CALLING THE COURT OF PUBLIC OPINION TO ORDER: A CRITICAL ANALYSIS OF *STATE OF FLORIDA V. GEORGE ZIMMERMAN*

INTRODUCTION

Vigilante.[1] Wannabe cop.[2] Creepy-ass cracker.[3] These pejoratives are a small selection of a wide array of titles given to George Zimmerman, and they were repeated *ad nauseam* in the news media[4] until Zimmerman's acquittal of second-degree murder.[5] Although these words communicate concentrated vitriol toward Zimmerman, they are microcosms of the extent to which Zimmerman was impugned in the public eye. George Zimmerman will look over his shoulder for the rest of his life, having reentered a world where he is despised by many.[6] Zimmerman was tried and convicted in the court of public opinion long before a verdict was returned in the Circuit Court of Seminole County, Florida.

Zimmerman's uphill battle to secure justice was marked by obstacles such as the misleading characterization of his ethnicity as a "white Hispanic,"[7] unfounded accusations of racial profiling,[8] the doctoring of his

---

[1] Defendant's Motion in Limine Regarding the Use of Certain Inflammatory Terms at 2, State v. Zimmerman, No. 2012-001083-CFA (Fla. Cir. Ct. May 30, 2013) [hereinafter Motion in Limine Regarding Inflammatory Terms], *available at* http://www.gzdocs.com/documents/0613/limine_use_of_terms.pdf.

[2] *Id.*

[3] Lizette Alvarez, *At* Zimmerman *Trial, a Tale of Pursuit and Attack*, N.Y. TIMES, June 27, 2013, at A19.

[4] The prejudicial characterization of Zimmerman in the media and the extent to which the public adopted a negative view of Zimmerman caused the defense to file a motion in an attempt to prevent the prosecutors from eliciting improper emotional responses from jurors. *See* Motion in Limine Regarding Inflammatory Terms, *supra* note 1.

[5] Judgment of Not Guilty, State v. Zimmerman, No. 12-CF-1083-A (Fla. Cir. Ct. July 13, 2013), http://www.flcourts18.org/PDF/Press_Releases/Judgment_of_Not_Guilty_7_13_13.pdf; Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, July 14, 2013, at A1.

[6] Zimmerman's brother Robert described fear on the part of the defendant and his family that arose because of the trial and the fear did not end after Zimmerman was acquitted. Interview by Piers Morgan with Robert Zimmerman Jr., *CNN Breaking News* (CNN television broadcast July 13, 2013), *available at* http://transcripts.cnn.com/TRANSCRIPTS/1307/13/bn.01.html.

[7] *CNN's "White Hispanic" Label for George Zimmerman Draws Fire*, HUFFINGTON POST (July 12, 2013, 5:59 PM), http://www.huffingtonpost.com/2013/07/12/cnn-white-hispanic_n_3588744.html.

[8] *See, e.g.*, Valena Elizabeth Beety, *What the Brain Saw: The Case of Trayvon Martin and the Need for Eyewitness Identification Reform*, 90 DENV. U. L. REV. 331, 336 (2012) (arriving abruptly at the conclusion that "[Trayvon] Martin's race . . . likely influenced Zimmerman's identification of Martin as a criminal."); *see also* Motion in Limine Regarding Inflammatory Terms, *supra* note 1, at 3 ("It is, of course, highly improper to interject even a

statements by media outlets,[9] and the deceptive circulation of mugshot photographs of him.[10] As further fuel to the fire, the *Zimmerman* trial was referred to by some as the most polarizing legal controversy since the O.J. Simpson "trial of the century."[11]

---

reference to, let alone an accusation of racism which is neither justified by the evidence nor relevant to the issues into any part of our judicial system. It is particularly reprehensible when this is done by a representative of the state in a criminal prosecution." (quoting Perez v. State, 689 So. 2d 306, 307 (Fla. Dist. Ct. App. 1997))).

[9] Zimmerman sued NBC for its willful promulgation of a news report in which an NBC affiliate spliced a 911 recording of Zimmerman's voice, making it appear that Zimmerman suspected Trayvon Martin of being a criminal because of his race. Complaint at 2–3, Zimmerman v. NBC Universal Media, No. 12CA6178-16-K, 2012 WL 6107926 (Fla. Cir. Ct. Dec. 6, 2012) [hereinafter Zimmerman Complaint]. Zimmerman was unsuccessful in his suit. *See* Zimmerman v. Allen, No. 12-CA-6178, 2014 WL 3731999, at *15 (Fla. Cir. Ct. June. 30, 2014) (granting summary judgment for NBC).

