IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. **CASE NO.: 2012-001083-CFA**

GEORGE ZIMMERMAN,

Defendant.
_____/

MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S ORDER DATED MARCH 4, 2013

COMES NOW the Defendant, GEORGE ZIMMERMAN, by and through his undersigned counsel, moves this Honorable Court to reconsider and clarify its Order entered on March 4, 2013, denying the Defendant's request to take the deposition of attorney Benjamin Crump, in light of new information received by the defense, and as grounds therefore states as follows:

1. On February 22, 2013, this Court held a hearing on the issue of whether the undersigned counsel could take the deposition of Mr. Crump as an unlisted witness in this case, pursuant to Florida Rule of Criminal Procedure 3.220.

2. The Court entered its Order Denying Defendant's Motion Regarding Deposition of Benjamin Crump, Esquire for reasons stated in the Order. Attached hereto and incorporated herein as Exhibit "A" is a copy of the Court's Order.

3. There has been a significant amount of newly discovered evidence in this cause,

making the deposition of Mr. Crump even more necessary and relevant than was perceived at the time of the hearing.

ADDITIONAL BASES FOR REQUEST

WITNESS 8'S HOSPITAL RECORDS

4. Witness 8, the witness generally known as the person who states she was on the phone with Trayvon Martin during the event that resulted in his death, gave a statement regarding her state of health after the incident to several people in this case. Witness 8 stated that the reason she was unable to attend the funeral services for Mr. Martin was because she was so distraught by his death that she had to be hospitalized. Witness 8 gave this statement to Mr. Crump in the March 19, 2012 recorded interview Mr. Crump took of Witness 8 (the original subject of the defense inquiry into deposition of Mr. Crump) (Attached hereto and incorporated herein as Exhibit "B" is a CD of the recorded interview); Mr. Martin's mother, Sybrina Fulton; and on April 2, 2012, Witness 8 offered this statement under oath to Assistant State Attorney Bernie de la Rionda.

5. Defense counsel initially sought information regarding this hospitalization from the State by email on August 23, 2012, but received no response. Attached hereto and incorporated herein as Exhibit "C" is a copy of defense counsel's email.

6. On September 19, 2012, in a signed letter delivered via U.S. Mail, defense counsel again requested the State to confidentially provide records regarding Witness 8's hospital visit if the State had them, but again received no response. Attached hereto and incorporated herein as Exhibit "D" (See #10) is a copy of defense counsel's signed letter.

7. Based upon the need to learn the truth behind Witness 8's hospital visit, and with other concerns for the veracity of this witness, undersigned counsel filed a Motion for Issuance of a Subpoena Duces Tecum requesting Witness 8's hospital records in an effort to document this hospitalization.

8. This matter was then set for hearing before this Court on March 5, 2013, where counsel for Defendant was set to argue its application to authorize subpoena duces tecum for the hospital records. On March 4, 2013, in the evening hours, undersigned counsel received a telephone call from Assistant State Attorney John Guy, who explained that there would be no need to move forward with the subpoena, as no hospitalization records existed for Witness 8, in that she misrepresented that she was in the hospital, and, in effect, lied to those various above-referenced people, particularly in her under oath statement to Assistant State Attorney Bernie de la Rionda. Attached hereto and incorporated herein as Exhibit "E" is a copy of the relevant portions of that unofficial transcript.

9. Mr. Crump stated in his own sworn affidavit filed with this Court on February 5, 2013, that he "[b]riefly determined that Witness 8 had been close with Trayvon and that she had been upset upon learning of his death (and, in fact, had been unable to attend Trayvon's wake because she had to go to the hospital)". Attached hereto and incorporated herein as Exhibit "F" is a copy of the Affidavit of Benjamin L. Crump, Esq. at 7.

10. Now that Witness 8's credibility is at issue because of this contradictory and possibly perjurious testimony, deposing Mr. Crump is even more necessary and relevant for further determination of additional misrepresentations or lies, to document further bases for impeachment

of Witness 8, and other necessary matters.

WITNESS 8 INTERVIEW: ABC NEWS RELEASE AND MR. CRUMP'S AFFIDAVIT

11. In the above referenced sworn affidavit that Mr. Crump filed with this Court regarding his interview of Witness 8, Mr. Crump stated that while the recording device was turned off during his interview of Witness 8, he did not converse with her about any substantive matters, but used that time to collect his thoughts and formulate questions. Accordingly, the parts of the interview that were not recorded did not contain a discussion with the witness on substantive matters.

> To the best of my knowledge, while the Recording does not include the Preliminary Inquiry, *it contains every substantive statement that Witness 8 ever made to me in regard to her conversations with Trayvon on February 26, 2012, what she heard or might have overheard during the course of those conversations, and what she perceived or might have been in a position to perceive as a result of those conversations, as well as every other substantive statement that Witness 8 ever made to me that could have a tendency to prove or disprove a material fact potentially at issue in the Litigation or the instant case* (including, but not limited to, those relating to the offense with which Defendant has been charged, the potentially lesser included offense of manslaughter, Defendant's claim of self-defense, justifiable homicide, excusable homicide, Florida's Stand Your Ground Law and a wrongful death claim). To the extent Witness 8 may have made any other statements – whether or not arguably relevant, legally discoverable or otherwise – that are not contained within the Recording but that I was potentially in a position to hear or understand during the Interview, apart from what was said during the Preliminary Inquiry, I have no recollection as to the substance or content of any such statements.

See Exhibit "F" at 11-12 (emphasis added). Mr. Crump explained that he chose not to record the silence. *Id.* at 12.

12. However, since the hearing before this Court on February 22, 2013, ABC News has released an audio recording of part of the interview conducted by Mr. Crump of Witness 8. Attached hereto and incorporated herein as Exhibit "G" is a CD of the audio recording. (As the Court may

recall, counsel for the Defendant has a request for subpoena duces tecum pending regarding any recordings made by ABC during this interview. Mr. Crump disclosed in his affidavit that Matt Gutman of ABC News and his assistant were present during the interview he conducted with Witness 8. *Id.* at 8.).

13. The recording released by ABC News contains a substantive conversation between Mr. Crump and Witness 8 that Mr. Crump did not record and which, according to his sworn affidavit, never took place. Further, during this segment, Mr. Crump is focusing Witness 8's attention on specific aspects of her conversation with Mr. Martin, and asking her to emphasize certain parts of her testimony when he turns on his recording device. Indeed, near the end of the segment, Mr. Crump is heard to "count down" to the point where he wants Witness 8 to specifically address an issue that he has decided is important.

14. This recording, previously unknown to the parties, contradicts the statements made by Mr. Crump in his affidavit filed in support of his objection to the Defendant's motion to authorize his deposition. It is now clear that the affidavit filed by Mr. Crump is not only incomplete, but it is also inaccurate. This further supports the importance of and the need to depose Mr. Crump regarding his conversations recorded and unrecorded with Witness 8. Mr. Crump should be required to answer questions regarding his interview.

15. In addition, while Mr. Crump is arguing to this Court that he should not be deposed regarding the event surrounding the audiotaping of Witness 8, his own actions, in fact, caused the greater need for deposition. Mr. Crump, an attorney versed in rules of evidence and aware of the need to maintain the sanctity of testimony, took on the responsibility of securing the first statement

of the State's most significant witness, and did it in such a way that he decided not to have law enforcement present or available. In making that decision, he avoided some of the traditional safeguards that would have been in place had this been done under law enforcement authority. Rather, he took on this task to properly accomplish an accurate audiotaping of this event himself. He failed miserably. Rather, Mr. Crump's attempt to secure an accurate audiotape of the witness's statement, if that was his true intent, had the opposite effect. Instead of securing testimony, Mr. Crump's attempts caused only more concern with the audiotaped statement itself, given the inaudibility, and chopped up and missing segments of the statement.

16. Further, it was Mr. Crump who had created the setting for the audiotaping, and that included securing the appearance of a national media outlet, ABC News. While the purposes of Mr. Crump's decision to have a national news outlet present may well be suspect (particularly in light of the recently discovered audiotape released by ABC last week), the presence of ABC nonetheless also secured an additional 25-minute audio recording which was of significantly better quality than that recorded by Mr. Crump. Had Mr. Crump only taken the extra step of securing a copy of the entire ABC audio, which was readily available to him (particularly since it was he who set up the media 'exclusive'), most of the concerns regarding the audiotaping would have dissipated. By failing to maintain even the most minimum modicum of evidence retention and security, Mr. Crump put not only himself in the position of a required deposition, but it also negatively affected the proper presentation of this evidence to this Court and to a jury, all, unfortunately, in derogation of Mr. Zimmerman's overriding right to a fair trial. Mr. Crump should not be able to hide behind his own technical incompetence to suggest that he cannot be deposed on these very relevant issues; certainly

not when his actions caused the concerns that now must be investigated.

ARGUMENT

OPPOSING COUNSEL

17. In addition to the necessity of taking the deposition of Mr. Crump for the reasons stated above, the undersigned counsel respectfully requests this Court reconsider the Court's decision concerning Mr. Crump's status as being "opposing counsel" in this matter, and that based upon that status determination, that he is 'immune' from deposition.

18. It is the position of the defense that Mr. Crump is not "opposing counsel" for purposes of this proceeding or for purposes of having his deposition taken, and accordingly that the test set forth in *Hickman v. Taylor*, 329 U.S. 495 (1947) and distilled in *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986) is the incorrect standard to apply. Further, that the Florida Rules of Criminal Procedure give the defendant the ability to "without leave of court, take the deposition of any unlisted witness who may have information relevant to the offense charged". Fla.R.Crim.P. 3.220(h)(1)(A). The fact that Mr. Crump represents Mr. Martin's parents does not make him opposing counsel in this action, and the fact that future civil litigation may or may not take place against the Defendant by Mr. Crump, does not make Mr. Crump opposing counsel in this action. Indeed, Mr. Crump acknowledged in his sworn affidavit when speaking to Witness 8 that he was not acting as a lawyer for either side in this case.

