

**Cornell Law Second
Amendment Club (CL2AC)**

PRESENTS:



Cornell University
Law School

Lawyers in the Best Sense

Did the jury get it right in The Zimmerman Trial?



ANDREW BRANCA,
attorney and author of
The Law of Self Defense



**PROFESSOR
WILLIAM JACOBSON,**
Cornell Law School

Join us for a discussion about the law of self-defense and the George Zimmerman trial.

Thursday, September 12, 4:00 – 6:00 PM

ROOM G90, MYRON TAYLOR HALL ■ Refreshments will be served

Co-sponsored by GPSAFC and open to the graduate community.

Did the Zimmerman jury get it right?

Did you?

William A. Jacobson

Timeline

- Feb. 26, 2012 : At about 7:17 pm George Zimmerman shoots Trayvon Martin
- Initial decision not to prosecute
- Family retains counsel and public relations consultant
- March 8: Tracy Martin and Sybrina Fulton Change.org petition calling for Zimmerman's arrest.
- March 9: Benjamin Crump demands that police release the 911 tapes or make an arrest
- March 13: Sanford Police Chief Billy Lee said there is no evidence to dispute Zimmerman's assertion that he shot Martin in self defense. That same day the lead investigator on the case Chris Serino files an affidavit recommending Zimmerman be charged with manslaughter

Timeline

- March 19: The U.S. Justice Department announces it will investigate Martin's death.
- March 22: State Attorney Norm Wolfinger recuses himself from the case
- March 23: President Obama comments on the case, saying he thinks the shooting should be investigated and telling reporters: "If I had a son, he'd look like Trayvon."
- March 23: Florida Gov. Rick Scott appoints state attorney Angela Corey as a special prosecutor
- [I start following the case]

Timeline

- April 11: Special prosecutor Angela Corey announces that Zimmerman is being charged with second-degree murder.
- No Grand Jury, files Criminal Information and supporting Affidavit of Probable Cause

Narratives

- 1) Race and Racial Motivation
- 2) Hoodie Symbolism
- 3) Told Not to Get Out of Car

1) Race and Racial Motivation

March 8, 2012: “Martin's father, Tracy, said Thursday that family members were upset that no arrest had been made in the shooting. He described the neighborhood as mixed race but his attorneys said they believed Trayvon Martin was being profiled at the time of the encounter because he was a young black man. The neighborhood watch leader is white.”

(<http://news.yahoo.com/family-wants-answers-fla-teens-death-162019527.html>)



March 19 - Speaking on the Today show, Sybrina Fulton, said that neighborhood watch volunteer Zimmerman targeted her son because of 'the color of his skin.'

<http://www.dailymail.co.uk/news/article-2117219/Trayvon-Martin-shooting-Mother-claims-George-Zimmerman-killed-son-skin-colour.html#ixzz2egMhoQXr>

Would the case have been prosecuted if no racial angle?

Was Zimmerman “white”?

What difference would it make?

Actual Evidence of racism?

FBI investigation

Life history

Events at issue?



http://youtu.be/8BQ_0IAjMzM

ZIMMERMAN »
He looks black.

911 OPERATOR »
Did you see what he was wearing?

ZIMMERMAN »
Yeah, a dark hoodie.



7:08 30" TODAY.COM

ALIZED WITH OBSCENE MESSAGES

NEW MEASUR

http://youtu.be/8BQ_0IAjMzM

Dispatcher: OK, and this guy is he white, black, or Hispanic?

Zimmerman: He looks black.

“Coon” or “Punk”

ZIMMERMAN: Shit, he's running.

911: He's running? Which way is he running?

ZIMMERMAN: Down towards the other entrance of the neighborhood.

911: Which entrance is that that he's heading towards?

ZIMMERMAN: The back entrance. [pause]
Fucking coons.

Nancy Grace Says 'Fking Coons' Uncensored While Railing Against Zimmerman's 'Hatred' For Trayvon**

by **Andrew Kirell** | 9:03 am, July 15th, 2013

2973 

During the recorded call Zimmerman made reference to people he felt had committed and gotten away with break-ins in his neighborhood. Later while talking about Martin, Zimmerman stated "these assholes, they always get away" and also said "these fucking punks".