[10] *See* Martin A. Holland, Note, *Identity, Privacy and Crime: Privacy and Public Records in Florida*, 23 U. FLA. J.L. & PUB. POL'Y 235, 240–41 (2012) ("As [the Zimmerman-Martin incident] rapidly gained publicity, a 2005 booking photograph of George Zimmerman was circulated by many media outlets, often without referencing the fact that the photograph was 7 years old, or that the charges against Zimmerman had been dropped. In the 7-year-old mugshot, Zimmerman is 'an apparently heavyset figure with an imposing stare, pierced ear and facial hair, the orange collar of his jail uniform visible.' At the time of the shooting of Martin, Zimmerman was 28 years old, and more recent photos of a slimmer, 'beaming Zimmerman looking sharp in a jacket and tie' received far less attention, even though they would be a more accurate record of his appearance at the time of the shooting. Experts noted that the outdated mugshot photo could portray Zimmerman as more menacing, and that is an ingredient 'journalists will grab onto and present.'" (footnotes omitted)).

[11] *Cf.* Chris Jones, *Courtroom No Place for the Great American Narrative*, CHI. TRIB., July 20, 2013, at C1 ("[T]rials are lousy places to look for . . . broader inferences . . . . The reason for the long-standing popularity of trial coverage is obvious: they appear inherently dramatic. . . [Such] exposure means that trials like the *Zimmerman* [trial] become catalysts for all kinds of post-facto actions: speeches, protests, marches. They spark boycotts, as with Stevie Wonder's declaration that he will not play in Florida until the 'stand your ground' law of that state is changed. But to say that trials are imperfect loci for these national moments of navel-gazing is to understate their flaws.").

In the *Zimmerman* trial, as will be discussed below, Presiding Judge Debra Nelson maintained control over her courtroom despite her apparent lack of patience for the defense attorneys, and she prevented the proceedings from becoming a politicized "show trial," as described by Professor Allo:

> A trial becomes a 'show trial' only when it involves a matter of public concern or a public figure. In most cases, juridical exercises dubbed 'show trials' deal with matters that are irreducibly political and only incidentally legal. They become subjects of concern, because the stories and narratives they unburden are stories that the society desperately needs an answer to—one that strikes home with every politically informed citizen.

Awol K. Allo, *The "Show" in the "Show Trial": Contextualizing the Politicization of the Courtroom*, 15 BARRY L. REV. 41, 71 (2010) (cautioning against the use of the courtroom for purely coercive ideological ends and noting that show trials can be used to achieve both oppressive and emancipatory results).

Like Professor Alan Dershowitz's post-acquittal "tell-all" about the O.J. Simpson trial, Sections I and II of this Article will serve as a hypothetical appellate brief for *State v.*

The media coverage of the *Zimmerman* case might paint a picture in which the justice system favors whites and discriminates against African-Americans.[12] At the same time, one might see a trial spiraling downward.[13] The proceedings devolved from what should have been a simple debate over the existence of the elements in a murder case to a "call to justice"—a nationwide throwing of pent-up, racially motivated accusations at George Zimmerman to see what would stick.[14] Distinct and opposite positions on the trial and Zimmerman's innocence quickly formed.[15] The trial caused a notable rearranging of traditional political positions on crime and justice, too.

> In a sense, the world has been turned topsy-turvy. Progressive activists and scholars call for the application of police power to Zimmerman and the elimination of a defense-friendly law for all future murder defendants. Conservative commentators lobby for prosecutorial restraint and the scrupulous honoring of a murder defendant's legal rights. What could move the tough-on-crime party to support leniency? What could move state authority skeptics to champion broadening prosecutorial power?[16]

A unique and tragic set of facts caused such a dramatic role reversal.

Zimmerman. *See generally* ALAN M. DERSHOWITZ, REASONABLE DOUBTS: THE CRIMINAL JUSTICE SYSTEM AND THE O.J. SIMPSON CASE 16 (1997) ("explain[ing] why even jurors who thought that Simpson 'did it' as a matter of fact could reasonably have found him not guilty as a matter of law—and of justice").

[12] *See* Tom Foreman, *Analysis: The Race Factor in George Zimmerman's Trial*, CNN (Jul. 15, 2013, 9:10 AM), http://www.cnn.com/2013/07/14/justice/zimmerman-race-factor/; *see also* Anita Bernstein, *What's Wrong with Stereotyping?*, 55 ARIZ. L. REV. 655, 690–92 (2013) (noting that violent conduct may be reasonable and comprehensible as self-defense without regard to the race of those involved in the encounter, yet arriving at the conclusion that "[k]illers are more likely to prevail when they are white or male rather than African American or female, because the actions of white persons and men are more likely to be perceived as orderly.").

[13] *See* Jones, *supra* note 11.

[14] Many commentators further contend that the *Zimmerman* trial was not just a case about proving the elements of second-degree murder, but rather, a case that functioned as a referendum on the use of racially biased notions of "fear-of-other" and "Black-as-criminal" as rationales for self-defense. *See, e.g.*, Tamara F. Lawson, *A Fresh Cut in an Old Wound–A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutors' Discretion, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL'Y 271, 297, 300 (2012).

[15] *See, e.g.*, Alvarez & Buckley, *supra* note 5 (reporting immediate reactions to the *Zimmerman* trial verdict); Matt Gutman et al., *George Zimmerman's Donations Spike on His Return to Jail*, ABC NEWS (June 4, 2012), http://abcnews.go.com/US/george-zimmermans-donations-spike-return-jail/story?id=16490782#.T8z8ZZlYusB (describing the surge in donations to the George Zimmerman's defense fund after he was ordered to return to jail).

