

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY
CASE NUMBER CRC14-00216CFAES

STATE OF FLORIDA,

Plaintiff,

vs.

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Motion

BEFORE: The Honorable Anthony Rondolino
Circuit Court Judge

DATE: May 19, 2016

PLACE: Courtroom 1
Pinellas County Justice Center
14250 - 49th Street North
Clearwater, Florida 33762

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(Pages 1 to 57)

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* * *

P-R-O-C-E-E-D-I-N-G-S

THE COURT: I think we've got another case scheduled to be heard on our 10:00 calendar. So State of Florida versus Curtis Reeves. I think there is a motion pending on the 10:00 calendar. (WHEREUPON, UNRELATED CALENDARED MATTERS WERE HEARD AND

NOT TRANSCRIBED)

THE COURT: All right. Is counsel prepared to go forward and the Reeves case?

MR. ESCOBAR: Good morning, your Honor. Richard Escobar for purposes of the record, representing Mr. Reeves.

THE COURT: Okay. And for the State?

MR. MARTIN: Good morning, Judge. Glenn Martin, representing the State Attorney's Office.

THE COURT: Very good. I've had an opportunity to review this interesting matter. So brief argument would be appropriate, starting with the movant.

MR. ESCOBAR: May I approach, your Honor?

THE COURT: You may.

MR. ESCOBAR: Good morning again, your Honor. I know that both the Defense and the prosecution had given the Court all of the previous motions and memorandums, writs of certs, decisions by the

1 Second District that we've gone through on this
2 particular matter, but I'd like to just give a very
3 brief summary of that process.

4 This issue really came to light as a result of
5 the government filing a motion to compel the
6 Defense to file our previously paid for deposition
7 transcripts in the Reeves case. There is, I think,
8 probably over 100 depositions that we've taken in
9 this matter. And so this motion was filed by the
10 government. We had taken the position very
11 early --

12 THE COURT: Can I stop for a minute? It's my
13 understanding that the issue is really related not
14 to the taking of depositions, but --

15 MR. ESCOBAR: The filing.

16 THE COURT: -- the transcriptions of the
17 depositions which were taken. Are you saying that
18 every deposition was transcribed in this case?

19 MR. ESCOBAR: No. The vast majority of them,
20 I believe, have been transcribed. I can't give the
21 Court an actual number of the numbers that we've
22 got in our office, but a good number have been
23 transcribed.

24 THE COURT: And so for the purpose of the
25 record, I think it's very relevant to make it clear

1 that the defendant, Mr. Reeves, in this case, has
2 hired private counsel; that there has not been a
3 determination of indigency in the case; that
4 Mr. Reeves is funding his defense; counsel is being
5 paid by Mr. Reeves, and the expenses associated
6 with the defense are being paid by Mr. Reeves
7 rather than the county or the state or any
8 government entity.

9 MR. ESCOBAR: That is absolutely correct.

10 THE BAILIFF: Okay.

11 MR. ESCOBAR: And, your Honor, in reviewing,
12 when we first got this motion to compel, we had
13 previously reviewed and we were aware of this
14 administrative order, and, of course, we had read
15 that administrative order as applying strictly to
16 situations where public funds were being expended
17 pursuant to a Public Defender or a court appointed
18 lawyer. We did not believe in reading the statute
19 in *peri materia* --

20 THE COURT: You're referring to order --
21 administrative order 99-35.

22 MR. ESCOBAR: I am. When we read that
23 particular order in *peri materia*, it was very clear
24 to us that it did not apply to us. And so, in
25 defense of the motion to compel, we filed a

1 response before Judge Barthle, explaining to the
2 Court in that proceeding, those particular issues,
3 that we were private counsel. We had paid for our
4 own depositions. No public funds had been
5 expended. And, therefore, when we read the
6 particular administrative order, it clearly did not
7 apply to us.

8 In my motion before this Court, I put some of
9 the --

10 THE COURT: Can I cut to the chase here?

11 MR. ESCOBAR: Yes.

12 THE COURT: When I read these submissions, it
13 seems to me that the State acknowledges the
14 provision in the administrative order that is
15 seminal to the issues here; that there is a
16 provision in that administrative order which is,
17 unless upon an attorney's request, chief judge
18 authorizes otherwise, and that your, that is,
19 Mr. Reeves', failing to timely move the chief judge
20 to authorize an exception to the filing of the
21 deposition transcript under that constitutes a
22 waiver of your attempt to now do so.

23 MR. ESCOBAR: That's correct.

24 THE COURT: And I think that is the primary
25 assertion, and so why don't you address that.

1 MR. ESCOBAR: I will.

2 THE COURT: Because it doesn't seem to me
3 there is much contravention of the facts.

4 MR. ESCOBAR: What the government is wanting
5 us to do was -- back even before Judge Barthle was
6 to embrace this particular order as, number one,
7 applying to us. And we even felt that it was one
8 step further. We believe that it had impliedly
9 been repealed by the change in funding in local
10 government in Pinellas and Pasco County, and
11 throughout the State of Florida for that matter.

12 And so what they would have wanted us to do
13 was to embrace that administrative order as
14 applying to us and then move for a motion before
15 the chief judge in order to get some relief, and
16 that would be discretionary relief, and as you can
17 read the administrative order, there is no criteria
18 for that discretionary relief. It was just go
19 before the chief judge. Don't argue before Judge
20 Barthle. Let's just go before the chief judge and
21 ask for your relief.

22 Well, we felt that that was inappropriate. We
23 believed that it did not apply to us. We believe
24 that it infringed upon some basic, very important
25 constitutional rights. And if you look at the

1 first paragraph of the administrative order, it
2 says, and I will read, with all the protections and
3 rights guaranteed by the federal and state
4 constitutions.

5 And so if you look at our first motion or
6 response to the government's motion to compel, you
7 will see that the two parts that we argued, number
8 one, it didn't apply to us, and it contravened a
9 fundamental right of Mr. Reeves which infringes on
10 both the state and federal constitution.

11 Those were our arguments, and if you read my
12 motion and my memorandum where I actually provide
13 the Court excerpts from the court's ruling in that
14 case, the court is saying, I don't want to
15 interpret this. I see that there is a sentence in
16 this administrative order and because I am a judge
17 in this circuit, I have to follow the
18 administrative order.

19 And there are -- I've got the rule here, and
20 I'm sure the Court's aware of it. There is a rule
21 that can sanction a circuit or county judge that
22 fails to follow an administrative order. So I
23 think Judge Barthle, in looking at that said, Hey,
24 I'm not going to not follow this one sentence in
25 this administrative order.

1 THE COURT: So here you are in front of me,
2 agreeing that Judge Barthle did what she had to do,
3 and yet what did you-all do? You appealed it.

4 MR. ESCOBAR: No. I don't agree that Judge
5 Barthle did what she had to do.

6 THE COURT: I thought you were saying she had
7 to follow the order.

8 MR. ESCOBAR: No. I think that was her
9 reasoning was, hey, I have to follow this one
10 sentence of order, because we argued back before
11 Judge Barthle that she had to read the
12 administrative order in *peri materia*, which means
13 that you don't read a particular sentence in
14 isolation. You have to read all of the sentences
15 and determine the legislative intent or the court's
16 intent in devising that particular administrative
17 order.