> [I] explained that, as counsel for Trayvon's parents and his estate, I was not acting as a lawyer for either the State or Defendant in any criminal prosecution that could eventually be brought and that, while Witness 8 could have her own lawyer if she or her family felt the need for one, I could not act as Witness 8's lawyer and was not

able to give her any legal advice.

Id. at 6-7.

19. In the relied upon case, *Barnett Bank of Polk County v. Dottie-G Development Corp.*, 645 So.2d 573 (Fla. 2d DCA 1994), the issue was whether Respondent was entitled to production of documents prepared in anticipation of litigation by the opposing party before counsel was formally retained. *Barnett Bank*, 645 So.2d at 573-74. The court ruled that even though the documents were prepared before counsel was retained, "documents are subject to the work product privilege even when litigation is neither pending nor threatened so long as there is a possibility that a suit might ensue". *Id.* at 574. The court did not address the issue of determining "opposing counsel".

The issue before this Court is distinguishable in several ways. First, Mr. Crump is simply not opposing counsel in the sense that there is no action brought by Mr. Crump against the Defendant at this point (unlike in *Barnett*). Second, there was no third-party counsel issue in the *Barnett* case, as there is in the instant case. Third, in *Barnett*, the Petitioner was seeking the production of documents, whereas in this case the Defendant is seeking to take the deposition of a fact witness, who is not a party to the proceedings. Finally, although even just the "possibility that a suit might ensue" activates the work product privilege, (assuming this applies even to those who are not opposing counsel which is not addressed in *Barnett*), Mr. Crump has actively waived this privilege, as to his interview with Witness 8. The Defense is not seeking anything protected by the work product privilege, even if Mr. Crump were determined to be opposing counsel. *Young, Stern & Tannenbaum, P.A. v. Smith*, 416 So.2d 4, 5 (Fla. 3d DCA 1982) (in granting Petitioner's request to take direct opposing counsel's deposition held that only those communications which actually fall

under the attorney/client privilege are protected); *Spector v. Alter*, 138 So.3d 517, 517 (Fla. 3d DCA 1962) ("Many communications in which an attorney is involved are not privileged.... We find that the record does not support the lower court's finding that all relevant matters which could be the subject of the deposition of the appellee's attorney would necessarily be privileged."). Even the Supreme Court acknowledged that not all actions performed by an attorney on behalf of his client are protected by the attorney-client privilege.

> We also agree that the memoranda, statements and mental impressions in issue in this case fall outside the scope of the attorney-client privilege and hence are not protected from discovery on that basis. It is unnecessary here to delineate the content and scope of that privilege as recognized in the federal courts. For present purposes, it suffices to note that the protective cloak of this privilege does not extend to information which an attorney secures from a witness while acting for his client in anticipation of litigation. Nor does this privilege concern the memoranda, briefs, communications and other writings prepared by counsel for his own use in prosecuting his client's case; and it is equally unrelated to writings which reflect an attorney's mental impressions, conclusions, opinions or legal theories.

Hickman, 329 U.S. at 508.

WAIVER

20. Even if this Court finds that Mr. Crump is opposing counsel for purposes of this motion, defense counsel asserts that opposing counsel is not immune from being deposed, and that especially in light of the new information referenced herein, the Defense has met the burden outlined in *Shelton*, 805 F.2d at 1327:

a. No other means exist to obtain the information than to depose opposing counsel;

b. The information sought is relevant and non-privileged;

c. The information is crucial to the preparation of the [defense] case.

Id.

21. As to the first prong, defense counsel has attempted to resolve the issues that have created somewhat of a "cloak of secrecy" surrounding Mr. Crump's interview with Witness 8 through all other means it knows how. Defense counsel has requested information from the State regarding the Witness 8 interview, even earlier than the August 23rd email (see Exhibit "C"), and letter (see Exhibit "D"), regarding several issues. Defense counsel requested information several times regarding whether the State had a better quality copy of the recording, and only after the issue was litigated in December of 2012 was a digital copy of the original recording delivered to the defense. Much of the recording is still unintelligible, and it is the position of the defense that Mr. Crump, as the person who conducted the interview, is the only person who can accurately explain what was asked, and what was said. Additionally, the defense only learned approximately eleven (11) days ago that Witness 8 misrepresented that she went to the hospital, even though the defense had tried through other means to obtain this information much earlier as referenced above. Further, and perhaps most shockingly, it became absolutely apparent only last week that the information in Mr. Crump's sworn affidavit was provably incomplete and inaccurate, as referenced above. This has certainly cast doubt onto Mr. Crump's representations, and the defense can have no other way of determining what interactions Mr. Crump had with Witness 8, and to what extent those interactions were, but to depose him on this issue. Finally, taking the deposition of Witness 8 does not in and of itself provide "another means" of obtaining the non-privileged information the defense feels is necessary to preparing its case because, among other things, Witness 8 likely does not know

of Mr. Crump's dealings in how this interview even came to take place and the other circumstances surrounding it.

22. As to the "nonprivileged" portion of the second prong, in addition to the new evidence supporting the deposition of Mr. Crump, defense counsel would like this Court to reconsider the issue of whether there was an affirmative waiver of any privilege Mr. Crump would have had against giving deposition testimony. Although the issue was raised by the defense in both argument and motion, it was left unaddressed in this Court's March 4, 2013 Order. The Court found that Mr. Crump's interactions with Witness 8 were privileged. Of course, Mr. Crump never had an attorney/client privilege with Witness 8, as Mr. Crump stated in his affidavit, so any privilege as to his interview of her would fall under work product. However, the work product privilege can be waived, and, in this instance, it was by his voluntary actions of discussing the matter on national television, making the interview non-privileged.[1]

Mr. Crump conducted his interview of Witness 8 in the presence of ABC News, who we now know recorded at least part of the conversation between Mr. Crump and Witness 8. Further, there were other individuals in the room who do not have an attorney/client privilege with Mr. Crump, as referenced in his affidavit. Affidavit of Benjamin L. Crump, Esq. at 8. Following his recorded interview with Witness 8, Mr. Crump appeared on national television announcing that he had conducted said interview, and played portions of the interview for the public to hear. Attached

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[1]A person who has a privilege against the disclosure of a confidential matter or communication waives the privilege if the person, or the person's predecessor while holder of the privilege, voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to disclosure of, any significant part of the matter or communication. This section is not applicable when the disclosure is itself a privileged communication. *Fla. Stat.* § 90.507.

hereto and incorporated herein as Exhibit "H" is a DVD of the recorded interview. Indeed, Mr. Crump does not claim work product privilege as to his interview with Witness 8, and explains the circumstances how he has waived that privilege consciously and purposefully in his affidavit (see Exhibit "F" at 12-13). Additionally, in December of 2012, Mr. Crump went on national television and explained that he was not going to assert the issue of work product as to this interview: "...we want to show that we're not hiding anything, we're not going to file an attorney work product or any of that kind of stuff and I told [the commentators] the circumstances of how this interview came to be.". (*In Session* recording at 00:40). Attached hereto and incorporated herein as Exhibit "I" is a DVD of the recorded interview. Insofar as Mr. Crump's interview of Witness 8 is concerned, he is a fact witness, and he does not have a work product privilege. If there was one, it has been affirmatively waived.[2] *See Black v. State*, 920 So.2d 668, 670 (Fla. 5th DCA 2006) ("...confidentiality of a conversation is dependent upon 'whether the person invoking the privilege knew or should have known that the privileged conversation was being overheard."); *Visual Scene, Inc. v. Pilkington Bros., plc.*, 508 So.2d 437, 440 (Fla. 3d DCA 1987) ("in most cases a voluntary disclosure to a third party of the privileged material, being inconsistent with the confidential relationship, waives the privilege.").

23. As to the "relevant information" portion of the second prong, the Court has suggested

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[2]Additionally, Mr. Crump's disclosure of this information, the fact that the interview was conducted in the presence of people who have no attorney-client relationship with Mr. Crump (including, for example, a field correspondent for a major news network who then discussed the interview on national television and played portions of the interview for the public), and overt claim that he was waiving a work product privilege if one existed, show that this could also not be considered an "inadvertent" production within the context of Florida law. *See, e.g., General Motors Corp. v. McGee*, 837 So.2d 1010, 1040 (Fla. 4th DCA 2002).

in its March 4, 2013 Order, that the Defendant has failed to show that the information sought is needed for any relevant purpose. However, at the hearing on this issue on February 22, 2013, defense counsel proffered many reasons why a deposition of Mr. Crump possesses relevant information to the case. Additionally, defense counsel offered to present video clips and other evidence for the Court's review, further showing why a deposition of Mr. Crump is relevant, given the fact that he has made public, unprivileged statements regarding the case:

> MR WEST: ...whether I need to put that in the record or if the Court will accept my proffer. If the Court wants me to put it in the record, I have it here, I have it on my computer, and I would like the opportunity to introduce that as exhibits. I have the letter Mr. Crump wrote, I have the newspaper article where he said Sanford was lying about Tracy Martin, and I have the various video press conferences where he said exactly what I said he said. So, shall I do that? I can take a few minutes and we can play them right now if Mr. Blackwell is challenging the accuracy of the statements in my proffer.

The Court indicated that it did not need any further information.

