

**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.

**DEFENDANT'S MOTION FOR SANCTIONS AGAINST STATE
ATTORNEY'S OFFICE FOR DISCOVERY VIOLATIONS**

COMES NOW the Defendant, GEORGE ZIMMERMAN, by and through his undersigned counsel, and moves this Honorable Court to issue sanctions against the State for various discovery violations, and as grounds therefore states as follows:

1. That a witness known as Witness 8 has been identified by the State Attorney's Office as a witness having significant information regarding this case.
2. Witness 8 has been identified as the witness who was on the phone with Trayvon Martin leading up to the altercation with Mr. Zimmerman, and is in a position to have significant testimony and evidence concerning the minutes leading up to the altercation.
3. It was disclosed by the State that this witness was interviewed by Benjamin Crump on or about March 19, 2012, and interviewed by Mr. de la Rionda in a sworn interview on April 2, 2012. During the interview with Mr. Crump, Witness 8 stated that she was a juvenile, and that she did not go to the wake and funeral of Trayvon Martin because her mother had taken her to the hospital where she stayed overnight. In the partially recorded conversation between

Mr. Crump and Witness 8 on March 19, 2012, Witness 8 stated to Mr. Crump, in relevant part, as follows:

BEN CRUMP: And why couldn't you go to his wake?

WITNESS 8: I was just sick... that day.

BEN CRUMP: And what happened? Where did you go?

WITNESS 8: I went on Friday um Friday I was just sick so I just stayed home and then my mama came and she took... around 2 something... hospital the next day.

BEN CRUMP: So you had to spend the night in the hospital?

WITNESS 8: Yes.

BEN CRUMP: And so this made you so sick that you had to get medical assistance?

WITNESS 8: Yes. ... I was the last person talking to him and I fell...

BEN CRUMP: And that's when you realized that the day of his wake that you were the last person talking to him and it just made you physically sick?

WITNESS 8: Yeah.

BEN CRUMP: Okay.

Benjamin Crump Interview of Witness 8, Part A7, 00:32 (attached hereto as Exhibit "A").

4. In addition, in the April 2, 2012 sworn interview conducted by Mr. de la Rionda, in relevant part, the following occurred:

MR. DE LA RIONDA: Okay what happened?

WITNESS 8: I didn't feel good.

MR. DE LA RIONDA: Okay did you end up going to the hospital or somewhere?

WITNESS 8: Yeah. I had like, um, high blood pressure.

See April 2, 2012 Interview with Witness 8 (attached hereto as Exhibit "B").

5. Finally, on August 2, 2012, Witness 8 was flown to Jacksonville¹ for yet another interview by Mr. de la Rionda. According to the deposition testimony of Witness 8, this interview (which was not recorded and it is unknown whether or not it was sworn) was the interview when Witness 8 told Mr. de la Rionda that she had in fact not gone to the hospital and lied about it to him, and to Mr. Martin's family.

6. It is interesting to note that Mr. Crump has also contended in various public appearances that Witness 8 was a juvenile, suggesting that she should, therefore, be entitled to even greater protection. The State Attorney's Office, particularly Mr. de la Rionda, never disavowed, or corrected Mr. Crump's statements that Witness 8 was a juvenile, at least up until the time that an offhand reference questioning whether she was a juvenile was made by Mr. de la Rionda at a hearing scheduled before this Court on October 19th 2012.² At that hearing, based upon the offhand, confusing reference of Mr. de la Rionda, defense counsel inquired, both on record and after that hearing, as to the meaning of Mr. de la Rionda's statement regarding whether or not Witness 8 was a juvenile. That question was not answered.³

7. Witness 8's deposition was taken on March 13, 2013. During that deposition, Witness 8 testified under oath that she had advised Mr. de la Rionda in the above referenced August interview that she was an adult, and had not, in fact, gone to the hospital; that she had

¹ See FDLE Investigative Report #58 (attached hereto as Exhibit "C").

² MR. DE LA RIONDA: I know who the person is, and I've cited the person. But we're very far afield here, speculating, with all due respect to Mr. O'Mara, as to who the person is. He knows the name, because I've disclosed the name. But there's been an indication here she's a juvenile. Have they proven that?(emphasis added) October 19, 2012 Hearing before this Court at 37:12 (attached hereto as Exhibit "D").

³ It became apparent that Mr. de la Rionda knew that Witness 8 was an 18 year old adult in April of 2012 when he interviewed Witness 8. However, the State redacted that information from the Defense when it provided the witness interview, and did not release that information to the Defense until months later.

lied about going to the hospital when she advised Mr. Crump of that statement, and that she had also lied to Mr. de la Rionda when she told him in the April 2, 2012 sworn interview that she had gone to the hospital. The reason Witness 8 gave for lying to Mr. Crump was that Trayvon Martin's mother, Sybrina Fulton, was present during the interview. Similarly, Witness 8 stated that she told Mr. de la Rionda the same lie because during Mr. de la Rionda's sworn interview of Witness 8, for unknown reasons, Ms. Sybrina Fulton was sitting next to her, and Witness 8 similarly felt the need to deceive as to the reason for not going to the wake or funeral.

8. That defense counsel made initial inquiry in this regard by email to the State, attached hereto as Exhibit "E", requesting information regarding those hospital records in order to save time and resources. No response was forthcoming.

9. After receiving no response to the request in the email, defense counsel followed up with a letter, attached hereto as Exhibit "F", requesting that information again. Similarly, no response was forthcoming.

10. In addition, undersigned counsel avers that several conversations occurred between undersigned counsel and Mr. de la Rionda or Mr. Guy on behalf of the State Attorney's Office, where the issue of hospital records documenting Witness 8's hospitalization were discussed and requested. No response was forthcoming.

11. Since these letters and conversations proved to be of no avail, on or about February 21, 2013 undersigned counsel filed a motion for issuance of a Subpoena Duces Tecum to Witness 8 to accomplish receipt of these medical records. To the motion, no response was forthcoming.

12. This is significant because Mr. de la Rionda knew this information well before even the first email referenced above as Exhibit "E" was sent, and before the second

correspondence listed above as Exhibit “F”, yet continually failed to inform undersigned counsel. It was in that context that the State failed to inform undersigned counsel of this significant and exculpatory information until such time as the evening before the Subpoena Duces Tecum motion was to be heard by this Court.

13. It was not until approximately 7:00 p.m. on March 4th, the evening before the hearing that the undersigned counsel was contacted by Mr. Guy who advised that, in fact, Witness 8 was not truthful about her hospital stay, and had lied to Mr. Crump and Sybrina Fulton. It is also now known that Witness 8 lied to Mr. de la Rionda during his April 2, 2012 interview of her, which, for unknown reasons, occurred under the unique circumstances of being conducted in the presence of other state witnesses such as Sybrina Fulton. Based upon this evidence, it is apparent that the State Attorney’s Office was fully aware that Witness 8 lied about the relevant and significant parts of her testimony, and the State knew this no later than August 2, 2012.⁴ In addition, the decision to conduct the interview in the living room of Ms. Fulton’s home, and to allow any other state witness, particularly the decedent’s mother, to be sitting next to the witness during the interview, when Mr. De la Rionda had to know the potential influence that could occur, places the legitimacy and veracity of the entire statement at issue.

14. The decision by the State Attorney's Office to fail to disclose this information was willful, voluntary, and caused the undersigned counsel additional time, frustration and effort to attempt to find out this information through other means such as additional correspondence, additional conversations, additional investigation, delay in scheduling the deposition of Witness 8, and finally the filing of a Motion for a Subpoena Duces Tecum.

⁴ When asked on March 5th how long the State knew Witness 8 had not gone to the hospital, the State responded, “Frankly I just don’t think that’s necessary. They can depose the witness and ask her...”

15. The evidence of Witness 8's deceit in this regard is significant exculpatory evidence as it goes to her credibility concerning her other statements and as such the State Attorney's Office has an affirmative obligation under *Brady v. Maryland*, 373 U.S. 83 (1963) to disclose. See *Defendant's Memorandum of Law in Support of its Position Regarding the Prosecutor's Obligation to Disclose Information* previously filed on October 25, 2012 (attached hereto as Exhibit "F").

16. As sanctions for this discovery violation, pursuant to Fla. R. Crim. P. 3.220 (n)(2) the Defense requests that this Honorable Court enter an order requiring the State Attorney's office to reimburse the Defense for all the time expended to seek out this information otherwise readily available to the State Attorney's Office, and having to do so through additional letters, conversations, inquiries, investigations, the filing of the motion for Subpoena Duces Tecum, and other investigative efforts. An Affidavit of Attorney Fees will be presented at hearing.

