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

STATE OF FLORIDA vs. GEORGE ZIMMERMAN	Case No.: 2012-CF-001083-A **NON-PARTY BENJAMIN L. CRUMP, ESQ.'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION**

Non-party Benjamin L. Crump, Esq. ("Attorney Crump"), by and through undersigned counsel, hereby responds to the March 15, 2013 Motion for Reconsideration and Clairifcation of the Court's Order dated March 4, 2013 (the "Motion for Reconsideration" or "Motion") filed by Defendant George Zimmerman ("Defendant"), and respectfully requests that the Court enter an order denying Defendant's Motion.

Defendant burdens the Court with a motion for reconsideration without asserting any of the accepted bases for seeking relief. The proper purpose for a motion for reconsideration is to give the "trial court an opportunity to consider matters which it failed to consider or overlooked," not matters that the Court has already considered and decided. *See, e.g., Pingree v. Quaintance*, 394 So. 2d 161, 162 (Fla. 1st DCA 1981). Indeed, a motion for reconsideration is not the proper procedure for re-arguing the whole case merely because the losing party disagrees with the Court's decision. *Diamond Cab Co. of Miami v. King*, 146 So. 2d 889, 891 (Fla. 1962); *cf. Ayala v. Gonzalez*, 984 So. 2d 523, 526 (Fla. 5th DCA 2008) (noting, in the appellate context, that the privilege to seek a rehearing is not "an open invitation for an unhappy litigant or attorney to reargue the same points previously presented, or to discuss the bottomless depth of the displeasure that one might feel" toward the court). Accordingly, it is improper to use a motion

for reconsideration as a vehicle to present almost identical arguments that the Court previously considered and rejected.[1]

Now, with the benefit of Attorney Crump's Response, the February 22, 2013 hearing, the Court's *ore tenus* ruling and subsequent March 4, 2013 Order, Defendant attempts to justify his Motion for Reconsideration on the allegation that the affidavit filed by Attorney Crump, which was filed on his own initiative, "is not only incomplete, but it is also inaccurate." (Mot. at 5). Defendant seems to also suggest that the discovery of some contradictory statements by Witness 8 somehow gives rise to the right to depose opposing counsel. Perhaps the guidance provided by this Court's March 4, 2013 Order was largely ignored or neglected by the Defendant.

This Court has already determined that, to depose opposing counsel, "'the party seeking to take the deposition [must show] that (1) no other means exist to obtain the information than to depose opposing counsel, *see e.g.*, *Fireman's Fund Insurance Co. v. Superior Court*, 140 Cal. Rptr. 677, 679, 72 Cal. App. 3d 786 (1977); (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to preparation of the case.' *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986). Discovery or depositions from an opponent's counsel are improper where these three criteria are not met. *Boughton v. Cotter Corp.*, 65 F.3d 823, 830 (10th Cir. 1995)." (Mar. 4, 2013 Order at 2). Nothing contained within the eighteen-page Motion filed by Defendant provides the Court with a sufficient basis on which

[1] This is especially true where, as here, Defendant was required as a matter of law – in his initial motion to compel – to make a substantial showing that, notwithstanding the formidable presumption and public policy concerns against deposing opposing counsel or discovering attorney work product, he was entitled to the sought-after discovery. *See, e.g., Horning-Keating v. State*, 777 So. 2d 438, 444 (Fla. 5th DCA 2001) (citations omitted); *State Farm Mutual Automobile Ins. Co. v. LaForet,* 591 So.2d 1143, 1144 (Fla. 4th DCA 1992); *North Broward Hosp. Dist. v. Button,* 592 So.2d 367 (Fla. 4th DCA 1992). He failed to do so, choosing instead to rely on only non-specific and conclusory allegations that fell woefully short of justifying any deposition of Attorney Crump.

to grant reconsideration. The Court was previously apprised of Defendant's arguments; it just did not find them to be persuasive.

Defendant cannot demonstrate that no other means exist to obtain the discovery sought from deposing Attorney Crump because Defendant has just recently conducted a partial deposition of Witness 8. Defendant has instead sought to begin discovery with the deposition of Attorney Crump, and has not demonstrated any additional effort to identify and obtain the information sought. For a second time, Defendant falls exceedingly short of bearing the burden of establishing the need and propriety of deposing Attorney Crump, and establishing that the underlying facts he seeks to discover are both relevant and non-privileged. Indeed, it would be difficult to conceive of any non-privileged information Attorney Crump has regarding his interview of Witness 8.

Lastly, Defendant argues that Attorney Crump must be deposed for impeachment purposes. Since the deposition of Witness 8 has been recent and partial in nature, there can be no showing of any possible inconsistency in her testimony that is relevant or otherwise material to any deposition of Attorney Crump. As the Court noted: "it is the preserved statement itself, and not the personal recollection of the attorney present at the time, that should be used for purposes of impeachment. *Olson v. State*, 705 So.2d 687, 691 (Fla. 5th DCA 1998)." (*Id.* at 5). Defendant nevertheless seeks to impose himself into the work-product privilege to investigate "contradictory and *possibly* perjurious testimony . . . for further determination of additional misrepresentation or lies, to document further bases for impeachment of Witness 8, and *other necessary matters*." (Mot. at 3-4) (emphasis added).

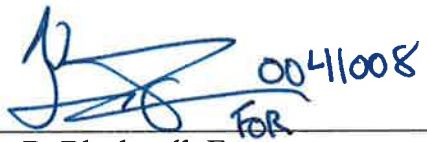
In short, Defendant improperly seeks judicial reconsideration of this Court's Order supported by nothing more than an apparent displeasure with the Court's previous ruling and the

identical arguments contained in Defendant's original motion to compel. Defendant's Motion for Reconsideration is woefully insufficient and should be denied in the interests of judicial economy and finality.

WHEREFORE, non-party Benjamin L. Crump, Esq. respectfully requests that the Court enter an order denying Defendant's March 15, 2013 Motion for Reconsideration and providing such further and appropriate relief as the Court may deem just and proper.[2]

Dated: March 26, 2013.

Respectfully submitted,



Bruce B. Blackwell, Esq.
Florida Bar No.: 0190808
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
25 E. Pine Street
P.O. Box 1631
Orlando, Florida 32802
Telephone No.: (407) 422-2472
Facsimile No.: (407) 648-0161
Primary Email: bblackwell@kbzwlaw.com
Secondary Email: courtfilings@kbzwlaw.com

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

[2] To the extent the Court is at all inclined to reconsider its March 4, 2013 Order, Attorney Crump would respectfully suggest that the Court simply include an amendment providing that Defendant's Motion to Compel is "denied for the reasons stated in open court during the February 22, 2013 hearing and for the reasons stated herein," thereby incorporating the Court's complete and well-reasoned rationale into a single order.

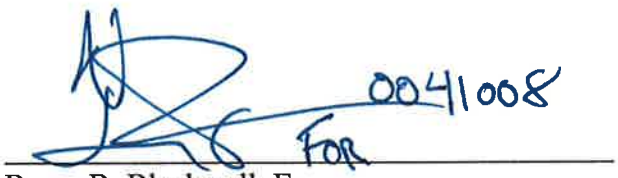
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 26, 2013, a true and correct copy of the foregoing was furnished via email (.pdf) to:

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

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

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



Bruce B. Blackwell, Esq.