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MARYANNE MORSE
Clerk of Circuit Court
Seminole County, Florida
By: [Signature]
Deputy Clerk

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

STATE OF FLORIDA

Case No.: 2012-CF-001083-A

VS.

AFFIDAVIT OF BENJAMIN L. CRUMP, ESQ.

GEORGE ZIMMERMAN

**(IN LIEU OF DEPOSITION OR,
ALTERNATIVELY, IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER)**

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

BACKGROUND & OVERVIEW

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

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

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

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

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

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

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

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

- a. The Information (docketed 04/11/2012);
- b. FLA. STAT. § 782.04 (proscribing second-degree murder), the Florida Supreme Court's decision in *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010) (discussing, in part, the potentially lesser included offense of manslaughter), and FLA. STAT. § 782.07 (proscribing manslaughter);
- c. Florida's Standard Jury Instructions for Criminal Cases, 7.1 – Introduction to Homicide, 7.4 – Murder (Second Degree) and 7.7 – Manslaughter;
- d. FLA. STAT. §§ 782.02, .03 (limiting the justifiable use of deadly force and circumstances for excusable homicide);

- e. Florida's so-called "Stand Your Ground Law," Chapter 2005-27, Laws of Florida, as codified at FLA. STAT. §§ 776.012, .013, .031, .032 [hereinafter, "Florida's Stand Your Ground Law"];
- f. Florida's Standard Jury Instructions for Criminal Cases, 3.6(f) – Justifiable Use of Deadly Force (which is currently under review by the Florida Supreme Court's Committee on Standard Jury Instructions in Criminal Cases);
- g. The State's Affidavit of Probable Cause (re-docketed 04/17/2012);
- h. Defendant's Motion to Compel Discovery (docketed 10/12/2012);
- i. In the absence of an available transcript, video of the Court's October 19, 2012 hearing (dated 10/19/2012);
- j. The Court's October 19, 2012 Amended Minutes and Order (docketed 10/19/2012);
- k. Defendant's Motion to Compel Production of Evidence from Third-Party (docketed 11/30/2012);
- l. The State's Response to Defendant's Motion to Compel Production of Evidence from Third-Party (docketed 12/10/2012);
- m. Defendant's Reply to the State's Response to Defendant's Motion to Compel Production of Evidence from Third-Party (docketed 12/10/2012);
- n. In the absence of an available transcript, video of the Court's December 11, 2012 hearing (dated 12/11/2012);
- o. The Court's December 11, 2012 Minutes and Order (docketed 12/11/2012);
- p. A copy of the FDLE Property Receipt Form provided by the State to the Defense (exchanged in open court 12/11/2012);
- q. The State's 11th Supplemental Discovery (docketed 12/13/2012);
- r. Defendant's Motion for Subpoena Duces Tecum to American Broadcasting Companies, Inc. (ABC) (docketed 01/18/2013);
- s. Defendant's Motion to Continue (docketed 01/30/2013);

- t. The operating instructions and marketing specifications for the Sony model ICD-BX112 digital voice recorder, as posted and made available on the website operated by Sony Electronics, Inc.; and
- u. Copies of audio recordings within the possession and control of the Defense, as posted and made available on the website operated by Mark M. O'Mara, P.A. ("Defendant's Redacted and Converted Copies of the Recording").

INITIAL DEVELOPMENTS & DISCOVERY OF WITNESS 8

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

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

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

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

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

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

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

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

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

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

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

TELEPHONIC INTERVIEW & RECORDING OF WITNESS 8

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

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

- a. Introduced myself as legal counsel for Trayvon’s parents and his estate;
- b. Briefly explained the reason for my call – that, according to phone records available to my clients, it appeared as though Witness 8 might have some knowledge bearing on the Litigation;
- c. Inquired if Witness 8 had legal counsel and learned that she did not;
- d. Inquired if Witness 8 had spoken to any investigators or other individuals affiliated with law enforcement, learned that she had not and, after encouraging Witness 8 to come forward to the authorities, further learned that Witness 8 and her family were fearful of coming forward and wanted Witness 8’s identity kept private;
- e. Explained that, as counsel for Trayvon’s parents and his estate, I was not acting as a lawyer for either the State or Defendant in any criminal prosecution that could eventually be brought and that, while Witness 8 could have her own lawyer if she or her family felt the need for one, I

