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

FILED IN OFFICE
MARYANNE MORSE
CLERK CIRCUIT COURT
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SEMINOLE CO. FL
BY D.C.

STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CASE NO.: 2012-001083-A**
	)	
GEORGE ZIMMERMAN,	)	
	)	
Defendant,	)	

AMICUS CURIAE BRIEF

I. **RECOMMENDATION**. Movant recommends that this Court grant a new trial in this case on its own motion pursuant to Fla.R.Crim.P. 3.580 in the interest of justice and for the reasons below being A. Jury Instructions, B. Verdict, and C. Misconduct as follows;

A. **JURY INSTRUCTIONS**. Pursuant to Fla.R.Crim.P. 3.600(b)(6) where the jury was erroneously instructed on matters of the law; where the final jury instruction did not contain the required instruction with respect to Fla. Stat § 776.041, "Aggressor".

1. **Rule**. Florida Standard Jury Instructions 3.6f requires a jury to be instructed with respect to Fla. Stat § 776.041, Aggressor, "only if the defendant is charged with an independent forcible felony."

2. **Analysis.** George Zimmerman was the defendant and was charged with murder; Fla. Stat. § 776.08 (2013) states "'Forcible felony' means . . . murder; manslaughter . . ."; George Zimmerman was both the defendant and was charged with a forcible felony; Then, pursuant to Florida Standard Jury Instructions 3.6f, the jury should have been instructed with Fla. Stat § 776.041, Aggressor, concerning George Zimmerman with respect to whether Zimmerman committed a forcible felony against Trayvon Martin, or whether Zimmerman initially provoked the use of force against himself. There was no instruction with respect to Aggressor concerning George Zimmerman in the case's final jury instructions. [See Final Jury Instruction Page 12]

3. **Conclusion.** When a defendant is charged with a forcible felony, the jury is required to be instructed regarding the Aggressor statute as to the defendant. The general rule is that this instruction will be given even in the absence of a party request. There was substantial evidence to warrant the "Aggressor" instruction. The "Aggressor" instruction was central, fundamental and went to the gist of this case. The Zimmerman jury was not so instructed. Therefore, this error in jury instruction requires that a new trial be GRANTED.

B. **VERDICT.** Pursuant to Fla.R.Crim.P. 3.600(a)(2) where the verdict was contrary to law; the verdict was contrary to law because the jury instructions were contrary to law.

1. **Rule.** If the jury instructions are erroneous and thereby contrary to law, then by greater force of logic any verdict rendered using the erroneous jury instructions is likewise contrary to law.

2. **Analysis.** Section II(A) above is adopted to this place where it shows that the jury was not properly instructed. The jury then did proceed to deliberate and render a verdict using those improper instructions making said verdict unlawful.

3. **Conclusion.** The jury instructions in this case were contrary to law. The jury's deliberations where conducted using the erroneous instructions. Therefore, the verdict rendered is likewise contrary to law. A verdict contrary to law is proper ground to GRANT a new trial.

C. **MISCONDUCT.** Pursuant to Fla.R.Crim.P. 3.600(b)(5) where prosecuting attorney was guilty of misconduct; misconduct arrives where prosecutor agreed to jury instructions in detriment to the State of Florida.

1. **Rule.** Misconduct is defined as "A dereliction of duty; unlawful or improper behavior." Black's Law Dictionary, 459, Third Pocket Edition.

2. **Analysis.** The prosecuting attorney's duty is to aggressively represent the State of Florida. In this case, the prosecuting attorney's misconduct was a dereliction of duty where the prosecutor allowed the jury to be instructed erroneously. Doing so prejudiced this case against the State of

Florida to the point of making a fair trial impossible. Certainly the prosecutor knew that the "Aggressor" statute would allow the jury to consider whether Zimmerman committed a felony against Martin, or whether Zimmerman provoked the use of force against himself – either of which would invalidate Zimmerman's claim to justifiable use of deadly force.

That made this particular instruction of central and critical importance to the case. Of even greater certainty is the prosecutor knowing that omitting the statute from jury instructions would all but gift wrap and forfeit the case to the defense by preventing the jury from taking such consideration. Having the jury consider and make an independent decision on the "Aggressor" statute is one thing. But, to deny the jury a full and fair review of all the applicable laws is improper behavior to say the least.

3. **Conclusion.** I'll not speculate about the motive of a prosecutor's dereliction toward the office for which he works. It should be sufficient that it is the prosecutor's job to represent the State, to ensure that jury instructions are at least fair if not favorable to the State, and to object and appeal erroneous jury instructions; none of which this prosecutor did.

Regardless of the reason, the prosecutor having allowed the jury to be erroneously instructed and publicly proclaim afterward that the verdict is readily accepted can only be seen as misconduct that so prejudiced this case

against the State of Florida that it did not result in a mere miscarriage of justice, but acted as a contraceptive ensuring that justice was never conceived. Prosecutorial misconduct of even lesser degrees is a ground for a new trial that this Court should GRANT sua sponte.

II. **WHEREFORE**, and in addition to a new trial, I recommend that the prosecution team be disqualified, and that Governor Scott allow Martin family attorneys to choose its replacements. I affirm this document is true to the best of my knowledge and filed of my own free will. I thank the Court for its time.

III. **CERTIFICATE OF SERVICE**. I certify that a copy of the Motion to File Amicus Curiae Brief and the Amicus Curiae Brief has been furnished by first class mail on 23 July 2013 to the party attorneys at the addresses below;

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Respectfully Submitted,



23 July 2013

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