For the purposes of meeting the "relevancy" portion of the second prong, a short discussion of some of the issues is appropriate. As to Witness 8:

> a. Paragraphs 4-16 of this motion are adopted as relevant information for purposes of taking Mr. Crump's deposition. The information leading up to Witness 8 lying about her hospital visit (and logically her closeness with Mr. Martin) are directly relevant to this case. Mr. Crump is the first person that the defense knows for sure was told this information. Further, the fact that Mr. Crump's affidavit is incomplete and inaccurate has created additional grounds for taking his deposition. He admittedly possesses relevant information by the self-evident fact that he was able to create the affidavit in the first place. The fact that there are inaccuracies in the

affidavit proves the document is insufficient on its own. Mr. Crump's assertions (many of which are intimately relevant to this case such as, the circumstances surrounding how Witness 8 was discovered, the circumstances surrounding how the recording was made, who was present, whether her story was influenced by anything other than her own recollection of what she heard, etc.) are relevant, as they go to the heart of the case, as Mr. Crump was the first one to interact with a very significant witness in this case, and these assertions should be made in a proper deposition.

b. There are significant gaps in the tape, and we now know that at least one of those gaps was filled with substantive discussion between Mr. Crump and Witness 8. The substance of the "silence" is relevant to this case for future depositions and the testimony of Witness 8. Additionally, a significant portion of the preliminary discussion was not recorded at all, as stated in Mr. Crump's affidavit.

c. The defense believes that Mr. Crump is aware of how the State Attorney's Office came to know about Witness 8. This information cannot be gained from any other source, as the State has refused to provide that information to the defense. This is relevant because it is important for the defense to understand the circumstances surrounding how this very important witness came to be known by the authorities prosecuting Mr. Zimmerman.

d. Mr. Crump's affidavit does not explain whether Witness 8 was ever identified when the recording was handed over to the FBI.

e. Only Mr. Crump knows why information on Witness 8 was not given to the Sanford Police Department or the Florida Department of Law Enforcement (hereinafter "FDLE"), even though multiple requests were made by FDLE.

f. It is relevant and important for the defense to at least be able to understand

the Witness 8 recording. There are many parts of the recording that seem unintelligible, and Mr. Crump, who conducted the interview, may be able to shed light on what certain words are.

g. It is of the utmost importance for the preparation of the defense case to know if Witness 8 has been influenced in any way that may affect her testimony, inadvertently or otherwise, by the circumstances surrounding the interview with Mr. Crump. It is the definition of relevance in a criminal case for the defense to be aware of any undue influence on the opposing party's witness. Mr. Crump possesses relevant information that will hopefully help allay that concern.

As to other issues, Mr. Crump has publicly spoken about, again to the extent that Mr. Crump would have a work product or attorney client privilege, his public statements regarding what was perhaps otherwise privileged, results in a waiver of that privilege and subjects him to deposition for reasons stated above. Certain relevant aspects are:

a. Mr. Crump made a broadcasted statement and publicly mailed correspondence to the Department of Justice claiming Chief Bill Lee of the Sanford Police Department and State Attorney Norman Wolfinger met on the evening of February 26, 2012 and conspired not to have Mr. Zimmerman arrested; in other words, jointly participated in a "cover up" of the death of Trayvon Martin. (Attached hereto and incorporated herein as Exhibit "K" is a copy of Mr. Crump's April 2, 2012 letter to Department of Justice). If Mr. Crump has evidence that supports this contention, it is absolutely relevant to the defense case because if indeed, the Sanford Police Department is corrupt and that further, Mr. Wolfinger played a part, in that the prosecution of Mr. Zimmerman is happening, in part, by those efforts. If Mr. Crump has evidence to support this statement, it is highly relevant.

b. Mr. Crump stated publicly that the Sanford Police Department falsified records during its investigation into the death of Trayvon Martin. Mr. Crump alleged that the Sanford Police Department "lied" in its report that said Tracy Martin told Investigator Chris Serino that the voice heard in the background screaming for help on a resident's 911 call was not his son's. (Attached hereto and incorporated herein as Exhibit "L" is a copy of the Orlando Sentinel's February 4, 2013 article). Mr. Crump further stated that since Mr. Martin heard the 911 call at the Sanford Police Department, he has listened to a "cleaned up" copy of the recording, and that he is convinced now that the voice crying for help is Trayvon Martin's voice. (Attached hereto and incorporated herein as Exhibit "M" is a DVD of the recording). If Mr. Crump has evidence supporting his contention that the Sanford Police Department lied, it is imperative that the defense be entitled to know what it is. If Mr. Crump is aware of any information at all supporting this contention, it is highly relevant to the defense case because these officers may be called as witnesses, and the issue of voice identification is crucial to the case.

c. Finally, Mr. Crump has also publicly commented on other significant factual aspects of the case that have not been addressed in the Witness 8 recorded interview, or in Mr. Crump's affidavit. An example of this is that Mr. Crump stated on national television (*Politics Nation* with Reverend Al Sharpton on March 21, 2012) that he knew the circumstances surrounding how Mr. Martin entered the Retreat at Twin Lakes subdivision on the night of February 26, 2012. What is curious is that he explains a scenario that is not on the recording the defense has of Witness 8. It is imperative that the defense learn where Mr. Crump received this information, as it differs from all other accounts of what happened that night.

24. As to the final prong of the test, as has been made clear in the above sections, Witness 8 is a crucial witness to this case, and understanding accurately, fully, and completely the

circumstances surrounding her interaction with Mr. Crump is crucial to the preparation of the defense case. A deposition of Mr. Crump on this non-privileged information seems to be the only way to fill in the significant holes that surround Mr. Crump's interaction with this witness. For the defense to not have this opportunity, a situation is created where the defense may not be adequately prepared for the upcoming trial. Additionally, as the deposition of Mr. Crump pertains to information not specifically relating to the Witness 8 issue, for the reasons outlined above, they are significant factual assertions for this case. It is crucial for the preparation of the defense in this case to know if officers have conspired or lied, especially if they are going to take the stand. Further, the issue of voice identification is so serious, that if Mr. Crump has factual information regarding that identification, the defense must be entitled to learn of it.

CONCLUSION

In sum, the Defendant requests this Court to reconsider and clarify its finding that Mr. Crump is "opposing counsel" for purposes of this deposition, as there are no pending actions between any client of Mr. Crump and Mr. Zimmerman, and, therefore, no special relationship exists to this litigation. Notwithstanding, even should the Court continue to find that Mr. Crump is "opposing counsel", any work product or attorney/client privilege that he may have once had has been waived by virtue of him speaking publicly as to the contents of his interview with Witness 8, and the other issues detailed above. Additionally, Defendant has met the three-pronged test outlined in *Shelton*, and is, therefore, entitled to take the deposition of Mr. Crump, whether he is considered opposing counsel or not.

WHEREFORE, the Defendant respectfully requests this Honorable Court to reconsider its previous ruling on Mr. Crump's deposition, and grant the ability to take his deposition for these limited purposes.

Respectfully submitted,

By: _____ Bar No. 88865

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail/U.S. Mail this 15th day of March, 2013 to Bernie de la Rionda, Assistant State Attorney and John Guy, Assistant State Attorney, Office of the State Attorney, 220 East Bay Street, Jacksonville, Florida 32202-3429, to Donald R. West, Esquire, 636 West Yale Street, Orlando, Florida 32804, and to Bruce B. Blackwell, Esquire, Post Office Box 1631, Orlando, Florida 32802.

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MARK M. O'MARA, ESQUIRE

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 12-CF-1083-A

STATE OF FLORIDA,

Plaintiff,

vs.

GEORGE ZIMMERMAN,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION REGARDING DEPOSITION OF BENJAMIN CRUMP, ESQUIRE

The Defendant is charged with second-degree murder for the shooting death of Trayvon Martin. Benjamin Crump, an attorney from Tallahassee, FL, was retained by Martin's parents to explore the possibility of filing a lawsuit for civil damages.

The Defendant, in this criminal action, believes that Mr. Crump stepped out of his role as counsel for the family and became a fact witness. As such, the Defendant has requested that Mr. Crump submit to a deposition to answer questions under oath relating to several matters. One of the primary matters is Mr. Crump's telephonic interview with "Witness #8," which was recorded by Mr. Crump. The Defendant believes that the recording of the interview that has been provided may have been altered or had certain portions deleted.

A deposition of Mr. Crump was set for February 5, 2013, but at Mr. Crump's request, this Court temporarily delayed it. In open court during the February 5, 2013 hearing, Mr. Crump submitted a lengthy affidavit providing several sworn details regarding the interview in an effort to provide the information sought by the Defendant while simultaneously maintaining client confidences and his work product relating to the expected civil case.

On February 12, 2013, the Defendant filed his "Motion Regarding Deposition of Benjamin Crump, Esquire," in which he seeks to compel Mr. Crump to sit for a

EXHIBIT A

deposition. Mr. Crump responded to the Defendant's motion on February 20, 2013, asking this Court to deny the motion or issue a protective order. The Court heard argument from counsel on February 22, 2013. No evidence was presented in support or opposition of the motions.

As a preliminary matter, the Defendant argued that Mr. Crump is not opposing counsel because this criminal proceeding is between the Defendant and the State and Mr. Crump does not represent the State. However, "documents are subject to the work product privilege even when litigation is neither pending nor threatened so long as there is a possibility that a suit might ensue." *Barnett Bank of Polk County v. Dottie-G Development Corp.*, 645 So. 2d 573, 574 (Fla. 2d DCA 1994). It is without dispute that Mr. Crump was retained to explore the possibility of seeking civil damages from the Defendant, so he must be deemed to be "opposing counsel" for purposes of this motion. As such, his work product is entitled to the protections of law.

The Defendant argues that even though he is deemed to be opposing counsel for purposes of this motion, such finding does not provide an absolute immunity from providing his litigation materials nor does it preclude this Court from directing him to submit to a deposition. *See Nucci v.* Simmons, 20 So. 3d 391 (Fla. 2d DCA 2009). *Nucci*, however, addressed the specific question of whether an attorney may be deposed when there is a suggestion that he must be disqualified from representing a party due to his extensive role in the underlying facts of the litigation. That situation does not apply to the instant case.