17. As further sanctions for this discovery violation pursuant to Fla. R. Crim. P. 3.220(n) the Defense requests that this Court fine the Office of the State Attorney for this willful and flagrant violation of discovery for their causing unnecessary delay in proper preparation by the defense for this case, and admonish the State for failure to timely comply with its obligation under *Brady v. Maryland*, and order strict and prompt compliance with discovery rules in the future.

18. As further basis for sanctions regarding this event, reference is made that this failure to disclose this exculpatory information comes on the heels of other such similar discovery violations by the State, as addressed by previous motions. A sampling follows:

A. The State's continued failure to forward digital images of the injuries to Mr. Zimmerman's face, offering only a black and white photocopy, then an image generated by a color copier, then finally, only after intervention by this Court, the requested digital images.

B. The State's misrepresentation to this Court and to defense counsel that it had provided every report it was aware of from FDLE, DOJ, and the FBI.

19. As to the first point, defense counsel would draw the Court's attention to the Defense Motion to Compel Discovery filed October 12, 2012 (attached hereto as Exhibit "H"), and also to Exhibit "E", and "F" #4, where defense counsel repeatedly requested these images from the State.

20. As to the second point, the State, through Mr. Guy, advised this Court at the hearing on October 26, 2012 in response to undersigned counsel's request for additional discovery regarding reports from FDLE, DOJ, and FBI (*See Demand for Specific Discovery* filed October 11, 2012, attached hereto as Exhibit "I") that the "State has supplied every report that it is aware of from FDLE, Department of Justice, and the Federal Bureau of Investigations." *See Partial Transcript from October 26, 2012 Hearing* at 7 (attached hereto as Exhibit "J").

MR. O'MARA: I can present you evidence to support my position that I want everything from FDLE pursuant to your court order, because we know from the depositions we've taken that we haven't gotten it all. So I want something very specific so that I know FDLE is giving us everything attached to the Zimmerman case.

THE COURT: Okay... Mr. Guy, if you would like to respond.

MR. GUY: What they've asked for in the specific demand is every conceivable shred or electronic piece of data to DOJ, the FBI, and FDLE, and to date the State has supplied every report that it is aware of from FDLE, Department of Justice and the Federal Bureau of Investigations. Additionally, we have provided the statement of every witness that has been taken by a member of those agencies. So I submit to date the State has complied with its obligation under the Florida Rules of Discovery.

Id. at 6-7. And again when asked by the Court:

THE COURT: Mr. Guy, do you know if there's anything else out there? Have you asked them?

MR. GUY: Mr. de la Rionda has spoken with those agencies, and again to our knowledge there are no reports yet furnished by the FBI or DOJ. And we have turned over the reports so far furnished by FDLE. And, again, as the Court mentioned, it is a continuing obligation, and we will continue to contact those agencies and see if any reports or any other interviews become available.

Id. at 11. When the issue came up again later in the hearing Mr. de la Rionda on behalf of the State responded:

MR. DE LA RIONDA: Now, I have gotten – I contacted the FBI. I’ve gotten all the FBI reports regarding witness interviews, and I’ve provided them. I am still constantly checking, so if there’s something, you know, that have gone through, I’ll try and get them. But I’ve provided those, including evidence that wasn’t favorable to the State where they interviewed an associate of the Defendant who said he’s not a racist or et cetera. I provided all those under my obligation. And I contacted them. I will continue to contact them. But from what I understand, they have an ongoing – I don’t want to know what kind of investigation they’ve done because, quite frankly, that’s not regarding this specific case.

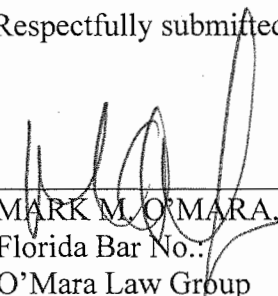
Id. at 20-21.

21. Within thirteen days from that hearing, the State provided to the Defense its 9th Supplemental Discovery where it disclosed an additional 35 FDLE reports and an additional 10 FBI reports not previously provided to the Defense, even though the State represented that it had provided all the reports it was aware of. *See* State’s 9th Supplemental Discovery Disclosure dated November 8, 2012 attached hereto as Exhibit “K”. Every one of those reports had been prepared and dated prior to the October 26th hearing and the State’s statements. Many of the reports dated as far back as March or April 2012. This Court may recall that once the 9th Supplemental was received, that led to requests for information identified by that release, and further led to a subsequent Motion to Compel production of that information. This Court then authorized defense counsel to go to FDLE and once there, even more additional information was discovered, not previously disclosed by the State.

WHEREFORE Defendant respectfully requests this Court to issue sanctions pursuant to Fla. R. Crim. P. 3.220 (n)(2) against the State as outlined in paragraphs 16 and 17 above, and additionally for the violations outlined in paragraphs 18-21.

Respectfully submitted,

By:


MARK M. O'MARA, ESQUIRE
Florida Bar No.: 359701
O'Mara Law Group
1416 East Concord Street
Orlando, Florida 32803
Telephone: (407) 898-5151
Facsimile: (407) 898-2468
E-Mail: Mark@markomaralaw.com
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/Facsimile/Hand Delivery this 25th 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, and Donald R. West, Esquire, 636 West Yale Street, Orlando, Florida 32804.


MARK M. O'MARA, ESQUIRE

Exhibit A

Benjamin Crump Interview of Witness 8

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 B

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On Thursday March 15, 2012, the Florida Department of Law Enforcement (FDLE) received a request for assistance from Norm Wolfinger, State Attorney for the Eighteenth Judicial Circuit, requesting that FDLE assist their office with an investigation into the February 26, 2012, shooting death of Trayvon Martin.

On Thursday, August 2, 2012, at approximately 1045 hours, at the request of Duval County State Attorney's Office (DCSAO), SA Ken Moore and SA G. White picked up a witness, [REDACTED] in the area of Northwest Miami-Dade County, FL and transported the witness to Ft. Lauderdale airport in Broward County, FL for a flight to Jacksonville, FL.

These Agents had no further involvement in this case to date.

Case Number: OR-01-0071	Serial #: 58
Author: Moore, Kenneth Wayne	Office: Miami
Activity Start Date: 08/02/2012	Activity End Date:08/09/2012
Approved By: Kuhn, Susan H.	

Description:Transport Witness to Ft. Lauderdale Airport

THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.

Exhibit C

Exhibit D

October 19 Hearing Video

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 depositions 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 E

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 depositions 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

Don West Law Group, P.A.

636 W. Yale St.
Orlando, FL 32804
407 425-9710
www.donwestlawgroup.com





DONALD R. WEST

BOARD CERTIFIED
CRIMINAL TRIAL LAWYER

don west law group, p.a.

636 w. yale street • orlando, florida 32804 • tel (407) 425-9710 • fax (407) 425-8287

donwest@donwestlawgroup.com

www.donwestlawgroup.com

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 F

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 depositions 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,

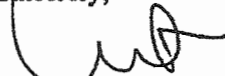
with regard to Trayvon Martin's phone, there is a reference in the reports that Tracy Martin was asked to provide the password to his son's phone so law enforcement could gain access to its contents and Mr. Martin indicated to law enforcement that he wanted to speak with his attorney first. I can't find 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

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

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 2012-001083-
CFA

vs.

GEORGE ZIMMERMAN,

Defendant.

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS POSITION
REGARDING THE PROSECUTOR'S OBLIGATION TO DISCLOSE
INFORMATION**

COMES NOW Defendant, George Zimmerman, by and through his undersigned counsel, and files this Memorandum stating as follows:

STATEMENT OF FACTS

The State Attorney's Office has failed, on multiple occasions, to deliver evidence to the defense. The defense asserts that the State Attorney's Office has a duty to deliver all documents and information obtained by other arms of the government, including the Federal Bureau of Investigation (FBI), Department of Justice (DOJ), and Florida Department of Law Enforcement (FDLE). It is known to the defense that the FBI has investigated civil rights issues involved in the case and the State Attorney's Office has not delivered all information from that investigation. To date, the defense has received 54 pages from the FBI, through the state. While only supposition at this point, the defense

believes that the FBI, following its tradition of intense and vigorous investigation of matters in its charge, has created significantly more than 54 pages of documents. The defense also has not received all evidence relating to FDLE's investigation of all aspects of the case. Additionally, the defense has not received any evidence from the DOJ Community Relations Service relating this case.