Calls to Police

- 46 times since 2004
- Almost all pertain to situations, not people
- Open garage door, etc.
- Small number calls regarding suspicious black males, but around time of home invasion and break-ins known to be committed by young black males

HE MATCHES THE DESCRIPTION THAT WAS GIVEN TO
LEO PER COMPL // SUBJ WAS ON FOOT // NOI NO LL

10-17 THE BACK ENTRANCE OF NEIGHBORHOOD FOR
BM LSW WHI TANK AND BLK SHORT BRO SANDALS AND
BLK // COMPL BELIEVES SUBJ IS INVOLVED IN RECENT
S-21S IN THE NEIGHBORHOOD
PDUNN

Called about 7-9 year old black child

NEG 1056 COMPL / NOI/ NO LL
EB OREGON TOWARD ELEMENTARY SCHOOL PER
COMPL
ON FOOT // PASSING COLONIAL VILLAGE APTS ATT

COMPL ADV D S43 IS WALKING ALONE & IS NOT
SUPERVISED ON BUSY STREET // COMPL CONCERNED
FOR WELL BEING

twalls

1017 OREGON REF BM S43 APPRX 7-9YOA APPRX
04FT/SKINNY BUILD SHORT BLK HAIR LSW BLU
TSHIRT/BLU SHORTS/

Also called about white males

SUBJ WAS LAST SEEN NEAR THE BLOCKBUSTER
BUILDING

S02 WALKING IN ROAD WM BLU TANK TOP AND KHAKI
SHORTS AT BLOCKBUSTER // CARRYING PAPER BAG

[REDACTED]

P3908 SPOKE TO THESE INDIVIDUALS ABOUT 20MINS
AGO AND THEY ADV THEY WERE LOCKED OUT OF
THEIR VEH
WHITE MALE .. HE IS BY THE PICKUP TRUCK .. FORD
F150 OR F250 NEWER MODEL.. UNK CLOTHING DESC

HISPANIC MALE WEARING HAT GRY SHIRT AND JEANS

dheim

dheim

LOOKS 13P PER COMPL..

1017 BY THE POOL .. 2 HISPANIC MALE AND 1 WHITE
MALE WITH SLIM JIM..

dheim

[REDACTED] WIFE WILL MEET WITH LEO
SUBJ IS A W/M SHAVED HEAD..UNK OF WHAT CLOTHING
HE WILL BE WEARING
JEFF IS THE NAME OF THE SUBJ// HAS NEVER MET THE
SUBJ IN PERSON
yriviera
CALLER HIRED SOMEONE ELSE, SUBJ SOUNDED UPSET
AND WANTS TO GET PAID

Was Trayvon profiling Zimmerman?

“creepy ass cracker”

3) Hoodie Symbolism



Trayvon Martin -- Hoodie



March 21, 2012 – Million Hoodie March



Jennifer Granholm



Harvard Law School



Cornell Law School

Where did “hoodie” issue come from?

Dispatcher: Sanford Police Department. ...

Zimmerman: Hey we've had some break-ins in my neighborhood, and there's a real suspicious guy, uh, [near] Retreat View Circle, um, the best address I can give you is 111 Retreat View Circle. This guy looks like he's up to no good, or he's on drugs or something. It's raining and he's just walking around, looking about.

Dispatcher: Did you see what he was wearing?

Zimmerman: Yeah. A dark hoodie, like a grey hoodie, and either jeans or sweatpants and white tennis shoes. He's here now, he was just staring...

Dispatcher: OK, he's just walking around the area...

Zimmerman: ...looking at all the houses.

Dispatcher: OK...

July 11, 2012: “In the documents, Sanford police Investigator Christopher Serino said he believes Zimmerman followed Martin because of the teen's attire, not his skin color.

Serino told the FBI that gangs in Sanford, referred to in the community as "goons," typically dressed in black and wore hoodies, prompting Zimmerman to follow Martin, who was not a gang member.

(<http://www.clickorlando.com/news/Investigator-George-Zimmerman-profiled-Trayvon-Martin-over-hoodie-not-skin-color/-/1637132/15480174/-/5gfwx8/-/index.html>)

Agents asked SERINO about the above statement and he replied that just the act of following him (MARTIN) was the instigation (of ZIMMERMAN) and nothing else. SERINO believed that ZIMMERMAN's actions were not based on MARTIN's skin color rather based on his attire, the total circumstances of the encounter and the previous burglary suspects in the community.