In most legal contexts, to depose opposing counsel, "the party seeking to take the deposition [must show] that (1) no other means exist to obtain the information than to depose opposing counsel, *see, e.g., Fireman's Fund Insurance Co. v. Superior Court*, 140 Cal. Rptr. 677, 679, 72 Cal. App. 3d 786 (1977); (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to preparation of the case." *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir, 1986). Discovery or depositions from an opponent's counsel are improper where these three criteria are not met. *Boughton v. Cotter Corp.*, 65 F.3d 823, 830 (10th Cir. 1995).

This three part test carries a very heavy burden. As recognized in *Upjohn Company v. United States*, 449 U.S. 383, 401-02 (1981),

> Some courts have concluded that *no* showing of necessity can overcome protection of work product which is based on oral statements from witnesses...As Rule 26 and *Hickman* make clear, such work product cannot be disclosed simply on a showing of substantial need and inability to obtain the equivalent without undue hardship. While we are not prepared at this juncture to say that such material is always protected by the work-product rule, we think a far stronger showing of necessity and unavailability by other means than was made...would be necessary to compel disclosure.

In other words, the Defendant in this case must show a compelling need to impose himself into the attorney-client relationship between Mr. Crump and the Martin family.

The main argument in the Defendant's motion focuses upon Mr. Crump's involvement in and recollection of the recorded conversation he had with Witness #8. Any information gained by Mr. Crump in that interview is absolutely privileged. *Horning-Keating v. State*, 777 So. 2d 438, 443 (Fla. 5th DCA 2001). *Horning-Keating* cited to the seminal case on this issue, *Hickman v. Taylor*, 329 U.S. 495 (1947). In *Hickman*, the United States Supreme Court held,

> But as to oral statements made by witnesses to [their attorney], whether presently in the form of his mental impressions or memoranda, we do not believe that any showing of necessity can be made ... 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.

Id. at 512-13. The Fifth District Court of Appeal stated, "[a]s for oral statements taken by attorneys from witnesses...the contents of these interviews are nondisclosable work product," confirming that this portion of *Hickman* means that witness statements taken by an attorney in the course of legal representation are privileged. *Horning-Keating*, 777 So. 2d at 443. Thus, Mr. Crump cannot be compelled to disclose any information addressing his interview with Witness #8 because any such information is his protected work product.

The Defendant also argues that he must be allowed to depose Mr. Crump to prepare for his future deposition of Witness #8. The Defendant has failed to state any reasonable basis for this position. It appears that his position is similar to that of the attorney in *Hickman*. There, counsel "want[ed] the oral statements only to help prepare himself to examine witnesses and to make sure that he has overlooked nothing." *Hickman*, 329 U.S. at 513. The Supreme Court held "[t]hat is insufficient under the circumstances to permit him an exception to the policy underlying the privacy of [the attorney's] professional activities." *Id.* As in *Hickman*, "the essence of what [the Defendant] seeks either has been revealed to him already ... or is readily available to him direct from the witness for the asking." *Id.* at 509.

The Defendant has similarly failed to demonstrate the need to depose Mr. Crump as to any other matters outside of his interview with Witness #8. The need and hardship test set forth in *Hickman* and reiterated in several cases thereafter, must be alleged in the motion to compel. *State Farm Mutual Auto Ins. Co. v. LaForet*, 591 So. 2d 1143, 1144 (Fla. 4th DCA 1992). Defendant's motion fails to allege any facts that support a claim that the information sought is needed for any relevant purpose or the information cannot be obtained from any other source without undue hardship. The required showing of need and undue hardship must include specific explanations and reasons; unsworn assertions of counsel are insufficient. *Horning-Keating*, 777 So. 2d at 444; *Ashemimry v. BaNafa*, 847 So. 2d 603 (Fla. 5th DCA 2003); *N. Broward Hosp. Dist. v. Button*, 593 So. 2d 367 (Fla. 4th DCA 1992). Inasmuch as defendant's motion is devoid of these requirements, the motion is facially insufficient and should be denied.

Having made that determination, and in order to avoid the necessity of further hearings on this matter, the court makes additional findings. Fla. R. Crim. P. 3.220(b) requires the State to list all persons known to have information that may be relevant to any offense charged or any defense thereto. The rule further provides that a defendant may take the deposition of any unlisted witness who has information relevant to the offense charges. The Defendant has failed to make a threshold showing as to his need to depose Mr. Crump or to discover any part of his work product because Mr. Crump has no other information relevant to the offense charged. He was not present during the shooting, he did not know the Martin family or the victim before the shooting, and he

cannot be considered a fact witness in any other way. Moreover, the Defendant has not exhausted less intrusive means of obtaining the discovery. Defendant's argument that he must take Mr. Crump's deposition before he deposes Witness #8 is unavailing

Finally, it is noted that Fla. R. Crim. P. 3.220(b)(1)(B) provides for discovery of written or recorded statements. The clear implication of the rule is that such statements, if not written or recorded, are not discoverable. When written or taped statements are included in discovery, it is the preserved statement itself, and not the personal recollection of the attorney present at the time, that should be used for purposes of impeachment. *Olson v. State*, 705 So. 2d 687, 691 (Fla. 5th DCA 1998). The Defendant's motion should also be denied for these reasons.

ORDERED:

The Defendant is hereby precluded from conducting a deposition of Benjamin Crump, Esquire, in relation to this case.

DONE in chambers at Sanford, Seminole County, Florida this 4th day of March, 2013.

DEBRA S. NELSON, Circuit Judge

Copies furnished this 4 day of March, 2013 to:

Mark M. O'Mara, Esquire
1416 East Concord Street
Orlando, FL 32803

Donald R. West, Esquire
Don West Law Group, P.A.
636 West Yale Street
Orlando, FL 32804

Bernie de la Rionda, Esquire
John Guy, Esquire
Office of the State Attorney
220 East Bay Street
Jacksonville, FL 32202-3429

Bruce B. Blackwell, Esquire
King, Blackwell, Zehnder, and Werrmuth, P.A.
25 East Pine Street
Post Office Box 1631
Orlando, FL 32802

JUDICIAL ASSISTANT

Exhibit B

March 19, 2012 interview by Benjamin Crump of Witness 8

From: Don West
To: Bernie de la Rionda [redacted]
Cc: Mark O"Mara [redacted]
Subject: Discovery issues and Depos for August 30th
Date: Thursday, August 23, 2012 1:45:00 PM

Bernie,
Following up with some discovery issues:
-The CD you gave us at the evidence viewing containing Wit 9's two interviews on March 20, 2012 would not play on any of our machines. I'll bring it with me tomorrow to show you. Please provide us with another copy.

-As we have discussed, we want to have a complete set of unedited witness interviews. For example, we noticed that the Wit 9 call to the SPD was 30 seconds longer in the copy that you gave us at the evidence review than the one you initially gave us in discovery. I can see no reason why we wouldn't be provided with the complete recordings of all the witnesses and I thought you had already agreed to that. Obviously, your office has them since, as I understand it, your staff made the initial edits.

-We would like to have an inventory of the discovery provided to Judge Lester for his *in camera* review and how it got to him if you didn't deliver it to him personally.

-Also, we still don't have color images of the cell phone pictures taken of the back of Zimmerman's head, the flashlight found nearby and of Trayvon Martin laying facedown the night of the shooting. We only have been provided with black and white photocopies. Witness [redacted] took these pictures according to discovery reports and provided them to law enforcement.

-As well, we don't have the color image of Zimmerman's face that Ofc. Wagner took at the scene that was used for identification with neighborhood witnesses. I believe he also took a picture of Mr. Martin's face. We don't' have a color image of that either. We have only been provided with a black and white photo copy. I thought you had previously agreed to provide those as well.

-We don't have the evidence inventory/log from FDLE that you had at the viewing. We need that in order to move forward with the depos of the FDLE personnel.

-We don't have the SIM card information from Trayvon Martin's phone that was downloaded by FDLE analyst Steve Brenton that he talked about at the evidence viewing, nor have I seen any report prepared by him. I'm sure there must be a report outlining what he did and what he couldn't do with the phone.
-I am still unclear about the sketches various witnesses made during their interviews. At one point we gave you a list of those we didn't have. I can't remember where that stands, I don't think you gave us any of them at the evidence review. We need another copy and I apologize if you gave them to us at the evidence review and I've misplaced them. I assume they would be hardcopies and I can't find them.

-Several witnesses have been listed "c/o SAO" . I want you to provide us with their actual

EXHIBIT C

addresses so we can conduct our own investigation. I am not opposed to maintaining their privacy with the public and am not asking you to file a discovery response with their addresses. You can file a sealed pleading or just give them to us and we will keep the information confidential if you want.

-Much of the interview Mr. Crump did with [redacted] is unintelligible. I don't know if the recording was on tape or digital recorder or how it may have been recorded. Do you have an original tape of the interview? If so, please bring it with you so we can listen to it on Friday, perhaps it is better quality than our copy. Do you know if you have the original or if Mr. Crump retained the original recording and gave you a copy?

Please bring these items/information with you on Friday so we can move discovery along.

I wasn't clear from our conversation at the evidence viewing whether or not the Facebook accounts and Twitter accounts of Trayvon Martin and [redacted] have been requested by the state and are pending. I got the impression that the state has not attempted to retrieve that information. Please let me know if you plan to do that if you haven't, I believe it may take search warrant to accomplish.
Also, please advise if you have Trayvon Martin's school records, if so, we would like a copy of them. As well, do you have [redacted]s hospital records that would confirm that she was hospitalized at the time of Trayvon Martin's wake as she told Mr. Crump and you during your interviews?

We got the total station diagram and photos, but don't have the location data captured by the software. Can you provide the raw data used to prepare the report?

Lastly, with regard to Trayvon Martin's phone, there is a reference in the reports that Tracy Martin was asked to provide the password to his son's phone so law enforcement could gain access to its contents and Mr. Martin indicated to law enforcement that he wanted to speak with his attorney first. I can't find a reference in the reports or in your interview with Mr. Martin that that the issue was addressed. Are you aware of what happened with that? We want to examine the contents of the phone and according to the FDLE analyst, it would be a simple thing to do with the password or even with the email account associated with the phone.

