee's note (2000 amends.) ("The trial judge in *all* cases of proffered expert testimony must find that it is properly grounded, well-reasoned, and not speculative before it can be admitted." (emphasis added))." U.S. v. Frazier, 387 F.3d 1244, 1262 (11th Cir 2004)

In In re TMI Litig, the court stated "As noted earlier, *Daubert* does not require that the proffered expert is correct. *Paoli II*, at 744. Rather, the proponent of the challenged testimony need only demonstrate that their opinions are reliable. So long as the expert's testimony rests upon "good grounds", it should be tested by the adversary process—competing expert testimony and active cross-examination—rather than excluded from juror's scrutiny for fear that they will not grasp its complexities or satisfactory weigh its inadequacies. *Ruiz-Troche*, at 85 (citing *Daubert*, at 596, 113 S.Ct. 2786)" *In re TMI Litig.*, 193 F.3d 613, 692 (3d Cir.1999)

## Conclusion

The reasoning and method the State's expert, Mr. Imel used in achieving the goal of enhanced videos and images so the actions of the participates can more clearly be identified is reliable under Daubert. By conducting a "comparison analysis" it can be determined that the enhanced duplicate video and image is, as far as the naked eye is concerned, a fair and accurate duplicate of the original. The trial judge has considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable. The trial judge in *all* cases of proffered expert testimony must find that it is properly grounded, well-reasoned, and not speculative before it can be admitted. The proponent of the challenged testimony need only demonstrate that their opinions are reliable. So long as the expert's testimony rests upon "good grounds", it should be tested by the adversary process—competing

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expert testimony and active cross-examination—rather than excluded from juror's scrutiny.

     **WHEREFORE,** the State of Florida respectfully requests the Court to enter its Order denying the Defendant's <u>Motion To Exclude Proof And Testimony Pertaining To The State's Forensic Video Expert Anthony Imel</u> as it relates to Defendant's second reason to exclude based on the allegation *Mr. Imel's Modifications Of Poor-Resolution Infrared Camera Footage From A Low-Light Environment With An Unknown Algorithm Are Not Fair, Accurate, And Reliable Depictions.* The State does not intend to present testimony to the jury relating to the Defendant's first ground to exclude based on the allegation *Anthony Imel's Brightness Measurements Are Irrelevant And Present The Potential For Undue Prejudice, Confusion Of The Issues, And The Misleading Of The Fact-Finder.*

## CERTIFICATE OF SERVICE

     I HEREBY CERTIFY that a copy of the foregoing <u>State's Response To Defendant's Motion To Exclude Proof And Testimony Pertaining To The State's Forensic Video Expert Anthony Imel</u> was furnished to Richard Escobar, Esq., Attorney for the Defendant, at 2917 West Kennedy Blvd., Suite 100, Tampa, FL 33609-3163, by U.S. Mail or Personal Service this _____ day of September, 2020.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

By: _____
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EXHIBIT #1

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

STATE OF FLORIDA,
      Plaintiff,

vs.

CURTIS J. REEVES,
      Defendant.

_____/

Case No:     CRC1400216CFAES

Division:    1

## STIPULATED ORDER CONCERNING WAIVER OF BEST EVIDENCE RULE REQUIREMENTS TO SPECIFICALLY IDENTIFIED EVIDENCE (COBB GROVE THEATER CAMERA SURVEILLANCE SYSTEM DATA FROM JANUARY 13, 2014)

The State and the Defense, in a mutual effort to reduce the scope and quantity of certain

testimony otherwise necessary under the rules of evidence at any future pre-trial immunity ("Stand

Your Ground") hearing and/or any trial, stipulate and agree to waive any potential "best evidence

rule" challenges pertaining to any need to introduce the "original" version of the January 13, 2014

data from the Cobb Grove Theater camera surveillance system;

The State and the Defense agree that the "best evidence rule" refers to section 90.952,

which states that "an original writing, recording, or photograph is required in order to prove the

contents of the writing, recording, or photograph."

The State and the Defense agree that neither party should be required to introduce the

"original" hard drives and USB drive containing the "original" data from the Cobb Grove Theater

camera surveillance system into evidence in order to lay the necessary predicate to introduce

un-enhanced and/or enhanced videos/images. Both parties therefore agree that they may introduce

un-enhanced and/or enhanced videos/images generated from duplicated versions of the "original"

data described below. This "original" data was originally stored on hard drives and a USB drive.

The State and the Defense stipulate that any un-enhanced and/or enhanced videos/images

introduced by the State at a future hearing and/or trial is based on duplicated data that Pasco County Sheriff's Office employees Detectives Anthony Bussone and Aaron Smith imaged from the "original" Cobb Grove Theater camera surveillance system data.

The State and the Defense stipulate that any un-enhanced and/or enhanced videos/images introduced by the Defense at a future hearing and/or trial is based on duplicated data that Pasco County Sheriff's Office employee Detective Aaron Smith and private expert Adam Sharp (of E-Hounds) imaged from the "original" Cobb Grove Theater camera surveillance system data.

The State and the Defense agree that both parties reserve their right to raise relevancy and/or any other legal challenge(s) to the admissibility of any and all unenhanced and/or enhanced videos/images referenced in this Stipulated Order.

The State and the Defense further agree that this Stipulated Order will remain in full force and effect for any hearing or trial in this matter.
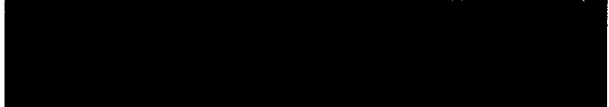
DATE: 2/17/2017

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Curtis J. Reeves

The Court, having reviewed the file and pleadings and being fully advised in the premises, finds that good cause exists to approve this Stipulated Order Concerning Waiver of Best Evidence Rule Requirements to Specifically Identified Evidence (Cobb Grove Theater Camera Surveillance System Data from January 13, 2014). Further, as agreed upon by the parties, this Stipulated Order will remain in full force and effect for any hearing or trial in this matter.

DONE AND ORDERED, in Dade City, Pasco County, Florida this ___ day, February 2017

████████████████████

SUSAN BARTHLE
Circuit Court Judge

*Conformed Copies To:*

Office of the State Attorney, Pasco County
Escobar & Associates, P.A., 2917 W. Kennedy Blvd., Ste. 100, Tampa FL 33609