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

- f. Determined that, while Witness 8 was willing to speak with me further, neither she nor her family would permit me to do so in person and wanted the interview to be conducted telephonically;
- g. Briefly confirmed that, consistent with the phone records recently made available to my clients, Witness 8 had, in fact, been speaking with Trayvon for much of the day on February 26, 2012 and – without eliciting or then learning the substance of anything that Witness 8 might have heard while speaking with Trayvon – further confirmed that Witness 8 had been speaking with Trayvon in the minutes leading up to his death and that she appeared to be one of the last persons to speak with Trayvon while he was still alive;
- h. Briefly determined that Witness 8 had been close with Trayvon and that she had been upset upon learning of his death (and, in fact, had been unable to attend Trayvon's wake because she had to go to the hospital);
- i. Instructed Witness 8 that, until we actually started the Interview in earnest, I did not want her to reveal to me, *inter alia*, the substance of anything she might have heard during her conversations with Trayvon on February 26, 2012 and that, whatever she knew, I needed her to provide a complete and truthful account during the Interview;
- j. Explained that, while I would be asking the questions, Trayvon's parents, other family members and two individuals affiliated with the media wanted to be present with me during the Interview and that I wanted the permission of Witness 8 and her family to interview her in this manner (which permission was given);
- k. Explained that, as an officer of the court, I could potentially subpoena and depose Witness 8 at some point in the future and that Witness 8 might also be deposed or called as a witness in connection with any criminal prosecution that might potentially be brought against Defendant;
- l. Emphasized that, while the Interview would not be the equivalent of a deposition that was given under oath and in the presence of opposing counsel, I wanted Witness 8 to tell the whole truth and that, regardless of whether her statements might potentially help or hurt Trayvon's parents in regard to the Litigation or any criminal prosecution that might potentially be brought against Defendant, I wanted Witness 8 to simply tell the truth;

- m. Explained that I wanted to record the Interview but that, before I could do so, I needed the consent of Witness 8 and her family (which consent was given);
- n. Explained that, if I asked Witness 8 any question during the Interview which she did not understand or to which she did not know the answer, I did not want her to guess or speculate and instructed her to simply state that she did not understand my question or did not know the answer; and
- o. Again emphasized that I wanted Witness 8 to simply tell the truth throughout the Interview.

(collectively, the "Preliminary Inquiry").

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. My need to take breaks between formulating questions, listening to and digesting Witness 8's answers, and my desire to stop the recorder, sometimes place Witness 8 on hold and start with a fresh message before taking Witness 8 off hold and then otherwise resuming;
- b. Audio problems associated with the cell phones used to call Witness 8 and the need to place her on hold (in an effort to improve the quality of the Recording, I was compelled to use multiple cell phones during the course of the Interview in an effort to determine which phone had the best

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

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

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

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

- c. The need to verify that the Recorder was functioning properly and actually recording Witness 8's statements (which, upon switching phones or re-instructing Witness 8 to speak more loudly, necessitated pauses during which I would play and listen to portions of the Recording); and
- d. My desire to transition into different subject matter areas and, for ease of reference, to ensure that those areas would be kept in separate and more easily locatable messages.

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

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

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

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

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

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

CIRCUMSPECT DISCLOSURE & CHAIN OF CUSTODY

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

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

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

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

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

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

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

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

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

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

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

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

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

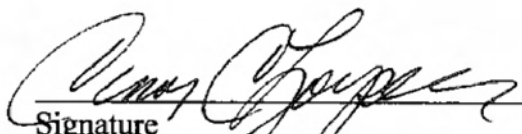

Converted Copies of the Recording appear to be true and correct copies of the original Recording.

FURTHER AFFIANT SAYETH NAUGHT.


BENJAMIN L. CRUMP

STATE OF FLORIDA
COUNTY OF SEMINOLE

SWORN TO AND SUBSCRIBED before me this 5th day of February, 2013, by Benjamin L. Crump, who duly acknowledged to me that he executed the above instrument. He is personally known to me or who has produced FL DL C65107269370-0 as identification and did take an oath.


Signature

(Print Name)

Notary Public
My Commission Expires:
My Commission No.:

