IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

GEORGE ZIMMERMAN,

Petitioner,

vs.

Case No. 5D13-
Lower Court Case No. 2012-001083-CFA
(Seminole County)

STATE OF FLORIDA,

Respondent.
_____/

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioner, GEORGE ZIMMERMAN, by and through his undersigned counsel pursuant to Florida Rules of Appellate Procedure 9.100(c) and 9.030(b)(2)(A), and Article V, Section 4 of the Florida Constitution, and petitions the Court for issuance of a Writ of Certiorari reversing the lower court's orders dated March 4, 2013 and March 28, 2013 denying Petitioner's discovery request to take the deposition of attorney Benjamin Crump. The denial of this pretrial discovery request causes irreparable harm which cannot be remedied on appeal after final judgment. *Office of Attorney General v. Millennium Communications & Fulfillment, Inc.*, 800 So. 2d 255, 257 (Fla. 3d DCA 2001).

I. Jurisdiction

Petitioner invokes this Court's jurisdiction pursuant to Fla. R. App. P. 9.030(b)(2)(A) and 9.100(c), and Article V, Section 4(b)(3) of the Florida Constitution. The orders to be reviewed in the present case were rendered on March 5, 2013 and March 28, 2013.

Certiorari review of orders denying discovery is proper if the harm caused by the order is irreparable. *See Millennium Communications & Fulfillment, Inc.*, 800 So. 2d at 257; *Ruiz v. Steiner*, 599 So. 2d 196 (Fla. 3d DCA 1992).

II. Introduction

Petitioner brings this cause before this Court because the trial court denied Petitioner's request to take the deposition of Benjamin Crump, an attorney for Trayvon Martin's family[1]. Petitioner is entitled to take Mr. Crump's deposition under Fla.R.Crim.P. 3.220(h)(1)(A) as he is a witness in this case who possesses relevant information about an important state witness. Mr. Crump was the first person to interview Witness 8[2], the person that was on the phone with Trayvon Martin moments before he was shot. Mr. Crump made a partial, and barely

[1] Trayvon Martin was shot and killed by George Zimmerman on February 26, 2012 in Sanford, Florida. George Zimmerman claims the shooting was in self-defense.

[2] Several witnesses have been publicly identified only by assigned numbers to protect their privacy due to the intense media attention this case has generated.

intelligible recording of his interview and then played parts of the recording at a nationally televised press conference the next day.

Petitioner is not seeking to depose Mr. Crump on information that is privileged. In his sworn affidavit, offered in lieu of deposition, that discusses some of the information Mr. Crump has about this witness and the circumstances leading to her discovery and subsequent interview, Mr. Crump states that he does not have an attorney-client relationship with Witness 8 and states that he knowingly waived any work-product privilege he may have had.

In denying Petitioner's request to depose Mr. Crump regarding this important witness, the trial court found Mr. Crump to be "opposing counsel," applying the wrong factual and legal standard designed to protect opposing counsel in a law suit from depositions by their adversaries except in unusual circumstances[3].

Finally, the trial court erred in failing to find a waiver of any work product privilege regarding Witness 8 and other case related statements Mr. Crump made to the national press. Mr. Crump's waiver of any privilege, work product or otherwise, was brought to the trial court for consideration in Petitioner's pleadings, through argument at the hearing and in Petitioner's Motion for Reconsideration, yet

[3] However, even if Mr. Crump is considered to be "opposing counsel," Petitioner has met the standard and is entitled to depose him.

the trial court wholly failed to address the waiver issue when finding privilege as a basis to deny the deposition.

III. Statement of the Facts

Overview of Criminal Case

George Zimmerman was charged by Information on April 11, 2012 with Second Degree Murder, a violation of *Fla. Stat.* § 782.04. App. A:1-4. Mr. Zimmerman faces life in prison if convicted. The charge arose from an incident on February 26, 2012, which resulted in the death of Trayvon Martin. Mr. Zimmerman explained to the police that he shot Mr. Martin in self-defense after he was punched in the face and continued to be battered by Mr. Martin. App B: 11-15. Prior to the fatal shot, Mr. Martin was seen by a witness to the incident on top of and straddling and beating Mr. Zimmerman as he lay on the ground. App C: 30-38. Mr. Zimmerman explained that he had cried out for help repeatedly before firing his gun and that no one came to help. App D: 50. Those cries for help were recorded in the background of another witness' 911 call and lasted for at least 40 seconds before the shot was fired. App E: 54-55. At the scene, EMTs observed that Mr. Zimmerman had bleeding lacerations to the back of his head consistent with his head being struck on or by a hard object, facial cuts and a swollen, bleeding, and likely broken nose. App F: 57, 60-62. Mr. Zimmerman was detained at the scene, transported to the Sanford Police Department, questioned

and released several hours later. Mr. Zimmerman continued to cooperate with law enforcement, was interviewed on several occasions, participated in a re-enactment of the events of February 26, 2012 and submitted to voice stress analysis. Mr. Zimmerman did everything he was asked to do in the days following the shooting of Trayvon Martin and did so without benefit of legal counsel. App G: 63-64.

Witness 8 Interview

On March 19, 2012, attorney Benjamin Crump, an attorney for the Martin family, conducted a largely unintelligible, partially recorded interview of Witness 8. The next day, Mr. Crump played parts of the interview at a nationally televised press conference and claimed that his interview with Witness 8 "completely blows Zimmerman's absurd self-defense claim out of the water." App. H: Clip 1: 10:20. Mr. Crump did not identify Witness 8 by name, saying that she was a 16 year old child whose privacy needed to be protected. Mr. Crump withheld Witness 8's identity from the prosecuting authorities (who did not participate in the interview), refused to cooperate with the 18th Judicial Circuit State Attorney's Office and at some unknown time provided a copy of the partial recording to the FBI in Tallahassee, Florida. The current prosecutor refuses to tell Petitioner how Witness 8 became known to his office although he interviewed her on April 2, 2012.

A poor quality, composite recording of Mr. Crump's partial interview of Witness 8 was provided to Petitioner in the State's discovery disclosure in May,

2012. The audio file containing this interview was largely inaudible, contains gaps, and was seemingly edited. App H: Clip 2. At best, the recording provided to Petitioner of this utterly significant witness was a "copy of a copy" and was obviously not the entire interview. Petitioner would come to learn that the circumstances surrounding this interview were suspect and haphazard, and little care was taken to preserve a correct, accurate copy of the interview.[4] A member of ABC News and his assistant were also present in the room with Mr. Crump during this interview. Matt Gutman of ABC News aired an "exclusive" story playing parts of the recorded interview on national news on March 20, 2012. App H: Clip 3. On August 24, 2012, counsel for Petitioner asked the State for a better copy of the recording and was told that the State did not receive that recording from Mr. Crump. App. I: 68; L 7. Counsel for Petitioner was told that the State's investigator believed the recording came via the Department of Justice. Counsel for Petitioner did not know what led up to the recording, or what happened after it was taken other than that there was a media broadcast and press conference about it. App. I: 68; L 13. Counsel for Petitioner followed up in writing and requested a better copy, but received no response from the State.