Serino explained to agents that the local gangs, referred to in the community as "GOONS", typically dressed in black and wore hoodies. Serino believes that when ZIMMERMAN saw MARTIN in a hoody, ZIMMERMAN took it upon himself to view MARTIN as acting suspicious. Serino described ZIMMERMAN as overzealous and as having a "little hego complex", but not as a racist. Serino explained that on numerous occasions he asked ZIMMERMAN specifically if he followed MARTIN based on his skin color and ZIMMERMAN never admitted to this fact.

3) Told not to get out of car



Photograph by Pool/Joe Burbank/Oriando Sentinel/MCT via Getty Images

George Zimmerman is found not guilty at Seminole County Criminal Justice Center in Sanford, Fla., on July 13

[Courts](#)

George Zimmerman's Acquittal: Four Blunt Observations

By Paul M. Barrett

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July 15, 2013



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Florida Gov. on Zimmerman:
Justice System 'Works'

1. George Zimmerman was at fault for killing Trayvon Martin.

Ignore the pious [post-verdict declarations](#) by Zimmerman's (skilled) defense lawyers. The police dispatcher told Zimmerman to stay in his car. If the wannabe cop had followed reasonable instructions and/or had decent training as a neighborhood watchman, he would have remained in his vehicle. Zimmerman deserves heavy blame.

Zimmerman: Shit, he's running.

Dispatcher: He's running? Which way is he running?

[Sound of car door opening.]

Zimmerman: [Grunts.] Down towards the other entrance of the neighborhood.

[Sound of car door closing.]

Dispatcher: OK, and which entrance is that he's heading towards.

Zimmerman: The back entrance. . . . [mutters] Fucking punks.
[Wind/breathing noise.]

Dispatcher: Are you following him?

Zimmerman: Yeah.

Dispatcher: OK, we don't need you to do that.

Zimmerman: OK.

Already out of car

No order to stop

[http://www.youtube.com/watch?feature=player
embedded&v=UCHm-Nlg8WE#t=189](http://www.youtube.com/watch?feature=player_embedded&v=UCHm-Nlg8WE#t=189)

I got it right!

- [Zimmerman-Martin questions](#) (March 23, 5:03 p.m.)
- Was Zimmerman, who is Hispanic (or some say “half-Hispanic” or a “white Hispanic”), actually motivated by racial animus?
- What was the geography?
- What happened between the last phone call between Zimmerman and 911, and the shooting?
- The trajectory of the bullet may tell us the position of Zimmerman when the fatal shot was fired, and other forensics may give an indication of the distance between the two at the time.

- There may be witnesses we don't yet know about, who heard things or saw things which in isolation may seem insignificant but may be pieces of a puzzle.

Let's allow the facts to come in before we opine on the legal significance of the facts.

The Five Principles of the Law of Self Defense in the Context of *Florida v. Zimmerman*

Andrew F. Branca, Attorney



@ Cornell Law School
Ithaca, NY
September 12, 2013

Andrew F. Branca

Andrew F. Branca is in his third decade of practicing law in the Commonwealth of Massachusetts. He began his competitive shooting activities as a youth, and today is a life member of the National Rifle Association (NRA) and a Master class competitor in multiple classifications in the International Defensive Pistol Association (IDPA). Andrew has for many years been an NRA-certified firearms instructor in pistol, rifle, and personal protection, and currently serves as a guest instructor at the now Sig Sauer Academy in NH. He has held concealed carry permits in Massachusetts, Connecticut, Rhode Island, New Hampshire, Maine, Pennsylvania, Florida, Utah, and other states.

The Five Principles of the Law of Self-Defense

The Defense: Self-Defense

The Five Principles of the Law of Self Defense

Innocence—one must not have been the aggressor

Imminence—the threatened harm must be immediate

Proportionality—the defensive force must not be excessive

Avoidance—there was no breach of a duty to retreat

Reasonableness—perceptions were both subjectively and objectively reasonable.

To overcome a claim of self-defense the state must **DISPROVE** any **ONE** of these elements beyond a reasonable doubt.

