

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 BRUCE E. KOENIG**

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 Bruce E. Koenig ("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. Koenig 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. Koenig’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 labor 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 vast majority of 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 (Bruce E. Koenig)**

*1. On September 11, 2015 the Defendant filed his Notice of Reciprocal Discovery listing in paragraph B. expert witnesses he expects to call, including Bruce E. Koenig. Fla. R. Crim. P. 3.220(d)(1)(A). The notice failed to identify a report or a statement by Bruce E. Koenig. 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 (Bruce E. Koenig)**

Pursuant to its obligations under Fla. R. Crim. P. 3.220(d)(1)(B), the Defense has provided to the State photographs and videos from Mr. Koenig/BekTek derived from the Cobb Grove Theater surveillance system. The Defense has, to date, received preliminary videos and photographs derived from the surveillance system hard drives provided by the State. The Defense will further make available, upon receipt, additional videos and photographs based on the recently imaged hard drives by eHounds of the Cobb Grove Theater surveillance system hard drives.

Notably, there is no legal mandate or obligation for the Defense to have an expert like Mr. Koenig 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 unnecessary expert witness materials.

Obtaining an expert report or written statement would further serve no purpose to the Defense 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 yet-to-be named 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. Koenig. 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 (Bruce E. Koenig)**

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 Bruce E. Koenig. 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 the State's Motion (Bruce E. Koenig):**

Although Mr. Koenig 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 (Bruce E. Koenig)**

3. *Through the discovery process, the Defendant has obtained a copy of the Cobb Theater DVR hard drives that contained digital surveillance video of the shooting of Chad Oulson inside Theater #10. Adam Sharp, E-Hounds, Computer Evidence Retrieval was employed by the Defendant to make a copy of the DVR hard drives containing the surveillance video of the shooting of Chad Oulson. The Defendant also obtained a copy of the surveillance video that was downloaded onto a flash drive on January 14, 2014 by a Cobb Theater computer specialist employee and provided to law enforcement. The State reasonable [sic] believes that the Defendant has provided the copy of the DVR hard drives made by Adam Sharp of E-Hounds and possible the flash drive to Bek Tek, LLC, Forensic Audio/Image Specialists.*

**Defense Response to Paragraph 3 of the State's Motion (Bruce E. Koenig)**

The Defendant has provided a copy of the “DVR hard drives” made by Adam Sharp of eHounds to Bek Tek, LLC. The Defense had previously offered to make a copy of said “DVR hard drives” for the State, but the offer was declined.

**State's Motion – Paragraph 4 (Bruce E. Koenig)**

4. *The State reasonable [sic] believes that one issue that will be material to the admission of the surveillance video is whether the surveillance video is an authentic, continues, unaltered video.*

**Defense Response to Paragraph 4 of the State's Motion (Bruce E. Koenig)**

The Defense learned through the depositions of various detectives from the Pasco County Sheriff's Office that they failed to properly secure the DVR hard drives from the Cobb Grove Theater the day of the incident. In particular, the referenced deposed law enforcement officers failed to obtain the hard drives from the movie theater surveillance system. Contracted employees from the Cobb Grove Theater later removed the hard drives and then transported them to the State of Alabama. Nearly two weeks after the shooting, detectives from the Pasco County Sheriff's Office drove to Alabama to pick-up the hard drives from the Cobb Grove Theater's attorney.

In between January 13, 2014 and the date the detectives went to Alabama to obtain the hard drives, multiple people handled the evidence. The Defense (and we believe the State as well) is still uncertain about the chain of custody of said hard drives. Given that the chain of custody has not yet been established or determined, it is similarly impossible to conclude whether anyone altered the hard drives.

It is therefore both misleading and ironic that the State alleges in Paragraph 4 that "whether the surveillance video is an authentic, continues [sic], unaltered video" is important to this case. Any problems associated with the chain of custody or the authentication of the video will likely stem from law enforcement's failure to properly secure the crucial hard drives in a timely and diligent manner. To now seek the services of defense experts to help them establish the authenticity of the hard drives is absurd and unjust.

**State's Motion – Paragraph 5 (Bruce E. Koenig)**

*5. 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 Response to Paragraph 5 of the State's Motion (Bruce E. Koenig)**

In paragraph 5 of the State's Motion, it alleges that "the State also reasonable [sic] believes that photographs, measurements, notes, sketches, and videos were made" as a result of Mr. Koenig's visit to the movie theater. What the State believes Mr. Koenig 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. Mr. Koenig further did not create any of these aforementioned items while in or as a result of being in the theater.

**State's Motion – Paragraph 6 (Bruce E. Koenig)**

*6. The State anticipates Bruce E. Koenig, Senior Forensic Examiner of Bek Tek will be called by the Defendant as an expert in forensic analysis of video recordings. 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. 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 Video Forensic 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 6 of the State's Motion (Bruce E. Koenig)**

The Defense has no objection to the State taking a deposition of Mr. Koenig. Further, the Defense has no objections to the State's questioning of Mr. Koenig 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. Koenig or any other defense expert.

**State's Motion – Paragraph 7 (Bruce E. Koenig)**

*7. 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(k).*

**Defense Response to Paragraph 7 of the State's Motion (Bruce E. Koenig)**

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. 1<sup>st</sup> 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 8 (Bruce E. Koenig)**

*8. In this case, the forensic analysis of the hard drives from the DVRs 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 8 of the State's Motion (Bruce E. Koenig)**

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. Koenig'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 9 (Bruce E. Koenig)**

*9. 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 Bruce E. Koenig.*

*a. Current C.V. for Bruce E. Koenig and all other Bek Tek personnel who in any way provided any services of any kind regarding the work requested by the Defendant.*

**Defense's Response to Paragraph 9 (a) of the State's Motion (Bruce E. Koenig)**

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. Koenig's C.V. The defense, however, will voluntarily provide Mr. Koenig's C.V. to the State as a courtesy.

The prosecution failed to establish how obtaining the C.V.s for each and every BekTek 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 Bek Tek 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 9(b) (Bruce E. Koenig)**

*b. Bek Tek Company 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. Enhancements - lighter, contrast, brightness, pixel smoothing, averaging of frames*
- ii. Computer evaluations which can identify alterations and duplication processes. Computer process used to determine if the video is original, continuous and unaltered.*

*iii. Duplication process allow for copying of unique and specialized media to standard formats*

*iv. Procedures that produce video clips of interest in a designated display sequence, to include but not limited to transitions, looping, slow motion, zoom, magnification, and titling, digital procedures to improve the quality of the video image, including magnification, de-convolution, filtering, masking, zoo, slow motion, looping and gamma changes*

*v. Procedure for identifying, separating and adjusting the speed of the images from different cameras that were recorded the event in question resulting in a video that can be viewed as either real-time or as still images.*

*vi. Procedure that center, remove/reduce motion effects, and average multiple fields/frames of moving objects in video recordings that are difficult to discern due to time-lapse recording*

**Defense's Response to Paragraph 9 (b) of the State's Motion (Bruce E. Koenig)**

The Defense does not have a copy of any Bek Tek 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. Koenig, all of the information requested regarding Paragraph 9(b)(i)-(vi) 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 or the Florida Department of Law Enforcement's operating manuals.

**State's Motion – Paragraph 9(c) (Bruce E. Koenig)**

*c. List of all software and respective versions used in performing any work or analysis, specifically used to determine that each event file is original, continuous and unaltered*

**Defense's Response to Paragraph 9 (c) of the State's Motion (Bruce E. Koenig)**

Undersigned counsel does not have, nor has he sought, the information requested by the State in this request. Paragraph 9 (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. Koenig 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 9(d) (Bruce E. Koenig)**

*d. All material, including but not limited to reports, photographs, letters, correspondence, emails, submissions, sketches, diagrams, videos, crime scene mapping Bruce Koenig received from Adam Sharp, E-Hounds (Copied DVR hard drives), Michael Knox, Knox & Associates (Forensic Consulting) and/or Dr. Philip Hayden (Use of Force expert)*

**Defense's Response to Paragraph 9 (d) of the State's Motion (Bruce E. Koenig)**

Although undersigned counsel listed the items provided to Mr. Koenig 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, other than the copied hard drives from Adam Sharp of eHounds.