[4] After many hours of investigation, the Petitioner also learned that the interview was conducted by telephone, and that the call lasted nearly 26 minutes, while the recorded parts provided to the Defense only lasted approximately 14 minutes in total.

After several failed attempts to learn information about this critical piece of evidence, Petitioner's counsel filed a motion to compel which was heard by the trial court on October 19, 2012. App. I: 67; L 7. One of the aspects to the motion to compel was a request for an original, digital copy of the recording Mr. Crump took of Witness 8, and for the State to disclose who was present during the recording of this interview. App. J: 79. At the hearing, the trial court heard argument from the State and Defense and suggested that the parties determine "whether or not [Mr. Crump] saved [the recording] on his phone, and if he saved it on his phone, if there's a means to get that, a better recording of it." App. I: 71; L 1. At that point, Mr. Crump (who was in the courtroom for the proceedings) took the podium to explain to the trial court and the parties the circumstances surrounding the recording. App. I: 71; L 22. Mr. Crump explained that he turned the recording over to the FBI, and admitted there were other people in the room when the recording was made, but did not offer much more information. App. I: 71; L 23. After further inquiry from the trial court to Mr. Crump, the trial court asked counsel if Mr. Crump's deposition had been set. App. I: 73; L 5. The trial court further directed Mr. Crump to determine whether the recording was still on his phone, and if it was, directed him not to erase it, and to bring the phone with

him to his deposition so the attorneys could listen to it at that time.[5] App. I: 73; L 11.

Counsel for Petitioner attempted to question Mr. Crump about the circumstances of the recording but the trial court allowed no further inquiry and stated, "these are questions that can be asked at a deposition." App. I: 74; L 5. Once counsel explained that Mr. Crump was not on the witness list, the court said, "Well, he said he's ready to give a deposition." App. I: 74; L 9. The trial court then said, "the Court's going to make [Mr. Crump] a witness for the purpose of taking a deposition regarding this issue. So, you can take his depo." App. I: 74; L 14.

After the hearing, the State and Petitioner worked together to schedule Mr. Crump's deposition. This process took several months in part due to Mr. Crump's schedule and the fact that the special prosecutor is located in Jacksonville, among other scheduling issues. Mr. Crump's deposition was ultimately scheduled for February 5, 2013 with the consent of the State and Mr. Crump. App K: 81.

On the day Mr. Crump's deposition was scheduled, at the end of a hearing on other matters, Mr. Crump was heard through his counsel, Mr. Bruce Blackwell, who asked the trial court to postpone the deposition scheduled for later that

[5] As it turns out, the recording was never made on Mr. Crump's phone. The interview was recorded on a digital recorder that was picking up the audio from Mr. Crump's iPhone speaker.

morning. Mr. Blackwell filed an affidavit prepared by Mr. Crump and asked the trial court to accept the affidavit in lieu of Mr. Crump being deposed.[6] App. L: 83. The court accepted Mr. Blackwell's filing but did not review the affidavit prior to entertaining Mr. Blackwell's motion. App. H: Clip 4; 47:56.

After a brief oral presentation by Mr. Blackwell and over the objection of defense counsel, the trial court granted Mr. Blackwell's request that Mr. Crump's deposition be postponed. App. H: Clip 4; 48:10. The trial court asked counsel for Petitioner to review the affidavit to determine whether the Petitioner would agree that the affidavit could substitute for Mr. Crump's deposition testimony. Counsel advised the trial court at that time it was the position of the Petitioner that the affidavit would not be an adequate substitute for Mr. Crump's deposition testimony. App. H: Clip 4; 50:46. The trial court was asked to recess long enough to review the affidavit so the matter could be addressed that morning, as it had taken considerable time and effort to schedule the deposition. App. H: Clip 4; 46:27. The trial court indicated it wanted more time to review the affidavit and denied the defense request to reconvene and rule on Mr. Blackwell's request. App. H: Clip 4; 47:56. Mr. Blackwell advised defense counsel that he would not

[6] Mr. Blackwell proffered that the affidavit should suffice in lieu of having his deposition taken because it was a sworn, complete accounting of the circumstances surrounding the recording of Witness 8's interview. App. L: 83.

produce Mr. Crump for deposition absent a ruling on his request to substitute the affidavit in lieu of deposition, or, in the alternative, an opportunity to be heard on a motion for protective order. App H: Clip 4; 50:00.

The court directed defense counsel to file a motion if the affidavit was insufficient. App. H: Clip 4; 51:00. The Petitioner filed his Motion Regarding Deposition of Benjamin Crump, Esquire, on February 12, 2013. App. M: 98. Counsel for Mr. Crump filed its Non-Party Benjamin L. Crump, Esq.'s Response in Opposition to Defendant's Motion to Compel on February 20, 2013. App. N: 104. On February 22, 2013, the trial court heard Petitioner's motion to depose Mr. Crump as an unlisted witness pursuant to Florida Rule of Criminal Procedure 3.220(h)(1)(A). The trial court heard argument from Mr. Blackwell, the State, and the Petitioner and denied Petitioner's request to take Mr. Crump's deposition. App. O: 170; L 19. The trial court rendered its written Order Denying Defendant's Motion Regarding Deposition of Benjamin Crump, Esquire[7] on March 5, 2013. App. P: 174.

On March 15, 2013 Petitioner filed a Motion for Reconsideration and Clarification of the Court's Order Dated March 4, 2013 because new information was discovered that further established that Mr. Crump's affidavit was incomplete and inaccurate. Petitioner's motion also requested clarification of the trial court's

[7] The Order at issue in this Petition.

order because it did not address a very important issue, the waiver of work-product privilege by public disclosure. App. Q: 180. On March 26, 2013, Mr. Crump, through counsel, filed his Non-Party Benjamin L. Crump, Esq.'s Response in Opposition to Defendant's Motion for Reconsideration. App. R: 238. On March 27, 2013, Petitioner filed Defendant's Reply to Non-Party Benjamin L. Crump, Esq.'s Response in Opposition to Defendant's Motion for Reconsideration. App. S: 243. On March 28, 2013 the trial court entered its Order Denying Defendant's Motion for Reconsideration and Clarification of the Court's Order Dated March 4, 2013 without addressing any of the issues raised in Petitioner's pleading. App. T: 247.

