

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

STATE OF FLORIDA,
Plaintiff,

Case No.: CRC-1400216FAES

v.

Division: 1

CURTIS J. REEVES,
spn 00683538 Defendant.

**RESPONSE TO STATE'S MOTION TO COMPEL ADDITIONAL DISCOVERY
RELATING TO DEFENSE EXPERT MICHAEL KNOX**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through Undersigned counsel, and responds to the State's Motion to Compel Additional Discovery Relating to Defense Expert Michael Knox ("State's Motion"), and as grounds therefore states as follows:

Effective assistance of counsel requires a zone of privacy around the communications and activities between attorneys, expert witnesses, clients, law firm staff members, and others employed for the purposes of preparing for litigation. This is because these privacy protections help keep secure the legal theories, opinions and strategies of litigants from improper disclosure to the opposing party. This very sacred and indispensable rule of law is commonly referred to as the work product doctrine.

As the Florida Supreme Court stated with great admiration, the United States Supreme Court opined "[w]ith words which have not lost their poignancy" that:

[i]n performing his various duties, ... it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to

protect their clients' interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways-aptly though roughly termed ... the “work product of the lawyer.” Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served. *Northup v. Acken*, 865 So. 2d 1267, 1269 (Fla. 2004) (quoting *Hickman*, 329 U.S. at 510-11) (emphasis added).

Hickman, as in this case, pertained to a demand for oral statements made to an attorney. In *Hickman*, the United States Supreme Court held that:

oral statements made by witnesses to ... [the attorney], whether presently in the form of his mental impressions or memoranda, we do not believe that any showing of necessity can be made under the circumstances of this case so as to justify production. Under ordinary conditions, forcing an attorney to repeat or write out all that witnesses have told him and to deliver the account to his adversary gives rise to grave dangers of inaccuracy and untrustworthiness. No legitimate purpose is served by such production. The practice forces the attorney to testify as to what he remembers or what he saw fit to write down regarding witnesses' remarks. Such testimony could not qualify as evidence; and to use it for impeachment or corroborative purposes would make the attorney much less an officer of the court and much more an ordinary witness. The standards of the profession would thereby suffer. *Hickman*, at 511-513. (emphasis added).

Since the issuance of *Hickman*, Florida courts have repeatedly and consistently held that “oral statements taken by attorneys from witnesses... are nondisclosable work product.” *Horning-Keating v. State*, 777 So. 2d 438, 443-444 (Fla. 5th DCA 2001) (citing other appellate decisions with a similar holding).

Florida courts recognize two categories of work product: fact work product and opinion work product. Fact work product, which pertains to factual information prepared or gathered in connection therewith, concerns what the attorney did and what he learned in his role as attorney. *Id.* at 444. Fact work product can be obtained by a moving party only upon a demonstration of “need” and “hardship”. *Id.* Bare assertions of need and undue hardship are insufficient to require

the production of fact work product. *Id.*, citing *Prudential Ins. Co. of America v. Florida Dept. of Ins.*, 694 So. 2d 772 (Fla. 2d DCA 1997). Opinion work product, which “involves a lawyer’s impressions, conclusions, opinion and theories of her client’s case... is an absolute, or nearly absolute, privilege.” *Id.*

Here, any statements made by Mr. Knox to any members of the Defense team would constitute opinion work product because they would, given his status and expertise, necessarily implicate and relate to undersigned counsel’s (and other members of the Defense team’s) impressions, opinions, legal theories, perspectives and interpretations of evidence, and ultimate trial strategy.

To avoid any needless litigation with the State, undersigned counsel makes clear that he is well aware of *Kidder v. State* and his reciprocal discovery obligations under Fla. R. Crim. P. 3.220(d)(1)(B)(ii). This latter provision, which states that “reports or statements of experts” must be shared with prosecution, means written reports or statements of experts. *Snow v. Fowler*, 662 So. 2d 1295, 1297 (Fla. 3d DCA 1995). The case law is clear that Mr. Knox’s oral statements to the Defense pertaining to this case are protected by the work product doctrine.

The State’s motion to compel additional discovery relating to the Defense’s expert is a legally impermissible attempt to obtain information that is protected by the work product doctrine. This motion to compel creatively, but unlawfully, requests a court order directing the defense’s experts to perform analysis and work for the prosecution’s benefit – thereby helping the state to obtain the functional equivalent of an expert report at Mr. Reeves’ expense. For the reasons explained below, the State’s motion to compel should be denied.

Having described the applicable law, undersigned counsel corrects, clarifies and/or addresses the State’s numerous incorrect factual and legal claims in the below paragraph-by-paragraph Response.

State's Motion – Paragraph 1 (Michael Knox)

1. On September 11, 2015 the Defendant filed his Notice of Reciprocal Discovery listing in paragraph B. expert witnesses he expects to call, including Michael Knox. Fla. R. Crim. P. 3.220(d)(1)(A). The notice failed to identify a report or a statement by Michael Knox. The notice also failed to identify the results of physical or mental examinations and of scientific tests, experiments, or comparisons. Fla. R. Crim. P. 3.220(d)(1)(B)(ii). Further, the notice failed to identify any tangible papers or objects the defendant intends to use in any hearing or trial. Fla. R. Crim. P. 3.220(d)(1)(B)(iii).

Defense's Response to Paragraph 1 of State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

Notably, there is no legal mandate or obligation for the Defense to have an expert like Mr. Knox prepare a formal report or written statement. Accordingly, the State did not cite to any such rule compelling the creation of such a report or statement because none exists.

In any event, given Mr. Reeves' status as a retired law enforcement officer, it is unrealistic and infeasible for him to pay for an expert report or written statement. Mr. Reeves's primary source of income is his Tampa Police Department pension and social security benefits. Perhaps there is a defendant in a different case with boundless resources who can pay his experts to prepare multiple reports or statements. Mr. Reeves, however, is of modest means and cannot afford to obtain gratuitous expert witness materials.

Obtaining an expert report or written statement would further serve no purpose because the State both has not completed their investigation and continues to provide undersigned counsel notices of new witnesses and other discovery. For example, the State recently advised the Defense that lead Detective Proctor and Detective Smith have resumed their investigation into this case.

The State in September 2015 obtained a court order to enter the premises of the movie theater where the underlying incident occurred to conduct some sort of experiments or tests. The prosecution recently further noticed the Defense of a Federal Bureau of Investigation expert that will be performing an unidentified forensic video analysis of the movie theater surveillance system footage. To date, the Defense has not received any such forensic video analysis.

Similarly, the Defense has started, but not yet completed, the deposition of the State's previously identified forensic video expert Agent Weyland. On the day of his originally scheduled deposition, Agent Weyland handed to the Defense videos the prosecution was previously required to give to the Defendant under Rule 3.220(b). The deposition could therefore not be completed, as the Defense needed to review and examine said videos. At this time, Agent Weyland is not available for completion of the deposition due to a reported illness.

Though this is a sampling, and not a comprehensive list of the activities the State and the Defense are conducting, it is clear that there would be no functional or useful purpose to obtaining an expert report or written statement from Mr. Knox. Said report or statement may become partially or fully obsolete or unusable upon further investigation by the State or the Defense.

Given that the State has not completed their investigation and the Defense continues to depose witnesses, it should also not be a surprise that undersigned counsel did not "identify any tangible papers or objects the defendant intends to use in any hearing or trial." *State's Motion*, ¶ 1. The Defense cannot be reasonably or realistically expected to identify which tangible papers or objects they intend on using at trial when the investigation is ongoing and the deposition process has not yet been completed.

State's Motion – Paragraph 2 (Michael Knox)

2. As has become the practice in Florida since Kidder v. State, 117 So.3d 1166 (Fla. 2d DCA 2013), criminal defense attorneys are frequently asking defense expert witnesses not to complete reports. The State does not anticipate a report or statement from Michael Knox. The fact that no

"report" will be forthcoming from him does not relieve the Defendant from providing the results of any physical or mental examinations and of any scientific test, experiments, or comparisons that would normally be summarized in his "report".