We are planning to go forward with depos on, Thursday, August 30th. We plan to depose some SPD officers and SFD Rescue personnel so we shouldn't need your help getting them there at this point. We can work on the logistics on Friday.

Thanks,
Don
I'm around today if you want to follow up with anything by phone.
[redacted] cell

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DONALD R. WEST
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CRIMINAL TRIAL LAWYER

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September 19, 2012

Mr. Bernie de la Rionda
State Attorney's Office
220 East Bay Street
Jacksonville, FL 32202-3429

Re: Zimmerman discovery

Dear Bernie:

I saw my copy of the email you sent to Mark today regarding the next round of discovery and that you are addressing some of the discovery issues we discussed at the meeting on August 24th, 2012. In that regard, since there were several matters up in the air, I want to outline the aspects of the discovery requests I think are waiting for your response and offer a little more detail. About three weeks ago I provided a detailed email to you regarding some discovery issues that we wanted to address with you. We talked about them in some detail at the meeting we had following the last motion hearing on August 24th, but to date there's been no specific response by your office to several of our requests. However, I'm glad to know you are preparing a response now. We feel that many of these requests directly impact the discovery deposition schedule and we think they need to be addressed before we can move forward with the important depositions. I will identify those discovery issues we would like you to address. When we met on August 24th, it seemed there were several items that you agreed to provide and some others that we didn't reach a clear understanding of where you stood. I would like to clear that up with this correspondence and work together to avoid unnecessary litigation.

Specific Discovery Requests:

1. As stated in the previous email, the first CD we received of Witness 9's statements did not include her second interview with FDLE. The CD you gave us to replace it would not play on our machines (as verified by John Guy at our meeting). We have still not received a CD with all of her statements. Please provide us with a replacement CD that contains all of Witness 9's statements.

EXHIBIT D(#10)

2. Regarding the various witnesses' recorded statements, on several occasions we have requested a copy of the un-redacted recorded interviews. I thought you had agreed to provide that information, but to date we have not received those un-redacted recorded interviews. For example, as I pointed out in the email, we received two redacted versions of Witness 9's initial anonymous call to the Sanford Police Department and those vary in length by as much as 30 seconds. We don't know what was redacted from the others without having an un-redacted copy. It's my understanding that your office produced the redacted copies originally so I assume that you have the originals available or certainly could get them easily enough.

3. We have also previously discussed an inventory list of the discovery provided by your office to Judge Lester. Because of the issue regarding the completeness of the CDs containing Witness 9's statements, we would like you to provide us with an inventory of the discovery provided to Judge Lester for his *in camera* review.

4. At the meeting on August 24th, you provided us with color photocopies of the images for which we had previously only received black and white photocopies. Those images included the cell phone pictures taken by [redacted] of the back of Zimmerman's head, the flashlight found at the scene, and Trayvon Martin's body lying face down on the grass. There were also the two images taken by Officer Wagner on his cell phone for identification of the individuals involved in the incident showing the face of Trayvon Martin and showing Zimmerman's face. We also asked you for the digital images of those pictures rather than a color photocopy. We still have not received any of those images in their original digital format.

5. We don't have the evidence inventory/log from FDLE that you had at the evidence viewing last month. We need that in order to move forward with the depos of the FDLE personnel.

6. Likewise, I asked for a report by FDLE analyst Amy Siewert with the color photos she took during her GSR examination (rather than the poor quality black and white photocopies of the images we were provided). I spoke with her and she offered to send me a CD with the images, but called back and said she was directed to send it to you instead and that you would provide it to me. I still haven't received her report with the color images from you.

7. While we have the SIM card information from Trayvon Martin's phone that was downloaded by FDLE analyst Steve Brenton (that he talked about at the evidence viewing), I haven't seen any report prepared by him. Please provide his report outlining what he did and what he couldn't do with the phone. Again, following up from my email,

with regard to Trayvon Martin's phone, there is a reference in the reports that Tracy Martin was asked to provide the password to his son's phone so law enforcement could gain access to its contents and Mr. Martin indicated to law enforcement that he wanted to speak with his attorney first. I can't find a reference in the reports or in your interview with Mr. Martin that that the issue was addressed. Are you aware of what happened with that? We want to examine the contents of the phone, and according to the FDLE analyst, it would be a simple thing to do with the password or even with the email account associated with the phone.

8. I also requested that you provide us with the actual addresses of the several witnesses that have been listed on the discovery response as "c/o SAO". I want you to provide us with their actual addresses so we can conduct our own investigation. I am not opposed to maintaining their privacy with the public and am not asking you to file a discovery response with their addresses. You can file a sealed pleading or just give them to us and we will keep the information confidential.

9. At the meeting on August 24th, we discussed the audio tape of [redacted]'s interview with Benjamin Crump. As I mentioned in the email much of the interview Mr. Crump did with [redacted] is unintelligible and I was hoping to get a better copy if it was recorded on magnetic tape. You indicated that you didn't know if it was an analog or digital recording or how it came to be in your possession. Mr. O'Steen said he thought you got the recording from the FBI who got it from DOJ as part of a request for a federal civil rights investigation. Please provide any reports that exist that explain who had custody of the recording, whether [redacted] was interviewed by any federal agent, and whether any efforts to improve the quality of the recording were made. Further, please provide the names of persons present in the room where the recording was made. There was an ABC News story broadcast that suggested that a reporter for ABC (Matt Gutman) had the recording at some point and part of it was aired. Please provide any information you have on this.

10. At the meeting on August 24th, I asked if you had Trayvon Martin's school records. You said you didn't know if you had them or not, that you couldn't remember if you had requested them. If you have them, please provide us with a copy. We will maintain their confidentiality. Likewise, if you have the hospital records for [redacted] verifying that she was hospitalized at the time of Trayvon Martin's funeral as she told you, we would like a copy of them as well. We will maintain their confidentiality.

11. We previously requested the location data captured by the Total Station system. Please respond whether you will provide the raw data used to prepare the report.

12. At the meeting on August 24th, we discussed the various state witnesses who were interviewed by the media whose interviews were broadcast in whole or in part over the public airwaves. We requested that you provide us with copies of any audio or video recorded interviews you had of the listed witnesses, but we have not received any of them to date. If you have some of these recordings, but claim they are not discoverable, please advise.

13. Likewise, we asked for any video recordings you had of Trayvon Martin that are connected in some way to him watching a fight, refereeing a fight or showed him fighting. You mentioned that you had seen a video connected to him in some way regarding a bicycle. We were previously unaware of anything like that, but later saw a clip taken from his cell phone SIM card that may have been what you were referencing. Please provide any audio recordings or video recordings you have of Trayvon Martin or made by him regardless of the content. Also, in accordance with *Brady v. Maryland*, provide any information you have regarding Trayvon Martin's interest in fighting, his knowledge and skill in boxing or fighting and any information showing his interest in mixed martial arts including Twitter, Facebook, or other social media.

Thank you for your attention to these matters. I know all of us are anxious to move forward with discovery depositions in this case.

Sincerely,

Donald R. West

DRW/lpp

Bernie De La Rio: Okay. I, I'm saying that they did. I just wanna make sure that the record is clear on that. Um, you, ah, obviously found out about what happened to Trayvon, right? And at some point you ended up knowing that he was killed, correct?

Speaker 2: Yeah.

Bernie De La Rio: Were you able to go to the funeral or to the

wake? Speaker 2: I was gonna go, but.

Bernie De La Rio: Okay, what

happened? Speaker 2: I didn't feel good.

Bernie De La Rio: Okay. Did you end up going to the hospital or

somewhere? Speaker 2: Yeah. I had like, um, high blood pressure.

EXHIBIT E

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA VS. GEORGE ZIMMERMAN	Case No.: 2012-CF-001083-A **NOTICE OF FILING AFFIDAVIT OF NON-PARTY BENJAMIN L. CRUMP, ESQ.** **(IN LIEU OF DEPOSITION OR, ALTERNATIVELY, IN SUPPORT OF MOTION FOR PROTECTIVE ORDER)**

Non-party Benjamin L. Crump, Esq., by and through undersigned counsel, hereby gives notice of filing Affidavit of Benjamin L. Crump, Esq. (In Lieu of Deposition or, alternatively, In Support of Motion for Protective Order).

Dated: February 5, 2013.

FILED IN OPEN COURT THIS FEB 5 2013
MARYANNE MORSE
Clerk of Circuit Court
Seminole County, Florida
By: _____
Deputy Clerk

Respectfully submitted,

Bruce Blackwell

Bruce B. Blackwell, Esq.
Florida Bar No.: 0190808
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
25 E. Pine Street
P.O. Box 1631
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Primary Email: bblackwell@kbzwlaw.com
Secondary Email: courtfilings@kbzwlaw.com

Counsel for Non-Party Benjamin L. Crump, Esq.

EXHIBIT F

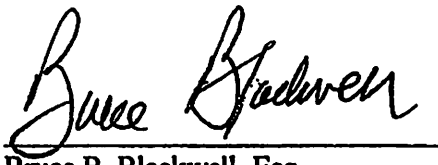
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 5, 2013, a true and correct copy of the foregoing was furnished via hand delivery (in open court) and email (.pdf) to:

Bernie de la Rionda, Esq., Assistant State Attorney
John Guy, Esq., Assistant State Attorney
Office of the State Attorney
220 East Bay Street
Jacksonville, Florida 32202-3429

Mark O'Mara, Esq.
O'Mara Law Group
1416 East Concord Street
Orlando, Florida 32803

Donald R. West, Esq.
636 West Yale Street
Orlando, Florida 32804



Bruce B. Blackwell, Esq.

