

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,
Defendant.
SPN: 683538

/

DEFENDANT'S UNOPPOSED MOTION TO CONTINUE TRIAL

COMES NOW, the Defendant, CURTIS J. REEVES, by and through his undersigned counsel, files this Unopposed Motion to Continue Trial, and as grounds therefore states as follows:

1. This case is presently scheduled for trial beginning August 24, 2015 before Judge Pat Siracusa.
2. This Unopposed Motion to Continue Trial is being made despite the diligent and reasonable efforts of the Defense and the State Attorney's Office to complete the discovery process pursuant to Fla. R. Crim. P. 3.220.
3. A continuance of the trial is necessary due to the sheer volume of witnesses, the need to conduct dozens of depositions under various constraints, the length of time the State required to complete their forensic analyses and investigation, the April 2015 disclosure of additional forensic reports and over 20 new witnesses, and other factors.
4. To date:
 - a. the Defense has served 142 subpoenas resulting in 99 individuals appearing for

depositions;

- b. some of these individuals were subpoenaed more than one time because they failed to or could not appear at the first deposition.
- c. the deposition transcripts total approximately 5,000 pages; and
- d. over 1,750 pages of discovery have been provided to the Defense.

Constraints on Taking Depositions

- 5. Although undersigned counsel began taking depositions in mid-July 2014, various limitations and problems prevented the Defense from deposing all of the witnesses.
- 6. During the vast majority of the time this case has been pending the State could only provide at most two days per week (Monday and Friday) for taking depositions. Monday and Friday were days that Assistant State Attorney Manuel Garcia and Assistant State Attorney Stacey Sumner were available for depositions in all privately retained cases. The Public Defender deposition days occupy Tuesdays, Wednesdays, and Thursdays. While the Defense took many Monday and Friday deposition dates, they were not able to secure every Monday and Friday because the State Attorney's Office had reserved many of those days for privately retained attorneys in other cases. Likewise, some Mondays and Fridays could not be utilized due to undersigned counsel's law firm's obligations to their other clients' cases. It is the consensus of both the State and the Defense that they have done everything humanly possible to complete depositions in this matter in a timely manner. Completing the depositions of 129 witnesses is a very time consuming process and a scheduling nightmare.

7. In February 2015 Assistant State Attorney William Loughery became available on some Wednesdays and Thursdays to participate in depositions. This did not, however, necessarily result in the Defense being able to depose witnesses on three distinct weekdays.
8. In addition, a majority of the witnesses who could not attend a deposition gave insufficient advance notice to allow the Defense to substitute another individual in the newly available timeslot.

Discovery Timeline: February 2014 to the Present

9. Discovery items were received by the Defense on: February 3, 12, and 25, 2014; March 5, 2014; May 13, 2014; June 2, 3, and 27, 2014; July 14, 2014; August 6, 11, 15, and 25, 2014; September 17 and 18, 2014; October 14 and 20, 2014; November 19, 2014; December 12, 2014; February 9 and 25, 2015; April 2, 9, 22, and 27, 2015; and May 29, 2015.
10. Although the State began providing discovery materials in February 2014, the defense could not reasonably or responsibly begin taking depositions until July 2014. This is because the Defense has a professional obligation and a realistic need to be properly prepared to ask witnesses relevant questions regarding the events of January 13, 2014 and each deponent's role in the case. The items provided to the Defense on February 3, 2014 were predominantly voluntary statements, case supplement reports, and other law enforcement reports. However, the State did not *begin* providing various FDLE forensic reports and other discovery relating to material evidence until May 2014. For example, the defense received: on May 12, 2014 photos and analysis of Mr. Reeves' shoe; on June 2, 2014 a recording of a 911 call; on June 16, 2014 a DNA laboratory report of Mr. Oulson's

cellular phone that was created on April 23, 2014; on June 27, 2014 an FDLE ballistics report that was created on June 20, 2014.

11. Upon receipt of the final preliminary forensic evidence in late June 2014, which included the FDLE ballistics report, the Defense started taking depositions. Undersigned counsel filed a Notice of Taking Depositions on July 3, 2014 and began deposing witnesses on July 18, 2014.
12. As noted above, the Defense has served 142 subpoenas resulting in 99 individuals being deposed.
13. On April 9, 22, and 27, 2015 the Defense received a large submission of discoverable materials. These included the names of 20 additional witnesses and numerous supplemental reports.
14. Further, additional forensic reports were provided in April 2015. In particular, the Defense received: a "Lantern Forensic Report" of Chad Oulson's cellular phone dated September 11, 2014; an over 40 page Video Timeline Report dated September 24, 2014 from Agent Ronald Weyland of the Orange County Sheriff's Office containing several dozen images of the surveillance video from the Cobb Grove Theater where the shooting occurred; and FDLE laboratory reports dated April 23, 2014.
15. Despite the Defense's need to closely scrutinize the recently disclosed documents, additional steps were nonetheless taken to conduct more depositions in a timely manner.
16. Following the April 2015 discovery disclosures the Defense filed a Motion to Compel Disclosure on May 21, 2015 wherein we requested, among other things, access to Mr. Oulson's cellular phone and the cellular phone data, the Digital Video Recorder hard

drive(s) containing the January 13, 2014 footage of the interior of the Cobb Grove Theater, and other items.

17. The Defendant's Motion to Compel Disclosure was heard on May 29, 2015 and June 10, 2015.

18. As stated in Defendant's Motion to Compel Disclosure, defense experts intend on testing, inspecting and analyzing the items to be disclosed pursuant to this Court's rulings on May 29, 2015 and June 10, 2015.

19. The Defense has also reserved the following future dates for depositions: June 29, July 10, July 17, July 20, July 27, and July 31, 2015. The Defense has also requested from the State Attorney's Office early August 2015 dates to complete the last remaining depositions.

20. There are approximately 30 additional witnesses that the Defense has not yet deposed.

The State's and the Defense's Proposed Discovery and Trial Schedule

21. The State and the Defense complied with the Court's directive to find a meaningful solution to the varying scheduling challenges in this case. On June 15, 2015 Assistant State Attorneys William Loughery, Manuel Garcia, and Stacey Sumner met with undersigned counsel and his co-counsel Dino Michaels to thoroughly discuss these issues. The State and the Defense reached a consensus regarding a proposed reasonable timeline to complete depositions, exchange defense witness lists, depose defense witnesses, and hold an immunity hearing and/or trial.

22. This consensus schedule proposes the following:

- a. the Defense completing depositions by early August 2015;
- b. the Defense providing the State with its witness lists by early September 2015;

- c. the State deposing of the Defense's witnesses in September and early October 2015;
 - d. the Defense filing any Motion to Dismiss Based on Statutory Immunity in October 2015;
 - e. the Court holding a hearing on a Motion to Dismiss Based on Statutory Immunity in late October or early November 2015; and
 - f. the Court scheduling a trial starting the second week of January 2016.
23. Additionally, undersigned counsel spoke to T.J. Grimaldi, Esq., the attorney for Nicole Oulson, who stated that although Ms. Oulson would have preferred to have the matter brought to a close before the proposed trial date they have no objection to a trial commencing the second week of January 2016.
24. This proposed consensus schedule is for the purposes of providing to the Court a forecast of when the State and the Defense reasonably believe they will be ready for an immunity hearing and, if necessary, a trial.

MEMORANDUM OF LAW

"In a criminal case... the defendant and his or her counsel are entitled to a reasonable time to prepare for trial." *Chavez v. State*, 48 So.3d 1022, 1024 (Fla. 2d DCA 2010) (citing *Browne v. State*, 88 Fla. 457, 102 So. 546, 546-47 (1924)) (other citations omitted). Although the decision to grant or deny a motion for continuance is within the sound discretion of the trial court, that discretion is not absolute. *Id.* Whether a trial court abuses its discretion in denying a motion for continuance based on inadequate time to prepare a defense depends on a number of factors, including:

(1) the time available for preparation, (2) the likelihood of prejudice from the denial, (3) the defendant's role in shortening the preparation time, (4) the complexity of the case, (5) the availability of discovery, (6) the adequacy of counsel actually provided, and (7) the skill and experience of chosen counsel and his pre-retention experience with either the defendant or the alleged crime. *Id.* at 1024 (citations omitted).

Given the facts and circumstances of this case, undersigned counsel believes that the above factors compel the granting of this Unopposed Motion to Continue Trial.