Defense's Response to Paragraph 2 of State's Motion (Michael Knox)

Although Michael Knox has not prepared a "formal report," *Snow*, 662 So. 2d at 1297, or a *written* statement, it is not because undersigned counsel is following the purported "practice in Florida since *Kidder v. State*" and not having such a document created. Criminal defense attorneys have routinely not requested reports from their experts due to the fact that the rules of discovery did not require one and because they serve the defendant no useful purpose. Further, such reports and statements are extremely expensive to generate.

State's Motion – Paragraph 3 (Michael Knox)

3. The State knows through defense pleadings that Knox & Associates were provided with the following non-work product: Police reports, photographs, video footage, architectural drawings of the interior of Cobb Theater, Report-Video Timeline, Medical Examiner Case Report, FDLE Ballistic report and various depositions of State witnesses taken by the defense.

Defense's Response to Paragraph 3 of State's Motion (Michael Knox)

Despite being under no legal obligation to do so, the Defense voluntarily provided the State notice that these aforementioned items were provided to Knox & Associates.

State's Motion – Paragraph 4 (Michael Knox)

4. The Defendant obtained a court order to enter Cobb Theater to conduct his own examination of the crime scene. The State reasonable [sic] believes that Bruce E. Koenig or another representative from Bek Tek was present along with Michael Knox, Knox & Associates, Forensic Consulting or another representative from Knox & Associates and Dr. Philip Hayden. The State reasonable [sic] believes that the purpose was to conduct an onsite evaluation to record visual information of the theater, including the evaluation of equipment that cannot be removed from the theater (Infra-red cameras & DVRs). The State also reasonable [sic] believes that photographs, measurements, notes, sketches and videos were made and will be used by these experts to support their opinions or to create demonstrative aids the experts will use to explain their testimony to the court or to the jury.

Defense's Response to Paragraph 4 of State's Motion (Michael Knox)

What the State believes Mr. Knox did or did not do at the movie theater is pure speculation. There is no basis for undersigned counsel to first seek information from the expert, then inform the State, prior to taking depositions, of the expert's activities. Undersigned counsel is further aware of his obligations under Fla. R. Crim. P. 3.220(d)(1)(B)(ii) and will comply with it.

State's Motion – Paragraph 5 (Michael Knox)

5. The State reasonable [sic] believes that material issues relating to the shooting event are being examined by defense experts Bruce Koenig, (Video expert), Michael Knox (Crime Scene Expert), Vemard Adams, M.D. (Forensic Pathologist), Dr. Philip Hayden (Use of force expert) and Michael Foley, M.D. (Forensic Radiologist) The State reasonable [sic] believes that the expertise of each defense expert is sufficiently interwoven that the work of one expert can be used by one or more of the other defense experts in an attempt to support their respective conclusions and/or opinions or to general explain a particular concept or issue to the trier of fact.

Defense's Response to Paragraph 5 of State's Motion (Michael Knox)

What the State believes Mr. Knox did or did not do in conjunction with the other defense experts is pure speculation. There is no basis for undersigned counsel to first seek information from one of its expert, then inform the State, prior to taking depositions, of the expert's activities.

State's Motion – Paragraph 6 (Michael Knox)

6. Michael Knox & Associates has the capability of providing Firearms, Ballistics & Shooting Reconstruction and Crime Scene Analysis services to the [sentence ends with no conclusion.]

Defense's Response to Paragraph 6 of State's Motion (Michael Knox)

The Defense has no objection to the State taking a deposition of Mr. Knox. Further, the Defense has no objections to the State's questioning of Mr. Knox regarding his ultimate opinion on the case or evidence, the basis of his opinion, and what he may have done or not done in this case. The State, of course, will need to assume full financial and logistical responsibilities for any deposition of Mr. Knox or any other defense expert.