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA vs. GEORGE ZIMMERMAN	Case No.: 2012-CF-001083-A **AFFIDAVIT OF BENJAMIN L. CRUMP, ESQ.** **(IN LIEU OF DEPOSITION OR, ALTERNATIVELY, IN SUPPORT OF MOTION FOR PROTECTIVE ORDER)**

Before me, the undersigned authority, appeared Benjamin L. Crump, Esq. who, upon being sworn, deposes and states:

BACKGROUND & OVERVIEW

1. My name is Benjamin L. Crump. I am over the age of eighteen, otherwise competent to testify, and have personal knowledge of the facts stated in this affidavit.

2. I have been a member in good standing of The Florida Bar since 1996, and have been engaged in civil litigation and trial practice in the State of Florida for more than seventeen years. I am a principal of the law firm of Parks & Crump, LLC.

3. I am also a member of, among other organizations, the Tallahassee Barrister's Association, the American Bar Association, the National Bar Association, the Federal Bar Association, the William Stafford Inns of Court and the American Board of Trial Advocates.

4. My legal practice is concentrated primarily in federal and state court civil litigation, including, in particular, wrongful death, personal injury and civil rights matters.

5. On February 26, 2012, as I and many others around the world would later came to learn, Defendant George Zimmerman ("Defendant") shot and killed Trayvon Benjamin Martin, an unarmed seventeen-year-old ("Trayvon").

6. On or about February 28, 2012, after local authorities refused to arrest Defendant, my law firm and I were engaged by Trayvon's parents to, *inter alia*, zealously pursue, defend and protect their rights as the next of kin of a homicide victim, as well as any wrongful death and other civil claims that they or Trayvon's estate may have – including, but not limited to, statutory, common law and constitutional claims against Defendant and others arising out of or related to Trayvon's tragic death, access to public records, and the criminal investigation and eventual prosecution of Defendant (collectively, the "Litigation").

7. The broad scope of my engagement in regard to the Litigation has remained the same at all times material to the instant case and, since February 2012, my representation has been continuous and remains ongoing. From the outset through the present, I have gathered factual information and performed legal research from which I have formed – and continue to form – my own legal opinions, conclusions, mental impressions and theories of liability in regard to the Litigation.

8. In preparation of this affidavit, I have considered or reviewed a number of publicly-available filings, documents and other materials associated with this case, including, but not limited to:

a. The Information (docketed 04/11/2012);

b. FLA. STAT. § 782.04 (proscribing second-degree murder), the Florida Supreme Court's decision in *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010) (discussing, in part, the potentially lesser included offense of manslaughter), and FLA. STAT. § 782.07 (proscribing manslaughter);

c. Florida's Standard Jury Instructions for Criminal Cases, 7.1 – Introduction to Homicide, 7.4 – Murder (Second Degree) and 7.7 – Manslaughter;

d. FLA. STAT. §§ 782.02, .03 (limiting the justifiable use of deadly force and circumstances for excusable homicide);

e. Florida's so-called "Stand Your Ground Law," Chapter 2005-27, Laws of Florida, as codified at FLA. STAT. §§ 776.012, .013, .031, .032 [hereinafter, "Florida's Stand Your Ground Law"];

f. Florida's Standard Jury Instructions for Criminal Cases, 3.6(f) – Justifiable Use of Deadly Force (which is currently under review by the Florida Supreme Court's Committee on Standard Jury Instructions in Criminal Cases);

g. The State's Affidavit of Probable Cause (re-docketed 04/17/2012);

h. Defendant's Motion to Compel Discovery (docketed 10/12/2012);

i. In the absence of an available transcript, video of the Court's October 19, 2012 hearing (dated 10/19/2012);

j. The Court's October 19, 2012 Amended Minutes and Order (docketed 10/19/2012);

k. Defendant's Motion to Compel Production of Evidence from Third-Party (docketed 11/30/2012);

l. The State's Response to Defendant's Motion to Compel Production of Evidence from Third-Party (docketed 12/10/2012);

m. Defendant's Reply to the State's Response to Defendant's Motion to Compel Production of Evidence from Third-Party (docketed 12/10/2012);

n. In the absence of an available transcript, video of the Court's December 11, 2012 hearing (dated 12/11/2012);

o. The Court's December 11, 2012 Minutes and Order (docketed 12/11/2012);

p. A copy of the FDLE Property Receipt Form provided by the State to the Defense (exchanged in open court 12/11/2012);

q. The State's 11th Supplemental Discovery (docketed 12/13/2012);

r. Defendant's Motion for Subpoena Duces Tecum to American Broadcasting Companies, Inc. (ABC) (docketed 01/18/2013);

s. Defendant's Motion to Continue (docketed 01/30/2013);

t. The operating instructions and marketing specifications for the Sony model ICD-BX112 digital voice recorder, as posted and made available on the website operated by Sony Electronics, Inc.; and

u. Copies of audio recordings within the possession and control of the Defense, as posted and made available on the website operated by Mark M. O'Mara, P.A. ("Defendant's Redacted and Converted Copies of the Recording").

INITIAL DEVELOPMENTS & DISCOVERY OF WITNESS 8

9. In the weeks after Defendant's admitted shooting and killing of Trayvon, the Sanford Police Department (SPD) informed me and members of the public that, despite his admitted act of homicide, Defendant could not be arrested due to his claim of self-defense and Florida's Stand Your Ground Law.[1]

10. On March 8, 2012, in particular, Bill Lee, Jr. – the former Chief of SPD – informed me and readers of the Orlando Sentinel that, despite being able to hear the struggle and fatal gunshot that killed Trayvon on a recorded 911 call, there supposedly was evidence corroborating Defendant's claim of self-defense. Chief Lee and SPD, however, repeatedly refused to release that recording or any other calls – including a non-emergency call placed by Defendant – that might have cast doubt on Defendant's self-defense claim or otherwise been potentially relevant to the Litigation.

11. On March 9, 2012, I brought suit on behalf my clients, seeking injunctive and other relief requiring Chief Lee to release the recording of Defendant's call and other public records relating to Defendant's shooting of Trayvon. *See Martin v. Lee*, No. 2012-CA-001276 (Fla. 18th Cir. Ct. 2012). In the meantime, however, Chief Lee and SPD still refused to arrest

[1] Whether constitutionally or otherwise, Florida's Stand Your Ground Law ostensibly presumes that an individual "who is attacked" is immune – in certain circumstances – from not only criminal prosecution but also civil liability. *See, e.g.*, FLA. STAT. §§ 776.013(3), 776.032(1); *see also* FLA. STAT. § 776.032(3) (providing further that if a court – not a jury – finds immunity, then the defendant shall be awarded "attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action. . . ."). Accordingly, I was immediately interested in gathering any factual information that might bear upon Defendant's self-defense claim and its tendency to affect the Litigation and the rights of my clients.

Defendant, claiming in a March 12, 2012 press conference that they still did not have "anything to dispute his claim of self-defense."

12. Less than a week after bringing suit, however, the recordings of Defendant's call to SPD and certain 911 calls were finally made available to me and my clients and released to the public.

13. Defendant's recorded call to SPD suggested that he not only pursued Trayvon but, consistent with what the State would later include in its Affidavit of Probable Cause, that Defendant first "profiled" Trayvon – as being, at a minimum, one of those "assholes" who "always get away" (if not also one of those "fucking punks") – before killing him.

14. In yet another recorded call, a male voice – later identified by my clients as belonging to Trayvon – could be heard repeatedly screaming out for help before being silenced by the loud report of a gunshot, casting significant doubt in my mind, at least, as to the reasonableness of SPD's claim that there was evidence corroborating Defendant's self-defense claim (much less that there was not "anything" with which to dispute it).

15. Notwithstanding this significance evidence, SPD still refused to arrest Defendant, having informed me and others that it had effectively concluded its investigation and simply turned the case over to former State Attorney Norman Wolfinger.

16. Faced with the prospect that the admitted killer of my clients' son might never be arrested – much less subject to a criminal jury trial – my clients and I redoubled our efforts to gather any additional information that we could in anticipation of a wrongful death suit and the rest of the Litigation, including, in particular, any evidence that might cast further doubt on Defendant's claim of self-defense and the putative presumptions provided in Florida's Stand Your Ground Law.

17. On March 18, 2012, our continued vigilance bore fruit and I learned for the first time that, based on phone records only then recently made available, Trayvon was having a conversation on his cell phone – with, as I would later learn, the young lady whom the State now refers to as "Witness 8" – in the crucial minutes before Trayvon succumbed to the fatal gunshot wound to his chest that Defendant wrought with a Kel-Tec CNC Industries, Inc. nine-millimeter concealable handgun.

TELEPHONIC INTERVIEW & RECORDING OF WITNESS 8

18. On March 19, 2012, I telephonically interviewed Witness 8. Inclusive of breaks, silences and other pauses – during which neither I nor Witness 8 were speaking and there were no questions pending – my interview of Witness 8 lasted less than approximately thirty (30) minutes (the "Interview"). At the time of the Interview, I did not know the address of Witness 8's residence or her surname.