18 I don't believe that Judge Schaeffer, when she
19 signed this administrative order, did so so that
20 private counsel would file their depositions with
21 the clerk so that the State Attorney's Office would
22 get hundreds of thousands of dollars of free
23 depositions in the criminal courts, because that
24 would have given some benefit to one side and not
25 the other.

1 And so we believed from the very beginning
2 that what Judge Barthle did was she focused on that
3 one sentence. She knew what the law was as far as
4 following administrative orders. And I can't tell
5 you how many times -- and I think the prosecution
6 will agree -- how many times she said, I sure hope
7 the Second District, you know, decides this by a
8 written opinion.

9 I could tell that she wanted some other
10 authority to give some guidance in this particular
11 case. And so what did we do? We realized that
12 petition for a writ of certiorari is a very
13 difficult writ. We didn't go to the Second
14 District understanding that it wasn't a difficult
15 writ, but we believed that that was the best
16 position for us to take under the record that we
17 had, and so we did that.

18 And what did the Second District do? They did
19 not decide this case on the merits. If you look at
20 Parkway Bank, which is a wonderful case that really
21 educates everyone as to the differences between a
22 per curiam dismissal and a per curiam denial, you
23 will see that we lost it on jurisdictional grounds.
24 We lost it on the very two jurisdictional grounds
25 that don't deal with the law.

1 And so here we are. We went -- he filed
2 another motion to compel before Judge Barthle. We
3 filed our responses. And we realize that now we
4 must come to this Court, even though as I stand
5 here, I firmly believe that this administrative
6 order really does not apply to the private bar. I
7 stand before this Court because I've got some gray
8 constitutional issues that will be infringed upon
9 should we file these particular depositions with
10 the clerk.

11 And isn't it ironic --

12 THE COURT: Is this a capital case or a
13 regular?

14 MR. ESCOBAR: No. Second degree.

15 THE COURT: All right.

16 MR. ESCOBAR: Isn't it ironic that under the
17 rules of civil procedure, you're not allowed to
18 file depositions unless that particular depo contains an
19 issue that's gonna be litigated before the court.
20 So under what reasoning would Judge Schaeffer want
21 the criminal defense bar, private criminal defense
22 bar, to file their depositions if the civil rules
23 of procedure prohibit it? It makes absolutely no
24 sense.

25 And I wish the Second District, you know,

1 would have taken this issue up. I understand
2 what -- why the Second District didn't, because the
3 Second District, I think, felt that, well,
4 Mr. Escobar, you do have an administrative order
5 here that gives you the opportunity for relief from
6 the chief judge. So we're not gonna accept
7 jurisdiction of your petition for writ of
8 certiorari. Go to the chief judge, which is why
9 we're here.

10 That's what this case is about, your Honor.
11 It's about nothing else other than they've taken,
12 and I think they've done this -- the government
13 here, State Attorney's Office, has done this for
14 years. I was quite surprised we've never --
15 they've never challenged us on not filing
16 depositions. But I'm surprised that here we are --
17 this was a 1999, you know, administrative order.
18 Here we are in 2016, and, you know, we're bringing
19 this to light.

20 THE COURT: Can I ask a couple of very
21 rudimentary questions?

22 MR. ESCOBAR: Yes.

23 THE COURT: Has there been some resistance by
24 the Defense to providing the State copies of the
25 depositions that the transcripts were obtained?

1 MR. ESCOBAR: Your Honor, as the Court well
2 knows, the minute that we start exchanging
3 discovery, the media and the public's right to some
4 of those documents, they are public records. And
5 so we've been very careful in what we do in this
6 case. I think this Court knows the publicity that
7 this case got from day one. There is a website.
8 There is a website.

9 THE COURT: I understand that. Maybe I could
10 be a better communicator. What I'm trying to find
11 out is whether the State has been unable to obtain
12 copies of the transcript of the depositions.

13 MR. ESCOBAR: No. They can purchase them.
14 Absolutely, they're --

15 THE COURT: Well, I understand. I think that
16 they would be able to purchase them.

17 MR. ESCOBAR: Without question.

18 THE COURT: Even if you had not ordered them,
19 they could probably order any that they wish.

20 MR. ESCOBAR: In fact, they've called my court
21 reporter. They've asked my court reporter for the
22 estimates of the cost of each deposition
23 transcript. That's been very, very clear. I mean,
24 the prosecution has told me that they've done so.
25 My court reporting firm had told me that they've

1 done so.

2 THE COURT: Well, let me hear from the State,
3 because I'm a little perplexed. It seems like
4 we've spent and awful lot of court time and an
5 awful lot of money when if the issue is obtaining
6 the information so that both sides under our rules
7 of discovery are equally armed, that's not the
8 issue. So it must be a money issue, or it must be
9 some other issue that is an attempt by one side to
10 transform documents in this case into some sort of
11 public record through the mechanism of having those
12 filed in the court file.

13 So let me hear from the State.

14 MR. MARTIN: May I approach, Judge?

15 THE COURT: Yes, Mr. Martin.

16 MR. MARTIN: I do have a response to
17 Mr. Escobar, and I have written down some of the
18 Court's questions. But if it's all right with the
19 Court, if you have some specific questions, let's
20 just get right to the chase. What would you like
21 to know and I'll answer it.

22 THE COURT: Well, the -- the setting in this
23 case is that the State, for whatever reason, sought
24 to have depositions put into the court file.
25 That's a little curious to me because ordinarily, I

1 guess, the State would be concerned about perhaps
2 having copies of the transcripts. So you-all have
3 the ability to get copies of whatever transcripts
4 of the depositions you want in this case, right?

5 MR. MARTIN: Yes.

6 THE COURT: Okay. And that would not be at
7 any expense to the county. There would be no --
8 your -- if you ordered an original -- or in this
9 case you wouldn't be ordering an original because
10 they, as I understand it, have ordered originals.
11 And so you would just be seeking to obtain a copy
12 of a deposition, and that would not be paid by
13 county funds.

14 MR. MARTIN: It would be paid by state funds
15 at \$3 a page.

16 THE COURT: Okay. So if the transcript was
17 filed in the court file, would that change?

18 MR. MARTIN: In what respect, Judge?

19 THE COURT: That you would not be obtaining
20 the copies of the transcript.

21 MR. MARTIN: We would be attaining the copies
22 from the clerk's file at a very reduced rate.

23 THE COURT: Okay. So this would -- this would
24 be that -- what the Court would be doing would be
25 entering an order which affected the private

1 business of court reporters, by doing so. In other
2 words, typically -- well, in civil, for example,
3 when a transcript is ordered, if the other side
4 wants the transcript, they're fully able to order
5 that and pay the fees which are associated with the
6 obtaining a copy of the transcript. And there may
7 be some limitation on what the State pays to court
8 reporters pursuant to some rule or law, but I don't
9 think that's particularly relevant.