State's Motion – Paragraph 7 (Michael Knox)

7. The following components of Firearms, Ballistics & Shooting Reconstruction involve the application of valid scientific principles and methods: trajectory reconstruction, wound dynamics, gunshot residue & range of fire (distance determination), photogrammetry and 3D computer modeling & animation.

Defense's Response to Paragraph 7 of State's Motion (Michael Knox)

The Defense has no objection to the State taking a deposition of Mr. Knox. Further, the Defense has no objections to the State's questioning of Mr. Knox regarding his ultimate opinion on the case or evidence, the basis of his opinion, and what he may have done or not done in this case. The State, of course, will need to assume full financial and logistical responsibilities for any deposition of Mr. Knox or any other defense expert.

State's Motion – Paragraph 8 (Michael Knox)

8. The following components of Crime Scene Analysis and Reconstruction involve the application of valid scientific principles and methods: Crime scene mapping, 3D computer modeling & animation and photogrammetry.

Defense's Response to Paragraph 8 of State's Motion (Michael Knox)

The Defense has no objection to the State taking a deposition of Mr. Knox. Further, the Defense has no objections to the State's questioning of Mr. Knox regarding his ultimate opinion on the case or evidence, the basis of his opinion, and what he may have done or not done in this case. The State, of course, will need to assume full financial and logistical responsibilities for any deposition of Mr. Knox or any other defense expert.

State's Motion – Paragraph 9 (Michael Knox)

9. The State anticipates Michael Knox will be called by the Defendant as an expert in Forensic Crime Scene Analysis. Prior to his testimony at any future hearing or trial in the above-styled cause, the State desires to take his deposition in order to learn the opinion(s) he is prepared to offer in support of the defense of the defendant and to determine if a Daubert hearing is necessary. Components of the two above-identified disciplines will include the use of applying valid scientific principles and methods to the facts and data gathered during the on-site investigation or analysis of materials provided for review. The below-described material is necessary for the State to make a preliminary assessment of whether the reasoning and/or the methodology underlying his

testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in this case. As a Forensic Crime Scene expert, he will certainly rely on various documents, results of examinations, scientific tests, experiments and comparisons he generated to support his opinion(s). Such documents would not contain legal research, opinions, theories or conclusions of the defense attorney or members of his legal staff, but the expert's specific findings or observations he obtained in formulating his ultimate opinion.

Defense's Response to Paragraph 9 of State's Motion (Michael Knox)

The Defense has no objection to the State taking a deposition of Mr. Knox. Further, the Defense has no objections to the State's questioning of Mr. Knox regarding his ultimate opinion on the case or evidence, the basis of his opinion, and what he may have done or not done in this case. The State, of course, will need to assume full financial and logistical responsibilities for any deposition of Mr. Knox or any other defense expert.

State's Motion – Paragraph 10 (Michael Knox)

10. On a showing of materiality, the court may require such other discovery to the parties as justice may require. Fla. R. Crim. P. 3.220(f).

Defense's Response to Paragraph 10 of State's Motion (Michael Knox)

Rule 3.220(f) states that “[o]n a showing of materiality, the court may require such other discovery to the parties as justice may require.” Fla. R. Crim. P. 3.220(f). Florida courts have held that “[i]n the discovery context, material means reasonably calculated to lead to admissible evidence.” *Demings v. Brendmoen*, 158 So. 3d 622, 624-625 (Fla. 5th DCA 2014) (quoting *Franklin v. State*, 975 So. 2d 1188, 1190 (Fla. 1st DCA 2008)). A mere demonstration that certain information or items may be useful is insufficient to demonstrate that the interests of justice compel their disclosure under Rule 3.220(f). *Franklin*, at 1190.

State's Motion – Paragraph 11 (Michael Knox)

11. In this case, the forensic analysis of the crime scene at Cobb Theater will involve the use of scientific principles and methods. The validity of the underlying principles and methodology underlying the expert's testimony is for the court to determine prior to the admission of the expert's testimony. The below-described materials are material in determining whether the expert used

valid principles and methods and had sufficient facts and data in arriving at his opinions or in the tangible items that he created for the Defendant.