ARGUMENT

In *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*, 427 U.S. 97 (1976), the Supreme Court determined that prosecutorial failure to reply to a specific defense request for information in its possession but unobtainable by the defense constituted a denial of due process. The court has enunciated three requirements that the defense must meet to establish a successful claim: "(1) the prosecutor's suppression of the evidence, (2) the favorable character of the suppressed evidence for the defense, and (3) the materiality of the suppressed evidence." *Martinez v. Wainwright*, 621 F.2d 184, 186 (5th Cir. Fla. 1980); see also *United States v. Preston*, 608 F.2d 626, 637 (5th Cir. 1979) (quoting *United States v. Delk*, 586 F.2d 513, 518 (5th Cir. 1978)).

The Prosecutor has an obligation to obtain, and provide for the Defendant, evidence that is held by other arms of the government. The Prosecutor is required to deliver evidence that is in their constructive possession. In *Brady*, the Supreme Court held that the suppression of material evidence by the state justifies a new trial "irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. *Brady* explained:

Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the

Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not 'the result of guile,' to use the words of the Court of Appeals.

Id.

Once a defendant requests the discovery of any favorable evidence material to either guilt, non-guilt, or sentence, the prosecution's suppression of such evidence, whether in good or bad faith, violates due process. *Id.* The scope was expanded by the Supreme Court in *Giglio v. United States*, 405 U.S. 150 (1972). In *Giglio*, the principal Government witness testified that he had not been offered immunity from prosecution as an incentive to testify. *Id.* at 151. It was subsequently revealed that a Government attorney had made such a promise to the witness in the preliminary stages of the investigation. *Id.* Although the Government attorney who tried the case was unaware of this agreement, the court held that the nondisclosure, whether stemming from negligence or design, was the responsibility of the prosecutor. *Id.* at 154.

The prosecutor has a duty not only to disclose favorable evidence that a defendant requests but also "to learn of any favorable evidence known to others acting on the government's behalf, including police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). The duty exists whether or not the prosecutor knew of the existence of the evidence, if the evidence was in the possession of the government arm or generally provided only to governmental entities. *Martinez*, 621 F.2d at 186-87.

In *Martinez*, it was undisputed that the medical examiner possessed an FBI rap sheet on the deceased victim. *Id.* It was standard practice for the medical examiner to send finger prints of deceased victims to the FBI to receive FBI rap sheets as a verification of identification. *Id.* at 187. The federal district court found that FBI arrest records are not provided to private individuals, but only to police and other investigatory agencies. *Id.* at 187-88. The state trial judge commented to the prosecuting attorney during the course of the trial that a rap sheet, if in existence, would be obtainable from the FBI. *Id.* Nonetheless, the prosecutor assured the court that all known sources for obtaining a rap sheet had been exhausted and that he would have received a rap sheet in the normal course of the investigation. *Id.* The court said that the fact that the prosecutor contended that he was personally unaware of the existence of the rap sheet does not excuse his misrepresentation to the trial court that a rap sheet was unavailable. *Id.* While the prosecutor's actions can be characterized as only negligent "(t)he deception which results from negligent nondisclosure is no less damaging than that deception which is a product of guile, and such negligent nondisclosure entitles a defendant to relief." *Id.* at 187-88 (quoting *Shuler v. Wainwright*, 341 F. Supp. 1061, 1069 (M.D.Fla.1972), remanded on other grounds, 491 F.2d 1213 (5th Cir. 1974), accord, *Grant v. Alldredge*, 498 F.2d 376, 382 (2nd Cir. 1974), *United States v. Valdivia*, 492 F.2d 199, 205-06 (9th Cir.)). The court's conclusion that the prosecutor may be deemed to have been in possession of the rap sheet, by virtue of its retention by the medical examiner, while the prosecutor assured the court that no such document existed, effectuates the purpose of *Brady* and *Agurs*. *Martinez*, 621 F.2d at 187-88.

A contrary holding would enable the prosecutor "to avoid disclosure of evidence by the simple expedient of leaving relevant evidence to repose in the hands of another agency while utilizing his access to it in preparing his case for trial," *Martinez*, 621 F.2d at 187-88 (quoting *United States v. Trevino*, 556 F.2d 1265, 1272 (5th Cir. 1977)). The court therefore held that the information contained in the rap sheet was evidence both material and favorable to the defense, and found that its suppression by the prosecution denied Martinez a fair trial. *Martinez*, 621 F.2d at 189. *Martinez* unequivocally holds that the State Prosecutor must seek and deliver to the defense all exculpatory evidence from all law enforcement agencies, including federal agencies.

The United States Court of Appeals for the Eleventh Circuit held that Gerald Spagnoulo was entitled to a new trial after he was convicted of narcotics and weapons offenses on the basis of the government's failure to provide defense with psychiatric report concerning his mental state. *United States v. Spagnoulo*, 960 F.2d 990 (11th Cir. 1992). While Spagnoulo awaited trial, a psychiatrist and psychologist at the pretrial detention facility performed a psychiatric evaluation of Spagnoulo because of an unprovoked attack on another inmate. *Id.* at 993. A report was issued recommending that no disciplinary action be taken against Spagnoulo for the unprovoked assault. *Id.* Based upon the report, the government dismissed the assault charge. *Id.* The defense lawyer in the assault case, which is a case separate from this case, obtained the report after having filed a motion to compel discovery. *Id.* The defense lawyer in the assault case then notified the defense lawyer in this case of the existence and contents of the report. *Id.* Spagnoulo contended that the government's failure to provide the defense with the report concerning his mental state violated *Brady*. *Id.*

The government conceded that the fact that the report was in the possession of an FBI agent was of no consequence. *Id.* at 994. The former Fifth Circuit noted in *United States v. Antone*, 603 F.2d 566 (5th Cir.1979) that “this court has declined to draw a distinction between different agencies under the same government, focusing instead upon the ‘prosecution team’ which includes both investigative and prosecutorial personnel.” *Id.* The requirement that the government possess the evidence can be satisfied if the evidence was in the possession of the prosecutor or anyone over whom the prosecutor had authority. *Id.* (quoting *United States v. Meros*, 866 F.2d 1304, 1309 (11th Cir.)). Therefore, the court concluded that the fact that the prosecutor in this case was different from the prosecutor in the assault case was immaterial. *Id.*

The Supreme Court has recognized that “suppression” for purposes of a *Brady* analysis is not “measured by the moral culpability, or the willfulness of the prosecutor.” *Id.* (quoting *Agurs*, 427 U.S. at 110). In *Agurs*, the Supreme Court reaffirmed its holding in *Brady* that the good faith or bad faith of the prosecutor was not a controlling consideration. *Spagnuolo*, 960 F.2d at 995. Thus, in *Spagnuolo*, the government's failure to disclose favorable evidence in its possession to the defense constituted the “suppression of favorable evidence” despite the absence of guile, willfulness, bad faith or moral culpability. *Id.* at 995.

In *Jones v. State*, 709 So. 2d 512, 518 (Fla. 1998), Officer Cleveland Smith approached the defendant's counsel and informed them of other officers' reputations. While the court agreed with the general proposition that evidence suppressed by the police can constitute a *Brady* violation, the court concluded that there was no indication in that case that Officer Smith's testimony was withheld by the police because the

statements were not part of any documents or report in the possession of the police. *Id.* at 520. Officer Smith was not involved in the particular homicide investigation. *Id.* Further, there was no indication that he revealed the information to any investigator in the case. *Id.* In fact, he affirmatively testified that he told no one. *Id.*

Lloyd Chase Allen was convicted of first degree murder and grand theft of an automobile and alleged that the State violated *Brady* by withholding the result of a hair analysis performed on two hairs found on the victim's hand. *Allen v. State*, 854 So. 2d 1255, 1258 (Fla. 2003). The State retained possession of the hair analysis. *Id.* at 1259. While Allen was aware that the State was conducting an analysis of the hairs, he was never informed of the results. *Id.* The Supreme Court of Florida stated that *Brady* does not require that the defendant compel production of exculpatory material, or even that a defendant remind the State of its obligations. *Id.* Once the State obtained the results of the hair analysis, it was required to disclose them to the defendant. *Id.*