IV. Nature of Relief Sought

Petitioner seeks entry of a writ of certiorari reversing the trial court's orders rendered March 5, 2013 and March 28, 2013 denying Petitioner's discovery request to take the deposition of Benjamin Crump, Esq.

V. Argument

A. Standard of Review

To obtain a writ of certiorari from a nonfinal order the petitioner must show: (1) a departure from the essential requirements of the law; (2) resulting in material injury for the remainder of the case; (3) that cannot be corrected on post-judgment appeal. *Parkway Bank v. Fort Myers Armature Works, Inc.,* 658 So. 2d 646, 648

(Fla. 2d DCA 1995). The petitioner must demonstrate that the order causes material harm that cannot be remedied on post-judgment appeal. *Stephens v. Geoghegan*, 702 So. 2d 517, 521 (Fla. 2d DCA 1997).

B. Applicable Case Law

While an order denying discovery is ordinarily not reviewable by certiorari, certiorari review of orders denying discovery is proper if the harm caused by the order is irreparable. *Millennium Communications*, 800 So. 2d at 257; *Ruiz*, 599 So. 2d at 198-99 (finding that certiorari review of orders denying discovery "has been granted where it was found that the injury caused by the order was irreparable.... especially in circumstances involving the denial of the right to take testimony of an alleged material witness as such a denial cannot be remedied on appeal since 'there would be no practical way to determine after judgment what the testimony would be or how it would affect the result.'"). Further,

> when the requested discovery is relevant or is *reasonably calculated to lead to the discovery of admissible evidence* and the order denying that discovery effectively eviscerates a party's claim, defense, or counterclaim, relief by writ or certiorari is appropriate. The harm in such cases is not remediable on appeal because there is no practical way to determine after judgment how the requested discovery would have affected the outcome of the proceedings.

Giacalone v. Helen Ellis Memorial Hospital Foundation, Inc., 8 So.3d 1232, 1234-35 (Fla. 2d DCA 2009) (emphasis added).

Florida District Courts of Appeal have previously reviewed a trial court's decision to deny discovery, particularly the deposition of a witness, through a petition for writ of certiorari. *See Nucci v. Simmons*, 20 So.3d 388 (Fla. 2d DCA 2009) (quashing order denying defense motion to depose plaintiff's attorney when trial court applied wrong analysis and such error could not be corrected on plenary appeal); *see also Sabol v. Bennett*, 672 So. 2d 93 (Fla. 3d DCA 1996); *Ruiz*, 599 So. 2d at 198; *Travelers Indemnity Co. v. Hill*, 388 So. 2d 648 (Fla. 5th DCA 1980).

This Court determined in *Beekie v. Morgan*, 751 So. 2d 694, 698-99 (Fla. 5th DCA 2000) that the denial of the opportunity to take a deposition of an opposing party is subject to certiorari relief. *Beekie*, 751 So. 2d at 698. This Court explained:

> We think this case is one of the rare denial-of-discovery cases in which certiorari review is warranted. *See Helmick v. McKinnon,* 657 1279 (Fla. 5th DCA 1995); *Ruiz v. Steiner,* 599 So.2d 196 (Fla. 3d DCA 1992). The failure to permit a deposition, or allow a party to answer questions during a deposition, has been held to be subject to certiorari relief. In *Medero v. Florida Power and Light Co.,* 658 So.2d 566, 567 (Fla. 3d DCA 1995), the third district held that the trial court lacked good cause to deny a second deposition and granted certiorari relief. The third district also granted certiorari relief in *Ruiz,* where the trial court had denied plaintiff the right to compel answers to questions during depositions about a meeting in which the autopsy of the deceased was discussed. And in *Sabol v. Bennett,* 672 So.2d 93 (Fla. 3d DCA 1996), the third district granted certiorari where the lower court entered an order denying the right to compel a material witness to answer questions in a deposition.

> Similarly, this court granted certiorari where an order was entered which denied the party a right to take the testimony of a material witness. *Travelers Indemnity Co. v. Hill,* 388 So.2d 648 (Fla. 5th DCA 1980). Recently, we found that certiorari relief was warranted with respect to an order which prohibited the plaintiff in a personal injury action from videotaping his medical exam. *Lunceford v. Florida Cent. R. Co., Inc.,* 728 So.2d 1239 (Fla. 5th DCA 1999). In all of these cases, the appellate courts found that the essential requirements for certiorari had been met, and that the denial of the testimony resulted in irreparable harm which could not be rectified on appeal.

Beekie, 751 So. 2d at 698-99.

Preventing the Petitioner from taking Mr. Crump's deposition on matters that are not privileged creates irreparable harm in this criminal case. Mr. Crump is the only person who truly knows the circumstances surrounding how Witness 8 came to be involved in this case, what she has told him on and off the recorded portions of the interview Mr. Crump had with her, and what other involvement Mr. Crump has had with this material witness. The affidavit offered in lieu of deposition is wholly inadequate, is not accurate or complete and to substitute an affidavit in the place of a deposition is not provided by Fla.R.Crim.P. 3.220. The denial of this deposition precludes the discovery of relevant evidence, whether substantive evidence, for impeachment purposes, or otherwise, and the circumstances under which this interview occurred and manner in which it was conducted is relevant and discoverable through deposition.

C. Additional Bases for Request that Arose After Order Denying Defendant's Motion Regarding Benjamin Crump, Esquire was Entered

As referenced *supra*, on February 22, 2013, the trial court held a hearing on the issue of whether the undersigned counsel could take the deposition of Mr. Crump as an unlisted witness in this case, pursuant to Fla.R.Crim.P. 3.220(h)(1)(A). Since that hearing there has been a significant amount of newly discovered evidence in this cause, making the deposition of Mr. Crump even more necessary and relevant than was known at the time of the hearing.

1. Witness 8's Hospital Records

Witness 8 stated to Mr. Crump in his interview of her that the reason she was unable to attend the funeral services for Mr. Martin was because she was so distraught when she learned that she was the last person to speak with him prior to his death that she had to be hospitalized. Witness 8 made this statement to Mr. Crump in the March 19, 2012 recorded interview (App. H: Clip 2; 12:50-14:07); Mr. Martin's mother, Sybrina Fulton; and on April 2, 2012, Witness 8 re-affirmed that she was hospitalized during the sworn interview taken by Assistant State Attorney Bernie de la Rionda. App. U: 248.