10 At the time we entered into this
11 administrative order 99-35, we had a completely
12 different court reporting system. Are you aware of
13 that?

14 MR. MARTIN: Yes, sir. I was practicing law
15 since 1984.

16 THE COURT: Yes. So you and I actually grew
17 up in a system that preceded July 1 of 2004, when
18 Revision 7, Article 5 was fully implemented and
19 certain court costs traditionally borne by the
20 county became a state responsibility.

21 So this order was entered in an era when
22 actually I was a judge at the time, and one of the
23 things that we did as a court system was engage in
24 having official court reporters who essentially
25 obtained what I'll term as a franchise; that is,

1 they were vying for the opportunity to do all of
2 the reporting in court as the official court
3 reporter and then be authorized to be the ones who
4 took the out-of-court deposition transcripts at a
5 particular rate.

6 And so the court, in an effort to save the
7 county moneys, by reason of this power to authorize
8 an official court reporter, considered the entire
9 package, that is, what was gonna be charged for the
10 appearances in court as the official court reporter
11 and the franchise to do criminal depositions.

12 As a result, the court is intimately involved
13 in the determination of what the fee structure is
14 and the provision of originals and copies. At that
15 time we also, incidentally, did not have the luxury
16 of having things in the court file that you can
17 electronically access and read and copy by the push
18 of a button.

19 But this was borne in the time when the court
20 engaged in an entire process of considering what
21 happened with the original depositions and the
22 copies of depositions which were produced at a
23 lower cost, and that's where this came from.

24 After that -- I think I went through the
25 administrative orders this morning. I counted --

1 there's a 2004 administrative order 18; 2006, 23
2 and 65; 2007, administrative order 79, the -- all
3 which relate to the transition the Sixth Circuit
4 was going through, and we've transitioned from a
5 contract court reporter model, which was fully in
6 place at the time of the '99 order, to a court
7 employee court reporter model pursuant to
8 revision 7.

9 And so under the new model, essentially, the
10 in-court reporting is separate and distinct, even
11 though a deposition might be determined by some as
12 a court proceeding separate and distinct from court
13 proceedings. So why isn't this really an outmoded,
14 unnecessary and really meaningless administrative
15 order?

16 MR. MARTIN: Let me start backwards.

17 THE COURT: Okay.

18 MR. MARTIN: The administrative order that
19 you've just read, I've also reviewed, and it is my
20 interpretation of those orders that that applies to
21 the court reporter sitting in the courtroom. It
22 doesn't apply to anything else. When the Court
23 wants a court reporter in the courtroom, that's
24 what those administrative orders apply to. There
25 is nothing in this administrative orders that you

1 have cited into the record that specifically refer
2 to 99.35.

3 THE COURT: I agree.

4 MR. MARTIN: There is nothing to indicate that
5 that procedure is no longer in effect. There is
6 nothing to indicate --

7 THE COURT: It's a valid administrative order.

8 MR. MARTIN: It is absolutely valid.

9 THE COURT: It has not been -- let's see. I
10 think I have printed out this morning a whole list
11 of -- at some point we go through and eliminate --

12 MR. MARTIN: I've got it too, Judge, and it
13 has --

14 THE COURT: It's not included in there?

15 MR. MARTIN: It is not. It is a valid order.

16 THE COURT: But it begs the question, and
17 that's why shouldn't this one be included in that?

18 MR. MARTIN: Well, right now, what -- we're
19 not here for that purpose, but what I would like
20 for the Court to do is to look at 99.35 and look at
21 the preamble, and we've looked at it, and I argued
22 extensively in front of Judge Barthle about the
23 uniformity and the treating of the depositions.

24 So to answer the Court's questions, it's the
25 State's position that the administrative orders

1 that have come subsequently to 19 -- 99.35 deal
2 with the court reporters that the judge orders for
3 a hearing. But depositions, however, still apply
4 to 99.35.

5 I also point out to the Court that we've had
6 some discussions about distinguishing between civil
7 depositions and criminal, and I would very
8 respectfully remind the Court that it's apples and
9 oranges. When we talk about criminal depositions
10 and criminal cases, we're talking about the
11 public's right to know. We're talking about the
12 public interest to know what goes within the
13 criminal justice system, because, in effect, what
14 your Honor does and what I do is we represent the
15 voters, the people of Pinellas and Pasco County, in
16 these criminal matters, and they have an absolute
17 right to know what happens, the transparency.

18 THE COURT: You're getting very, very far out
19 onto thin ice now.

20 MR. MARTIN: I know, but that goes to the
21 uniformity within the order. So when we talk about
22 the transparency and why is there a difference
23 between civil and criminal, well, that's the
24 reason, Judge.

25 And so what we have here is we have a valid

1 order in which as Mr. Escobar pointed out, if you
2 read the preamble, is it applies with the exception
3 of constitutional issues.

4 And that goes to Mr. Escobar's argument that
5 there is no criteria set forth; therefore, he
6 couldn't come to the judge -- chief judge
7 previously to determine exactly what the criteria
8 was in order for the authorization not to apply.
9 Well, clearly it's constitutional issues.

10 And that brings me into the segue, if the
11 Court believes I've answered your questions, for me
12 to go ahead in response to Mr. Escobar and make my
13 brief comments to the Court, but I'll answer any
14 other questions you would have.

15 THE COURT: Okay.

16 MR. MARTIN: All right. Thank you, Judge.
17 And let me just quickly -- and I've already
18 mentioned the difference between the civil and the
19 criminal. Mr. Escobar argued, and he's -- that the
20 issue that was being litigated is whether or not it
21 applies to Mr. Reeves.

22 What I would like to point out to the Court,
23 essentially, as we stand here today, I think
24 there's three legal analyses available to the
25 Court.

1 I think the first one is is that Mr. Reeves is
2 not entitled to any type of remedy from you because
3 of the concept of res judicata. I don't -- I think
4 another legal analysis that the Court can do maybe
5 simultaneously, in conjunction or a combination of,
6 is that Mr. Reeves is not entitled to any type of
7 remedy from the chief judge based on the concept of
8 waiver.

9 If we get past those two procedural bars that
10 the State believes exists, then the other option is
11 for the Court to actually rule on the merits, and
12 it's the State's position that all those merits
13 have already been legally analyzed by Judge
14 Barthle, and she made the correct ruling because
15 Mr. Reeves did not make any valid argument that --

16 THE COURT: Wasn't her ruling totally
17 dependent upon the existence and validity of the
18 administrative order?

19 MR. MARTIN: No, Judge.

20 THE COURT: No?

21 MR. MARTIN: No.

22 THE COURT: Absent the administrative order,
23 she would have required them to file the originals?

24 MR. MARTIN: Oh, no, no, no, no. I apologize.
25 I misunderstood the Court's question. The

1 administrative order is what the State used as the
2 catalyst to file the order because it hadn't been
3 done, and we believed that the administrative
4 order's in full force and effect and should be
5 complied by anyone who chooses to practice criminal
6 law in Pinellas and Pasco County in the Sixth
7 Circuit.