The Defense: Self-Defense

In this case the state would have had to prove at least one of the following beyond a reasonable doubt:

Innocence—that Zimmerman was the aggressor

Imminence—that the threat of death or grave bodily harm, or the aggravated battery, was not imminent

Proportionality—that Zimmerman's use of deadly force was an excessive response to the threat

Avoidance—Zimmerman failed in his duty to make use of a safe avenue of retreat

Reasonableness—Zimmerman's perception of all of the above was both objectively and subjectively reasonable.

1st Principle: Innocence

Self-Defense: Innocence

To defeat Zimmerman's claim of self-defense on the principle of innocence the state would have had to prove beyond a reasonable doubt that Zimmerman was the aggressor in the conflict.

§776.041 Use of force by aggressor.

The justification [of self-defense] is not available to a person who . . .

(2) Initially provokes the use of force against himself or herself . . .

Self-Defense: Innocence

The state sought to prove Zimmerman was the aggressor in the conflict by showing that he relentlessly pursued Martin.

But does the evidence support—beyond a reasonable doubt—the pursued that Zimmerman pursued Martin in such a manner that it would put a reasonable person in fear of harm?

For purposes of self-defense, such a pursuit would have Zimmerman intentionally closing distance on Martin for the purpose of threatening Martin with physical harm.

Self-Defense: Innocence

There were certainly wide-spread allegations in support of the view that Zimmerman “ruthlessly” pursued, specifically that Zimmerman exited his vehicle against police orders, followed Martin against police orders, and that Zimmerman chased down a fleeing Martin.

Again, however, the actual evidence was either directly or circumstantially contrary to these claims.

Self-Defense: Innocence

On the question of whether Zimmerman exited his car contrary to police orders:

- (1) There is no evidence whatever of any order being given by the police dispatcher that Zimmerman remain in his vehicle.
- (2) The police dispatcher testified at trial that it is not their policy to give “orders” to callers because the dispatcher can never be as aware of all the circumstances as the caller.

Self-Defense: Innocence

On the question of whether Zimmerman pursued Martin against police orders.

(1) There is no evidence whatever of any order being given by the police dispatcher that Zimmerman remain in his vehicle.

(2) To the contrary, a reasonable interpretation of the non-emergency call is that Zimmerman exited the vehicle specifically in response to the dispatchers request for information.

Self-Defense: Innocence

Zimmerman: Shit, he's running.

Dispatcher: He's running? Which way is he running?
[Sound of car door opening.]

Zimmerman: [Grunts.] Down towards the other entrance of the neighborhood.
[Sound of car door closing.]

Dispatcher: OK, and which entrance is that he's heading towards.

Zimmerman: The back entrance. . . . [mutters] Fucking punks [puddles?].

This exchange is consistent with Zimmerman merely moving so as to keep Martin under observation, in order to be responsive to law enforcement's specific requests for information on Martin's position and direction of travel.

Self-Defense: Innocence

Did Zimmerman then continue to “pursue” Martin contrary to a police order?

(1) Again, the police dispatcher testified that it is not their policy to give “orders” to callers on the scene.

(2) In any case, no such “order” was given—at best, the dispatcher’s comment could be considered a “suggestion”.

Self-Defense: Innocence

Zimmerman: The back entrance. . . . [mutters] Fucking punks [puddles?].

[Wind/breathing noise.]

Dispatcher: Are you following him?

Zimmerman: Yeah.

Dispatcher: OK, we don't need you to do that.

Zimmerman: OK.

[Wind/breathing noise stops.]

Regardless of whether one chooses to consider the phrase “we don’t need you to do that” to be a police order, all the facts in evidence (the audible recording and Zimmerman’s multiple statements to police) indicates that he did, in fact, cease any following of Martin at that point.

Self-Defense: Innocence



Self-Defense: Innocence

Martin needed to cover 400 feet to get to safety.

Martin was by all indications a fit, healthy, 17-year-old who until recently was a high school football player.

Zimmerman was an overweight 28-year-old who is physical trainer rated as a “1” on a “1-to-10” scale.

Martin had a running start and a >100 foot lead (distance from Zimmerman’s car to the corner of the building).

In addition, there are ~2 minutes between end of Zimmerman call first 911 calls, so Martin had at least that much time to cover the 400 feet to safety.

Self-Defense: Innocence

Can a healthy 17-year-old male cover 400 feet in two minutes?

Not having a healthy 17-year-old on hand, I decided to run an empirical experiment with an overweight, former-smoker, 48-year-old with questionable knees.