The Time Available for Preparation

The presently scheduled trial date of August 24, 2015 does not give the Defense adequate time to sufficiently and effectively prepare for either the scheduled trial or a future hearing on a Motion to Dismiss Based on Statutory Immunity. As noted above, there remain nearly 30 witnesses that need to be deposed. The constraints on performing depositions have hindered, and will likely continue to delay, the Defense's ability to complete its questioning of these witnesses. The State, through no fault of its own, could not provide sufficient deposition timeslots to enable completion of the depositions for all of the witnesses prior to August 2015. Further, based upon the Court's recent ruling on the Defense's Motion to Compel Disclosure items of evidence need to be thoroughly examined by the Defense's experts.

Even if the Court were to disregard the above, the Defense also needs to review the voluminous discovery items and deposition transcripts, make crucial decisions on what, if any, lay or expert witnesses to call, prepare these witnesses for testimony, and perform a litany of other actions. This cannot be properly and effectively done within the present timeframe.

Undersigned counsel does not have sufficient time to prepare for trial in a manner that satisfies his ethical and legal obligations to his client. "[T]he Sixth Amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on

professional decisions and informed legal choices... made only after investigation of options.” *Strickland v. Washington*, 466 U.S. 668, 680 (1984). Further, defense attorneys have a “professional obligation to investigate critical prosecution evidence,” and their failure to effectively do so can constitute a “breakdown in the adversarial process that our system counts on to produce just results.” *Elmore v. Ozmint*, 661 F.3d 783, 861-862 (4th Cir. 2011) (citing *Strickland v. Washington*, 466 U.S. 668, 696 (1984)). Undersigned counsel therefore requires more time to prepare for trial.

The Likelihood of Prejudice from the Denial

There is a serious and real risk that the Defendant will be prejudiced if the trial is not continued. As outlined above, there is extensive pre-trial investigation that remains to be performed. There is insufficient time for the Defense to perform said investigation in an effective manner before the current trial date. The Defense presently anticipates performing depositions until August 2015 – the same month as the presently scheduled trial. Once the depositions are completed, the Defense’s experts can begin analyzing the relevant discovery items. Some of these experts also need access to the deposition transcripts so that they can render reliable and accurate opinions based on all the available facts and information. It is unlikely that all of these necessary tasks can be performed before the current trial date.

The Defendant’s Role in Shortening the Preparation Time

As detailed above, the Defense has taken extensive steps to expedite the discovery process. In a case of this magnitude, however, it is not realistically possible to materially shorten the preparation time for trial. There are 129 witnesses, 1,700 pages of discovery, and 5,000 pages of deposition transcripts. There is extensive forensic evidence that needs to be analyzed and tested.

There are limited deposition timeslots. The Defense was therefore unable to shorten its preparation time.

The Complexity of the Case

This is a complex case of great volume and magnitude. The shooting occurred in a dark movie theater. There were dozens of lay and law enforcement witnesses. The available evidence includes numerous forensic reports and tangible objects that require expert examination and, very likely, expert testimony at a future proceeding. Though the State began both providing discovery in February 2014 and performing a large-scale investigation immediately after the shooting, it continued exchanging sizeable amounts of discovery items as recently as April 2015. It therefore cannot be debated that this is a unique and complex case.

The Availability of Discovery

The fact that large volumes of discovery were exchanged does not mean that the Defense will be properly prepared for a hearing or an August 24, 2015 trial. Undersigned counsel simply does not have sufficient time to prepare for a hearing or August trial because the discovery needs to be analyzed, tested, investigated, and scrutinized. In other words, the exchange of discovery items and large numbers of witness names in conjunction with the complexity of the case means the Defense required more - and not less - time to prepare an effective defense.

The Adequacy, Skill and Experience of Counsel

The need for a continuance of the trial is needed despite the fact that undersigned counsel and the attorneys in his firm are experienced criminal law practitioners. Given that there are additional witnesses that need to be deposed, the Defense's need to examine the discovery granted pursuant to the May 29, 2015 Defendant's Motion to Compel, the possibility of a hearing on a


Motion to Dismiss Based on Statutory Immunity, and the brief time frame between today and August 24, 2015, undersigned counsel's broad experience in criminal law does not remove the unavoidable need for a trial continuance.

CONCLUSION

For the above-stated reasons, the Defense requests that this Court grant this Unopposed Motion to Continue Trial and adopt the proposed consensus schedule.

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 18th day of June, 2015


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