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 CONCURRENCE TO THE STATE'S MOTION FOR PROTECTIVE ORDER AND OBJECTION TO RELEASE OF CERTAIN DISCOVERY AND REQUEST FOR DELAY IN RELEASE OF CERTAIN DISCOVERY TO ALLOW ANALYSIS

COMES NOW the Defendant, GEORGE ZIMMERMAN, by and through his undersigned counsel, and hereby files this his Objection to Release of Certain Discovery, within the anticipated discovery from the State Attorney's Office, and Request for Delay in Release of Discovery to Allow Analysis, and as grounds therefore states as follows:

1. On April 11, 2012, Mr. Zimmerman was arrested, and charged with the offense of Second Degree Murder in violation of *Florida Statute* Section 782.04, a first degree felony punishable by up to the maximum punishment of life in prison and a $10,000.00 fine.

2. On April 16, 2012, an appropriate Notice of Appearance and Demand for Discovery was filed by undersigned counsel.

3. Based upon ongoing discussions with representatives of the State Attorney's Office,

undersigned counsel believes that discovery disclosure, having begun on May 14, 2012, will continue over the next weeks.

4. Undersigned counsel is of the reasoned believe that the discovery will include certain categories of information which, if disclosed to the media presently, will adversely affect the proper administration of justice in this case, and may make it impossible to find an appropriate jury unaffected by this information.

5. In the case of *Reilly v. State*, 557 S.2d 1365 (Fla. 1990), the Supreme Court opined that release of what is later determined to be inadmissible information could be so prejudicial that a prospective juror exposed to that information would not be allowed to serve on a jury. In support for that position, Supreme Court cites an earlier and instructive case, *Bolin v. State*, 736 S.2d 1164 (Fla. 1999).

6. Undersigned counsel believes that there will be several categories of information which will be subject to appropriate motions in limine or motions to deny release after being given an opportunity to review this discovery.

7. Discovery to date has exceeded thousands of pages, and includes various audiotapes, videotapes, expert reports, scene reconstruction reports, and other matters presently unknown to undersigned counsel, which will take a great deal of time to review.

8. Undersigned counsel believes that the categories of information which will or may be subject to a request for either redaction or limitation from disclosure are as follows:

a) Names and other demographic information concerning witnesses. Undersigned counsel believes that this information is necessary to protect those witnesses from

scrutiny which will be visited upon them by the media and by the public based upon their information regarding this case.

b) Certain discovery, though completely irrelevant, may tend to inflame the passions of those in favor of one position or the other in this matter. As an example, undersigned counsel is aware that there are approximately 1,000 emails received by the Sanford Police Department regarding this case. This is appropriate discovery, and the undersigned expects to review it. While the majority of that information would not be admissible in Court, the release of such information (which undersigned counsel understands to include racially charged comments either in favor of the defendant or opposed to the defendant) would negatively impact the potential jury pool, and will therefore further affect the appropriate administration of justice in this regard. Undersigned counsel believes that there will be other similar categories of discovery information, but is presently unaware, having not seen that part of discovery yet.

c) There may well be information within the discovery which would be subject to motions affecting the admissibility of that information. As an example, statements have been taken from Mr. Zimmerman, and , without reviewing the statements, there is the possibility that these statements may be subject to motions to suppress, if there is a potentially involuntary statement elicited from Mr. Zimmerman. The release of that information would be highly prejudicial to Mr. Zimmerman's case, and again, would adversely affect the proper administration of justice. The state has, to date, redacted these statements from the discovery released, and undersigned counsel joins the state in its decision to withhold these statements until such time as the undersigned has an opportunity to review them and decide if any motions attendant to these statements are proper.

Disclosure of that information would make it very difficult for any prospective juror, having been exposed to that information, to set it aside, as per the admonition of *Reilly* and *Bolin* above.

Similarly, undersigned counsel understands, upon reasoned belief, that there are certain 'text messages', emails, journal entries and/or other similar information, made by Mr. Zimmerman, which have no relevance whatsoever to this proceeding, but which have been secured by the state as part of their evidence gathering. Undersigned counsel requests that these text messages be withheld until such time as they may be reviewed, and motions attendant to them filed and heard.