Ground covered in 2 minutes at a “run”: 1,260 feet.

Ground covered at a brisk walk: 750 feet.

Ground covered pushing a 2-year-old in a stroller: 575 feet.

Self-Defense: Innocence

In short, to believe that 28-year-old, overweight George Zimmerman ruthlessly pursued and ran to ground 17-year-old football player Trayvon Martin would require us to believe that even with a running start, a >100 feet lead, and a two-minute time-span, Martin still couldn't cover even as much ground as an overweight, middle-aged lawyer pushing a 2-year-old in a stroller.

The verdict suggests the jury found this notion unconvincing.

Self-Defense: Innocence

But let us assume that the jury accepted the fact that Zimmerman's alleged pursuit of Martin was the act of an aggressor.

Mere pursuit cannot cause someone death or grave bodily harm.

Therefore Martin would have been justified in "defending himself" against this pursuit with, at most, force not capable of causing death or great bodily harm.

If Martin responds to Zimmerman's alleged non-deadly pursuit with excessive force, then suddenly the tables turn.

Self-Defense: Innocence

A person who was initially the aggressor, and has thereby lost their “innocence” and by extension their right to claim self-defense, can “regain their innocence” and their right to claim self defense. §776.041 goes on to provide that an aggressor cannot claim self-defense:

. . . unless

(a) Such force [that the aggressor provoked against himself] is so great that the [aggressor] reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant . . .

Self-Defense: Innocence

In other words, the law looks at such a scenario as consisting of two distinct fights.

Fight #1: A initiates non-deadly force against B. B is free to use non-deadly force in self defense. A is the aggressor, B is innocent (and able to claim self-defense).

But if B escalates to deadly force we now have:

Fight #2: B initiates deadly-force against A. A is free to use deadly force in self-defense. B is the deadly-force aggressor, and A is innocent and able to claim self-defense.

(Note that A is still criminally liable, however, for fight #1.)

Self-Defense: Innocence

There was testimony from multiple witnesses that blows to the head of the type caused by Martin's beating of Zimmerman could well cause death or grave bodily harm. Martin's use of force therefore qualifies as deadly force.

Absent any prior threat of deadly force by Zimmerman—and there is no evidence of such—Martin's vicious beating of Zimmerman therefore initiated a second, deadly-force conflict, in which Martin was the aggressor, Zimmerman the innocent (and able to claim self-defense).

Had Martin simply struck Zimmerman once in the nose, arguably simply non-deadly force, he may have had a reasonable argument that he was responding to Zimmerman's alleged "pursuit"—but, of course, Martin did not stop with a single blow.

Self-Defense: Innocence

In addition, the great disparity of injury suffered by the two men circumstantially supports a conclusion that Martin—who had injuries only to his knuckles, consistent with beating someone—was the aggressor against Zimmerman—who had substantial injuries, as supported by both forensic and witness evidence.

In conclusion, there was little basis to believe that the state could disprove innocence beyond a reasonable doubt.

2nd Principle: Imminence

Self-Defense: Imminence

To defeat Zimmerman's claim of self-defense on the principle of imminence the state would have had to prove beyond a reasonable doubt that Zimmerman was not reasonably in fear of death or grave bodily harm.

Self-Defense: Imminence

FLJI 3.6(f) JUSTIFIABLE USE OF DEADLY FORCE

(Based on § 782.02, Fla. Stat.)

The use of deadly force is justifiable only if the defendant reasonably believes that the force is necessary to prevent imminent death or great bodily harm to himself while resisting:

1. another's attempt to murder him, or
2. any attempt to commit (applicable felony) upon him, or
3. any attempt to commit (applicable felony) upon or in any dwelling, residence, or vehicle occupied by him.

Self-Defense: Imminence

FLJI 3.6(f) JUSTIFIABLE USE OF DEADLY FORCE

(Based on §§ 776.012, 776.031, Fla. Stat.)

A person is justified in using deadly force if he reasonably believes that such force is necessary to prevent

1. imminent death or great bodily harm to himself or another, or
2. the imminent commission of (applicable forcible felony) against himself or another.

Self-Defense: Imminence

Imminence is (usually) assessed temporally, that is, the threatened harm was about to occur right now.