In *United States v. Bagley*, 473 U.S. 667 (1985), the court applied a constructive knowledge/possession doctrine to evidence that was only known to and possessed by the investigative arm of the prosecutor's office. In that case, the federal government convicted the defendant, Hughes Anderson Bagley, of narcotics offenses primarily on the testimony of two witnesses. *Id.* at 669-71, 673. Bagley requested prior to trial for the prosecutor to disclose materials relating to "any deals, promises, or inducements made to witnesses in exchange for their testimony." *Id.* at 669-70. The prosecution failed to disclose any material relating to any such promises. *Id.* at 669-70. Three years after Bagley's conviction, he made a request for information under the Freedom of Information Act of 1974. *Id.* at 670-71. In response, he received copies of form contracts

between the government's two witnesses and the Bureau of Alcohol, Tobacco and Firearms (ATF), the law enforcement entity that investigated Bagley on behalf of the prosecution. *Id.* The form contracts were for the purchase of information relating to Bagley's violations. *Id.* In the suit to vacate his sentence, the Assistant U.S. Attorney who prosecuted Bagley stated that he had not known that the contracts existed and that he would have disclosed them to Bagley had he known of them. *Id.* Although the Court did not discuss the reasons for its implicit extension of *Brady* to materials outside the prosecutor's possession, the court found error in the nondisclosure because "the prosecutor failed to disclose evidence that the defense might have used to impeach the Government's witnesses," even though the court appeared to have acknowledged that the prosecution was unaware of and never possessed the suppressed evidence. *Id.* at 674-78. The *Bagley* court thus construed *Brady* to extend a prosecutor's disclosure obligation to materials possessed by other branches of the government—specifically, a prosecutor's investigative arm.

A Motion for Production of a victim's FBI Report Sheet was made for the first time during trial in *Yanetta v. State*, 320 So. 2d 23, 24 (Fla. 3d. DCA 1975). The court said that a defendant is allowed discovery concerning the criminal records of the State's witnesses to the extent that the information is in the actual or constructive possession of the State, "not limited to that in the physical possession of the State Attorney's office, and including data obtainable from the FBI." *Id.* (quoting *State v. Coney*, 294 So. 2d 82, 86 (Fla. 1973)). However, a defendant should not be permitted to use the pretrial discovery procedures to require the State Attorney to disclose information or documents which by the exercise of due diligence, are readily available to him by subpoena or deposition. *Id.*

at 24 (quoting *Coney*, 272 So. 2d at 553). Therefore, since demand for the FBI Report Sheet was not timely made (during trial), and since it was not available when it was demanded, no error has been shown. *Id.*

In *Gorham v. State*, 597 So. 2d 782 (Fla. 1992), Ada Johnson was the State's key witness. Receipts from the Pompano Police Department showed that Johnson received substantial payments for confidential information relating to other cases and the State admitted that Johnson was a former confidential police informant. *Id.* at 784. A receipt dated June 9, 1982, also indicates that while Johnson was incarcerated during the period between the defendant's, David Kidd Gorham, two trials she received ten dollars related to this case from the Pompano police. *Id.* This information was never disclosed to Gorham, and, thus, the defense was unable to attack Johnson's credibility by showing that she was biased. *Id.* at 784-85. Even though the police did not reveal Johnson's informant status to the state attorney who prosecuted Gorham's case, the state attorney was charged with constructive knowledge and possession of evidence withheld by other state agents, such as law enforcement officers. *Id.* at 784. The state attorney stated at an evidentiary hearing that had he known about Johnson's informant status he would "certainly" have given that information to the defense because it "comes within the *Brady* definition." *Id.*

Given this trial's circumstantial nature, Johnson's role as the State's key witness, and the defense's inability to impeach Johnson based upon the undisclosed evidence, the court found that such a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different did in fact exist in this case. *Id.* at 785. As the Court stated, "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is

upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Id.* at 785 (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)).

The duty to produce requested evidence falls on the state and there is no suggestion in *Brady* that different "arms" of the government are severable entities. *Martinez*, 621 F.2d at 184, 186 (quoting *United States v. Deutsch*, 475 F.2d 55, 57 (5th Cir. 1973)). However, there is no suppression if the defendant knew of the information or had equal access to obtaining it. *Maharaj v. Sec'y of the Dep't of Corr.*, 432 F.3d 1292, 1315 n.4 (11th Cir. 2005).

Disclosure of information held by the state, as well as the other arms of the government, will serve to justify trust in the prosecutor as "the representative. . . of a sovereignty. . . whose interest. . . in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Kyles*, 514 U.S. at 439 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)) (emphasis added).

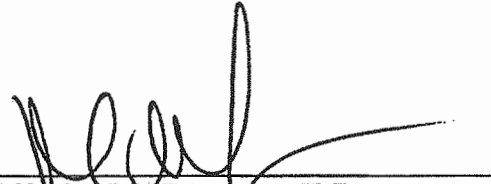
The State Attorney's Office has an obligation to deliver to the defendant all material evidence from every arm of the government. The FBI, FDLE, and DOJ are included in the investigative agencies that the State has an obligation to deliver.

PRAYER FOR RELIEF

WHEREFORE, the Defendant, George Zimmerman, respectfully requests that this Court order the State Attorney's Office, and its agents, to deliver all material evidence regarding the investigation of the events surrounding the event involving George Zimmerman on the evening of February 26th, 2012, from any local, state, or federal agency, including, but not limited to the Florida Department of Law Enforcement,

The Federal Bureau of Investigation and the Department of Justice, Community Relations Services.

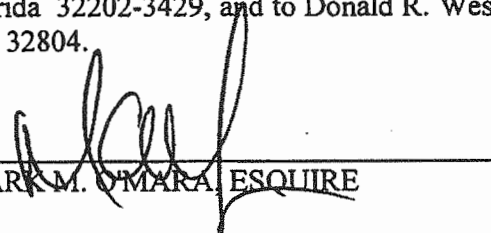
Submitted this 25th day of October, 2012.



MARK M. O'MARA, ESQUIRE
Florida Bar No.: 359701
O'Mara Law Group
1416 East Concord Street
Orlando, Florida 32803
Telephone: (407) 898-5151
Facsimile: (407) 898-2468
E-Mail: Mark@markomaralaw.com
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/Facsimile this 25th day of October, 2012 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, and to Donald R. West, Esquire, 636 West Yale Street, Orlando, Florida 32804.



MARK M. O'MARA, ESQUIRE

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

STATE OF FLORIDA

v.

CASE NO. 2012-001083-CFA

GEORGE ZIMMERMAN
_____ /

MOTION TO COMPEL DISCOVERY

COMES NOW the defendant, GEORGE ZIMMERMAN, by and through counsel and moves this Honorable Court to enter its order directing the State of Florida to provide the following discovery pursuant to its discovery obligation under Fla. R. Crim. P. 3.220:

1. Digital, original format color copies of the cell phone photos taken by Witness 13 of Trayvon Martin, George Zimmerman and a flashlight at the scene of the shooting on February 26, 2012.
2. Digital, original format color copies of the cell phone photos taken of Trayvon Martin and George Zimmerman by Sanford Police Officer Mike Wagner on the night of February 26, 2012.
3. Physical addresses for the several witnesses listed "c/o SAO" on the state's discovery exhibits. Rule 3.220(b) requires the state to provide the witnesses' addresses as well as the witnesses' names. See also, *Holmes v. State*, 557 So.2d 933 (5th DCA 1990).
4. Access to and a true copy of the original recorded interview of Witness 8 made by the Martin Family attorney, Benjamin Crump, including a list of people present during the interview; the chain of custody of the recording, including the circumstances of its release to the media (ABC News); and any reports by state or federal agencies that had possession of the recording¹.

¹ During a discovery meeting with the state prosecutors on August 24, 2012, we were told by T.C. O'Steen, investigator for the State Attorney's Office, 4th Judicial Circuit, that the state received this recording from the FBI and not from Mr. Crump, but no additional information has since been provided, notwithstanding a written follow-up request.

Exhibit H

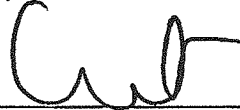
WHEREFORE, the defendant urges this Honorable Court to enter its order directing the state to provide the foregoing discovery/information.



Donald R. West
Co-Counsel for George Zimmerman
Florida Bar: 315941
Don West Law Group, P.A.
636 W. Yale St.
Orlando, Florida 32804
Telephone: (407) 425-9710
Facsimile: (407) 425-8287

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of defendant's Motion to Compel Discovery has been furnished by U.S. Mail/Facsimile/email this 12th day of October, 2012 to Bernardo 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.