8 So if the Court -- if I could just briefly,
9 the Court has the State's exhibits, and there is
10 several exhibits in there, but the time line I
11 think is important, and if the Court would refer to
12 State's Exhibit Number 6, let me just refer to a
13 couple of things I think are helpful in the Court
14 making the determination that it needs to do.

15 Because from the very beginning, Mr. Reeves
16 has claimed not only that it does not apply to him,
17 but if the Court orders him to file, orders him to
18 file, then there are some constitutional
19 impingements or violations that occur that will be
20 prejudicial to the defendant. So as you can see --

21 THE COURT: Based primarily on the Palm Beach
22 case?

23 MR. MARTIN: Yes, sir, the Palm Beach. But he
24 also had another nuance, kind of with the Palm
25 Beach case, that it's not only prejudicial to the

1 defendant as far as a fair case, but, my gosh, the
2 privacy incidence of the witnesses that are being
3 deposed. So he was actually throwing them into the
4 mix. But that would be an exemption which the
5 Court could rule on, and it doesn't necessarily
6 make a determination of whether it applies to him
7 or not.

8 So if you look at the August 10 hearing, right
9 from the beginning, on page 15, he argues that it
10 violates the defendant's right to a fair trial.
11 Again, that is a constitutional argument. It would
12 apply to whether it was a public defender or
13 private attorney. So we're talking about something
14 that's not just does it apply to him.

15 If you look on a page 24, he again argues the
16 constitutional impingements, asking Judge Barthle
17 to consider not having to file because -- not
18 because it doesn't apply to him, but if it does
19 apply to him, there is some real harm that's gonna
20 come from the filing, which is, of course, an
21 exemption.

22 If you look at page 26, he again argues the
23 violation of the privacy interests of the witnesses
24 being deposed of. And what's important, at the
25 conclusion of the August 10 hearing, he argues to

1 Judge Barthle that even if it applies, even if the
2 administrative order applies to Mr. Reeves, it
3 would be a violation of his constitutional rights
4 to have them filed.

5 So it's a two -- his legal claims are asking
6 for two remedies. One remedy is it doesn't apply
7 to me; the second remedy, if it does apply to me,
8 there is some constitutional violations in which an
9 exemption should be granted.

10 On page 31 of 32 of the August 10 hearing,
11 Judge Barthle gives him an opportunity. Look, go
12 to the chief judge. Just go to the chief judge and
13 make your pitch regarding the exemption. He does
14 not do that.

15 State's Exhibit Number 8 in the packet is when
16 I filed the motion for the immediate filing of the
17 transcriptions because he hasn't taken up the
18 opportunity to go before your Honor and seek the
19 exemptions that he did.

20 We then had Exhibit Number 9 is the August 28
21 hearing, and again he makes the very same argument.
22 He continues to argue the same claims, asking for
23 the same two types of remedies. On page 10 and 11,
24 he again argues the West Palm Beach case. On page
25 16 through 17, he tells the court he has no

1 intention to go on before the chief judge. He's
2 gonna a file a writ of cert.

3 And on page 31, at almost the conclusion of
4 the hearing, Judge Barthle tells Mr. Escobar that
5 she would think before a petition for writ could be
6 applied for, that all administrative remedies
7 should be explored, again giving him another
8 opportunity to go before the chief judge and argue
9 authorization not to file the depositions based on
10 the constitutional violations that he
11 appeared (sic).

12 And page 39 of State's Exhibit Number 9, which
13 is the August 26 hearing, Judge Barthle actually
14 bought in to that second remedy, that maybe there
15 is prejudicial (sic) and, therefore, she's gonna
16 take the responsibility or have Judge Crane take
17 the responsibility to say, okay, if there is
18 prejudice, I'm gonna decide that. Here's the
19 procedure. I accept the responsibilities of the
20 chief judge, and I'm not gonna authorize
21 depositions in which I find prejudice or Judge
22 Crane finds prejudice.

23 So, again, she's not only assuming the
24 responsibilities of does it apply to me, but now
25 she's taken on the role, at the request of

1 Mr. Escobar, because he's making those arguments
2 before her, that exemptions apply to him.

3 It's at this point that the State's really had
4 no other obligation in order to comply with the
5 order. I filed a motion that was not
6 subsequently -- it was rendered moot by her
7 September 8 order, but, again, I filed the
8 procedure to go either before her or the chief
9 judge and argue each motion separately, not as it
10 applied to him but is there an exemption that
11 applies for these particular depositions. Again,
12 Mr. Reeves did not seek exemptions from your Honor.
13 He sought a writ -- I mean, he did not seek the
14 exemptions from chief judge.

15 It was on September 8 that Judge Barthle
16 finally put in her final order, basically saying
17 file them now. The implications of the September 8
18 order, she made a decision accepting the duties and
19 responsibilities of the chief judge as asked for by
20 Mr. Escobar, that you're gonna file them now, and
21 by saying you're gonna file them now, she's saying
22 it applies to you and now that I've considered all
23 the arguments, there is no exemption that I feel is
24 worthy at this time for them not to be filed now.

25 She found that, no, it wasn't such a harm to

1 the defendant because of the publicity not to file
2 the depos. She's already made the same decision
3 that Mr. Escobar is now in front you to ask for
4 based on the constitutional violations of the
5 publicity and some of the other things argued in
6 his motion that Judge Barthle has already ruled on
7 by her September 8 order.

8 And so I point out to the Court that that is a
9 lawful order and, all respect to the Court, you're
10 of equal competent jurisdiction as Judge Barthle.

11 THE COURT: No. I agree with that. I in no
12 circumstance would enter an order which reversed an
13 order that she determined.

14 MR. MARTIN: And she has determined that. She
15 has determined to file it right now. That is a
16 lawful order. Now, yes, it's gone to the Second
17 DCA, and that really doesn't matter in the analysis
18 of whether or not there was a waiver or res
19 judicata applies, but there is now a lawful order
20 that --

21 THE COURT: Yeah. See, lawyers sometimes kind
22 of miss the point on what these pieces of paper we
23 call orders really do.

24 MR. MARTIN: You're talking about the Second
25 DCA or --

1 THE COURT: No. I'm talking about all -- as a
2 judge, this is it, the pen here, you know? All we
3 do is we make a little pronouncements in court, and
4 there are cases that say that doesn't even matter.
5 The judge didn't put it on a piece of paper. So
6 whatever he said in court doesn't matter. It's got
7 to conform -- the paper is supposed to be entered,
8 and it's supposed to conform with the oral
9 pronouncement. But my point here is --

10 MR. MARTIN: Yes, sir.

11 THE COURT: -- that we just sign pieces of
12 paper, and then what happens, sometimes as the
13 judgment, like you heard in a civil case, you can't
14 take that to the bank and put it in the deposit
15 box. You got to use that and go collect the money.

16 Well, on these orders like we're talking about
17 today, Judge Barthle's order, if Mr. Reeves,
18 through counsel, does not comply with Judge
19 Barthle's order, then what happens?