9. Mr. Zimmerman's Constitutional right to have a fair trial, and to have this matter heard by a jury of his peers, without unnecessary influence from such matters, is paramount, and the need for protecting those rights far exceed any right that the media or the public may have in this information. *Florida Freedom Newspapers Inc. v. McCrary*, 497 S.2d 652 (Fla. 1st DCA 1986).

10. The release of this information to the media and the public is authorized by *Florida Statutes* Chapter 119. However, in certain situations, *Florida Statutes* 119.0714 identifies that a Court has the authority to further restrict the disclosure of such information.

> 119.0714 Court files; court records; official records.—
>
> (1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and *that is not specifically closed by order of court*, except: {no exceptions apply} (emphasis added)

11. This matter was also addressed by the Supreme Court in the *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982), where the Supreme Court acknowledged a three prong test to identify whether or not the court should exercise its inherent authority to limit disclosure of

information. This three prong test is as follows:

a) Where disclosure is necessary to prevent a serious and imminent threat to the administration of justice;

b) That no alternatives are available, other than the change of venue, which would protect a defendant's right to a fair trial; and

c) That closure would be effective in protecting the rights of the accuser without being broader than necessary to accomplish this purpose.

12. Under the standard identified by *Lewis*, the defendant's request is appropriate in that the following is, undeniably, true. The case of *The State of Florida v. George Zimmerman* has garnered an enormous local, statewide, nationwide, and international focus, such that news media from throughout the nation, and from as far off lands as Europe and the Far East, have had ongoing involvement in coverage of this matter. Further, the internet, today's staple of information commerce, has had hundreds of websites addressing various elements of this case on an ongoing basis; there are thousands of differing types of Internet 'chat' events going on regarding this case; and there has been ongoing, constant updating of every move by any of the parties involved, on a virtually instantaneous basis.

In addition, the victim's family in this matter, being handled by a law firm and a public relations firm, have had an extraordinary media and internet presence which has further heightened the focus on this case. Realizing this focus, undersigned counsel would argue that closure of the categories of information identified above is, in fact, necessary to prevent both a serious and an imminent threat to the administration of justice in this case. As to that issue, it is

without question that the potential jurors in this matter are being exposed to an unprecedented onslaught of information, innuendo, opinion, proselytizing and lobbying regarding issues mostly tangential to this case by various elements involved. Under the best of circumstances, it will be difficult to identify and sit a juror who has not been so impacted by information regarding this case that they do not have a preformed opinion regarding it.

13. As to the second *Lewis* element, its important to note that *Lewis* dealt with a 1983 reality, wherein a change of venue was the default remedy for a publicity laden case. Such is not an available remedy in today's information-overload world. A change in venue, while it may be a necessity, does less to act as a curative remedy today then it did thirty years ago. Therefore, even a change of venue would not protect the defendant's rights to a fair trial potentially because of the extraordinary explosion of non-local information flow.

14. As to the third *Lewis* element, it is Mr. Zimmerman's hope that closure, particularly of the categories referenced above, would be effective in protecting his rights to a fair trial. Certainly, that closure, as limited to the three above-referenced categories, would be as limited as necessary to accomplish this purpose without improperly treading on either the media or public's right to this information. Mr. Zimmerman's Sixth Amendment right to an impartial jury is paramount and is a fundamental right which he enjoys. Though the public's right and the media's right also is significant, they must bend to the right granted by the Constitution to a fair trial.

15. Undersigned counsel believes that based upon the volume of information, present work schedule and other matters, he would need a period of 30 days to review the entirety of the

disclosed information, and thereafter present to this Court specific requests for further redactions or restrictions regarding release of said discovery.

WHEREFORE, the Defendant respectfully requests this Honorable Court to enter its Order delaying the release of the presently redacted discovery forwarded by the State Attorney's Office for a period of not less than 30 days, allowing undersigned counsel to review the entirety of the disclosed information, and present specific requests for further redactions or restrictions regarding release of said discovery.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/Facsimile this 22 day of May, 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.

MARK M. O'MARA, ESQUIRE