19. Before conducting the Interview, I reached out to Witness 8 by phone and made a preliminary inquiry, during which I:

a. Introduced myself as legal counsel for Trayvon's parents and his estate;

b. Briefly explained the reason for my call – that, according to phone records available to my clients, it appeared as though Witness 8 might have some knowledge bearing on the Litigation;

c. Inquired if Witness 8 had legal counsel and learned that she did not;

d. Inquired if Witness 8 had spoken to any investigators or other individuals affiliated with law enforcement, learned that she had not and, after encouraging Witness 8 to come forward to the authorities, further learned that Witness 8 and her family were fearful of coming forward and wanted Witness 8's identity kept private;

e. Explained that, as counsel for Trayvon's parents and his estate, I was not acting as a lawyer for either the State or Defendant in any criminal prosecution that could eventually be brought and that, while Witness 8 could have her own lawyer if she or her family felt the need for one, I

could not act as Witness 8's lawyer and was not able to give her any legal advice;

f. Determined that, while Witness 8 was willing to speak with me further, neither she nor her family would permit me to do so in person and wanted the interview to be conducted telephonically;

g. Briefly confirmed that, consistent with the phone records recently made available to my clients, Witness 8 had, in fact, been speaking with Trayvon for much of the day on February 26, 2012 and – without eliciting or then learning the substance of anything that Witness 8 might have heard while speaking with Trayvon – further confirmed that Witness 8 had been speaking with Trayvon in the minutes leading up to his death and that she appeared to be one of the last persons to speak with Trayvon while he was still alive;

h. Briefly determined that Witness 8 had been close with Trayvon and that she had been upset upon learning of his death (and, in fact, had been unable to attend Trayvon's wake because she had to go to the hospital);

i. Instructed Witness 8 that, until we actually started the Interview in earnest, I did not want her to reveal to me, *inter alia*, the substance of anything she might have heard during her conversations with Trayvon on February 26, 2012 and that, whatever she knew, I needed her to provide a complete and truthful account during the Interview;

j. Explained that, while I would be asking the questions, Trayvon's parents, other family members and two individuals affiliated with the media wanted to be present with me during the Interview and that I wanted the permission of Witness 8 and her family to interview her in this manner (which permission was given);

k. Explained that, as an officer of the court, I could potentially subpoena and depose Witness 8 at some point in the future and that Witness 8 might also be deposed or called as a witness in connection with any criminal prosecution that might potentially be brought against Defendant;

l. Emphasized that, while the Interview would not be the equivalent of a deposition that was given under oath and in the presence of opposing counsel, I wanted Witness 8 to tell the whole truth and that, regardless of whether her statements might potentially help or hurt Trayvon's parents in regard to the Litigation or any criminal prosecution that might potentially be brought against Defendant, I wanted Witness 8 to simply tell the truth;

m. Explained that I wanted to record the Interview but that, before I could do so, I needed the consent of Witness 8 and her family (which consent was given);

n. Explained that, if I asked Witness 8 any question during the Interview which she did not understand or to which she did not know the answer, I did not want her to guess or speculate and instructed her to simply state that she did not understand my question or did not know the answer; and

o. Again emphasized that I wanted Witness 8 to simply tell the truth throughout the Interview.

(collectively, the "Preliminary Inquiry").

20. After concluding my Preliminary Inquiry, I conducted the Interview. I did so from within an enclosed room in a residence located in South Florida. Present with me in the room during the Interview were Trayvon's parents and certain other family members, as well as Matt Gutman – a news correspondent with American Broadcasting Companies, Inc. (ABC) – and Mr. Gutman's assistant.[2]

21. I have no knowledge of who, if anyone, may have been present with Witness 8 at her location during the Interview and, apart from the individuals I have already identified pursuant to this Court's October 19, 2012 Order, I am not aware of anyone else who may have been in a position to hear, overhear or intercept any portion of the Interview.

22. With the consent of Witness 8 and her parents, I made a contemporaneous audio recording of the Interview (the "Recording"), which I made using my Sony model ICD-BX112 digital voice recorder, a monaural recording device with a built-in unidirectional microphone (the "Recorder").[3]

---

[2] In accordance with this Court's October 19, 2012 Order, I timely disclosed the identities of all individuals present with me during the Interview.

[3] While the Recorder is capable of using an external microphone, including some external electret microphones that can be used to record telephone calls, the Recorder's built-in microphone was used; I did not have access to a compatible external microphone, much less a compatible electret microphone, before or during the Interview.

23. While the Recorder has a 'high/low' microphone sensitivity setting, a noise-cut function and four different recording modes (ranging from 'super high-quality' to 'long-play'), I do not recall which settings I used to make the Recording. To the best of my knowledge, however, I employed the settings that I understood – rightly or wrongly – would result in the best quality recording.[4]

24. While I believe Mr. Gutman and his assistant also may have had a recording device of their own present with them in the room during some or all of the Interview, I have no knowledge as to whether that device was ever successfully used to record any portion of the Interview.[5]

25. Based on my use and understanding of the Recorder and its limitations, there are no means by which one can patch or otherwise connect the Recorder directly into a telephonic device – whether a cellular or landline phone – so as to record both sides of a telephonic conversation. Consistent, then, with the understanding reached during my Preliminary Inquiry, I made the Recording of Witness 8 by placing her on 'speakerphone' and positioning the Recorder near the speaker from which I and those present with me in the room could hear Witness 8's voice during the Interview.

[4] Pursuant to this Court's December 11, 2012 Order, I understand that the Defense has been given the opportunity to inspect the Recorder at the offices of the Florida Department of Law Enforcement (FDLE). Upon such an inspection, the Defense should easily be able to determine the settings used to make the Recording, as well as certain other metadata that can be displayed on the Recorder.

[5] I did not provide a copy of the Recording to Mr. Gutman, his assistant or anyone else affiliated with ABC; nor did I otherwise make the Recorder available to them so that they could create a copy.

26. While the Recorder has a date and time setting – which, if correctly set, will display the date and time that a recording was made – I do not recall whether the date and time had been correctly set in the Recorder before I made the Recording.[6]

27. The Recorder is a digital recording device with built-in, non-removable flash memory; recordings made with the Recorder are not stored on any sort of tape or other removable media (such as a secure digital or SD card) but are instead saved directly to the Recorder's memory as files – or what the publicly-available operating instructions of the Recorder's manufacturer refer to as "messages" – within either an "A," "B," "C," "D" or "E" folder of the Recorder.[7]

28. To the best of my knowledge and present recollection, the Recording was comprised of and saved as multiple messages within a single folder on the Recorder (while not certain, I believe all messages comprising the Recording were saved to the "A" folder).[8] Multiple messages were created for a number of reasons, including:

a. My need to take breaks between formulating questions, listening to and digesting Witness 8's answers, and my desire to stop the recorder, sometimes place Witness 8 on hold and start with a fresh message before taking Witness 8 off hold and then otherwise resuming;

b. Audio problems associated with the cell phones used to call Witness 8 and the need to place her on hold (in an effort to improve the quality of the Recording, I was compelled to use multiple cell phones during the course of the Interview in an effort to determine which phone had the best

[6] Again, Defense counsel could determine the existence of such date-time and other metadata upon a simple inspection of the Recorder at FDLE.

[7] Based on my use and understanding of the Recorder and its limitations, there are no ready means by which one can transfer or copy the files saved within the Recorder to another device (such as a computer). To transfer a recording saved on the Recorder, one must actually play the recording on the Recorder – either through the Recorder's built-in speaker or through its headphone output jack – and save the recording to the other device – either by using a microphone connected to the other device or by connecting an audio cable from the Recorder's headphone output jack to a line-in jack on the other device.

[8] Again, Defense counsel should be able to determine in which folder the files were stored upon a simple inspection of the Recorder at FDLE.

'speakerphone' and, as Defendant's Redacted and Converted Copies of the Recording make clear, I decided at one point to call Witness 8 back on a particular cell phone that appeared to have the best 'speakerphone');

c. The need to verify that the Recorder was functioning properly and actually recording Witness 8's statements (which, upon switching phones or re-instructing Witness 8 to speak more loudly, necessitated pauses during which I would play and listen to portions of the Recording); and

d. My desire to transition into different subject matter areas and, for ease of reference, to ensure that those areas would be kept in separate and more easily locatable messages.

29. While it is possible to 'divide' a message that has been saved on the Recorder into multiple messages without any loss of content, I do not recall ever using the Recorder's 'divide' function in connection with the Recording (either during or at any time after the Interview). Furthermore, based on my use and understanding of the Recorder and its limitations, it is impossible to erase only part of a message that has been saved on the Recorder; one must erase an entire message (to erase only a part, therefore, one must first divide a message into two separate messages and then erase the undesired message).

30. At no time did I – or, for that matter, anyone else to my knowledge – ever use the Recorder's erase function in connection with the Recording or, more generally, otherwise delete, remove, edit, alter or spoliate any portion of the Recording. For better or worse, the Recording on the Recorder is the true and correct original and unedited recording that I made of the Interview.

31. To the best of my knowledge, while the Recording does not include the Preliminary Inquiry, it contains every substantive statement that Witness 8 ever made to me in regard to her conversations with Trayvon on February 26, 2012, what she heard or might have overheard during the course of those conversations, and what she perceived or might have been in a position to perceive as a result of those conversations, as well as every other substantive

statement that Witness 8 ever made to me that could have a tendency to prove or disprove a material fact potentially at issue in the Litigation or the instant case (including, but not limited to, those relating to the offense with which Defendant has been charged, the potentially lesser included offense of manslaughter, Defendant's claim of self-defense, justifiable homicide, excusable homicide, Florida's Stand Your Ground Law and a wrongful death claim). To the extent Witness 8 may have made any other statements – whether or not arguably relevant, legally discoverable or otherwise – that are not contained within the Recording but that I was potentially in a position to hear or understand during the Interview, apart from what was said during the Preliminary Inquiry, I have no recollection as to the substance or content of any such statements.

32. I am aware of Defendant's contention that one or more call records apparently show that the Interview lasted for approximately 26 minutes, but that the Recording is only approximately 14 minutes long,[9] suggesting that some 12 minutes of the Interview were not included in the Recording. As set forth, *supra*, Defendant's supposition is mistaken. In addition to the Preliminary Inquiry (which was not recorded), the Recording itself makes plain that due to my need for breaks and to sometimes place Witness 8 on hold, audio problems and other issues, much of the call(s) comprising the Interview were filled with silence that I deliberately did not record.