20 MR. MARTIN: We're not here to argue that,
21 Judge, respectfully.

22 THE COURT: I know we're not, by my point is
23 that the next step would be there would have to be
24 some sort of a hearing in front of Judge Barthle
25 about what to do about that, whether to hold them

1 in contempt.

2 MR. MARTIN: Yes.

3 THE COURT: And since it's -- my concept is
4 that a noncompliance with that order would be a
5 civil matter by which compliance with the order
6 would cure a noncompliant, which is not gonna be a
7 punishment. It would be you got the key. File it.
8 Then I guess it would be available to the Court to
9 consider any other circumstances that might occur
10 such as whatever order this Court might give.

11 So my point here is that just because the
12 judge has entered some sort of an order doesn't
13 mean that ultimately they will not have an
14 opportunity to argue in front of that judge what
15 the then circumstances are about the potential
16 noncompliance.

17 MR. MARTIN: Well, I agree, Judge, and I
18 think, in all due respect to your Honor, you're
19 thinking ahead. You're the cart before the horse.
20 We're here now to whether or not this Court has
21 jurisdiction to do anything. You're absolutely
22 correct.

23 THE COURT: I have -- I'm gonna tell you right
24 now, I have absolute jurisdiction to consider an
25 application to me for some relief based upon the

1 administrative order, right? I mean, it says right
2 in there "upon request to the chief judge."

3 MR. MARTIN: That's correct, but he's waived
4 that right to come before you.

5 THE COURT: But that's not a jurisdictional
6 argument.

7 MR. MARTIN: That is a jurisdictional
8 argument.

9 THE COURT: Well --

10 MR. MARTIN: If you waive it, then the Court
11 no longer has jurisdiction. That's why I cited the
12 Johnson case, and I cited the Atlantic whatever --
13 I don't have it in front of me. Those two cases --
14 and we talked about -- in venue, we talked about
15 the Bundy case and one of the other cases in my
16 response, that once you engage in a waiver, you
17 don't get a second bite of the apple, and that's
18 what we're talking about here.

19 We're talking about an opportunity for forum
20 shopping. We go before Judge Barthle, don't like
21 the ruling, don't like the ruling from the Second
22 DCA, and now I want to go before the chief judge
23 when he could have done it months ago. He didn't.
24 He chose the path, and now he's stuck with it, and
25 the case law that I cited to the Court stand for

1 that proposition.

2 So, respectfully, Judge, I suggest that, no,
3 you don't have jurisdiction. It has already been
4 litigated by Judge Barthle. You do not have
5 appellate jurisdiction over her. You cannot
6 overturn her order.

7 Now, if he wants to go back in front of Judge
8 Barthle and again argue once she says, you file,
9 no, I'm not, we'll have that argument in front of
10 her, but he has lost the ability to come before you
11 because now that Judge Barthle has entered a lawful
12 order, in which he has the power to do, you cannot
13 undo that. That's the State's position. And so it
14 is jurisdictional, and I respectfully disagree with
15 the Court.

16 THE COURT: Okay.

17 MR. MARTIN: So if I could just have two
18 minutes and I'll sum it up, Judge. Judge, it is
19 the State's position that the legal claims have
20 already been argued before Judge Barthle, and the
21 remedies that he requested has been rejected by
22 Judge Barthle, the remedy of it doesn't apply to
23 me, so don't make my file, the other remedy, an
24 exemption.

25 I think that by the September 8 order, like I

1 pointed out to the Court, it is absolutely clear
2 that she has assumed the duties of the chief judge
3 as contemplated in administrative order 99.35, at
4 the request of the defendant, because he continued
5 to argue the constitutional impingements or
6 violations which are exemptions, and he chose to do
7 that and that constitutes the waiver.

8 What I'm asking the Court to do is not to give
9 Mr. Escobar an opportunity at a second bite at the
10 apple. All these issues have been thoroughly
11 litigated before a court of equal competent
12 jurisdiction.

13 What I'm asking the Court to do is simply find
14 that it does not have the jurisdiction to overrule
15 Judge Barthle, to send this case back to her for
16 whatever litigation Mr. Escobar wants to do now,
17 but he has to stick with litigating this case in
18 front of Judge Barthle and not the chief judge.

19 So I ask you to send it back to her with the
20 understanding that she can enforce her order, and
21 then Mr. Escobar can take whatever steps he wants
22 in front of her. But, quite frankly, Judge, you're
23 just not in the picture anymore. That's the
24 State's position. We're in front of Judge Barthle
25 from here on out.

1 And then like the Court's well aware, at the
2 close of the case, at the final order of judgment
3 and sentence, if that comes about, he has a right
4 of direct appeal. He has the right of direct
5 appeal. So that's the State's position, and I
6 appreciate the Court's indulgence.

7 THE COURT: Let me ask you a question since
8 you're completed. Do you assert that somehow the
9 law has changed and that pronouncements of the
10 Florida Supreme Court in the Palm Beach Newspapers
11 case, that deposition proceedings are not public
12 components of a trial unless made so by the
13 parties, and that the purpose of depositions is to
14 develop evidence by discovering what potential
15 witnesses may know about the subject of the trial,
16 and that attendance at the depositions is not a
17 public right?

18 MR. MARTIN: And that's the key, Judge, if I
19 could, if you don't mind my interrupting, and I
20 apologize.

21 THE COURT: No. That's --

22 MR. MARTIN: But that is the absolute key.
23 The whole focus of that case is the press' right to
24 sit in on a deposition. We cannot extend that
25 ruling beyond any further than that than the press

1 does not have a right to sit in on depositions.
2 That's what that case is about. It's
3 distinguishable. It doesn't apply, and that's how
4 I distinguish the case.

5 To extend it any further, a whole different
6 type of logic would have to be involved and
7 reasoned by the Court, and I think the Court hit it
8 right on the head. This is -- that case is about
9 the press sitting in on it, and to take it any
10 further would be inappropriate. So that's my
11 response to Palm Beach.

12 THE COURT: Okay. And then I have, I guess,
13 more pragmatic --

14 MR. MARTIN: Sure.

15 THE COURT: -- concerns, and that is my review
16 of this entire circumstance is that Administrative
17 Order 99-35 was entered solely for the purpose of
18 dealing with the cost of depositions in criminal
19 cases which were borne by the counties, as was the
20 in-court transcription of proceedings, and that in
21 order to lessen the expenses -- it actually says in
22 here, in order to provide copies of depositions and
23 transcripts in criminal proceedings at a reasonable
24 rate when the cost is paid by the county and paid
25 with county funds. So the whole reason for this

1 was targeting the county expenditure of funds for
2 these deposition and, frankly, in-court
3 transcripts, but that has changed because of
4 revision 7.

5 So as we stand here, everyone acknowledges
6 that there are -- there is no reason for this
7 administrative order since, unlike the
8 circumstances when the administrative order went
9 into effect, the Court had control and concern over
10 the expenses that were borne by the county, and yet
11 there are a whole panoply of new laws, and there is
12 actually a new agency, the JAC, that deals with the
13 rates for transcription of depositions.

