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 SANCTIONS AGAINST STATE ATTORNEY'S OFFICE FOR DISCOVERY VIOLATIONS AND REQUEST FOR JUDICIAL INQUIRY INTO VIOLATIONS

COMES NOW the Defendant, GEORGE ZIMMERMAN, by and through his undersigned counsel, and hereby files this his Motion for Sanctions against the State Attorney's Office for Discovery Violations and Request for Judicial Inquiry Into Violations, and as grounds therefore states as follows:

1. The defense has recently been made aware that the State has had access to certain discoverable information on the phone of Trayvon Martin, and that this information includes, specifically, relevant information for Mr. Zimmerman's defense; relevant information for impeachment of State witnesses; and relevant information for potential rebuttal evidence from the State. Further, the defense is aware that the State had access to this information in January of 2013, in that they received and/or generated reports concerning this information.

2. Undersigned counsel previously filed a Demand for Specific Discovery dated April 25, 2013 requesting that the State disclose any and all data in its possession, or any and all data it has received regarding any downloads or reports from any phone or phone number connected to Trayvon Martin or any information that the State or law enforcement has retrieved, received or investigated concerning data on or regarding Trayvon Martin's phone, phones and/or phone numbers.

3. In the hearing regarding that motion, Mr. de la Rionda advised this Court that he had not received any further reports from anybody else regarding information resident on Trayvon Martin's cell phone. This was false. *See* April 30, 2013 *State v. Zimmerman* Hearing at 16:46:00:

> MR. WEST: We also include any other person that may have given them that information not limited just to Cellbrite
>
> THE COURT: Have you received *any* information?
>
> MR. DE LA RIONDA: No we have not talked directly to Cellbrite, Your Honor.
>
> THE COURT: Or anybody else?
>
> MR. DE LA RIONDA: No, Your Honor.

The State was fully aware at that time that there was information resident on Trayvon Martin's cell phone, including pictures of Trayvon Martin in possession of at least one weapon, pictures of marijuana plants, pictures of Trayvon Martin smoking marijuana, pictures of marijuana blunts, and texts discussing, securing or purchasing firearms, and bragging about being involved in fights, etc.

4. This information is discoverable pursuant to the Florida Rules of Criminal Procedure 3.220, which makes it clear that, as soon as practicable after the filing of the

charging document, the prosecutor must disclose to the defendant any material information within the state's possession or control that tends to negate the guilt of the defendant as to any offense charged, regardless of whether the defendant has incurred reciprocal discovery obligations. Fla. R. Crim. P. 3.220(b)(4). In addition, witnesses and evidence that must be disclosed in accordance with the reciprocal discovery provisions of Rule 3.220 include reasonably anticipated rebuttal and impeachment witnesses and evidence. *See e.g., Lucas v. State*, 376 So. 2d 1149 (Fla. 1979); *Fabregas v. State*, 829 So. 2d 238 (Fla. 3d DCA 2002); *Grant v. State*, 474 So. 2d 259 (Fla. 1st DCA 1985). A prosecutor's obligation under Brady extends to the disclosure of evidence that could be used for impeachment, as well as exculpatory evidence. *See e.g,. Youngblood v. West Virginia*, 547 U.S. 867; *Way v. State*, 760 So. 2d 903 (Fla. 2000); *Stanley v. State*, 995 So. 2d 599 (Fla. 1st DCA 2009). Furthermore, a defendant's knowledge that the state submitted evidence for testing does not create a duty to inquire further, rather, the state has the burden to disclose to the defendant all information in its possession that is exculpatory. *Polk v. State*, 906 So. 2d 1212 (Fla 1st DCA 2005). Lastly, it is well settled that a defendant has no duty to exercise due diligence to review Brady material until the state discloses its existence. *See e.g., Allen v. State,* 854 So. 2d 1255 (Fla 2003); *Ward v. State*, 984 So. 2d 650 (Fla. 1st DCA 2008).