Counsel for Petitioner initially sought information regarding this hospitalization from the State by email on August 23, 2012, but received no response. App. V: 249. On September 19, 2012, in a signed letter delivered via

U.S. Mail, counsel again requested the State to provide records regarding Witness 8's hospital visit if the State had them, but again received no response. App. W: 252.

Having received no response regarding these records in spite of repeated requests, counsel filed a Motion for Issuance of a Subpoena Duces Tecum requesting Witness 8's hospital records in an effort to document this hospitalization. App. X: 256.

The matter was then set for hearing before the trial court on March 5, 2013. On March 4, 2013, in the evening hours, undersigned counsel received a telephone call from Assistant State Attorney John Guy, who explained that there would be no need to move forward with the subpoena, as no hospitalization records existed for Witness 8. Mr. Guy confirmed that Witness 8 had lied about being in the hospital. App. U: 248.

Mr. Crump stated in his sworn affidavit referenced *supra* filed with the trial court on February 5, 2013, that he "[b]riefly 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)." App. L: 89.

Witness 8's credibility is squarely at issue, especially in light of this recent revelation of her prior deception. Mr. Crump has first-hand, unrecorded

information[8] from this witness that the Petitioner can only explore by deposing Mr. Crump.

2. Witness 8 Interview: ABC News Release And Mr. Crump's Affidavit

Mr. Crump stated in his sworn affidavit that while the recording device was turned off during his interview of Witness 8, he did not speak with her about any substantive matters, but used that time to collect his thoughts and formulate questions. App. L: 93-94. In other words, nothing was said by either Witness 8 or Mr. Crump during the unrecorded parts of the interview...there was just silence.

> 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

[8] Mr. Crump acknowledges in his affidavit that he spoke with Witness 8 for several minutes before he attempted to record the conversation and, further, Mr. Crump may be able to decipher some of the inaudible or unintelligible parts of the interview that was recorded.

> Preliminary Inquiry, I have no recollection as to the substance or content of any such statements.

See App. L: 93-94 (emphasis added). Mr. Crump explained that he chose not to record the silence. App. L: 94.

However, since the hearing before the trial court on February 22, 2013, ABC News released an audio recording of part of the interview conducted by Mr. Crump of Witness 8. App. H: Clip 5. Mr. Crump disclosed in his affidavit that Matt Gutman of ABC News and his assistant were present during the interview he conducted with Witness 8. App. L: 190. The recording released by ABC News contains an important part of the interview that was heretofore unknown to exist and, if one were to take Mr. Crump's affidavit at face value, did not take place. Mr. Crump did not record this part of the interview yet it clearly contains substantive discussion and, indeed, could be construed as Mr. Crump "coaching" Witness 8 on how to better answer his questions when he started the recorder and asked her about key aspects of the events of February 26, 2012 when Trayvon Martin was killed.[9] During this segment, Mr. Crump focuses Witness 8's attention on specific aspects of her conversation with Mr. Martin, and asks her to emphasize certain parts of her testimony when he turns on his recording device. Indeed, near

[9] This part of the recording also suggests that Witness 8 spoke with Tracy Martin and/or Sybrina Fulton about her possible testimony, something Tracy Martin and Sybrina Fulton denied in their statements to the prosecution two weeks later.

the end of the segment, Mr. Crump is heard to "count down" to the point where he wants Witness 8 to specifically address an issue that he has decided is important:

> MR. CRUMP: Ok. I wanna stop you and I want to have you say all that over again just that part there and I want you to uh, tell about how he said, how Trayvon said, 'I thought I lost him' and then, yeah I want you to start off right there, 'I thought I lost him, and then he caught up.' I want you to do it loud and slow, ok? So I can get it. Because I remember you said Trayvon, you told Trayvon to run home and so I want you to say that –
>
> WITNESS 8: No. Trayvon, well I told Trayvon to run home because I thought he had said he lost him, so Trayvon told me (Crump interrupts)
>
> MR. CRUMP: Ok
>
> WITNESS 8: he's gonna run for it
>
> MR. CRUMP: Ok. Let me do this here. Let me have you start over just that there ok, and say it loud and slow for me. Ok?
>
> WITNESS 8: Alright.
>
> MR. CRUMP: Ok, a one, two, three…
>
> WITNESS 8: Trayvon run for it.

App. H: Clip 5; 4:30.

This recording, previously unknown to the parties, contradicts the statements made by Mr. Crump in his affidavit filed in support of his objection to the Petitioner's motion to authorize his deposition. It is now clear that the affidavit filed by Mr. Crump is not only incomplete, but it is also inaccurate in its description of the critical events of the interview. This further supports the

importance of and the need to depose Mr. Crump regarding his conversations recorded and unrecorded with Witness 8. The Petitioner should be able to question Mr. Crump about all the circumstances of this interview including this newly discovered evidence.

In addition, while Mr. Crump argued to the trial court that he should not be deposed regarding the event surrounding the audiotaping of Witness 8, his own actions, in fact, caused a greater need for deposition. Mr. Crump, an attorney learned in the rules of evidence and aware of the need to maintain the integrity of testimonial evidence, took the first interview of the State's most significant witness in the presence of the media but did not include law enforcement or guarantee that a complete and accurate record would be made. In making that decision, he ignored all the traditional safeguards that would have been in place had this been done under law enforcement supervision. Instead, he took on the responsibility to properly accomplish an accurate audiotaping of this event himself. He failed miserably. Rather, Mr. Crump's attempt to secure an accurate audiotape of the witness' statement, if that was his true intent, had the opposite effect. Instead of securing testimony, the way Mr. Crump decided to conduct the interview created the problems. It was Mr. Crump who had created the setting for the audiotaping, and that included securing the appearance of a national media outlet, ABC News. While the purposes of Mr. Crump's decision to have a national news outlet present

may well be suspect (particularly in light of the recently discovered audiotape released by ABC last month), the presence of ABC nonetheless also secured an additional 25-minute audio recording which was of significantly better quality than that recorded by Mr. Crump. Had Mr. Crump only taken the extra step of securing a copy of the entire ABC audio, which was readily available to him (particularly since it was he who set up the media 'exclusive'), most of the concerns regarding the audiotaping would have dissipated. By failing to maintain even the most minimum modicum of evidence retention and security, Mr. Crump put not only himself in the position of becoming a material witness, but it also negatively affected the proper presentation of this evidence to the trial court and to a jury, all, unfortunately, in derogation of Mr. Zimmerman's overriding right to a fair trial. Out of the 25-minute clear recording ABC News took of the interview, ABC has only preserved the 5-minute clip referenced *supra*. Mr. Crump should not be able to hide behind his own technical incompetence and now claim that he cannot be deposed on these very relevant issues; certainly not when his actions created the issues that now must be investigated.

D. Legal Argument

1. Summary of the Argument

The Florida Supreme Court states in Florida Rule of Criminal Procedure 3.220:

> [a]fter receipt by the defendant of the Discovery Exhibit, the defendant may, without leave of court, take the deposition of any unlisted witness who may have information relevant to the offense charged.

Fla.R.Crim.P. 3.220(h)(1)(A)(emphasis added). Mr. Crump's affidavit illustrates that Mr. Crump does have information relevant to the offense charged and is therefore subject to the rule governing depositions of unlisted witnesses.

Florida courts have long held that an attorney who may possess relevant information is not exempt from having his deposition taken. *See Nucci*, 20 So.3d at 391; *City of Oldsmar v. Kimmins Contracting*, 805 So. 2d 1091 (Fla. 2d DCA 2002); *see also Young, Stern &Tannenbaum, P.A. v. Smith*, 416 So. 2d 4 (Fla. 3d DCA 1982) (holding that the preclusion of taking any deposition of the defendant's attorney under the circumstances was overly broad and departed from the essential requirements of law); *Spector v. Alter*, 138 So. 2d 517 (Fla. 3d DCA 1962). There is also not a prohibition against taking the deposition of opposing counsel, although it should be entered into carefully. *Nucci*, 20 So.3d at 391; *Spector*, 138 So. 2d at 517. In *Spector*, the appellants sought review of an order which quashed a notice to take the deposition of the attorney for the appellees on the ground that "any matter inquired into would be privileged." *Spector*, 138 So.3d at 517. In reversing the order, the Third DCA stated:

> [i]n quashing the order appealed the lower court has improperly prevented the appellants from seeking proper discovery information in areas not

> privileged. [Internal citations omitted]. Many communications in which an attorney is involved are not privileged.

Id.

Here, Mr. Crump is a non-party, and does not meet the standard of "opposing counsel." Though, even if he did, the taking of his deposition would not be prohibited. Additionally, based on public statements Mr. Crump has made, counsel has learned Mr. Crump possesses information relevant to this case on matters that are not privileged, or for which the privilege has been waived.[10] The denial of a discovery deposition of Mr. Crump is a departure from the essential requirements of law creating irreparable harm moving forward with the case, and for which there is no adequate remedy after final judgment. Mr. Crump himself possesses directly relevant, non-privileged information regarding his own involvement with Witness 8 that is absolutely necessary as substantive evidence into what Witness 8 originally said, necessary to adequately prepare Petitioner's case, necessary for impeachment purposes, necessary as Mr. Crump has made himself into a material witness, and necessary because this is a criminal case with

[10] A person who has a privilege against the disclosure of a confidential matter or communication waives the privilege if the person, or the person's predecessor while holder of the privilege, voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to disclosure of, any significant part of the matter or communication. This section is not applicable when the disclosure is itself a privileged communication. *Fla. Stat.* § 90.507.

no other adequate remedy at law. Petitioner cannot take Mr. Crump's deposition after final judgment is rendered.

It will be helpful to parse the substantive issues in the trial court's March 4, 2013 Order in turn.

2. Opposing Counsel

Although a showing of necessity was made in the trial court for taking the deposition of Mr. Crump for the reasons stated above, the trial court determined that Mr. Crump was "opposing counsel" for purposes of taking Mr. Crump's deposition, and that based on that status determination, he is immune from deposition. App. P: 174.

It is the position of the Petitioner that Mr. Crump is not "opposing counsel" for purposes of this proceeding or for purposes of having his deposition taken, and accordingly that the test set forth in *Hickman v. Taylor*, 329 U.S. 495 (1947) and distilled in *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986) is the incorrect standard to apply. Further, the Florida Rules of Criminal Procedure give the defendant the ability to "without leave of court, take the deposition of any unlisted witness who may have information relevant to the offense charged." Fla.R.Crim.P. 3.220(h)(1)(A). The fact that Mr. Crump represents Mr. Martin's parents does not make him opposing counsel in this action, and the fact that future civil litigation may or may not take place against the Petitioner by Mr. Crump,

does not make Mr. Crump opposing counsel in this action. Indeed, Mr. Crump acknowledged in his sworn affidavit when speaking to Witness 8 that he was not acting as a lawyer for either side in this case.

> [I] 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.

App. L: at 88-89.

In the case relied upon by the trial court to make the determination that Mr. Crump was opposing counsel, *Barnett Bank of Polk County v. Dottie-G Development Corp.*, 645 So. 2d 573 (Fla. 2d DCA 1994), the issue was whether Respondent was entitled to production of documents prepared in anticipation of litigation by the opposing party before counsel was formally retained. *Barnett Bank*, 645 So. 2d at 573-74. The Second DCA ruled that even though the documents were prepared before counsel was retained, "documents are subject to the work product privilege even when litigation is neither pending nor threatened so long as there is a possibility that a suit might ensue." *Id.* at 574. The Second DCA did not address the issue of determining "opposing counsel".

The trial court misconstrued *Barnett*; the issue before the trial court and this Court is distinguishable in several ways. First, Mr. Crump is simply not opposing

counsel in the sense that there is no action brought by Mr. Crump against the Petitioner at this point (unlike in *Barnett*). Second, there was no third-party counsel issue in the *Barnett* case, as there is in the instant case. Third, in *Barnett*, the petitioner was seeking the production of documents, whereas in this case the Petitioner is seeking to take the deposition of a fact witness, who is not a party to the proceedings. Finally, although even just the "possibility that a suit might ensue" activates the work product privilege, (assuming this applies even to those who are not opposing counsel, which is not addressed in *Barnett*), Mr. Crump has actively waived any privilege as to his interview with Witness 8 by act (Mr. Crump invited ABC News to be present during the interview and called a press conference to discuss the interview (App. H: Clip 1)) and admission (Mr. Crump published information about this interview in his affidavit (App L: 83).

Petitioner is not seeking anything protected by the work product privilege, even if Mr. Crump were determined to be opposing counsel. *Young, Stern & Tannenbaum, P.A.*, 416 So. 2d at 5 (in granting petitioner's request to take opposing counsel's deposition held that only those communications which actually fall under the attorney/client privilege are protected); *Spector*, 138 So.3d at 517 ("Many communications in which an attorney is involved are not privileged.... We find that the record does not support the lower court's finding that all relevant matters which could be the subject of the deposition of the appellee's attorney

would necessarily be privileged."). The Supreme Court has acknowledged that not all actions performed by an attorney on behalf of his client are protected by the attorney-client privilege.