14 And so this is essentially circles. If you
15 can tell me, why in the world would we need to have
16 a special rule which might implicate under some
17 construction of Palm Beach Newspapers the
18 fundamental rights of accused, why would we -- is
19 there some reason, if you were here saying, Judge,
20 we need to keep the administrative order because --

21 MR. MARTIN: Well, as I pointed out to the
22 Court, I don't believe Palm Beach is applicable to
23 the issue before us, the filing of the depositions,
24 because we're talking about the press having the
25 right to sit in on a depo, which I think makes it

1 apples and oranges.

2 To go a little bit further in the Court's
3 inquiry, if the State chooses to purchase the
4 depos, then that is an obligation by the State,
5 which is contemplated by that order.

6 THE COURT: No, it's not contemplated by the
7 order at all.

8 MR. MARTIN: Yes, it is.

9 THE COURT: This is for the county
10 expenditure.

11 MR. MARTIN: Well, when I say State, I'm
12 talking about the State Attorney's Office. And I
13 understand what the Court is attempting to point
14 out to the State is that the administrative order
15 says county as opposed to the State of Florida, but
16 what we're doing is we're talking about the
17 expenditure of funds.

18 THE COURT: Well --

19 MR. MARTIN: Yes, we are.

20 THE COURT: -- not really, because you
21 admitted very candidly that you intend to
22 circumvent the payment of the court reporter, which
23 the private -- now we're talking about private
24 enterprise the Court has no control over. JAC
25 rates, et cetera, are controlling that, and the

1 State controls the payment of the private court
2 reporter to some degree, but the Court certainly
3 doesn't.

4 So the idea which was present in the '99 order
5 that somehow we as an adjunct benefit of providing
6 the authority and the benefit of the court
7 reporting service being made the official to come
8 in through the exclusive right to report at the
9 court reporting the criminal context, we got a
10 deal, that is, specifically agreed upon lower rates
11 for original transcripts and copies that would
12 enure to the benefit of the entity paying for the
13 in-court cost and the out-of-court cost, and all of
14 that is now wiped away, but yet you've said what
15 we're gonna do is, because of an administrative
16 order, that's gonna enable us the ability to go --
17 to not pay the court reporters as they would
18 ordinarily be paid for their work but just get it
19 directly out of the court file, as could anybody.

20 Under the electronic thing, now anybody can
21 just push a button, have their own printer, print
22 it out, and we have an entire industry based upon
23 the charge that's gonna have to be changed now
24 because they can't control their cost basis by
25 including charges for copies because that's gonna

1 be available to every single person. Because the
2 court ordered it that the original transcript be
3 filed. So the only thing the court reporter could
4 rely on then is getting paid for an original.

5 MR. MARTIN: Judge, that --

6 THE COURT: I'm struggling with why in the
7 world we're in the business -- the Court would be
8 in the business, me, of entering an order which
9 impinges upon the private enterprise of court
10 reporting simply because we want to load the clerk
11 up with a bunch more paper to scan and put in the
12 court files and give everybody else a free download
13 of the court reporter's work product. I'm not
14 getting it. I just don't see a reason for this to
15 continue.

16 MR. MARTIN: All right. Can I go ahead?

17 THE COURT: Yeah, please. I know it's hard to
18 tell when to stop.

19 MR. MARTIN: That's all right, and I
20 appreciate your patience with me, Judge. Let me
21 take a couple concepts and then answer your
22 question.

23 THE CLERK: Okay.

24 MR. MARTIN: The case law is clear that the
25 court reporter's transcripts, there is no

1 copyright. It doesn't belong to her. It belongs
2 to the court. Whether civil or criminal, it
3 belongs to the court. She is being paid. She had
4 her money. She has her attendance fee, and --

5 THE COURT: Where is case law that says an
6 original transcript belongs to the court of a depo?

7 MR. MARTIN: It's a court -- it's a court
8 document, Judge.

9 THE COURT: A transcript of a deposition
10 obtained by a party in only criminal litigation or
11 criminal and civil litigation is the property of
12 the court unfiled?

13 MR. MARTIN: Well, unfiled, no.

14 THE COURT: No.

15 MR. MARTIN: Once it's filed, it is the
16 property of the court. The point is is that once
17 she has been paid for the original work and
18 whatever copy that the defense ordered or whatever,
19 she is being appropriately compensated. When we
20 talk about working within the criminal justice
21 system, we also have a fiduciary relationship --
22 fiduciary responsibility to be financially
23 responsible, and we -- and that's what we're doing
24 with that administrative order.

25 So when we talk about the cost to the State,

1 it will take me a minute, but the Court might
2 recall in either the August 10 or August 26
3 hearing, we did point out that there is a provision
4 under the rules of discovery about transcripts
5 being filed with obligation of the court. I
6 apologize. I'm -- I can't really remember, but
7 there is an indication in the discovery rule about
8 state funds being expended for transcripts.

9 To answer your -- the Court's question, in
10 this particular case, we're talking about State's
11 obligations to pay, which is contemplated by
12 administrative order 99.35. Now, whether it's the
13 court or the state, we're talking about public
14 funds, public funds which we have a responsibility
15 to be judicial (sic) with.

16 And so in this particular case, once it is
17 filed, whether or not and how the State obtains its
18 copy, very respectfully to the Court, is not
19 germane to this issue. The issue is whether or not
20 the administrative order has already been ruled on
21 by Judge Barthle. She's heard all these arguments.
22 She's contemplated all that over numerous hearings,
23 and I don't want to re-litigate it in front of your
24 Honor. She has already made the determination that
25 that -- that dog just ain't gonna hunt.

1 The administrative order says to file it. So
2 she's issued her order of September 8, and I -- and
3 I suggested it, and best I could respectfully argue
4 in front of Judge Barthle that how the State gets
5 the copies is not germane to deciding this issue.
6 He either files, or files because it applies to
7 him, or it doesn't apply to him, or there are
8 exemptions. That's it. That's the only thing the
9 State can be prepared for, for that administrative
10 order.

11 The nuances of why Judge Schaeffer and the
12 judges and all the elected officials back then
13 decided it is not before your Honor. And so,
14 again, just like I did with Judge Barthle, I
15 respectfully suggest to the Court that that is for
16 a different time and a different forum.

17 THE COURT: Okay. What's certainly before the
18 Court is the determination of jurisdiction and then
19 waiver, or maybe there was a combined, and so if
20 the Court were to determine that there was no time
21 limit on when the defendant had to come forward
22 stated in the administrative order and if the Court
23 evaluates all the circumstances, the Court might
24 conclude that it was reasonable for them to attempt
25 the exhaust whatever other remedies before coming

1 before the chief judge, so for whatever reasons
2 then, the chief judge would say, all right, we're
3 here on a timely presented request.

4 It doesn't even say motion. It's not even a
5 suggestion here that it's got to be an adversary
6 proceeding. But we're here on a timely request
7 with notice to the chief judge, seeking the
8 authorization of the chief judge not to have to
9 file. So let's just assume we were here very first
10 thing, there is none of these other waiver
11 arguments and all that and it's presented before
12 me. What possible argument could the State have to
13 say, gee, whiz, Judge, they ought to have to file
14 this stuff?