Donald R. West

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

FILED IN
EAST BRANCH OFFICE
MARVINE MORSE
CLERK OF DISTRICT COURT
12 OCT 11 AM 10:08
SEMINOLE CO. FLA
BY D.C.

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO.: 2012-001083-CFA

GEORGE ZIMMERMAN,
Defendant.

DEMAND FOR SPECIFIC DISCOVERY

COMES NOW the Defendant, GEORGE ZIMMERMAN, by and through his undersigned counsel, and pursuant to Rule 3.220, *Fla.R.Crim.P.*, hereby files this his Demand for Specific Discovery, demanding that the State of Florida forward true and accurate copies of all of the following information:

1. The entire file from the Florida Department of Law Enforcement, including, but not limited to, all documents, audio tapes, video tapes, electronic data in their native file (to include any and all existing electronic copies of documents, reports, summaries, emails, text messages, interoffice communications or any other data), or any other information maintained by the Florida Department of Law Enforcement in regards to *State of Florida vs. George Zimmerman* or any related matters, including, but not limited to, investigation of the Sanford Police Department's handling of the initial investigation of the Trayvon Martin shooting, any communication between the Florida Department of Law Enforcement and any other law enforcement or governmental agencies, including, but not limited to, Department of Justice, Federal Bureau of Investigation, Department of Justice Community Relations Services, Seminole County State Attorney's Office, Duval County State Attorney's Office, Sanford Police Department or the City of Sanford.

Exhibit I

2. The entire file from the Federal Bureau of Investigation, including, but not limited to, all documents, audio tapes, video tapes, electronic data in their native file (to include any and all existing electronic copies of documents, reports, summaries, emails, text messages, interoffice communications or any other data), or any other information maintained by the Federal Bureau of Investigation in regards to *State of Florida vs. George Zimmerman* or any related matters, including, but not limited to, investigation of the Sanford Police Department's handling of the initial investigation of the Trayvon Martin shooting, or the issue of whether or not there was a violation of Trayvon Martin's civil rights by George Zimmerman, and any communication between the Federal Bureau of Investigation and any other law enforcement or governmental agencies, including, but not limited to, Department of Justice, Florida Department of Law Enforcement, Department of Justice Community Relations Services, Seminole County State Attorney's Office, Duval County State Attorney's Office, Sanford Police Department or the City of Sanford.

3. The entire file from the Department of Justice Community Relations Services, including, but not limited to, all documents, audio tapes, video tapes, electronic data in their native file (to include any and all existing electronic copies of documents, reports, summaries, emails, text messages, interoffice communications or any other data), or any other information maintained by the Department of Justice Community Relations Services in regards to *State of Florida vs. George Zimmerman* or any related matters, including, but not limited to, investigation of the Sanford Police Department's handling of the initial investigation of the Trayvon Martin shooting, or its involvement in the quelling of social or racial tensions in Seminole County, and any communication between the Department of Justice Community Relations Services and any other law enforcement or governmental agencies, including, but not limited to, Florida Department of Law Enforcement, Federal Bureau of Investigation, Department of Justice, Seminole County State Attorney's Office,

Duval County State Attorney's Office, Sanford Police Department or the City of Sanford.

DATED THIS 11th day of October, 2012.

Respectfully submitted,

O'MARA LAW GROUP

By: 

MARK M. O'MARA, ESQUIRE
Florida Bar No. 359701
1416 East Concord Street
Orlando, Florida 32803
Telephone: (407) 898-5151
Facsimile: (407) 898-2468
E-Mail: Mark@markomaralaw.com
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of this document was delivered by facsimile transmission and/or email to the persons listed below on October 11, 2012:

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

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


MARK M. O'MARA, ESQUIRE

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

3 STATE OF FLORIDA,

4 Plaintiff,

5 VS.

CASE NO.: 2012CF1083A

6 GEORGE M. ZIMMERMAN,

7 Defendant.

8 _____ X

9 BEFORE THE HONORABLE

10 DEBRA S. NELSON

11 JUDGE OF THE COURT

12 REPORTED BY:

13 SHELLY COFFEY, R.P.R.

14 In Courtroom 5D

Seminole County Courthouse

101 Bush Boulevard

Sanford, Florida

15 October 26, 2012

16 1:30 p.m.

17 APPEARANCES:

18 OFFICE OF THE STATE ATTORNEY

220 East Bay Street

19 Jacksonville, Florida 32202

Attorneys for Plaintiff

20 BY: BERNARDO DE LA RIONDA, ESQ.

JOHN GUY, ESQ.

21 O'MARA LAW GROUP

22 1416 East Concord Street

Orlando, Florida 32803

23 Attorneys for Defendant

24 BY: MARK O'MARA, ESQ.

DONALD WEST, ESQ.

25 LORNA TRUETT, ESQ.

1 (APPEARANCES CONTINUED)

2 HOLLAND & KNIGHT
3 200 South Orange Avenue
4 Suite 2600
5 Orlando, Florida 32801
6 BY: SCOTT PONCE, ESQ.
7 Attorneys for media entities

8 THOMAS & LoCICERO PL
9 8461 Lake Worth Road
10 Suite 114
11 Lake Worth, Florida 33467
12 BY: GREGG D. THOMAS, ESQ.
13 Attorneys for the Orlando Sentinel, WFTV
14 and the Sun Sentinel
15
16
17
18
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22
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25

1 WHEREUPON:

2 The following proceedings were had:

3 THE COURT: Please be seated. Good
4 afternoon.

5 MR. DE LA RIONDA: Good afternoon, Judge.

6 THE COURT: Where is counsel for the Defense?
7 Court starts at 1:30.

8 MS. TRUETT: I apologize, Your Honor. I'm not
9 sure.

10 (Whereupon, there was a pause in proceedings.)

11 THE COURT: We left a note for them, didn't we?

12 THE DEPUTY: Yes, ma'am. They're on their way
13 up, ma'am.

14 (Whereupon, there was a pause in proceedings.)

15 MR. O'MARA: Good afternoon, Your Honor. A few
16 minutes late. I apologize. There was a problem
17 with some of the monitoring that they just had to
18 try and reset.

19 THE COURT: Okay. Thank you. We're on the
20 record on State versus Zimmerman, case number
21 12CF1083A. Attorneys, please make your appearances
22 for the record.

23 MR. DE LA RIONDA: Bernie De La Rionda on
24 behalf of the State of Florida.

25 MR. GUY: John Guy on behalf of the State of

1 Florida.

2 MR. O'MARA: Mark O'Mara on behalf of
3 Mr. Zimmerman.

4 MR. WEST: Don West here, with Mr. Zimmerman to
5 my left.

6 MS. TRUETT: Lorna Truett on behalf of
7 Mr. Zimmerman.

8 MR. PONCE: Good afternoon, Your Honor. Scott
9 Ponce on behalf of the media organizations listed on
10 our papers.

11 MR. THOMAS: Gregg Thomas on behalf of the
12 Orlando Sentinel and the South Florida Sun Sentinel.

13 THE COURT: Thank you very much. Before we get
14 started today I wanted to provide to counsel for the
15 State and counsel for the Defense the order
16 disclosing the redacted medical records. This is
17 the original. This one is for the State. This one
18 is for the Defense. I have reviewed them. What I
19 have done and provided to the State along with the
20 order, and the Defense wants the order, instead of
21 making a list of what is redacted and what isn't
22 redacted, I've copied every record, and the portions
23 that are redacted are not in there, but it will have
24 the date of whatever the visit may have been. So
25 those are in the envelopes that are attached to the

1 order, and your envelopes are not sealed, but the
2 original unredacted and the redacted ones are put in
3 the court file under seal.

4 MR. O'MARA: So I'm clear, that you've now
5 given the State the copy from which you've redacted
6 certain items?

7 THE COURT: Yes. I've given --

8 MR. O'MARA: Okay.

9 THE COURT: Every page that has been provided
10 to the Court. Some of the pages just have the
11 heading of the Altamonte Family Practice with the
12 date or, you know, the heading part, and whatever
13 the Court deemed not relevant or that should be
14 redacted has been redacted.

15 MR. O'MARA: Yes, Your Honor. Thank you.

16 THE COURT: We're here today, there are three
17 motions that were set for hearing. And I don't know
18 what order you want to go in. I was just going to
19 go by the notice of hearing. The first one was the
20 Defendant's demand for specific discovery.

21 MR. O'MARA: Yes, Your Honor, and as to that
22 motion we had filed a motion or a specific demand
23 for discovery. As you recall last time, I had told
24 you it wasn't ripe. In the intervening time I had
25 asked Mr. De La Rionda on behalf of the State to

1 respond to me, and I haven't gotten a specific
2 response from the State yet, but my request to the
3 Court is quite straightforward.