> We also agree that the memoranda, statements and mental impressions in issue in this case fall outside the scope of the attorney-client privilege and hence are not protected from discovery on that basis. It is unnecessary here to delineate the content and scope of that privilege as recognized in the federal courts. For present purposes, it suffices to note that the protective cloak of this privilege does not extend to information which an attorney secures from a witness while acting for his client in anticipation of litigation. Nor does this privilege concern the memoranda, briefs, communications and other writings prepared by counsel for his own use in prosecuting his client's case; and it is equally unrelated to writings which reflect an attorney's mental impressions, conclusions, opinions or legal theories.

Hickman, 329 U.S. at 508.

3. Waiver

Counsel for Petitioner sought clarification from the trial court as to perhaps the most important issue, Mr. Crump's waiver of the work product privilege (to the extent one ever existed). App. Q: 180. Neither the trial court's March 4th Order, Mr. Crump's response to the Defense Motion for Reconsideration and Clarification of the Court's Order Dated March 4th 2013, or the trial court's March 28th Order addressed the issue at all, even though the issue was raised by defense counsel in Defense's Motion regarding Deposition of Benjamin Crump, Esquire (App M: 98), again at the February 22nd hearing (App O: 133), and finally in Defense's Motion

for Reconsideration (App. Q: 180). Even if Mr. Crump is found to be opposing counsel for purposes of having his deposition taken, Petitioner asserts that opposing counsel is not immune from being deposed, and that especially in light of the new information referenced showing Mr. Crump's affidavit to be incomplete and inaccurate, the Petitioner has met the burden outlined in *Shelton*, 805 F.2d at 1327:

> a. No other means exist to obtain the information than to depose opposing counsel;
>
> b. The information sought is relevant and non-privileged;
>
> c. The information is crucial to the preparation of the [defense] case.

Id.

As to the first prong, counsel for Petitioner has attempted to resolve the issues that have created a "cloak of secrecy" surrounding Mr. Crump's interview with Witness 8 through all other means. Counsel has requested information from the State regarding the Witness 8 interview even earlier than the August 23, 2012 email App. V: 249, and letter App. W: 252, regarding several issues. Counsel for Petitioner requested information several times regarding whether the State had a better quality copy of the recording, and only after the issue was litigated in December, 2012 was a digital copy of the original recording delivered to the Petitioner. App. Y: 259. Much of the recording is still unintelligible, and it is the

Petitioner's position that Mr. Crump, as the person who conducted and created the interview, is the only person who can adequately explain why the interview was held the way it was including the setting, why law enforcement was not involved, why the 18th Judicial Circuit State Attorney's Office was not advised, why he did not retain a full copy of the audio available to him, what was asked, and what was said. Further, Mr. Crump made himself the only witness to challenge Witness 8's veracity and version of the unintelligible recordings. Additionally, Petitioner only learned on March 4, 2013 that Witness 8 misrepresented that she went to the hospital, even though Petitioner had tried through other means to obtain this information much earlier, as referenced above.

Further, and perhaps most surprisingly, it became clear in early March, 2013 that some of the critical information in Mr. Crump's sworn affidavit was provably incomplete and inaccurate regarding his interview of Witness 8, as referenced above. The affidavit does not adequately address the issues that need to be explored about this important witness and Petitioner has no other way of determining what interactions Mr. Crump had with Witness 8, and what the details of those interactions were, but to depose him on this issue. Finally, taking the deposition of Witness 8 does not in and of itself provide "another means" of obtaining the non-privileged information Petitioner feels is necessary to preparing its case because, among other things, Witness 8 likely does not know of Mr.

Crump's dealings in how this interview even came to take place, what was said to him about this witness by others and the other circumstances surrounding it. Counsel for Petitioner took a partial deposition of Witness 8 on March 13, 2013 which only led to more questions and confusion as to her interaction with Mr. Crump. App. Z: 260.

As to the "nonprivileged" portion of the second prong of the test outlined in *Shelton*, in addition to the new evidence supporting the deposition of Mr. Crump, counsel for Petitioner asked the trial court to reconsider the issue of whether there was an affirmative waiver of any privilege Mr. Crump would have had against giving deposition testimony. App. Q: 188. Although the issue was raised by Petitioner in both argument and motion, it was left unaddressed in the trial court's March 4, 2013 and March 28, 2013 Orders. App. P: 174; App. T: 247. The trial court found that Mr. Crump's interactions with Witness 8 were privileged. App. P: 176. Of course, Mr. Crump never had an attorney/client privilege with Witness 8, as Mr. Crump stated in his affidavit, so any privilege as to his interview of her would fall under work product. However, the work product privilege can be waived, and, in this instance, it was by his voluntary actions of discussing the matter on national television, making the interview non-privileged. App. H: Clip 1.

Mr. Crump conducted his interview of Witness 8 in the presence of ABC News. App. H: Clip 5. Further, there were other individuals in the room who do

not have an attorney/client privilege with Mr. Crump, as referenced in his affidavit. App. L: 91. Following his recorded interview with Witness 8, Mr. Crump appeared on national television announcing that he had conducted said interview, and played portions of the interview for the public to hear. App. H: Clip 1. Indeed, Mr. Crump does not claim work product privilege as to his interview with Witness 8, and explains the circumstances how he has waived that privilege consciously and purposefully in his affidavit. App. L: 94-95.

Additionally, in December, 2012, Mr. Crump went on national television and explained that he was not going to assert the issue of work product as to this interview: "...we want to show that we're not hiding anything, we're not going to file an attorney work product or any of that kind of stuff and I told [the commentators] the circumstances of how this interview came to be." App. H: Clip 6; 00:40. Insofar as Mr. Crump's interview of Witness 8 is concerned, he is a fact witness, and he does not have a work product privilege. If there was one, it has been affirmatively waived.[11] *See Black v. State*, 920 So. 2d 668, 670 (Fla. 5th

[11] Additionally, Mr. Crump's disclosure of this information, the fact that the interview was conducted in the presence of people who have no attorney-client relationship with Mr. Crump (including, for example, a field correspondent for a major news network who then discussed the interview on national television and played portions of the interview for the public), and overt claim that he was waiving a work product privilege if one existed, show that this could also not be considered an "inadvertent" production within the context of Florida law. *See, e.g., General Motors Corp. v. McGee*, 837 So. 2d 1010, 1040 (Fla. 4th DCA 2002).