33. I have not taken another interview of, re-interviewed or spoken with Witness 8 at any time after the Interview.

CIRCUMSPECT DISCLOSURE & CHAIN OF CUSTODY

34. The decision to conduct the Interview in the manner that I did was made only after careful consideration and consultation with my clients – including, in particular, but not

[9] In point of fact, one of Defendant's own Redacted and Converted Copies of the Recording – comprised of FDLE "Part 1" through "Part 7" – is actually 14 minutes and 57 seconds long.

limited to, the risk of potentially making a limited waiver of what, in my opinion, was privileged and otherwise protected confidential material. At the time, however – specifically, after SPD indicated that it had effectively concluded its criminal investigation and would not arrest Defendant – my clients and I determined that the potential risk of such a limited waiver was clearly outweighed by the benefits (including, *inter alia*, giving the State some pause before possibly abandoning a criminal prosecution or deciding to put Defendant's fate to a grand jury that would proceed in secret, and providing the Department of Justice and/or its Federal Bureau of Investigation (FBI) with some additional evidence in connection with a potential federal investigation).

35. Consistent with that determination, on March 20, 2012, I gave a press conference at which I played an approximately 1 minute and 3 second portion of the Recording. Based on my review, that portion of the Recording corresponds precisely with both copies of the Recording that were provided to the Defense.[10]

36. As I assured the public during that press conference, in late March 2012, I brought the Recorder to the Department of Justice's FBI field office in Tallahassee, Florida. Before doing so, to the best of my knowledge the Recorder remained in my custody and control.

37. Upon arriving at the FBI's field office, I verified that the Recording had not been changed or altered in any way. I then signed a receipt – which, so far as I know, may still be in the possession of the FBI – and provided the Recorder to an agent who then proceeded to take it into a glass-enclosed room filled with what appeared to me, at least, to be rather sophisticated recording equipment. I then watched and heard the agent examine the Recorder, play some

[10] *Compare* WFTV.COM, TRAYVON MARTIN'S FAMILY ATTORNEY BENJAMIN CRUMP PRESS CONFERENCE (Part 2), http://www.wftv.com/videos/news/lawyer-presser-pt-2-in-trayvon-martin-case/vGcFM/ (last visited Feb. 4, 2013) at 00:09 to 01:12, *with* Defendant's Redacted and Converted Copies of the Recording – 05/14/2012 FBI copy and FDLE "Part 3" – at 05:15 to 06:18 and 0:00 to 1:03, respectively.

samples of the Recording and, upon performing what appeared to be some sort of initial analysis, position the Recorder next to an external microphone and play the entire Recording through the Recorder's built-in speaker. After the Recording finished playing, the agent informed me that he had copied the entire Recording; he, in fact, then played the copy that he had created and asked me to verify its accuracy. To the best of my knowledge and belief, the agent created a true and correct copy of the original Recording.[11]

38. After I verified the accuracy of the FBI's copy of the Recording, the agent returned the Recorder to me. For approximately the next six months, the Recorder remained in my custody and control (specifically, in my personal office).

39. In accordance with the Court's Order, on or about December 10, 2012, I personally delivered the Recorder to FDLE (and more specifically, to the best of my knowledge, FDLE Special Agent John McDonald – whose name appears on the FDLE Property Receipt Form that the State provided to the Defense in open court on December 11, 2012 – and who personally came to my office to take custody of the Recorder). Before providing the Recorder to FDLE, I verified that the Recording on the Recorder had not been altered or changed in any way. To the best of my knowledge, the Recorder I provided to FDLE contained the true and correct original Recording.

40. Since providing the Recorder to FDLE, the Recorder has no longer been in my possession.

41. To the best of my knowledge and belief, absent redactions and potential loss of fidelity from being converted and re-converted into MP3 files, Defendant's Redacted and

[11] While I am aware of the Defense's apparent disappointment with the quality of the FBI's copy of the Recording, reasonable persons, in my opinion, might disagree with that criticism. *Compare, e.g.*, Defendant's Redacted and Converted Copies of the Recording – 05/14/2012 FBI copy at 05:15 to 06:18 *with id.* – FDLE "Part 3" at 0:00 to 1:03.

Converted Copies of the Recording appear to be true and correct copies of the original Recording.

FURTHER AFFIANT SAYETH NAUGHT.

BENJAMIN L. CRUMP

STATE OF FLORIDA
COUNTY OF SEMINOLE

SWORN TO AND SUBSCRIBED before me this 5th day of February, 2013, by Benjamin L. Crump, who duly acknowledged to me that he executed the above instrument. He is personally known to me or who has produced FL DL C651 072 69 370-0 as identification and did take an oath.

Signature

Cindy Chorpening
(Print Name)

Notary Public
My Commission Expires:
My Commission No.:

CINDY CHORPENING
MY COMMISSION # DD 951659
EXPIRES: February 25, 2014
Bonded Thru Notary Public Underwriters

Exhibit G

ABC audio recording of Witness 8 interview

Exhibit H

Benjamin Crump announced that he conducted interview of Witness 8 and played portions of the interview

Exhibit I

December 2012 *In Session* recording

PC PARKS CRUMP
ATTORNEYS AT LAW
A LIMITED LIABILITY COMPANY

April 2, 2012

Roy Austin, Deputy Assistant Attorney General
U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Austin:

Pursuant to our previous meeting regarding the United States Department of Justice's review of the shooting death of unarmed teenager, Trayvon Martin, at the hands of armed gunman, George Zimmerman, you informed us that you and United States Attorney Bobby O'Neill would be leading the investigation on behalf of the department. You told us that the department planned to review the tragic circumstances of the shooting incident itself, in addition to the Sanford Police Department's investigation and conduct. During our meeting you instructed the family and their attorneys to contact you if we became aware of pertinent information related to this matter.

Since our last meeting we have obtained new information which is of paramount importance in considering whether or not a fair and impartial investigation was conducted by the Sanford Police Department. In particular, we learned that on the night of February 26, 2012, within hours of the shooting in which Trayvon Martin was killed, Sanford Chief of Police Bill Lee met with State Attorney Norm Wolfinger. We also believe that family members of shooter George Zimmerman were present at the police department. It was further revealed that State Attorney Norm Wolfinger and Chief Bill Lee overruled the recommendation of the lead homicide investigator, Chris Serino, who recommended that George Michael Zimmerman be arrested for manslaughter for killing Trayvon Benjamin Martin. More poignantly, Mr. Serino filed an affidavit stating that he did not find Zimmerman's statements credible in light of the circumstances and facts surrounding the shooting. Therefore, we respectfully request that the United States Department of Justice investigate the circumstances surrounding this meeting between Chief Bill Lee and State Attorney Norm Wolfinger, in which they disregarded the lead homicide investigator's recommendation to arrest George Zimmerman for manslaughter.

We look forward to your thorough and comprehensive review of the suspicious circumstances surrounding this meeting, and the decision to disregard the recommendation of the lead homicide investigator, Mr. Serino, who felt compelled to prepare an affidavit memorializing his recommendation to arrest the shooter George Zimmerman.

Respectfully,

Benjamin Crump, Esquire
Jasmine Rand, Esquire
For the Firm

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v 850 222 3333
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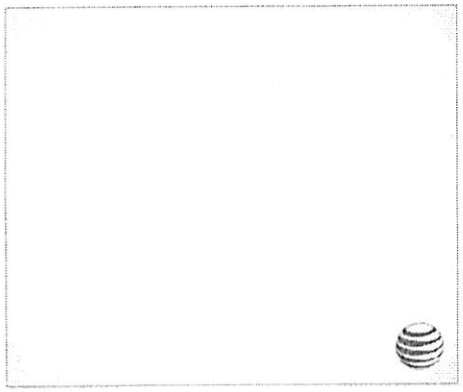
w ParksCrump.com

EXHIBIT K

Cc: Eric Holder, United States Attorney General
Thomas Perez, United States Assistant Attorney General, Civil Rights Division



Trayvon Martin shooting: Screams, shots heard on 911 call

3:15 p.m. EST, March 17, 2012 |
By Rene Stutzman and Bianca Prieto, Orlando Sentinel

For the first time Friday, police told the Sentinel some of the details of their investigation.

Zimmerman told police he got out of his SUV to follow Trayvon on foot, and the 17-year-old came toward him. The two got into a fight, and Zimmerman wound up on the ground, he told police. Trayvon hit him in the face, and Zimmerman yelled for help.

Serino said Trayvon's father, Tracy Martin, listened to all of the 911 calls in the case before the entire family convened at City Hall to listen Friday night. When asked if the voice on one, a male calling for help was his son, told Serino no.

Police lied Friday, Crump said, when they said Tracy Martin said the voice crying for help was not his son. What Tracy Martin told police, Crump said, was that "he couldn't tell, that it was too distorted."

The audio has since been cleaned up, and now Tracy Martin has no doubt but that the voice is his son, Crump said.

Zimmerman told police that Trayvon was the aggressor. Police have found no credible evidence, Serino said, to contradict that.

"Everything we have is adding up to what he says," said Serino.

Lee said he has no qualms about the U.S. Department of Justice getting involved. He's been in touch with that office for several days, trying to set up a meeting, he said.

EXHIBIT L

"If the DOJ wants to come in and look at what we've done, we are an open book," said Lee.

At the family's press conference Friday, Mary Cutcher, who lives in a townhome near where Trayvon was shot, described what she heard the night of the shooting. She said she heard what sounded like a child crying and then a gunshot. When Cutcher went outside, she said she saw Zimmerman crouched over the boy's body. Trayvon, who was shot once in the chest, was face down, Cutcher said.

"I thought it was common sense that [Zimmerman] would be arrested," Cutcher said. "This was not self-defense."

On Thursday the police department said witness Mary Cutcher's statement during a TV interview was "inconsistent" with what she told investigators.

bprieto@tribune.com or 407-420-5620, rstutzman@tribune.com or 407-650-6394

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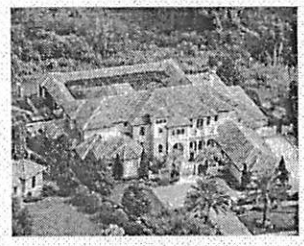

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Exhibit M

Video of Benjamin Crump regarding Tracy Martin listening to 911 call