15 MR. MARTIN: Well --

16 THE COURT: When the Court says, my goodness,
17 you know, here we got -- there's no compelling
18 reason to put all of this stuff out in the public
19 that might cause a problem under Palm Beach or
20 cause a problem with venue and jury selection and
21 all that. Why would I want to buy a problem in the
22 case? Why wouldn't I just say let's avoid it in a
23 very high profile important case? What would be
24 the argument to say, No, Judge, here's why you want
25 to go forward with that?

1 MR. MARTIN: The Court has already read my
2 arguments in front of Judge Barthle on August 10
3 hearing and August 26. So I won't rehash those.
4 I've -- and before your Honor, I've distinguished
5 the Palm Beach case for you, why I believe it does
6 not apply.

7 In addition, we have a situation in a criminal
8 case where a transparency for the public is
9 tantamount for them having confidence in the
10 proceedings that take place in these courtrooms.
11 So when we talk about the publicity and the right
12 to know, then -- and then you balance that with the
13 right to fair trial, the publicity --

14 THE COURT: Would there be some bar in the
15 State Attorney obtaining copies of the depositions
16 and providing those to anyone?

17 MR. MARTIN: In the event that Mr. McCabe said
18 obtain the depositions through the court reporter,
19 whether or not he would tell them -- ask me to file
20 them, I don't know. I assume that he would because
21 I'm filing all the depositions I'm taking in this
22 particular case with the Clerk of Court.

23 THE COURT: You're filing them all?

24 MR. MARTIN: Absolutely, Judge, pursuant to
25 the administrative order.

1 THE COURT: Okay. But if the administrative
2 order didn't exist and wasn't even in play, is
3 there some bar since you're asserting, wow, I'm a
4 prosecutor, your boss, I'm an elected official, I
5 think the public ought to know about all of this
6 stuff, even though it's not a requirement under
7 119? Is there some bar to the State Attorney
8 publishing any discovery items? The confession
9 that has been suppressed, you could hand that right
10 over to the Tampa Bay Times?

11 MR. MARTIN: Subject to --

12 THE COURT: Here's the confession that we
13 agree is totally inadmissible, but, my gosh, here
14 you have a right know what's going on in the case.
15 There is no bar to that, is there?

16 MR. MARTIN: No, subject to Chapter 119 that
17 may or may not apply that I don't know all the
18 nuances to, but there are some minor things that
19 might have to be excised.

20 THE COURT: I'm not saying that it falls into
21 119. I'm -- what I'm talking about --

22 MR. MARTIN: There would be no bar. We could
23 put it out.

24 THE COURT: -- a voluntary disclosure of this
25 wouldn't be a violation of -- I don't know if I'm

1 asking a question of your oath or statue or
2 anything of that nature. So if indeed it is the
3 essential component of the State's prosecution of
4 these cases, I guess one would assume that there is
5 some mechanism by which, even though the court
6 hasn't engaged in some order -- and I think
7 actually the rules of criminal procedure and
8 administrative orders contemplate that we don't
9 fill up our court file with all the discovery
10 responses, right? We don't put all of the
11 photographs into the court file and the evidence
12 into the court file and all the things that the
13 public might have a right to know what's in a
14 hearing.

15 We don't put that in the court file, but yet
16 now we're singling this out under this theory that
17 the public has the right to know. And my counter
18 to you is really, well, if they've got a right to
19 know all of this, what about all the rest of the
20 discovery?

21 Why is it that I'm entering -- it's me now who
22 would be continuing to countenance this order or
23 enter it, in effect. The disclosure on the basis
24 that, gee, I'm doing this because the public has a
25 right to know this, I think then the next step

1 would be, oh, we've got to include in the Clerk's
2 responsibility paying their employees, scanning the
3 stuff, keeping the records forever and open to the
4 public on the internet all discovery in a criminal
5 case. And I just don't think that's where we're
6 heading.

7 So I'm distinguishing this public right to
8 know through the mechanism of requiring a filing.
9 If the public has a right to know pursuant to 119
10 or any other law, I don't think it's somehow got to
11 be inculcated by an administrative order that
12 furthers that interest. Otherwise, it would be a
13 rule of criminal procedure, a statutory provision,
14 a mandate by the Florida Supreme Court, or every
15 single circuit would have a requirement because the
16 public has a right to know that depositions in
17 criminal cases have to be transcribed and filed.

18 We're even talking about depositions here
19 which I might determine -- one of my jobs in the J
20 calendar, as you know, is to hear lawyers who don't
21 have the money to buy every depo they want, come in
22 and under the indigency laws, if there is a
23 determination of indigency, have the State pay for
24 necessary and essential depositions.

25 So we're not even talking about that. We're

1 talking about things that might even be
2 inconsequential or unnecessary be required to be
3 filed simply because somebody made a decision to
4 order it. So I'm kind of skeptical about it.

5 I appreciate your written arguments and your
6 oral submissions on this complicated circumstance,
7 and I'm gonna give the defendant an opportunity to
8 rebut, and then I'm gonna take it under advisement
9 and consider what order -- I'm gonna enter some
10 order obviously.

11 Do you have any final remarks precipitated by
12 my observations?

13 MR. MARTIN: No. I pretty much know when the
14 barn door's been shut, Judge.

15 THE COURT: Okay. All right. Thank you.

16 MR. ESCOBAR: Just very briefly, your Honor?

17 THE COURT: Yes.

18 MR. ESCOBAR: Judge, your Honor, I'm just
19 gonna speak to this issue of res judicata and
20 waiver because I think the record does not support
21 that in this particular case. If you would read
22 the transcripts -- I'm sure you probably have
23 already. If you had read the transcripts or would
24 read the transcripts concerning our arguments as
25 well as our pleadings, we were very, very careful

1 to argue two points:

2 One, that it did not apply because obviously
3 this particular administrative order, clearly, by
4 reading it in *peri materia*, applies to
5 court-appointed counsel, and not to the private
6 bar.

7 We also then argued the constitutional issue,
8 which is at the very first paragraph of this
9 administrative order. In other words, this
10 administrative order does not apply if it cannot be
11 applied in a constitutional way, because that's
12 what the order is suggesting, and I'll read it to
13 the Court again:

14 While also providing the defendant with all
15 the protection and the rights guaranteed by the
16 federal and state constitutions.

17 Those were the only things that we argued.
18 There is not one word in any of the transcript
19 where I'm asking Judge Barthle at any point in time
20 to take the position or take the role of the chief
21 judge, under the administrative rule, in order for
22 the administrative judge to render a discretion not
23 to file.

24 We stayed away from that. We couldn't in good
25 faith ask Judge Barthle, By the way, I know that

1 the administrative order says that the chief judge
2 is supposed to make that decision, but why don't
3 you make the decision since we're here? We didn't
4 do that. We left that out. We've carved that out.