Defense's Response to Paragraph 11 of State's Motion (Michael Knox)

The State requests a number of items that have not been created by this defense expert. Accordingly, the State's purported claim that it needs the below listed items to ascertain Mr. Knox's methodology is a guise to force Mr. Reeves to pay for expert witness labor that will assist the prosecution. The rule in Florida is that a defense expert cannot be forced to evaluate and analyze information for the benefit of the State. *Northup*, 865 So. 2d at 1272.

A bare allegation that the requested items "are material" is also insufficient to satisfy the legal requirements of materiality and that production/disclosure is in the interests of justice. *Demings*, 158 So. 3d at 624-625.

State's Motion – Paragraph 12(a) (Michael Knox)

12. Justice requires that the below-described material be provided to the State by the Defendant prior to the taking of the discovery deposition of defense expert Michael Knox.

a. Current C.V. for Michael Knox and all other Knox & Associates personnel who in any way provided any services of any kind regarding the work requested by the Defendant.

Defense's Response to Paragraph 12(a) of State's Motion (Michael Knox)

Undersigned counsel is not obligated under any rule or law to provide the State with the C.V. of an expert. Had counsel for the State reviewed the expert's website, they would have obtained a copy of Mr. Knox's C.V. The defense, however, will voluntarily provide Mr. Knox's C.V. to the State as a courtesy.

The prosecution failed to establish how obtaining the C.V.s for each and every Knox & Associate employee who "in any way" provided "any services" of "any kind" regarding the work requested by the Defendant is reasonably calculated to lead to discoverable evidence. They also failed to explain or allege that the interests of justice compel the production of every C.V. of every

Knox & Associate employee who has had any contact – no matter how tangential – to this case. Taken to the extreme, the State’s request, if granted by this Court, would require that any receptionist, college intern, secretary, technician of the lowest level, or other person would need to provide their C.V. to the State. The State’s failure to satisfy the materiality and interest of justice requirements compels this Court to deny the production of all of the remaining C.V.s.

State’s Motion – Paragraph 12 (b) (Michael Knox)

b. *Knox & Associates Standard Operating Procedure manual - relating to work performed at the Defendant's request, to include but not limited to SOP or best practice regarding:*

- i. *Photography*
- ii. *Scene mapping with laser mapping equipment*
- iii. *Scale diagramming*
- iv. *Photogrammetry*
- v. *Laser trajectory reconstruction*
- vi. *Determination of shooting distance*
- vii. *Shooter & witness perspective*
- viii. *Wound dynamics*
- ix. *Event timing analysis*
- x. *Crime scene recreation*
- xi. *Photographs with infrared-sensitive camera to reveal presence of gunshot residue*
- xii. *Lighting analysis*
- xiii. *Three-Dimensional computer modeling*
- xiv. *Rendering photorealistic images from 3D computer modeling*
- xv. *Using video surveillance footage to aid in reconstructing sequence and timing of shooting event*
- xvi. *Analysis of use of force*
- xvii. *Shooting incident dynamics*
- xviii. *Showing what the jury as to what the shooter perceived*
- xix. *Explaining the threat*
- xx. *Educating the jury as to what really happens during a shooting*

Defense’s Response to Paragraph 12 (b) of State’s Motion (Michael Knox)

The Defense does not have a copy of any Knox & Associates operating procedure manual. The Defense also has no knowledge of any such operating procedure or best practices manual. In any event, the State failed to satisfactorily explain why such a manual is material or is required to be shared pursuant to the interests of justice. Given that the State claims it will be deposing Mr.

Knox, all of the information requested regarding Paragraph 10(b)(i)-(xx) can be explored through questioning. The Defense would further note that it competently deposed the prosecution's witnesses without the benefit of the Pasco County Sheriff's Office's or the Florida Department of Law Enforcement's operating manuals.

State's Motion – Paragraph 12 (c) (Michael Knox)

c. List of all software and respective versions used in performing any work or analysis of items of any kind, specifically used to perform any of the work requested by the Defendant.