Definition: Imminent danger

“Immediate danger, such as must be instantly met, such as cannot be guarded against by calling for the assistance of others or the protection of the law . . . Such an appearance of threatened and impending injury as would put a reasonable and prudent person to his instant defense.”

Black’s Law Dictionary

Self-Defense: Imminence

The rationale for requiring imminence is to disallow legal justification for the use of force either pre-emptively in expectation of some harm or in retribution for a harm that has already occurred.

A cannot use force on B based on the belief that at some time in the future B will otherwise use force on A.

A cannot use force on B because at some point in the past B used force on A, if B does not otherwise present an immediate threat.

In both cases A is required to pursue alternatives to force to resolve the situation.

Self-Defense: Imminence

In the instant case, if Zimmerman had shot Martin before Martin had revealed his intention to use deadly force against him, or if Zimmerman had shot Martin after Martin had ceased his use of deadly force on him, the temporal disconnect between the opposing forces would have doomed Zimmerman's claim of self-defense.

The evidence, however, was entirely consistent with the shot being fired as the defensive act that ended the attack, and so contemporaneously with the attack.

As such, there was little basis for believing the state could disprove imminence beyond a reasonable doubt.

3rd Principle: Proportionality

Self-Defense: Proportionality

To defeat Zimmerman's claim of self-defense on the principle of proportionality the state would have had to prove beyond a reasonable doubt that Zimmerman used force that was excessive under the circumstances in either duration or intensity.

Duration: The use of "defensive" force continues after the imminent threat has passed.

Intensity: Deadly force is used in response to a non-deadly attack.

Self-Defense: Proportionality

There is no issue around disproportional force in the context of duration, because Zimmerman fired only the single round.

Self-Defense: Proportionality

On the issue of intensity, there is no question that Zimmerman's force was deadly.

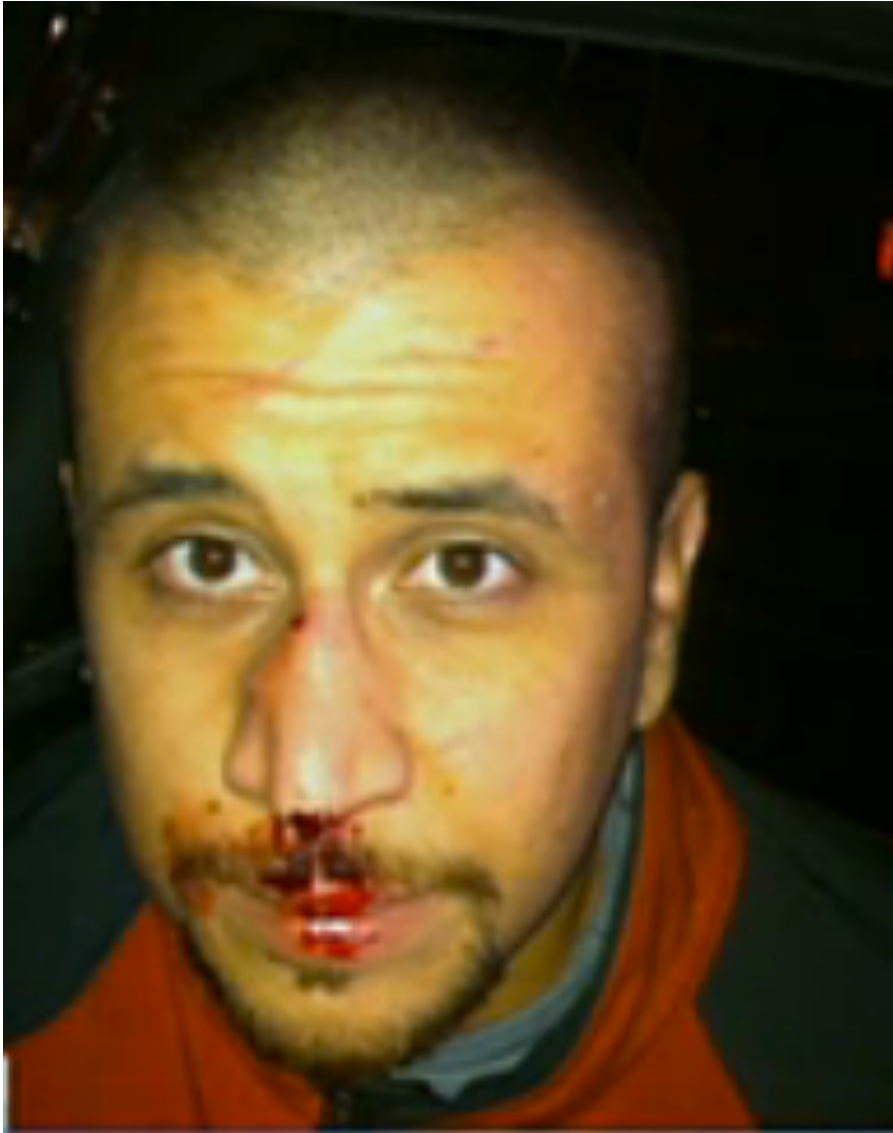
The question then is whether Martin's use of force was deadly—by which we mean, more specifically, whether the force used by Martin against Zimmerman was likely to cause death or grave bodily harm.