5 We even spoke to the judge after she had
6 initially denied, you know, our motion, what our
7 process was gonna be, that we were gonna take this
8 matter up before the Second District Court of
9 Appeal on a writ, on those particular points that
10 we argued, the non-applicability and the
11 constitutional issues, which if you read our
12 petition for writ of certiorari, that's exactly
13 what we limited it to, and if we were to lose that,
14 we told Judge Barthle -- in fact, she encouraged
15 it, and she gave us time in order to be able to do
16 that -- that we would come before your Honor in
17 order for your Honor to exercise your discretion
18 and to review this order in exercising that
19 discretion.

20 So there has been no res judicata here. There
21 has been no waiver, and I would respectfully ask
22 the Court, in using your discretion, not to order
23 the filing of these particular depositions pursuant
24 to any rule of law, administrative order or
25 decision.

1 THE COURT: Just a couple of comments. I
2 think you're incorrect in your basic assertion that
3 99-35 only applies to appointed defense counsel and
4 does not apply to private counsel.

5 My understanding of the rule, the purpose of
6 the rule and practice of the rule was that at the
7 time this was entered, a private attorney could be
8 taking a deposition. If the private attorney
9 ordered a transcript -- of course, when you order a
10 transcript, you have to order an original
11 transcript. So when they ordered that, then the
12 idea was that if the private attorney is ordering
13 the deposition and the State Attorney then would be
14 seeking a copy of the deposition that, in order to
15 hold down the rates, we negotiated an agreement
16 with the then official court reporter who did the
17 in-courtroom procedures as an official exclusively
18 and then did the transcripts at a particular rate.

19 So we held down the rate of the copies for the
20 county, who was paying at that time, the obtaining
21 of copies of transcripts by the State Attorney when
22 they were originally ordered; or when they ordered
23 an original transcript, it was a saving for the
24 Public Defender who would be paid. That enured to
25 the benefit of private counsel who would also

1 obtain it at this lower rate, but that wasn't the
2 purpose of it.

3 You know, that's just an observation about,
4 you know, your underlying arguments, I guess, to
5 Judge Barthle that was not applicable, which I
6 guess in some way it might be perceived that the
7 DCA agreed that she acted within the law in
8 rejecting those arguments and following the
9 administrative order that's in effect.

10 MR. ESCOBAR: Your Honor, I think if the
11 Second District had made any decision, you know, on
12 the merits, it was purely jurisdictional. If the
13 Second District -- and I've got the Parkway case
14 here. I'm sure if the Court has -- may I approach?

15 THE COURT: You may.

16 MR. ESCOBAR: Your Honor, the Parkway case is
17 a Second District Court case, and it -- on page 3
18 of that particular opinion, it actually outlines
19 the history of writs of certiorari. And initially
20 back prior to 1939, the petition for writ of
21 certiorari had two parts. First you had to
22 petition for jurisdiction, and then after you
23 petitioned for jurisdiction, then you were able to
24 file the brief on whether the court's decision
25 departed from the essential requirements of the

1 law.

2 That essential requirements of the law is the
3 [REDACTED] prong of a writ of certiorari. And so here
4 where we failed was resulting in material injury
5 for the remainder of trial. That's why I said I
6 think that the appellate court said, you know,
7 there is this administrative order there that, you
8 know, is giving you an opportunity to go back
9 before the chief judge; therefore, you failed in
10 that particular prong.

11 That cannot be corrected on post-judgment
12 appeal. I don't believe that that would apply as
13 to the appellate court's decision because, clearly,
14 once we filed the transcripts, there's nothing in a
15 post-judgment appeal that's going to correct, you
16 know, the problem.

17 So this particular case, this Palm Beach case,
18 is a wonderful case to show that here the appellate
19 court said per curiam dismissed, which means purely
20 jurisdictional, not that you deviated from the
21 essential requirements of law. You just never got
22 to the jurisdiction.

23 If they had said per curiam denied, then they
24 would have reviewed the court's legal decision on
25 the matter and would have then, in essence, agreed

1 with the court's decision. And this Parkway Bank
2 case is very important in that. So I would ask the
3 Court if the Court has not read it, to please read
4 it before rendering your opinion because it is
5 directly on point with what happened here.

6 THE COURT: Okay. Well, then let's follow
7 that then with once it came back from the DCA, why
8 wasn't it then timely brought before me --

9 MR. ESCOBAR: Oh, we did.

10 THE COURT: -- when I was the chief judge at
11 that time?

12 MR. ESCOBAR: I think that it was.

13 THE COURT: It was?

14 MR. ESCOBAR: It just came back from the
15 Second District. I can give you the court date.
16 I've got the opinion here. The Second District --
17 we did a motion for rehearing en banc. We did a
18 motion to render an opinion after we got the
19 initial decision, but I can show you here if I can
20 approach the Court.

21 THE COURT: Okay.

22 MR. ESCOBAR: Here, February 26, 2016, is when
23 the original per curiam dismissed was issued. We
24 then filed a motion for rehearing en banc, motion
25 for written opinion. I believe we also filed a

1 motion for clarification. We were trying to get
2 this jurisdictional issue at least clarified by
3 some form of an opinion from the Second District.
4 They took a considerable period of time in order to
5 make their decision, and then the minute that they
6 made the decision, which I think was within the
7 last few weeks, we filed this motion.

8 THE COURT: Okay.

9 MR. ESCOBAR: So we did not delay, your Honor.

10 THE COURT: So the further proceedings that
11 occurred in front of Judge Barthle were while your
12 subsequent appellate papers were pending?

13 MR. ESCOBAR: No. What happened was,
14 immediately after the court deciding the last
15 motion that we filed for rehearing en banc,
16 immediately after that the government filed a
17 motion before Judge Barthle.

18 We never had a hearing on that last motion.
19 We filed a response, and at the time we were in the
20 process of getting this particular motion drafted
21 before your Honor. In fact, we had an in-chambers
22 meeting with Judge Barthle concerning that issue.
23 We had indicated to her we were coming over to the
24 chief judge in order to render that decision.

25 So, yes, I wanted to make sure that we were

1 right on schedule as to what we needed to do.

2 THE COURT: Okay. Thank you very much,
3 Counsel. Very interesting circumstances.

4 MR. ESCOBAR: Thank you, your Honor.

5 THE COURT: Cogent arguments.

6 MR. ESCOBAR: Thank you.

7 THE COURT: Court's taking it under
8 advisement. What's next scheduled then, the trial?

9 MR. ESCOBAR: We are scheduled, your Honor, on
10 May the 26th for a pretrial.

11 THE COURT: Okay. Thank you very much.

12 MR. ESCOBAR: Thank you, your Honor. Is that
13 correct?

14 MR. MARTIN: Yeah, next week.

15 THE COURT: Thank you, Mr. Martin.

16 MR. MARTIN: Thank you, Judge, for your time.

17 THE COURT: Thank you.

18 (PROCEEDINGS CONCLUDED)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, Jennifer Fleischer, Registered Merit
Reporter, certify that I was authorized to and did
stenographically report the foregoing proceedings and
that the transcript is a true record.

DATED this 23rd day of May, 2016.


Jennifer Fleischer
Registered Merit Reporter