Defense's Response to Paragraph 12 (c) of State's Motion (Michael Knox)

Undersigned counsel does not have, nor has he sought, the information requested by the State in this request. Paragraph 12 (c) constitutes the first (but not the only) request by the State for one of Mr. Reeves' defense expert to perform work and analysis for the benefit of the prosecution. Mr. Reeves should not have to pay Mr. Knox to obtain this information, provide it to the Defense, and then expect undersigned counsel to send it to the State. Similarly, the Florida Supreme Court held that expert witnesses cannot be expected to perform labor for the benefit of an opposing party seeking disclosure. *Northup*, 865 So. 2d at 1272. The State, as the Defense did in over 120 depositions, can ask this question at the deposition.

State's Motion – Paragraph 12 (d) (Michael Knox)

d. All material, including but not limited to reports, photographs, letters, correspondence, emails, submissions, sketches, diagrams, and videos Michael Knox received from Bruce E. Koenig, Bek Tek (Video expert), Dr. Vernard I. Adams (Forensic pathologist) and Dr. Philip Hayden (Use of Force expert).

Defense's Response to Paragraph 12 (d) of State's Motion (Michael Knox)

Although undersigned counsel listed the items provided to Mr. Knox in its October 6, 2015 *Defendant's Second Notice of Reciprocal Discovery*, the State now requests disclosure of any items received from any other defense experts. There are no items responsive to this request.

Undersigned counsel notes, however, that the State nonetheless has not satisfied the materiality and in the interest of justice prerequisites for this request.

State's Motion – Paragraph 12 (e) (Michael Knox)

e. All material, including but not limited to reports, photographs, videos, letters, correspondence, emails, submissions, sketches, diagrams, [and] crime scene mappings Michael Knox sent to Bruce E. Koenig, Beck [sic] Tek (Video expert), Dr. Vernard I. Adams (Forensic pathologist) and Dr. Philip Hayden (Use of Force expert)

Defense's Response to Paragraph 12 (e) of State's Motion (Michael Knox)

Undersigned counsel has already provided to the State copies of all of the items received from Mr. Knox as contemplated under Rule 3.220(d)(1)(B). *Defendant's Second Notice of Reciprocal Discovery*. Photographs that Knox & Associates LLC took from within the Cobb Grove Theater and at the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12 (f) (Michael Knox)

f. All defense deposition transcripts provided to Michael Knox to include but not limited to: Angela Hamilton, Anthony Colello, Elaine Ajamian, Garry Houston, Gladys Perez, Luis Perez, Mary Houston, Nerida Abreu, Robert Kerr, Sylvia Keer [sic] and Vincent Redfern

Defense's Response to Paragraph 12 (f) of State's Motion (Michael Knox)

It is utterly remarkable that given the circumstances of this case, the State claims that the interests of justice compel the Defendant to produce copies of deposition transcripts to the prosecution. First, the aforementioned individuals are prosecution witnesses. Second, a prosecutor (taking extensive notes) was present at every deposition of every state witness. Third, in his October 6, 2015 Defendant's Second Notice of Reciprocal Discovery, undersigned counsel gratuitously both advised the State that Mr. Knox was provided a copy of the relevant deposition transcripts and provided the contact information of the court reporter, from whom they can order a copy of the transcript at a reasonable rate.

Fourth, the State attempts to circumvent the pending litigation before the Second District Court of Appeal (2D15-4082) by asking this Court to direct the Defendant to provide to the prosecution free copies of deposition transcripts of prosecution witnesses. As this Court was served a copy of the pending Petition for Writ of Certiorari, it is well aware that the Defendant's Petition alleges that the filing of deposition transcripts has great and irreparable constitutional ramifications for Mr. Reeves. As no ruling has been issued by the Second District Court of Appeal, it would be improper and counterproductive for this Court to order production of any deposition transcript. The interests of justice would not be served if the Defense is forced to file another legal challenge to the State's latest attempt to get free deposition transcripts.