DCA 2006) ("...confidentiality of a conversation is dependent upon 'whether the person invoking the privilege knew or should have known that the privileged conversation was being overheard."); *Visual Scene, Inc. v. Pilkington Bros., plc.*, 508 So. 2d 437, 440 (Fla. 3d DCA 1987) ("in most cases a voluntary disclosure to a third party of the privileged material, being inconsistent with the confidential relationship, waives the privilege.").

As to the "relevant information" portion of the second prong, the trial court suggested in its March 4, 2013 Order, that the Defendant has failed to show that the information sought is needed for any relevant purpose. App. P: 177. However, at the hearing on this issue on February 22, 2013, counsel for Petitioner proffered many reasons why a deposition of Mr. Crump possesses relevant information to the case. Additionally, counsel for Petitioner offered to present video clips and other evidence for the trial court's review, further showing why a deposition of Mr. Crump is relevant, given the fact that he has made public, unprivileged statements regarding the case:

> MR WEST: ...whether I need to put that in the record or if the Court will accept my proffer. If the Court wants me to put it in the record, I have it here, I have it on my computer, and I would like the opportunity to introduce that as exhibits. I have the letter Mr. Crump wrote, I have the newspaper article where he said Sanford was lying about Tracy Martin. And I have the various video press conferences where he said exactly what I said he said. So, shall I do that? I can take a few minutes and we can play them right now if that's if – Mr.

> Blackwell is challenging the accuracy of the statements contained within my proffer.

App. O: 162; L 17. The trial court indicated that it did not need any further information.

For the purposes of meeting the "relevancy" portion of the second prong, a short discussion of some of the issues is appropriate. As to Witness 8:

a. The issues referenced *supra* in this Petition regarding Mr. Crump's involvement in the creation of the Witness 8 audio recording and the inaccuracies in his affidavit are adopted as relevant information for purposes of taking Mr. Crump's deposition. The information leading up to Witness 8 lying about her hospital visit (and, by extension her closeness with Mr. Martin) are directly relevant to this case. Mr. Crump is the first person that Petitioner knows for sure was told this information. Further, the fact that Mr. Crump's affidavit is incomplete and inaccurate has created additional grounds for taking his deposition. He admittedly possesses relevant information by the self-evident fact that he was able to create the affidavit in the first place.

   The fact that there are inaccuracies in the affidavit proves the document is insufficient on its own. Mr. Crump's assertions (many of which are intimately relevant to this case such as, the circumstances surrounding how Witness 8 was discovered, the circumstances surrounding how the recording was made, who

was present, whether her story was influenced by anything other than her own recollection of what she heard, etc.) are relevant, as they go to the heart of the case, as Mr. Crump was the first one to interact with a very significant witness in this case, and these assertions should be made in a proper deposition.

b. There are significant gaps in the tape, and we now know that at least one of those gaps was filled with substantive discussion between Mr. Crump and Witness 8. The substance of the alleged "silence" is relevant to this case for future depositions and the testimony of Witness 8. Additionally, a significant portion of the preliminary discussion was not recorded at all, as stated in Mr. Crump's affidavit. App. L: 88.

c. The Petitioner believes that Mr. Crump is aware of how the State Attorney's Office came to know about Witness 8. This information cannot be gained from any other source, as the State has refused to provide that information to the Petitioner. This is relevant because it is important to understand the circumstances surrounding how this very important witness came to be known by the authorities prosecuting Mr. Zimmerman and why her identity was withheld initially.

d. Mr. Crump's affidavit d sdoes not explain whether Witness 8's identity was ever provided when the recording was first provided to the FBI.

e. Only Mr. Crump knows why information on Witness 8 was not given to the Sanford Police Department, FDLE, or the 18th Judicial Circuit State Attorney's Office, even though multiple requests were made.

f. It is relevant and important for the Petitioner to at least be able to understand the Witness 8 recording. There are many parts of the recording that are unintelligible, and Mr. Crump, who conducted the interview, may be able to shed light on what certain words are.

g. It is of the utmost importance for the preparation of the Petitioner's case to know if Witness 8 has been influenced in any way that may affect her testimony, inadvertently or otherwise, by the circumstances surrounding the interview with Mr. Crump. It is certainly relevant in a criminal case for the defense to be aware of any undue influence on the prosecution's key witness. Mr. Crump possesses relevant information in this regard.

As to other issues to be inquired into at deposition, again to the extent that Mr. Crump would have a work-product or attorney-client privilege, his public statements regarding what was perhaps otherwise privileged, results in a waiver of

that privilege and subjects him to deposition for reasons stated above. Certain relevant aspects are:

a. Mr. Crump made a broadcasted statement and publicly mailed correspondence to the Department of Justice claiming Chief Bill Lee of the Sanford Police Department and State Attorney Norman Wolfinger met on the evening of February 26, 2012 and conspired not to have Mr. Zimmerman arrested; in other words, jointly participated in a "cover up" of the death of Trayvon Martin. App. AA: 262. If Mr. Crump has evidence that supports this contention, it is absolutely relevant to the Petitioner's case because if indeed, the Sanford Police Department is corrupt and that further, Mr. Wolfinger played a part, the prosecution of Mr. Zimmerman is happening, in part, by those efforts. If Mr. Crump has evidence to support this statement, it is highly relevant.

b. Mr. Crump stated publicly that the Sanford Police Department falsified records during its investigation into the death of Trayvon Martin. Mr. Crump alleged that the Sanford Police Department "lied" in its report that said Tracy Martin told Investigator Chris Serino that the voice heard in the background screaming for help on a resident's 911 call was not his son's. App. BB: 264. Mr. Crump further stated that since Mr. Martin heard the 911 call at the Sanford Police Department, he has listened to a "cleaned up" copy of the recording, and that he is convinced now that the voice crying for help is Trayvon

Martin's voice. *Id.* If Mr. Crump has evidence supporting his contention that the Sanford Police Department lied, it is imperative that the Petitioner be entitled to know what it is. If Mr. Crump is aware of any information at all supporting this contention, it is highly relevant to the Petitioner's case because these officers may be called as witnesses, and the issue of voice identification is crucial to the case.

c. Finally, Mr. Crump has also publicly commented on other significant factual aspects of the case not apparent in the Witness 8 recorded interview, or in Mr. Crump's affidavit. Mr. Crump has commented on significant factual aspects of the case and seems to possess information that could have only come from Witness 8. Petitioner can only learn where this information came from through taking Mr. Crump's deposition as this information is not otherwise memorialized in any statement Petitioner has from Witness 8.

As to the final prong of the test outlined in *Shelton*, as has been made clear in the above sections, Witness 8 is a significant witness to this case, and understanding accurately, fully, and completely the circumstances surrounding her interaction with Mr. Crump is crucial to the preparation of the defense case. A deposition of Mr. Crump on this non-privileged information is the only way to fill in the significant holes that surround Mr. Crump's interaction with this witness.