4 THE COURT: I read your motion. I've read your
5 memo of law. I've read the cases that you have
6 provided. If you have additional argument -- no?

7 MR. O'MARA: I think everything's in there. I
8 just simply think to summarize real quickly.

9 The State has an obligation to get us what we
10 call Brady or information suggesting it's
11 exculpatory. Under the case law that I've cited,
12 that umbrella goes out to other law enforcement
13 agencies, including federal law enforcement
14 agencies. That would include the FBI and Department
15 of Justice and FDLE.

16 I can present you evidence to support my
17 position that I want everything from FDLE pursuant
18 to your court order, because we know from the
19 depositions we've taken we haven't gotten it all.
20 So I want something very specific so that I know
21 FDLE is giving us everything attached to the
22 Zimmerman case.

23 THE COURT: Okay. Mr. De La Rionda, if you
24 would like to -- oh, Mr. Guy, if you would like to
25 respond.

1 MR. GUY: Just briefly, Your Honor.

2 Judge, if we can begin with the proposition
3 that the Defense is not entitled to every shred of
4 evidence in possession of the State. What they've
5 asked for in the specific demand is every
6 conceivable shred or electronic piece of data to
7 DOJ, the FBI and FDLE, and to date the State has
8 supplied every report that it is aware of from FDLE,
9 Department of Justice and the Federal Bureau of
10 Investigations. Additionally, we have provided the
11 statement of every witness that has been taken by a
12 member of those agencies. So I submit to date the
13 State has complied with its obligation under the
14 Florida Rules of Discovery. And we understand it's
15 a continuing obligation, and we will abide by that,
16 accordingly.

17 THE COURT: Okay. Rule 3.220 is the discovery
18 rule here in the State of Florida and counsel, I
19 know, are all aware of the rule, as is the Court.
20 Subsection A binds the prosecutor and the defense to
21 all the discovery procedures that are set forth
22 therein. Subsection B sets forth the prosecutor's
23 obligation to disclose material within their
24 possession or control. Case law includes the --
25 the -- any material, even if a party to any compact

1 or agreement with the FBI or any federal agencies.
2 And in support of that proposition I would cite
3 State versus Cody at 294 So. 2d. 82 Florida Supreme
4 Court 1973; Yanetta, Y-A-N-E-T-T-A, versus State
5 found at 320 So. 2d. 23, the Third DCA 1975; and
6 State versus Miranda, 777 So. 2d. 1173, also a Third
7 DCA 2001.

8 So it seems that the State's response is that
9 they have provided everything there is, and they
10 understand that they're on a continuing obligation,
11 so unless and until there's specific things that
12 need to be addressed. I mean, just thinking there's
13 something else out there, you know, I'm not going to
14 go look at files.

15 MR. O'MARA: I understand the Court's ruling.
16 So I shouldn't be arguing, you know, but here is
17 the -- when the --

18 THE COURT: Well, it's not necessarily a
19 ruling. I mean, the State has responded they've
20 provided everything, so.

21 MR. O'MARA: But we have evidence that that is
22 not true in the past. So here's what I hear from
23 what you're saying and what the State is saying: If
24 we can find out what it is that we don't have, then
25 we can come to you and demand them to give it to us.

1 I'll give you some examples of what they've given us
2 that is inaccurate.

3 THE COURT: Well --

4 MR. O'MARA: So I can't -- well, here's my
5 problem: What you're asking me do is take on the
6 State's burden. When you look at Brady, look at the
7 case law cited, what it says is they have the
8 affirmative obligation to go get it. So the FBI is
9 a perfect example. It's a law enforcement agency.
10 It's covered by the case law. And what they're
11 saying is the only thing that we have is 54 pages,
12 and the FBI can give you that. But what I would ask
13 that you do, and what you demand as the case law, is
14 you should state to them that they have contacted
15 the FBI --

16 THE COURT: I think that's what Mr. Guy --

17 MR. O'MARA: No. No. No.

18 THE COURT: Don't no, no, no me, please.

19 MR. O'MARA: I'm sorry.

20 THE COURT: I think Mr. Guy just said that he
21 has given everything. You know, you're asking me to
22 almost -- for me to prove a negative; I can't. You
23 have means to take depositions or whatever means are
24 available to see if there is any other information.
25 All of you are officers of the court, and I have an

1 officer of the court standing up at the podium on
2 the record telling me that they have provided
3 everything that they know is out there.

4 MR. O'MARA: What he said was he provided
5 everything they gave him. He did not say that
6 they've taken on the affirmative obligation of
7 talking to the FBI and saying what else do you have,
8 and the case law specifically says that they have
9 that obligation.

10 THE COURT: I'm very aware of the case law, and
11 I'm aware of their obligation. I'm assuming because
12 he told me he knows he has an obligation for
13 continuing discovery, to supply any discovery that
14 they're aware of, it's a continuing obligation that
15 as an officer of the court I am expecting him to
16 abide by that.

17 MR. O'MARA: Well, then --

18 THE COURT: So it's almost like you're putting
19 the cart before the horse. You're saying that
20 there -- I'm sure -- you know, I suppose there's
21 more information out there. And I have somebody
22 telling me that there is not. So there's nowhere to
23 go until that becomes an issue.

24 MR. O'MARA: So then I ask for this: If it now
25 comes back on our shoulders to go find out what the

1 FBI has in addition to the 54 pages that they've
2 given to the State, and you're saying the State has
3 no affirmative obligation to go to their other law
4 enforcement agencies --

5 THE COURT: I did not say any such thing.

6 MR. O'MARA: Then let's have them say that
7 they've done that because I don't think that they've
8 done it, because I think they're sticking their
9 hands in the sand about additional information
10 because everything that seems to come out seems to
11 be exculpatory so they're not looking for it. So
12 the FBI --

13 THE COURT: Well, you're making statements that
14 I don't know are true.

15 Mr. Guy, do you know if there's anything else
16 out there? Have you asked them?

17 MR. GUY: Mr. De La Rionda has spoken with
18 those agencies, and again to our knowledge there are
19 no reports yet furnished by the FBI or DOJ. And we
20 have turned over the reports so far furnished by
21 FDLE. And, again, as the Court mentioned, it is a
22 continuing obligation, and we will continue to
23 contact those agencies and see if any reports or any
24 other interviews become available.

25 THE COURT: This Court -- what I'm trying to

1 say, Mr. O'Mara, is that all the lawyers know what
2 their discovery obligations are. If this Court goes
3 to trial and something else comes out, the State
4 runs the risk of -- if there's a guilty verdict,
5 they run the risk of that being set aside or
6 reversed and a new trial ordered based upon some
7 information that they failed or refused to give.
8 They're aware of that. The case law that you
9 provided is very clear on that issue. So, you know,
10 I have the representation from an officer of the
11 court.

12 MR. O'MARA: I also asked in my specific motion
13 that we get native (phonetic) files and electronic
14 discovery from FDLE. We have to avoid -- I would
15 like to show this to the Court, if I might, just to
16 give you some information. That is what we received
17 in discovery when we first asked for it, and I want
18 to make that a composite exhibit so that you get the
19 feel of what it is that we get as information
20 concerning my client.

21 THE COURT: Let me interrupt you for just one
22 second. Sara, if you will make this -- any
23 objections to this being introduced?

24 MR. GUY: No, Your Honor.

25 THE COURT: This will come in as Defense

1 Exhibit 1 to the defense demand for specific
2 discovery.

3 MR. O'MARA: And I would like to add, since
4 it's a composite, these are other ones to
5 that composite.

6 THE COURT: Any objections?

7 MR. GUY: Judge, if I could just take a --

8 THE COURT: Yes, you may.

9 MR. GUY: The other ones I got a chance to
10 see.

11 MR. O'MARA: And then, Your Honor, this would
12 be my second composite, which is the second round of
13 information that we've gotten, which goes from --

14 THE COURT: Okay. Just let me take this step
15 by step. Any objections to these documents being
16 added to Composite 1?

17 MR. GUY: No.

18 THE COURT: All right. Thank you.

19 Any objections to the Defense Composite Exhibit
20 that they're seeking to introduce as Number 2?

21 MR. GUY: No.

22 THE COURT: They will come in as composite
23 Exhibit Number 2. Okay. I'm sorry. Go ahead and
24 continue.

25 MR. O'MARA: Now, the first one is what they

1 gave us under the guise that they're giving us all
2 the discovery that they have, and they would come
3 into you and say, well, we gave them everything.
4 And that was the first composite.