Saving the State some money at the expense of Mr. Reeves' constitutional rights to a fair trial is unjust. *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378 (Fla. 1987). This request should therefore be denied.

State's Motion – Paragraph 12 (g) (Michael Knox)

g. Any and all written or tapped [sic] statements of individuals who have information that is relevant to the State or the defense that was provided to Michael Knox

Defense's Response to Paragraph 12 (g) of State's Motion (Michael Knox)

The Defense has already voluntarily provided the State a list of the items given to Mr. Knox. *October 6, 2015 Defendant's Second Notice of Reciprocal Discovery*. Undersigned counsel notes, however, that the State nonetheless has not satisfied the materiality and in the interest of justice prerequisites for this request.

State's Motion – Paragraph 12 (h) (Michael Knox)

h. All bench notes made and/or created contemporaneous with the performance of the analysis, to include but not limited to:

- i. Lead in notes listing to include but not limited to: Date received; ID of item received - subject to analysis; Source of item; initial review of item - model, SN; Description - what item purported to be, condition of item when received, chain of custody within company*
- ii. Initial Analysis, Examination of any items submitted by the Defendant or Data Collection, Listing or documentation in any form to include but not limited to: notes of any kind created in conjunction with any work required by the Defendant, photographs, sketches, diagrams, video, calibration of any equipment used, items collected, data collected, software used, employee who did the actual work*
- iii. Software log listing to include but not limited to: three-dimensional mapping, photogrammetry software, determining trajectory and wound dynamics, three-dimensional computer modeling software, two dimensional diagramming software, employee(s) who did actual work*
- iv. Experimentation or Testing Documentation, to include but not limited to: test firing of any firearm, type of ammunition used, testing to determine the duration of the shooting; comparison results, test results, experiment results of any kind requested by the Defendant*
- v. Demonstrative aids created*

Defense's Response to Paragraph 12 (h) of State's Motion (Michael Knox)

This Court should reject portions of this request on the basis that some of the items require the Defense's expert to perform analysis on behalf of the State. The Florida Supreme Court recognizes that expert witnesses cannot be expected to perform labor for the benefit of an opposing party seeking disclosure. *Northup*, 865 So. 2d at 1272.

It is notable that the State is ultimately requesting that Mr. Reeves pay for Mr. Knox's services so that he may prepare information for the benefit of the government. Not only is this not allowed in the State of Florida, it is fundamentally unfair. The interests of justice compel the denial of any such requests.

Furthermore, bench notes, like analyst and police officer notes, are not discoverable. Handwritten notes and other working materials are not covered or contemplated by the phrase "reports or statements of experts" as defined in Fla. R. Crim. P. 3.220(d)(1)(B)(ii). *Snow v. Fowler*, 662 So. 2d 1295, 1296-1297 (Fla. 3d DCA 1995). More specifically:

[s]uch reports or statements... do not include the handwritten notes of an expert as such notes are merely the working materials from which a report of statement may later be made; stated differently, handwritten notes of this nature are in no sense the type of formal report or statement of an expert that [Rule 3.220(d)(1)(B)(ii)] contemplates. Indeed, it has been held that the field notes of a crime laboratory analyst are not discoverable by the defendant as a “report or statement of [an] expert[.]” under [the Rules of Criminal Procedure.] *Id.* at 1296-1297 (citing *Geralds v. State*, 601 So. 2d 1157 (Fla. 1992)).

Given that the State requests a number of items that are tantamount to handwritten notes and other working materials, this request should not be granted by the Court.

State’s Motion – Paragraph 12(i) (Michael Knox)

i. All still frames created from video files, regardless of the source

Defense’s Response to Paragraph 12 (i) of the State’s Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff’s Office property section will be made available to the State upon receipt by the Defense.

State’s Motion – Paragraph 12(j) (Michael Knox)

j. All still frames or video sequels or individual event files that were highlighted, zoomed, or slowed, regardless of the source

Defense’s Response to Paragraph 12 (j) of the State’s Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff’s Office property section will be made available to the State upon receipt by the Defense.