Self-Defense: Proportionality

There was substantial evidence that Martin subjected Zimmerman to a sustained beating, knocking him to the ground with a single powerful blow, straddling his hips, raining down blows “MMA style” despite desperate (unanswered) pleas for help, having his head smashed against a sidewalk, his mouth and nose covered by Martin’s hands, and finally Martin reaching for Zimmerman’s sidearm.

This evidence consists of Zimmerman’s own statements to police, eyewitnesses who observed Martin on top of Zimmerman, Zimmerman’s injuries, and medical/forensic examination of those injuries and their consistency with Zimmerman’s claims.

Self-Defense: Proportionality



Self-Defense: Proportionality



Self-Defense: Proportionality

There was considerable medical and forensic testimony that any blow to the head can be instantly debilitating, and quickly fatal, and on that basis alone can represent an imminent threat of death or grave bodily harm—particular if the blows are repeated.

Self-Defense: Proportionality

Curiously, the state sought to argue at trial that Zimmerman's injuries were slight, and not sufficient to have justified his use of deadly force in self-defense.

This argument is curious because it is not necessary under Florida law (or the law of any other state) that a defender must **ACTUALLY** suffer death or grave bodily harm in order to use deadly force in self defense.

The reasonable perception that death or grave bodily harm is *imminent* is sufficient to justify the use of deadly force in self-defense.

Self-Defense: Proportionality

To overemphasize the obvious, if I point a gun at you and verbalize my intent to shoot you through the head, you don't have to wait until I've actually induced that injury before you can shoot back.

Clearly, then, a person can lawfully use deadly force in self-defense without having had suffered so much as a scratch themselves.

Self-Defense: Proportionality

The state prosecutors would, of course, have been very well aware that the point they sought to make—that the extent of Zimmerman's injuries were inadequate to support the use of deadly force in self-defense—was legally meaningless.

It's almost as if they were seeking a conviction based on emotion rather than the law.

Self-Defense: Proportionality

In this case, of course, there were actual injuries suffered by Zimmerman, and evidence that these injuries were entirely consistent with the use of force by Martin reasonably capable of causing death or great bodily harm.

As such, there was little basis for believing the state could disprove proportionality beyond a reasonable doubt.

4th Principle: Avoidance

Self-Defense: Avoidance

To defeat Zimmerman's claim of self-defense on the principle of avoidance the state would have had to prove beyond a reasonable doubt that Zimmerman failed to adhere to a duty to safely retreat before using force in self-defense.

Traditionally, under English common law, there existed a generalized duty to retreat, if one could do so absolutely safely, before resorting to the use of force in self-defense.

A failure to make use of a safe means of retreat automatically destroyed any right to claim self-defense.

Self-Defense: Avoidance

In America, this requirement of a generalized duty to retreat is the minority position among the states—only 17 states require such a generalized duty. (NY ranks among these, requiring safe retreat before the use of deadly—but not non-deadly—force.)

Even these states have numerous exceptions to the duty—such as the Castle Doctrine, and extension of the Castle Doctrine to temporary dwellings, places of business, vehicles, etc.

Self-Defense: Avoidance

A majority of states (33) are effectively Stand Your Ground states, in that they apply no generalized duty to retreat before you may use force in self-defense (even if they don't use the phrase Stand Your Ground).

In these states the citizens are effectively relieved of a generalized duty to retreat.