5 Then we said what are these? They look like
6 abstract paintings. Because as you can see, you
7 can't tell anything of what they are. So then we
8 said will you, please, give us the native files,
9 give us the actual digital photographs, because we
10 all know in dealing with digital photographs. Then
11 we got Composite 2, which are not digital
12 photographs. They are now color copies of what they
13 gave us in 1; evidencing, of course, they had color
14 copies to begin with, but they decided to give us as
15 the Defense --

16 THE COURT: Okay. Let me interrupt you right
17 there.

18 MR. O'MARA: -- the black and white.

19 THE COURT: Do you have the disks or whatever
20 electronic means it was that you printed out those
21 photos?

22 MR. DE LA RIONDA: Your Honor, may I respond to
23 this? Since I'm the one that dealt with this, may I
24 respond --

25 THE COURT: Yes.

1 MR. DE LA RIONDA: -- on behalf of the State of
2 Florida? I provided what they gave me first which
3 is black and white. Then they wanted color, but to
4 make sure the record is clear, all this evidence was
5 provided to the Defense. They physically went to
6 the FDLE. I arranged a meeting. They went over
7 there and met with the FDLE agents, and we arranged
8 for all the evidence to be opened. And they had a
9 camera. They took photographs of all this evidence,
10 and then they said we want color. So then I went
11 back and asked them, and I provided not a color
12 photograph but the actual disk that FDLE gave us of
13 those items, those photographs that the agent
14 himself took, the analyst.

15 THE COURT: So you're saying you provided them
16 with the disk?

17 MR. DE LA RIONDA: That's correct.

18 THE COURT: Did you not get it?

19 MR. O'MARA: The third time. My concern is not
20 what they finally did on the third time on this
21 particular one; my concern is that there is
22 additional evidence that we've been trying to get
23 from FDLE today. We would --

24 THE COURT: But you're standing here arguing
25 about something now that you've gotten and --

1 MR. O'MARA: Sorry.

2 THE COURT: And if you have it, then that is no
3 longer an issue. What you're now seeking is
4 anything that you don't know of, they don't know of
5 that may be out there.

6 MR. O'MARA: This is what I want: I want the
7 entirety of the FDLE file. Agent Lee seems to be
8 the chief agent in charge. I want FDLE through the
9 state attorney's office --

10 THE COURT: Did you not go to FDLE?

11 MR. O'MARA: We went to FDLE and took our own
12 pictures, and at FDLE that's when we found out about
13 Trayvon Martin's phone that we had never known about
14 before.

15 THE COURT: I don't need to hear all that, but
16 did you go to FDLE?

17 MR. O'MARA: Yes, I did.

18 THE COURT: Okay.

19 MR. O'MARA: And they did not give me digital
20 files.

21 THE COURT: Did they open it all up for you?

22 MR. O'MARA: No. Just the evidence, not the
23 files, just the evidence, just pieces of evidence
24 that we looked at. They did not give up -- I
25 understand that I'm...

1 THE COURT: No. Go ahead.

2 MR. O'MARA: Let me take a second.

3 THE COURT: I want to get down to what you do
4 and do not -- were and were not provided.

5 MR. O'MARA: Here is my concern and I have to
6 give you some history because the evidence is where
7 I am, a short history. We go in there to talk to --
8 to take the deposition of the person --

9 THE COURT: I don't -- and I don't mean to keep
10 interrupting you and I really apologize for that,
11 but I do want to take control over my hearings.

12 MR. O'MARA: Yes, ma'am.

13 THE COURT: And if you're saying that you
14 hadn't gotten something and then you finally got it,
15 I really don't need to know about that unless you're
16 seeking some other remedy. So I just want to know
17 what it is that you think you don't have that has
18 not been provided to you, and now we're talking
19 about FDLE.

20 MR. O'MARA: Okay.

21 THE COURT: And you said that you went there.
22 And while you were there, did they open up their
23 files to you?

24 MR. O'MARA: No.

25 THE COURT: Okay.

1 MR. O'MARA: No. What we're talking about is a
2 tangible evidence review, so the phone and the
3 tangible evidence, nothing to do with their file.

4 What we found out in the depositions, not going
5 too far into it, is that we did not have everything
6 that FDLE has. All I'm trying to do now is a very
7 simple process. If you were to enter an order that
8 says FDLE is hereby ordered to ship over to O'Mara
9 all their digital files, everything they have. Now,
10 some of that will be duplicated because they have
11 given us some, but under that order I will now know
12 that I have everything FDLE has in this case
13 regarding my client, and that's what I deserve.

14 THE COURT: Well, let's talk about that because
15 3.220 says that the State is supposed to provide you
16 the right to -- well, list what they know is
17 available or the means to copy, inspect. It doesn't
18 mean that they have to copy, inspect. They have to
19 provide the defense the opportunity to go there and
20 look at everything that they want that's in that
21 file and ask for what they want a copy of, because
22 there may be thousands of things in a room. And if
23 you only want a copy of one, why should they copy
24 thousands of things?

25 So you're allowed to go back to FDLE -- and if

1 you want that in the court order, that's fine. You
2 can go back to FDLE and inspect their entire file on
3 this matter and ask them to provide you with copies
4 of whatever you are seeking to have copies of.

5 MR. O'MARA: Agreed. And what I'm asking for
6 is electronic copies, which is not --

7 THE COURT: Whatever is in their file.

8 MR. O'MARA: Right. So I want the order to say
9 that I want to receive all of the FDLE discovery,
10 what we call native file, which is digital, so
11 there's not thousands of pages. I will get all
12 their reports the way they generate them because
13 they generate them not on typewriters anymore.

14 THE COURT: I understand. I understand.

15 MR. O'MARA: That's all I want.

16 THE COURT: Well, if you will give me a
17 proposed order, send a copy of it to Mr. De La
18 Rionda, if there's no objection to the form of the
19 order, I will sign it as is; if there is an
20 objection, I will readdress it.

21 MR. O'MARA: Now, as to the Department of
22 Justice, we've received nothing. So is it the
23 State's position that --

24 THE COURT: Well, we'll ask them.

25 MR. O'MARA: -- they have contacted DOJ and

1 there is nothing?

2 THE COURT: Was it either you, Mr. De La
3 Rionda, or Mr. Guy who talked to DOJ?

4 MR. GUY: I will defer to Mr. De La Rionda as
5 the person.

6 THE COURT: Thank you.

7 MR. DE LA RIONDA: Your Honor, I guess it's
8 obvious. The Defense is aware. The FBI has been
9 doing an investigation separate from this case, and
10 that is their investigation. We can't get involved
11 in that, in other words. That deals with security
12 matters not just regarding this specific case but
13 also other matters in terms of this community, and
14 so I don't think this is our obligation to check
15 with them when they're saying it's an ongoing
16 investigation. Now, I have gotten -- I contacted
17 the FBI. I've gotten all the FBI reports regarding
18 witness interviews, and I've provided them. I am
19 still constantly checking, so if there's something,
20 you know, that have gone through, I'll try and get
21 them. But I've provided those, including evidence
22 that wasn't favorable to the State where they
23 interviewed an associate of the Defendant who said
24 he's not a racist or et cetera. I provided all
25 those under my obligation. And I contacted them. I

1 will continue to contact them. But from what I
2 understand, they have an ongoing -- I don't want to
3 know what kind of investigation they've done
4 because, quite frankly, that's not regarding this
5 specific case.

6 THE COURT: Well, who's making that
7 determination?

8 MR. DE LA RIONDA: The FBI in terms of -- they
9 can subpoena -- they can ask the FBI. They have the
10 authority to go subpoena them. They can request
11 that from the FBI, and then the FBI gets to respond
12 to that. It's not my obligation to go and get that
13 from the FBI when it's an ongoing investigation.
14 In terms of whether it's civil rights or not or
15 whether there was a police department investigation,
16 I think that's what Mr. O'Mara is trying to get at.

17 THE COURT: The case law says, basically, that,
18 you know, the Defense would have to exhaust all
19 means available to get the additional information
20 that they think exists and has not been produced.
21 So that's what I meant by maybe we're taking the
22 cart before the horse. Have you inquired by
23 subpoena or otherwise of the FBI or Department of
24 Justice right now?