State’s Motion – Paragraph 12(k) (Michael Knox)

k. All photorealistic images from 3D computer modeling, to include from the perspective of a witness or the victim attempting to show lighting in the theater at the time of the shooting

Defense's Response to Paragraph 12 (k) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12(l) (Michael Knox)

l. All presentations and scene reenactments regarding the shooting or any other presentations requested by the Defendant

Defense's Response to Paragraph 12 (l) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12(m) (Michael Knox)

m. All 3D computer modeling and animation video(s) depicting any aspect of the shooting event

Defense's Response to Paragraph 12 (m) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12 (n) (Michael Knox)

n. All presentation and/or crime scene reconstruction or diagrams created 3D laser mapping equipment and/or photogrammetry software from facts and data collected during the on-site evaluation or from material provided by the Defendant

Defense's Response to Paragraph 12 (n) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12(o) (Michael Knox)

o. All video recreations depicting the duration of the shooting

Defense's Response to Paragraph 12 (o) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12(p) (Michael Knox)

p. All scale diagrams depicting any aspect of the shooting that was requested by the Defendant

Defense's Response to Paragraph 12 (p) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12(q) (Michael Knox)

n. All presentation and/or crime scene reconstruction or diagrams created[,] 3D laser mapping equipment and/or photogrammetry software from facts and data collected during the on-site evaluation or from material provided by the defendant

Defense's Response to Paragraph 12 (q) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12(o) (Michael Knox)

o. All video recreations depicting the duration of the shooting

Defense's Response to Paragraph 12 (o) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12(p) (Michael Knox)

p. All scale diagrams depicting any aspect of the shooting that was requested by the Defendant

Defense's Response to Paragraph 12 (p) of the State's Motion (Michael Knox)

Pursuant to his obligations under Fla. R. Crim. P. 3.220(d)(1)(B), undersigned counsel has already stated in his October 6, 2015 Notice of Reciprocal Discovery that photographs taken by Knox & Associates, LLC from within the Cobb Grove Theater and the Pasco County Sheriff's Office property section will be made available to the State upon receipt by the Defense.

State's Motion – Paragraph 12(q) (Michael Knox)

q. All forensic mannequins, replica firearms or other demonstrative exhibits that will be used as an aid by any expert while testifying

Defense's Response to Paragraph 12 (p) of the State's Motion (Michael Knox)

As explained above, it is neither reasonable, realistic, nor feasible for the Defense to finalize the list of tangible papers and objects that will be used at a future hearing or trial. The State is still conducting their investigation and providing information and discovery to the Defense. The Defense is still conducting depositions. Some depositions – including of prosecution expert witnesses – have not been fully completed.

State's Motion – Paragraph 13 (Michael Knox)

13. Further, in order to be able to take a meaningful, economical discovery deposition of Dr. Michael Knox, the State is requesting the Defendant to provide to the State any tangible papers or objects that the defendant intends to use at any hearing or trial, including but not limited to the above-described items the State reasonably believes is specific and unique to defense expert Michael Knox. Fla. R. Crim. P. 3.220 (d)(1)(B).

Defense's Response to Paragraph 13 of State's Motion (Michael Knox)

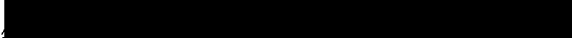
As explained above, it is neither reasonable, realistic, nor feasible for the Defense to finalize the list of tangible papers and objects that will be used at a future hearing or trial. The State is still conducting their investigation and providing information and discovery to the Defense. The Defense is still conducting depositions. Some depositions – including of prosecution expert witnesses – have not been fully completed.

As noted above, undersigned counsel is familiar with his reciprocal discovery obligations. When he can, in good faith, provide a list of tangible papers and objects that he intends on using at trial, he will.

WHEREFORE, the Defendant, CURTIS J. REEVES, respectfully requests this Honorable Court to grant or deny relief consistent with this Response.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery/Facsimile to the Office of the State Attorney, Dade City, Florida this 22nd day of October, 2015.


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