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 9(e) (Bruce E. Koenig)**

*e. All material, including but not limited to reports, photographs, videos, letters, correspondence, emails, submissions, sketches, diagrams Bruce Koenig sent to Adam Sharp, E-Hounds (Copied DVR hard drives), Michael Knox, Knox & Associates (Forensic Consulting) and/or Dr. Philip Hayden (Use of Force expert)*

**Defense's Response to Paragraph 9 (e) of the State's Motion (Bruce E. Koenig)**

Undersigned counsel has already provided to the State copies of all of the items received from Mr. Koenig as contemplated under Rule 3.220(d)(1)(B). See *October 6, 2015 Defendant's Second Notice of Reciprocal Discovery*, at 1. The Defense has, to date, received preliminary

videos and photographs derived from the surveillance system hard drives provided by the State. The Defense will further make available, upon receipt, additional videos and photographs based on the recently imaged hard drives by eHounds of the Cobb Grove Theater surveillance system hard drives.

**State's Motion – Paragraph 9(f)(i)-(iv) (Bruce E. Koenig)**

*f. All bench notes made, created contemporaneous with the performance of the analysis, to include but not limited to:*

*i. Lead in notes, listing: 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 examination - number of frames within each event file, number of frames between compressed version and non-compressed version of each event file; date of analysis, description of analysis performed; person who performed analysis, hardware used; software used; calibration of hardware; documenting method used to determine if the video is original, continuous and unaltered*

*iii. Software log- changes as result of using software (non-destructive), action took with software, overlays determined or made; results I findings of analysis; what changes made during process; what frames altered or changed or modified by process; changes involving enhancements such as lighter, contrast, brightness, pixel smoothing, averaging of frames; changes by the process that center, remove/reduce motion effects, and average multiple fields/frames of moving objects in video recordings that are difficult to discern due to time-lapse recording; changes or modifications to improve the quality of the video image, including magnification, de-convolution, filtering, masking, zoo, slow motion, looping and gamma changes*

*iv. Demonstrative aids created - with data obtained from analysis*

**Defense's Response to Paragraph 9 (f)(i)-(iv) of the State's Motion (Bruce E. Koenig)**

This Court should also 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 State, for example, requests information on "number of frames within each event file... date of analysis, description of analysis performed, hardware used, software used, etc." *State's Motion*, ¶ 9(f)(ii). 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. Koenig'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 9(g) (Bruce E. Koenig)**

*g. All still frames created from event video files*

**Defense's Response to Paragraph 9 (g) of the State's Motion (Bruce E. Koenig)**

Pursuant to its obligations under Fla. R. Crim. P. 3.220(d)(1)(B), the Defense has provided to the State photographs and videos from Mr. Koenig/BekTek derived from the Cobb Grove Theater surveillance system. The Defense has, to date, received preliminary videos and photographs derived from the surveillance system hard drives provided by the State. The Defense

will further make available, upon receipt, additional videos and photographs based on the recently imaged hard drives by eHounds of the Cobb Grove Theater surveillance system hard drives.

**State's Motion – Paragraph 9(h) (Bruce E. Koenig)**

*h. All still frames, video sequels or individual event files that were highlighted, zoomed, or slowed*

**Defense's Response to Paragraph 9 (h) of the State's Motion (Bruce E. Koenig)**

Pursuant to its obligations under Fla. R. Crim. P. 3.220(d)(1)(B), the Defense has provided to the State photographs and videos from Mr. Koenig/BekTek derived from the Cobb Grove Theater surveillance system. The Defense has, to date, received preliminary videos and photographs derived from the surveillance system hard drives provided by the State. The Defense will further make available, upon receipt, additional videos and photographs based on the recently imaged hard drives by eHounds of the Cobb Grove Theater surveillance system hard drives.

**State's Motion – Paragraph 10 (Bruce E. Koenig)**

*10. Further, in order to be able to take a meaningful, economical discovery deposition of Bruce E. Koenig, 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 Bruce E. Koenig. Fla. R. Crim. P. 3.220 (d)(1)(B).*

**Defense's Response to Paragraph 10 of the State's Motion (Bruce E. Koenig)**

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 DENY this Motion.

**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 22<sup>nd</sup> day of October, 2015.



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