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

The State of Florida, by and through the undersigned Assistant State Attorney, files the following response to Defendant's Motion for sanctions filed on March 25, 2013[1].

SUMMARY OF ARGUMENT

The only thing more inflated than Defense Counsel's rhetoric is perhaps the alleged hourly fees cited in a second motion for payment of attorneys' fees and costs.

Defendant's counsel asserts that somehow the State, in the person of Assistant State Attorneys de la Rionda and Guy, has committed "discovery violations" by:

[1] In a prime example of the calumny of Defendant's Motion, the Court should note that it was filed at essentially the same time as a Motion containing an agreement from the State to extend the deadline to list witnesses (which Defense Counsel was requesting) in this case. When Defense Counsel was discussing this request with the undersigned, it is now apparent that at least one of the reasons he needed said extension was that he wasted considerable time preparing a request for sanctions against the very attorneys from which he was courting favor (never mentioning, of course, the fact that he was about to accuse them of misconduct). Such craven conduct exemplifies the lack of merit with respect to both the Motion, and its author.

Further, it bears noting that said pleadings were, in a curious bit of timing, the subject of a counsel-friendly "news" story even before the ink was dry on the filing stamp. Defendant's apologists complain that Victim's family is merely trying to line its own pockets. It appears that Defense Counsel, however, may have found an entirely different use for his own pocket.

a) "fail[ing] to disavow" a media report made by a civil attorney "in various public forums."

b) "failing to disclose. . . significant exculpatory evidence."

Though Defendant attempts as well to rehash prior allegations of what he claims was misconduct (which have been considered and rejected already, on more than one occasion) these two allegations are the basis for Defense Counsel demanding that the Court order the State to reimburse him and his colleague an amount to be disclosed at a later time.

The State, however, committed no such violations in the instant case.

I. "FAILURE TO DISAVOW"

Counsel for Defendant apparently feels that the State Attorney's Office should keep him from publicly humiliating himself and his client. Rule 3.220 does not appear to contain such a requirement. It was Defense Counsel, not the State, who apparently outsourced his legal strategy to the internet resulting in the "doxing" of the wrong female witness (see attached Exhibit A). Presumably, he is seeking compensation now for time he spent following bad legal strategy and advice from anonymous internet trolls.

Moreover, Defense Counsel certainly understands that public statements by civilians, the vast majority of which were made before the State Attorney's Office was even assigned to this case, are hardly the responsibility of this office to censor. By way of example: Defense Counsel not only himself courts anything resembling a microphone or camera, but there are likewise many statements made by minions of his client, such as this recent gem provided by Defendant's own brother:

> Saturday morning, Robert sent an image to the NAACP and the NRA, among others, with two images side by side. One is of De'Marquise Elkins, 17, one of two teenagers accused of fatally shooting a 13-month-old baby. The other is of Trayvon Martin, who was fatally shot on February 26, 2012, in Sanford, Florida.

Both are holding up their middle fingers. The words on Zimmerman's Photoshop job read "a picture is worth a thousand words ... any questions?"

http://www.washingtonpost.com/blogs/therootdc/post/robert-zimmermans-ugly-dangerous-tweets/2013/03/26/3cd24baa-961c-11e2-894a-b984cbdff2e6_blog.html

Additional comments were made by Defendant's brother, who has now admitted that the comments were inappropriate. Defense Counsel has stated with respect to such remarks that "He has his own opinions about things. He does not represent the defense." Counsel would do well to remember that concept in the context of claims like that in his Motion. "The world is full of pots jeering at kettles." LeRochefoucauld, *Maxims* # 507.

II. NO "EXCULPATORY" EVIDENCE WAS WITHHELD

Initially, the State notes that Defense Counsel contends that the supposedly "exculpatory" material was a witness's statement that she went to a hospital instead of going to the funeral of the Victim, Trayvon Martin, who had been murdered by counsel's client; in fact, the witness has now admitted that she did not actually go to the hospital. This, of course, is not exculpatory; whether the witness attended the victim's funeral has nothing to do with Defendant being the person who caused the funeral to happen. What becomes clear, then, is that Defense Counsel either does not know what "exculpatory" means, or he is willfully misrepresenting the same to this Court.

In short, this allegation is rife with sensationalism, yet bereft of substance.

> This case is similar to others in which we have affirmed the denial of claims of newly discovered evidence that purports to establish the defendant's innocence. In Buenoano v. State, 708 So.2d 941 (Fla.1998), the defendant, a prisoner under a sentence of death and a third death warrant, asserted that the trial court erred in summarily denying her newly discovered evidence claim. The defendant had been convicted of the first-degree murder of her husband, who died as a result of chronic arsenic poisoning. See id. at 943. The newly discovered evidence consisted of a report issued by the Office of the Inspector General of the United

> States Department of Justice that brought into question some of the practices of an FBI special agent who testified concerning collateral-crime evidence presented during the guilt phase of Buenoano's trial. See id. at 945. After introducing evidence that another man with whom the defendant lived after her husband's death had also died of acute arsenic poisoning, the State presented the testimony of a third man who testified that he suspected that the defendant was trying to poison him with vitamin capsules. See id. Pursuant to a stipulation, the jury was informed that based on an examination, the FBI agent had determined that the capsules given to the third man contained paraformaldehyde, a Class III poison. See id. at 944. In affirming the summary denial of the defendant's newly discovered evidence claim, the Court noted with approval the trial court's determination that ***this evidence "constitutes, at most, impeachment evidence***." Id. at 950.