Self-Defense: Avoidance

Florida, a formally named “Stand Your Ground” state, is among this majority of states.

FLJI 3.6(f) JUSTIFIABLE USE OF DEADLY FORCE

[Based on §776.013(3), Fla. Stat.]

If the defendant was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force, if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or to prevent the commission of a forcible felony.

Self-Defense: Avoidance

Note the numerous conditions of Stand Your Ground:

- (1) You must not be engaged in any unlawful activity (so cannot have been the aggressor).
- (2) You must have been in a place you have the right to be (so cannot be a trespasser/burglar).
- (3) You must have been under deadly-force attack, or threat of a forcible felony (e.g., rape).
- (4) Your defensive use of force must have been reasonably necessary to prevent that deadly-force attack/rape.

When you see claims in the media that SYG means that one can “shoot first, ask questions later”, ask yourselves if the source is merely ignorant or whether they are purposely communicating misinformation in pursuit of some unstated agenda.

Self-Defense: Avoidance

Note that the duty to retreat only ever applies where a **totally safe** means of retreat exists. You are never required to increase your danger.

If there is no safe means of retreat, there is no duty to retreat, even in states with a generalized duty to retreat.

If there is no duty to retreat, there is no need to apply a Stand Your Ground provision to relieve you of the duty to retreat (since no such duty exists under those circumstances).

In other words, SYG is irrelevant in the absence of a safe means of retreat.

Zimmerman had no safe means of retreat, being pinned under Martin, which is why the *Zimmerman* trial was not a SYG case.

Self-Defense: Avoidance

Because Zimmerman had no safe means of escape, he had no duty to attempt such escape, and so there was no avenue for the state to disprove beyond a reasonable doubt his claim of self-defense on the principle of avoidance.

5th Principle: Reasonableness

Self-Defense: Reasonableness

To defeat Zimmerman's claim of self-defense on the principle of reasonableness the state would have had to prove beyond a reasonable doubt that Zimmerman's perception of the facts relevant to the other four principles—innocence, imminence, proportionality, avoidance--was either objectively or subjectively unreasonable.

Objective reasonableness: As they would be perceived by a reasonable and prudent person in the same circumstances and possessing the same knowledge, skills, and physical abilities.

Subjective reasonableness: A genuinely held belief that the the perceptions are correct.

NOTE: Your perceptions need not be ACCURATE, they need merely be REASONABLE. You are permitted to be reasonably mistaken.

Self-Defense: Reasonableness

FL 3.6(f) JUSTIFIABLE USE OF DEADLY FORCE

In deciding whether defendant was justified in the use of deadly force, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

Self-Defense: Reasonableness

The facts in evidence on the issues of innocence, imminence, and proportionality were so overwhelmingly favorable to Zimmerman that there was no substantive grounds on which Zimmerman's objective and subjective perception of them could be seen as unreasonable.

As just discussed, the principle of avoidance was irrelevant.

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The State did try to attack the principle of reasonableness more generally, by describing Zimmerman as a “wannabe” cop” who was enraged by the communities frequent robberies, and simply wanted vengeance on the next robbery suspect he came across.

Unfortunately, the facts in evidence and testimony in court undercut all three notions.

Self-Defense: Reasonableness

Zimmerman rejected an opportunity to receive a patrol car and uniform as part of becoming a kind of “super” community watch.

Although the state frequently repeated Zimmerman’s words in shouted tones of outrage, the actual audio tape played repeatedly in court showed Zimmerman speaking in quiet tones.

Zimmerman referred to the thieves running through the neighborhood as “punks” and “assholes”, but consistently phoned the police in response to their presence rather than seeking to take action himself—exactly as the police had trained him as a community watch volunteer.

In the end, the state was not able to disprove the reasonableness of Zimmerman’s perceptions and actions beyond a reasonable doubt.

Verdict: Not Guilty

Because the state was not unable to disprove, beyond a reasonable doubt, even a single one of the five principles of Zimmerman's self-defense claim, the jury was obligated to find him not guilty of all charges—including all lesser included charges, such as manslaughter.

It is notable, but food for some future discussion, to note that all of the facts described here were known to prosecutors within days or weeks of the initial shooting.

Perhaps the possession of these facts and the law was what led the local police and prosecutors to decline to charge Zimmerman with second degree murder?