For the Petitioner to not have this opportunity, a situation is created where the Petitioner may not be adequately prepared for the upcoming trial. Additionally, as the deposition of Mr. Crump pertains to information not specifically relating to the Witness 8 issue, it is apparent there are numerous areas of inquiry such as the assertions regarding Mr. Wolfinger and Mr. Lee, the issue regarding Tracy Martin and the audio, etc. These are significant factual assertions for this case and it is imperative for the preparation of the defense to understand these issues.

4. Procedural "Need and Hardship" Test In Initial Motion to Compel

To the extent that this Court is considering the "need and hardship" test for fact work-product in the context that it must be alleged in the initial motion to compel, it is important not to combine the "opposing counsel" test outlined in *Shelton* (which the Petitioner has met) and the "fact work-product" test alleged in the motion to compel. The need and hardship standard applies if the moving party is seeking "fact work-product." *See Horning-Keating v. State*, 777 So. 2d 438, 447 (Fla. 5th DCA 2001). Further, the Petitioner never actually filed a "Motion to Compel" Mr. Crump's deposition. The deposition was scheduled without opposition by the State and Mr. Crump and at the Court's direction. Once Mr. Crump filed his affidavit in lieu of deposition, the trial court directed counsel to file a motion if the affidavit was insufficient, which counsel did.

Further, counsel for Petitioner does not consider the information sought through a deposition of Mr. Crump to be "fact work-product" or other privileged information. In any event, counsel did meet this standard at the February 22, 2013 hearing and in the Motion for Reconsideration and Clarification. To suggest that Petitioner is procedurally barred from the relief it seeks based upon a determination that the information sought is "fact work-product" and that it did not properly allege the standard in its initial Motion Regarding the Deposition of Benjamin Crump, Esquire is premature and circular. Any objections regarding work product can be made during the deposition, when those rights, should they exist, can be best protected. It should not be done in a wholesale, preemptory fashion. The Petitioner cannot be expected to plead and meet a standard in an initial motion when the very subject of the standard (whether the information sought is fact work-product) had not yet been determined by the trial court.

5. To Disallow Mr. Crump's Deposition Creates Bad Policy

Mr. Crump led the effort to pressure the State of Florida to charge Mr. Zimmerman with the murder of Trayvon Martin. To fuel his effort, Mr. Crump solicited the help of a public relations firm App. CC: 266. With the firm's help, Mr. Crump made several high-profile television appearances where he made accusations about law enforcement corruption, speculated about the evidence in this case, and accused Mr. Zimmerman of an egregious act by stating repeatedly

that George Zimmerman "profil[ed], pursu[ed], and confront[ed] Trayvon Martin and then kill[ed] Trayvon Martin in cold blood." App. H: Clip 8; 00:35. More significantly, Mr. Crump sequestered Witness 8, coordinated her first interview (App. H: Clip 1), misstated the circumstances regarding the taking of the statement, and shared select portions of the interview with the press while simultaneously refusing to reveal the witness' identity or testimony to law enforcement or provide any other information to the agencies responsible for the investigation.

A civil lawyer with a vested interest in the outcome of the case should not be allowed to keep evidence from law enforcement; potentially influence significant witnesses; speak on national television about evidence he claims to exist and witnesses he has spoken with; accuse several law enforcement agencies of dishonesty; otherwise play a central role in the media persecution; and then gather evidence to further the prosecution of the Petitioner and, as a result, significantly threaten Mr. Zimmerman's chance of having a fair trial, yet claim he is not subject to a deposition regarding non-privileged matters.

This protection has been established to protect against the unnecessary dissemination of information protected by an attorney's client-related obligations. In this case, the dissemination was by Mr. Crump, was voluntary, was crafted quite intentionally, and should be subject to scrutiny. By prohibiting the deposition of

Mr. Crump, the trial court set upon a dangerous course that goes well beyond simply protecting a lawyer from unwarranted disclosure; it allows an attorney unfettered discretion to significantly affect a pending criminal proceeding with no obligation to explain the basis for that influence.

Conclusion

In denying the Petitioner's discovery request to take the deposition of Mr. Crump, a witness who possesses relevant, non-privileged information about the most significant witness in this case, the trial court's order has departed from the essential requirements of the law regardless of the fact that Mr. Crump happens to be an attorney. The Petitioner has already experienced material injury, in that subsequent depositions have been hindered and rendered incomplete. Further, if this issue is not corrected before trial, the Petitioner will be exposed to irreparable harm, as there is no practical way to determine after judgment how the requested discovery would have affected the outcome of the proceedings – an issue that cannot be corrected on post-judgment appeal. *Giacalone*, 8 So.3d at 1234-35. Under the circumstances of this case, Rule 3.220(h)(1)(A) clearly gives Petitioner the right depose Mr. Crump as to issues that are not privileged, or to which a potential privilege has been waived.

Should this Court continue to find that Mr. Crump is "opposing counsel," any work product or attorney/client privilege that he may have once had as to these

specific issues has been waived by virtue of him speaking publicly as to the contents of his interview with Witness 8, and the other issues detailed above. Additionally, Petitioner has met the three-pronged test outlined in *Shelton*, and is, therefore, entitled to take the deposition of Mr. Crump, whether he is considered opposing counsel or not. Accordingly, the Writ of Certiorari should be granted and the trial court's Orders rendered March 5, 2013, and March 28, 2013 should be reversed.

RESPECTFULLY SUBMITTED this 4th day of April, 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 4th day of April, 2013 to the following persons as follows: via Hand Delivery to the Honorable Debra Nelson, Circuit Court Judge, Seminole County Courthouse, 301 North Park Avenue, Sanford, Florida 32771; via E-Mail to Bernie de la Rionda, Assistant State Attorney (brionda@coj.net) and John Guy, Assistant State Attorney (jguy@coj.net), Office of the State Attorney, 220 East Bay Street, Jacksonville, Florida 32203; via E-Mail to Bruce B. Blackwell, Esquire, Post Office Box 1631, Orlando, Florida 32802 (bblackwell@kbzwlaw.com); and via E-Mail to the Attorney General, 444 Seabreeze Boulevard, Suite #500, Daytona Beach, Florida 32118 (crimappdab@myfloridalegal.com).

Mark M. O'Mara, Esquire
Co-Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Petition for Writ of Prohibition has been prepared using Times New Roman 14pt in compliance Florida Rule of Appellate Procedure 9.100(l).

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Co-Counsel for Petitioner