Rutherford v. State, 926 So. 2d 1100, 1110-11 (Fla. 2006) (emphasis supplied).

That distinction aside, the State agrees that potential impeachment material should be (and has been) disclosed. Defense Counsel admits that he was informed on March 4, 2013, before any hearing on the matter, that the witness had not gone to the hospital. Defendant completely fails to identify any actual prejudice or additional cost affiliated with this issue; rather, counsel appears to be grandstanding in an attempt to repeat as many times as possible what the Court already knows: the witness made an incorrect statement about a matter having nothing to do with Defendant's culpability. *"Parturient montes, nascetur ridiculus mus."*

Defense Counsel, of course, is no stranger himself to such misrepresentations, having made more than one himself in this very case:

A) On 4/20/2012, Defense Counsel asserted to the Court that he was surrendering his client's only passport; that turned out not to be the case. In fact, Defendant had a second active passport (subsequently surrendered) in a safety deposit box that Defendant and his wife talked about in jail calls.

- Mark O'Mara: Your Honor, if I might, this is my client's current passport and the only passport that he has. It does expire May of 2012, but did want to acknowledge his surrendering it to the Court at this time.

- Mark O'Mara: We have surrendered his passport, he doesn't have a legal way to get out of the country.

  On 4/17/2012, Defendant and his wife talked about the passport in a jail call. (Jail call 18587153 @ 11:27:26)

- George Zimmerman: I think my passport's in that bag.
- Shellie Zimmerman: Oh, really, Well, I have one in a safety deposit box.
- George Zimmerman: Okay, you hold onto them.

B) On several occasions Defense Counsel asserted to the Court that Defendant was indigent, and he was unaware of the "defense fund" dollars his client had received. However, Defendant and his wife said otherwise[2]:

In a jail call with his wife, they talked about Defense Counsel knowing about the money. (Jail call # 18556807Jail on 4/14/12 at 14:36:43)

- George Zimmerman: Are you still meeting with Mark?

Later on after his wife reminds Defendant the call is being recorded, Defendant discusses talking with Mark O'Mara.

- George Zimmerman: He told me he's gonna try and get me uh, try and have the State find me uh, indigent.
- Shellie Zimmerman: What does that mean?
- George Zimmerman: That I don't have any money cause I'm not working, so.
- Shellie Zimmerman: Oh, oh, oh, oh. Right. Yeah.
- George Zimmerman: And I told him, you know, that we had received uh, some small contribution, and he said it doesn't, you know, that's
- Shellie Zimmerman: It doesn't what?

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[2] In yet another fascinating coincidence, counsel actually presented the testimony of Defendant's wife at a bond hearing, resulting in her testifying falsely to the matters material to the hearing and being charged with perjury. Strangely counsel's act has yet to be "disavowed."

- George Zimmerman: It doesn't matter.

WITNESS # 8

Defense Counsel has consistently attempted to discredit Witness 8 in the public forum. This motion is just another attempt to do so. Others who support Defendant have made it their mission to identify this teenager and subject her to public ridicule. And, as a society we wonder why so many witnesses don't want anything to with the criminal justice system.

In that regard, it is important to set the record straight about a few undisputed facts. Witness 8 was talking on the phone with Trayvon Martin on 2/26/2012. In addition to Witness 8's statements, Victim and Witness 8's phone records prove they were talking on the phone when:

- Defendant observed Trayvon Martin (incorrectly profiled him as a criminal)
- Defendant called police
- Defendant followed Trayvon Martin (and continue to do so after being told not to)
- Defendant confronted Trayvon Martin

The call was interrupted ..... and she never spoke to the Victim again.

Witness 8 didn't want to get involved in this case. Unlike some people involved in this case, she has never sought out publicity. Quite the opposite is true. Witness 8 reluctantly agreed to talk only after a review of Trayvon Martin's phone records established she was on the phone with him. Even though she agreed to talk, she wanted her true identity to remain a secret. Witness 8 did everything she could to not being identified, including using her nickname so that she would not be subjected to what is now happening to her. See attached letter Witness 8 gave Victim's mother, Sybrina Fulton, prior to the recorded telephone call with Trayvon Martin's attorney, Benjamin Crump. (Exhibit B).

