IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

STATE OF FLORIDA,

v. Case No.: CRC14-00216CFAES

CURTIS J. REEVES,
Defendant
_____/

STATE'S RESPONSE TO DEFENDANT'S EMERGENCY MOTION TO STAY ORDER GRANTING STATE'S MOTION TO COMPEL

COMES NOW, Bernie McCabe, State Attorney for the Sixth Judicial Circuit, by and through the undersigned Assistant State Attorney, and moves this Honorable Court to deny the motion to stay, and in support thereof states as follows:

Facts and Procedural History

The Defendant, Curtis Reeves, stands accused of the second degree murder of Chad Oulson. Pretrial discovery has been ongoing for over a year. In an attempt to facilitate pretrial discovery, this Court entered an order, dated August 26, 2015, for defense counsel to file transcripts of the depositions taken in the above-styled cause but provided no time period in which to comply with the order. In response to that order, the State filed a motion for the immediate filing of the transcripts pursuant to a long standing administrative order in the Sixth Judicial Circuit. Although this Court was hesitant to require the immediate filing of the depositions, it did, at first, require the State to request depositions transcripts from the administration judge, who would then order Defendant Reeves to file the transcripts within 30 days. After further

contemplating the State's motion, this Court decided, on September 8, 2015, that Defendant Reeves needed to immediately file the deposition transcripts and entered an order reflecting such. To date, Defendant Reeves has filed no deposition transcripts in the court file of the above-styled cause. Instead, Defendant Reeves filed a motion to stay this Court's ruling, claiming that he would be filing a petition for writ of certiorari with the Second District Court of Appeal. As of the filing of this response, no such petition has been filed with the Second District. Nor has Defendant Reeves filed a motion before the Chief Judge of the Sixth Circuit to request an exception to the administrative order requiring him to immediately file the deposition transcripts.

Argument

This Court should deny Defendant Reeves' motion for a stay because there is little likelihood of success, on the merits, of any claimed petition for writ of certiorari. Furthermore, there exists a likelihood of harm to the State if the stay was granted and no likelihood of harm to Defendant Reeves if the stay was denied.

"A party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal." Fla. R. App. P. 9.310(a). Courts should consider two factors when determining whether to grant a motion to stay: 1) the likelihood of success on the merits of the issue being reviewed by the appellate court and 2) the likelihood of harm should the stay be granted (or not). Perez v. Perez, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999); see State ex. rel. Price v. McCord, 380 So. 2d 1037, 1039 (Fla. 1980). Fla. R. App. P. 9.310(a) provides that a trial court has discretion to grant, modify or deny a stay.

As to Defendant Reeves' likelihood of success on his contemplated petition for writ of certiorari, he has little likelihood of success because the general law requires the filing of the

original transcript of a deposition in the court file, unless upon an attorney's request the chief judge authorizes otherwise. Admin. Order No. PA/PI-CIR-99-35. Rarely will a petitioner prevail in a petition for writ of certiorari because lower courts must commit a higher than normal level of error before a decision will be reversed. See Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097 (Fla. 1987). Not only must the lower court have erred, but the lower court must have departed from the "essential requirements of the law." Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 527 (Fla. 1995). Add to this already high standard the fact that Defendant Reeves also has little likelihood of success based on the merits of his case.

The issue Defendant Reeves claims he wants to raise in the certiorari petition involves reciprocal discovery rules, deposition transcripts and the obligation to file the transcript in the court file maintained by the clerk of court where the criminal case is pending. Once a defendant files a notice of discovery, he is obligated to participate in reciprocal discovery. Fla. R. Crim. P. 3.220(a). This includes discovery depositions. Fla. R. Crim. P. 3.220(h). The discovery deposition rule requires that no transcripts of a deposition for which the state may be obligated to expend funds shall be ordered by a party unless it is in compliance with general law. Fla. R. Crim. P. 3.220(h)(2). To comply with this discovery rule, and create fairness in the criminal justice system, the Chief Judge of the Sixth Judicial Circuit developed an administrative order requiring the original transcript of a deposition be filed in the court file . Admin. Order No. PA/PI-CIR-99-35. This order requires any party to a criminal case to file the original of the deposition transcript with the clerk of court. Admin. Order No. PA/PI-CIR-99-35. The administration order providing the uniform treatment throughout the circuit of transcripts of depositions in criminal cases was developed under proper authority granted to the Chief Judge by the criminal discovery rules. Admin. Order No. PA/PI-CIR-99-35 complements and is consistent

with Fla. R. Crim. P. 3.220(h)(2). Thus, Defendant Reeves' likelihood of success, based on the merits of his claim, is minimal, at best.

As to the likelihood of harm, the second prong of the analysis when determining whether to grant a motion to stay, the State submits that it would be harmed if the motion to stay was granted. The motion to stay is focused on only the trial court's order compelling Defendant Reeves to immediately file the deposition transcripts. The motion to stay does not stay the proceedings themselves. Thus, a granting of the motion to stay would force the State to continue on with this case without the benefit of the transcripts available to the State by being in the court file maintained by the clerk of court. A Stand Your Ground Hearing is scheduled to begin on November 16, 2015 and the trial to begin on January 11, 2016. Granting the defendant's motion to stay would defeat the intention of the court's September 8, 2015 order requiring the immediate filing of the depositions. The State would be harmed if this Court granted the motion to stay.

Furthermore, Defendant Reeves' claim of harm if the stay was not granted is conclusory and speculative. Defendant Reeves claims that public access to these transcripts would violate his right to impartial jury because his case is a high profile case with media interest. The filing of the transcripts does not change the nature of Defendant Reeves case or the information that is available to the public. As Defendant Reeves has already shown in his motion, the media has already shown interest in his case. Defendant Reeves' court file, the State Attorney's file and law enforcement's records are public records. The media and the public has access to all of these documents, including police reports, interviews and court filed documents (including the State's witness list). All of the people deposed are listed in the State's witness list. Defendant Reeves cannot show that that the substance of depositions contains material that is not already available to the media or the public through other sources already available to them. Nor can Defendant

Reeves actually show that the filing of any transcripts will cause any additional media attention or public interest in his case. Defendant Reeves is merely hypothesizing that the filing of such transcripts will cause an increase in media attention.

The Defendant Reeves' argument that the filing of the depositions would result jeopardize his right to a fair trial and the right to a trial by an impartial jury is without merit, thus there is little likelihood of his success on the merits if a stay was granted. Further, his quotes from Palm Beach Newspaper, Inc. v. Burk, 504 So.2d 378 (Fla. 1987) in support of his position are misleading and in no way support his argument that a stay should be granted because there is a likelihood of success on the merits.

Burk involved the media seeking the right based on the First Amendment to be present at future criminal discovery depositions and to obtain copies of depositions which have not been filed. Id. at 379. The court's decision in Burk sought to strike a balance between a private individual right to privacy and the First Amendment. Id. at 379-8. The court ruled "[B]ased on our analysis of the above cases, we are satisfied that there is no affirmative constitutional right on the part of the press to attend deposition proceedings or to have access to depositions prior to their being filed with the court." Id. at 383. The issue before the court in Burk was the breadth of the First Amendment with the backdrop of a non-party (the media) being present at criminal discovery depositions.

However, even though the facts and the issue before the Burk court is totally distinguishable from the issue at bar, the Defendant Reeves cites to Burk at 383 in support of this argument that he will be harmed by the filing of the discovery depositions. First and foremost, the quote is taken out of context and is simply dicta by the Burk court in explaining why it is not going to expand the view of the First Amendment as suggested by the petitioner. While the Defendant

Reeves accurately quoted the language of Burk on pages 5 and 6 of his motion, the Burk court was actually citing to the language in Seattle Times Co. v. Rhinehart, 467 U.S. 20, 104 S.Ct. 2199 (1984). The Seattle case was a civil case involving private litigants that unlike here, the parties to the civil suit were subject to being examined during discovery deposition and there was no requirement the depositions be filed with the court. The issue in Seattle was "...whether parties to civil litigation have a First Amendment right to disseminate, in advance of trial, information gained through the pretrial discovery process." Seattle Times Co. v. Rhinehart, 104 S.Ct. at 2202.

The Burk court used the analysis of the Seattle court in explaining why the press does not have a First Amendment right to be present at discovery depositions or to obtain copies of depositions which are not file with the court. Because the Seattle case involved civil litigants there was a concern that information obtained not only from the witnesses but also from the petitioner and the respondent would be made public before a deponent had the right to seek a protective order to prevent disclosure of non-admissible information or private information of which the deposing party was not entitle to. That is not the issue here. The Defendant Reeves will never be deposed in this criminal case. No witness who has been deposed has sought a protective order to prevent the disclosure of any information obtained during the depositions. And, the media is not seeking to attend the criminal depositions.

Therefore, the analysis by the Seattle court, cited as dicta by the Burk court and quoted by the Defendant Reeves in support of the his argument that the filing of the deposition as order by the court would result in jeopardizing his right to a fair trial or an impartial jury is misleading and his argument that he will suffer harm, based on Burk, in the defense of his criminal case by the filing of discovery depositions is without merit.

Conclusion

Defendant Reeves has little likelihood of success in any petition for writ of certiorari that he may file with the Second District Court of Appeal. Additionally, there exists a likelihood of harm to the State if the stay was granted and merely speculative harm to Defendant Reeves if the stay is denied. Therefore, this Court should deny Defendant Reeves' motion to stay this Court's previous order for the immediate filing of the deposition transcripts in the above-styled cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail / Facsimile / Hand to Richard Escobar, Esq., Escobar & Associates, P.A., 2917 West Kennedy Boulevard, Tampa, Florida 33609, this 1st day of September, 2015.

Respectfully submitted,

BERNIE MCCABE
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[redacted]

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