25 MR. O'MARA: The answer is no, and I believe

1 the reason why is because I do think that the
2 State is -- and I think the case law supports it. I
3 think you reference it partially, but we can focus
4 on some of the cases that say --

5 THE COURT: I've read every single one of the
6 cases. I've highlighted them. I spent the entire
7 night last night doing that, so I am aware of it.
8 But even in the State versus Miranda case, in that
9 case the Third District Court of Appeals said, where
10 it was undisputed that the state made efforts to --
11 and this was not a case that you had provided.
12 Where it was undisputed that the state made efforts
13 to obtain information not in its actual possession,
14 which the trial court ordered produced, they went on
15 to say defendant made no attempt to subpoena the
16 federal agencies. The court said, the Third
17 District Court of Appeals said, it was confronted
18 with a situation in which the state has made its
19 best efforts to obtain the information and documents
20 and did not allege there was any compact or
21 agreement between the state and the federal agencies
22 named in the trial court order which would enhance
23 the ability of the state to obtain the requested
24 documents to no avail.

25 The court, the Third District Court of Appeal,

1 quashed the trial court's order excluding the
2 confidential informant as the state witness and also
3 quashed the order granting the motion to compel.

4 So that seems to be, you know, the latest in
5 there. So that's why I asked the question, have you
6 exhausted all your means available to get any
7 additional information that you think may be out
8 there and has not been produced?

9 MR. O'MARA: Your Honor, as to the Martinez
10 case, that was a case where the medical examiner had
11 a rap sheet that was not disclosed. I'm sure you
12 looked at it. And in that case the court said to
13 not hold them responsible for forwarding that
14 information, to just say they didn't really have it,
15 the medical examiner did, what they said was a
16 contrary ruling, one of not holding them responsible
17 would enable the prosecutor to avoid disclosure of
18 evidence by simply expedience of leaving relevant
19 evidence to repose in the hands of another agency,
20 maybe it's the FBI, while utilizing his access to it
21 in preparing the case for trial.

22 What Martinez says, I think, is they do have an
23 affirmative obligation to go get it. You know as
24 well as I do that there's two people who can call up
25 the FBI to get the information, them and somebody

1 else besides me, because they won't give it to me,
2 but they will give it to them if you tell them they
3 have to go get it.

4 Now, he sort of said two things. He stood up
5 and said I don't know that it's my responsibility to
6 go get it, but he said if they give it to me, I'll
7 forward it. All I'm saying is look at Martinez, and
8 it says -- look, here's the reality. The FBI has
9 been involved in this case for four and a half
10 months. I know that they talked to some 30
11 witnesses because they did give me 54 pages, but I
12 don't have an agent report. I don't have a tasking
13 sheet. I don't have anything that I know that the
14 FBI has done, only because of 30 years' experience.

15 THE COURT: Okay. Here's what I'm going to
16 rule on that issue with the FBI: If you provide the
17 State with a list of the things that you think the
18 FBI has done, Mr. De La Rionda will then call the
19 FBI and ask them do you have this information, and
20 if you do, provide it, and he will pass it on to
21 you. That's the best --

22 MR. O'MARA: Thank you, Your Honor.

23 THE COURT: -- that I can do.

24 MR. O'MARA: That is a perfect first step.

25 THE COURT: If you put that in the proposed

1 order, and that would also go for the DOJ.

2 MR. O'MARA: Yes, Your Honor.

3 THE COURT: So have we completed that issue?

4 MR. O'MARA: Did we make a decision on -- I'm
5 sorry.

6 THE COURT: No. Go ahead.

7 MR. O'MARA: FDLE. I'm getting --

8 THE COURT: Well, FDLE is in the State's -- you
9 know, the State really can produce anything FDLE
10 has, but I said you are free to go to FDLE again.

11 MR. O'MARA: Right.

12 THE COURT: And review anything that they have
13 in their files and ask them to produce whatever it
14 is in there that you want.

15 MR. O'MARA: And I asked you to expand that to
16 include all digital and native files and --

17 THE COURT: Yes. Anything in their entire
18 file. Now, we all know they're not required to
19 create something for you.

20 MR. O'MARA: No. No. Just --

21 THE COURT: But if they have something in their
22 file, whether it be a disk. If they're -- if they
23 have a report, if they have anything in writing or
24 electronic and you're able to view it and you want a
25 copy of it, they have to provide you it at the same

1 means they have it.

2 MR. O'MARA: Perfect. Thank you very much.

3 THE COURT: You're welcome. Okay. That takes
4 care of that one.

5 (End of requested partial transcript.)
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1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA)
4 COUNTY OF SEMINOLE)
5
6

7 I, SHELLY COFFEY, Registered Professional
8 Reporter, certify that I was authorized to and did
9 stenographically report the foregoing proceedings and
10 that the transcript is a true and complete record of my
11 stenographic notes.

12 I FURTHER CERTIFY that I am not a relative,
13 employee, attorney, or counsel of any of the parties, nor
14 am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action, nor am I
16 financially interested in the action.

17
18
19 Dated this the ____ day of _____, 2012.
20
21
22
23
24
25

SHELLY COFFEY, RPR

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

STATE OF FLORIDA

VS.

CASE NO.: 2012-001083-CFA

SA NO: 1712F04573

GEORGE ZIMMERMAN
_____ /

STATE'S 9TH SUPPLEMENTAL DISCOVERY

A.

Category A:

W49---[REDACTED]

Category B:

Folgate, Lindzee, PA, Altamonte Family Practice, 249 Maitland Ave. Ste 1000, Altamonte Springs, FL

Category C:

Custodian of Records, Altamonte Family Practice

W44 ---[REDACTED]
W45---[REDACTED]
W46---[REDACTED]
W47---[REDACTED]
W48---[REDACTED]
W50---[REDACTED]
W51---[REDACTED]

FDLE (Orlando, unless indicated)

Stephens, Amanda
Pounds, Jean
White, Gaylon (Miami)

B.

W44 ---Audio recorded FDLE interview (CD copy attached).

FBI reports (Special Agent who wrote report and person(s) interviewed-name) (copies attached):

SA Alexander: W50.

SA Dawson: W51.

SA Majeski: W46.

Exhibit K

SA Oliver: Santiago, Singleton, Taffe W48, W49.
SA Weyrauch: W45, W47.

FDLE reports (Agent who wrote report and if person(s) interviewed-name) (copies attached):
SA Lee: Brandy (Audio recorded statement –CD provided in prior discovery).
SA Mullins: W44

FDLE reports: (Non-interview reports. Report # listed) (copies attached):
SA Batchelor: # 1, 15, 16, 26, 27, 28, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 50, 57.
SA Crosby: # 17, 22.
SA Lee: # 20, 48, 49, 51, 53.
SA Moore: # 32, 58.
GA Pounds: # 56.
SA Rodriguez: # 23.
CIA Stephens: 18, 19, 54.
SA White: # 59.

C. Defendant's statements detailed in Altamonte Family Practice medical records.

J. Altamonte Family Practice medical records (Defendant) (copies provided as part of Judge's Order).

Pursuant to your request copies of the following were provided:

- Orta's complete FDLE file (two reports, notes, etc.) (CD) provided on 9/26/12.
- Brenton's two FDLE reports regarding Victim's cell phone provided on 9/26/12.
- Krejci's complete FDLE file (reports, notes, etc.) (CD) provided on 9/26/12.
- Guzman's complete FDLE file (case tracking forms, sweep notes, images, etc.) (CD) provided on 10/13/12.
- Orta's FDLE total station information (CD) provided on 10/13/12.
- Gorgone's FDLE DNA raw electronic data (CD, two) provided on 10/13/12.

K.

Pursuant to your request copies of the following were provided:

- Victim's additional cell phone records (Brenton) (downloaded) provided on 9/26/12.
- Photos (3) taken by W13 in digital in digital format (CD) provided 10/18/12. (Black & white, then color photos were provided in regular photo format in prior discovery replies).
- Photos (8) taken by Investigator Wright in digital format provided 10/18/12. (Color photos were provided in regular photo format in prior discovery reply.)
- Photos (2) taken by Wagner in digital format provided 10/29/12. (Black & white, then color photos were provided in regular photo format in prior discovery replies).

*Please Note. Copies attached are provided to Defense Counsel but are not attached to the Discovery Exhibit filed with the Clerk.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a copy of the foregoing has been furnished by hand to Mark O'Mara, Esq., / Don West, Esq., this 8th day of November, 2012.

ANGELA B. COREY

STATE ATTORNEY

By: 

Bernardo de la Rionda
Bar Number: 365841
Assistant State Attorney