III. CONCLUSION

It has been said that "when the facts are against you, argue the law; when the law is against you, argue the facts; and when the facts and law are both against you, call the other lawyer names." Paul Dickinson, *The Official Rules* (1978). Counsel has done exactly that throughout the course of this case, systematically levying loud, public, scurrilous allegations and attacks against a wide variety of targets:

- he has accused attorneys who represent members of the family of the Victim in this case, of a wide variety of misstatements, misconduct, and misbehavior; he has on several occasions referred to them as "the handlers";

-he has accused the Victim's mother, *in the instant Motion* of "potential influence" of a witness;

-he has accused at least one judge of being biased and prejudiced;

-he has accused various members of the media, going so far as to sue some.

It is no surprise then that Defense Counsel finally got around to targeting the prosecutors as well. No misconduct has occurred, nor should sanctions be awarded to compensate counsel. Indeed, the instant Motion appears to be the product of

> [A] walking shadow, a poor player
> That struts and frets his hour upon the stage
> And then is heard no more: it is a tale . . .
> Full of sound and fury,
> Signifying nothing.

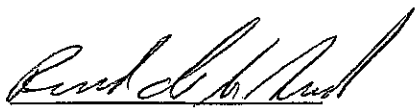
William Shakespeare (1564 - 1616), "Macbeth", Act 5 scene 5.

WHEREFORE, the State requests this Honorable Court enter an Order Denying Defendant's Motion.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a copy of the foregoing has been furnished by email to Mark O'Mara, Esq. and Don West, Esq., this 28th day of March, 2013.

ANGELA B. COREY
STATE ATTORNEY

By: 

Bernardo de la Rionda
Bar Number: 365841
Assistant State Attorney

search...

HOME PRESS RELEASES DOCUMENTS MEDIA REQUESTS DEFENSE FUND

ADDRESSING CONCERNS ABOUT CYBER ATTACKS AND DOXING

ON 13 DECEMBER 2012.

We feel a responsibility to make a public, affirmative stance against any and all incidents of cyber attacks or "doxing" to anyone associated with this case, any one suspected as being associated with this case, or to anyone who contributes to the conversation about this case.

We have heard that some witnesses, or possible witnesses, and supporters on both sides of this case have been the victims of cyber attacks or doxing (the act of publishing personal documents about the individual on the Internet). With a case of such intense scrutiny, we are in uncharted waters regarding how the case is discussed publicly, and the online accessibility of individuals associated with the case. As the defense team, we have taken a well-documented proactive stance on how we manage our digital media presence. Our policy regarding digital media makes us particularly aware of the online conversation regarding our case, and we attempt to adjust our online presence as we see the need.

We first became aware of these concerns while we hosted the George Zimmerman Legal Case page on Facebook. Part of the reason we discontinued our presence on Facebook was because we were uncomfortable being in any way associated with people engaged in such practices and we refused to provide a platform where this practice could take place.

We understand that there may have been such actions directed at individuals who may be associated with Witness #8. In an October 19 hearing, the defense team requested a Subpoena Duces Tecum for the social media accounts of Witness #8; however, we intentionally did not disclose her name or any possible Twitter handle out of respect for her privacy. (We still have not been informed of her Twitter handles). If there is an individual who has been mistaken as Witness #8, and if this individual has been subjected to these practices, then we feel that those who knew Witness #8's identity and therefore her Twitter handle, such as the State Attorneys Office or the handlers of the Martin family, have had many specific opportunities through social media or press conferences to publicly correct the misrepresentations and end the concerns -- an opportunity they have yet to take. We implore them to do so now, to minimize any further damage. If they know the Twitter handles are of a person unrelated to the case, why has this not been publicized?

We are taking this opportunity to say that we do not condone or encourage such practices; and anyone who wishes to make a beneficial contribution to this case must know that they do a considerable disservice if they engage in such practices, and we unequivocally condemn the practices mentioned above.

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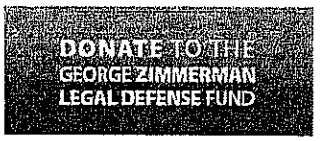
WHY SOCIAL MEDIA FOR GEORGE ZIMMERMAN?

Find out why we have created an Internet presence for the defense of George Zimmerman»



@GZLEGALCASE

#zimmerman MEMORANDUM OF LAW IN SUPPORT OF POSITION REGARDING THE PROSECUTOR'S OBLIGATION TO DISCLOSE INFORMATION http://t.co/1XuQNPGe
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State's Response to Defendant's Motion to Continue
DEFENDANT'S MOTION FOR SPECIFIC DISCOVERY
Defendant's Motion to Continue
Notices of Taking Deposition

Exhibit B

March 19, 2012

I was on the phone when Trevon decided to go to the Cornerstone. It started to rain. So he decided to walk through another complex because it was raining so hard. He started walking then noticed someone was following him. Then he decided to find a shortcut cause the man wouldn't follow him. Then he said the man didn't follow him again. Then he looked back and saw the man again. The man started getting closer. Then Trevon turned around and said Why are you following me!! Then I heard him yell, then the phone hung up. I called back and text. No response. In my mind I thought it was just a fight. Then I found out this tragic story.

Thank you,

[redacted]