Additionally, this information cannot be claimed as "work product." The Florida Supreme Court in *Young v. State*, 739 So. 2d 553 (Fla. 1999) neatly sums up the prosecutor's Brady obligations regarding the sort of evidence at issue here. The court explained:

The State argues that the notes fit the definition of attorney work product and

> thus were exempt from pretrial discovery under Florida Rule of Criminal Procedure 3.220(g)(1). We reject the State's argument. First, we again make plain that the obligation exists even if such a document is work product or exempt from the public records law. [citations omitted].
> Second, we find that the trial court's decision that the state attorney notes of witness interviews were not Brady material was error.

Young, 739 So. 2d at 559.

5. It is anticipated, based upon the machinations of the State to date regarding the discharge of its discovery obligations, that they will argue that the forwarding of the BIN file to defense counsel completes its discovery obligation in regard to the information. Such a suggestion is similar to offering the 26 letters of the alphabet and stating that all words of discovery could be found within it. The BIN file produced is a series of zeroes and ones, which can only be interpreted by appropriate software, as stated at the April 30, 2013 hearing. The State has purchased a copy of that software and have scoured the data, producing additional reports, including the exculpatory information referenced above. This is undeniable. While the defense has hired an expert to partially decipher the BIN file, it is unknown what information the state has been able to extract, and to the extent such information is discoverable, pursuant to the Young case as argued above, it should be forwarded to the defense.

The State has intentionally hidden this information from the defense as part of an overall

6. This continued and ongoing philosophy of hiding discovery and failing to disclose discoverable information from the defense is an ongoing attempt by the State

Attorney's Office to deny Mr. Zimmerman a right to a fair trial by attempting to customize and curtail discovery in this matter in violation of his Sixth Amendment rights. Reference is, once again, made to the many motions filed by the Defense in this regard such as the Motion to Compel Discovery dated 10/12/12, Motion to Compel Additional Discovery dated 12/06/12; Motion for Specific Discovery dated 1/31/13, Demand for Specific Discovery dated 2/07/13; Motion for Sanctions Against the State Attorney's Office dated 3/25/13; and the Demand for Specific Discovery dated 03/26/13, etc.

Reference is further made to the State's questionable explanation for its failure to forward information to the defense regarding the erstwhile non-hospital visit of Witness 8. Mr. de la Rionda offered that he simply 'forgot', even though the defense had asked him on five previous occasions, including letter, email, motion and a notice of hearing. The only way this matter can properly be addressed is for this Court to inquire of the state regarding the existence of these reports, and to demand that they be forwarded to the defense.

WHEREFORE, the Defendant respectfully requests this Honorable Court make a judicial inquiry concerning this discovery violation and whatever sanctions the court deem appropriate.

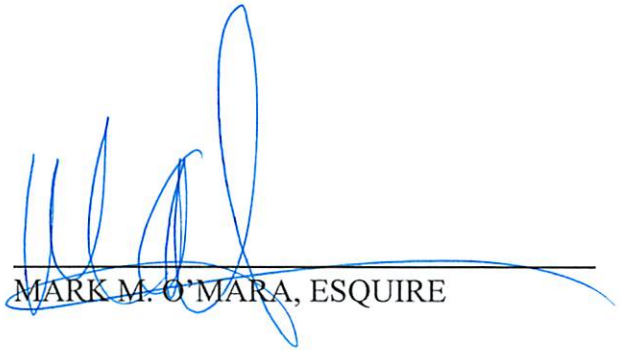
MARK M. O'MARA, ESQUIRE
Florida Bar No.: 359701
O'Mara Law Group
1416 East Concord Street
Orlando, Florida 32803
Telephone: (407) 898-5151
Facsimile: (407) 898-2468
E-Mail: Mark@markomaralaw.com
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile/E-Mail/U.S. Mail this 23rd day of May, 2013 to:

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