[16] Aya Gruber, *Leniency as a Miscarriage of Race and Gender Justice*, 76 ALB. L. REV. 1571, 1573 (2013) (footnotes omitted).

This Note will discuss the obstacles George Zimmerman faced and overcame in his effort to obtain justice.[17] Part I analyzes the procedural and evidentiary irregularities that occurred at the trial. Part II discusses relevant cases illustrative of the elements of the second-degree murder charge Zimmerman faced, as well as why both murder and the lesser included crime of manslaughter were negated by self-defense. Part III presents a Christian perspective on self-defense, and more specifically, on the actions taken by Zimmerman when he defended himself on February 26, 2012.[18] In addition to discussing how George Zimmerman is indisputably legally innocent in light of the facts of his case, this Note also presents perspectives on factual issues about the case that have been underreported by the media. This Note does not address the controversy surrounding Florida's "Stand Your Ground" law, in light of the veritable mountain of scholarship that has been produced on the subject.[19]

I. *STATE V. ZIMMERMAN*: CASE FACTS

A. Prosecutor's Version

Viewed in the light most favorable to the State of Florida, Trayvon Martin, an unarmed African-American boy,[20] was "profiled" by George Zimmerman on Sunday, February 26, 2012.[21] Martin, who had been

---

[17] It is this author's intent to provide a dispassionate, apolitical legal analysis of this case while respecting the memory of Trayvon Martin.

[18] *See* Narrative Report from George Michael Zimmerman to Sanford Police, at 2–4 (Feb. 26, 2012) [hereinafter Zimmerman Statement], *available at* http://s3.documentcloud.org/documents/371127/george-zimmerman-written-statement.pdf.

[19] *See, e.g.*, Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827 (2013).

At the time this Note was written, an effort to repeal Florida's Stand Your Ground law, FLA. STAT. ANN. § 776.013 (Westlaw through Ch. 254, 2014 2d Reg. Sess.), had been recently defeated in subcommittee. Bill Cotterell, *Florida Bid to Repeal "Stand Your Ground" Law Fails*, HUFFINGTON POST (Nov. 7, 2013, 10:54 PM), http://www.huffingtonpost.com/2013/11/08/stand-your-ground-repeal-fails_n_4237302.html.

[20] *See* Affidavit of Probable Cause—Second Degree Murder, at 1, State v. Zimmerman (Fla. Cir. Ct. Apr. 11, 2012) [hereinafter Affidavit of Probable Cause], http://s3.documentcloud.org/documents/336022/zimmerman-probable-cause-document.pdf; Zimmerman Complaint, *supra* note 9, at 1; Alvarez & Buckley, *supra* note 5.

[21] *See* Affidavit of Probable Cause, *supra* note 20, at 1. The accusation of profiling was a notably bare assertion but it had a substantial bearing on the *Zimmerman* case. *See infra* note 152 and accompanying text (noting that the relationship between the second-degree murder defendant and the victim is usually one that has been established for longer than a mere chance encounter; if it could be established that Zimmerman observed and maliciously profiled Martin for long enough, the requisite malice for second-degree murder may have been formed). Profiling, a fully legal, non-racial, and ordinary practice, is defined as "the activity of collecting important and useful details about someone." *Profiling Definition*, DICTIONARY.CAMBRIDGE.ORG, http://dictionary.cambridge.org/us/dictionary/business-english/profiling (last visited Nov. 14, 2014). We "profile" the person standing off

temporarily living in the same gated community as Zimmerman, the Retreat at Twin Lakes in the city of Sanford,[22] was returning home from 7-Eleven with his purchases.[23] Zimmerman saw Martin while driving through the neighborhood, assumed Martin was a criminal who did not belong in the gated community, and called the police.[24]

Zimmerman asked for an officer to respond to the scene because he thought Martin was acting suspicious.[25] The dispatcher told Zimmerman to wait for the police to arrive.[26] While waiting for an officer to arrive, Zimmerman made explicit references to people he thought had gotten away with break-ins in the neighborhood, saying that "these a[******], they always get away" and calling them "f[******] punks," all of which the dispatcher heard.[27]

Martin called a friend and told her that he was scared of being followed through the neighborhood for no reason by someone he didn't know.[28] Martin tried to run home, and Zimmerman followed under the false assumption that a potential criminal was going to get away.[29] The dispatcher became aware of Zimmerman's pursuit and told him to stop and wait for the police to arrive, but Zimmerman ignored instructions and continued to follow Martin.[30]

---

down the hallway that we cannot see clearly, but think to be a friend of ours based upon the way they look and the way they walk. The police officer "profiles" the unknown driver weaving in and out of his lane before pulling him over, as well as the two people who have just exchanged items in the darkened parking lot. The reader has possibly even "profiled" this author based upon the title of this article.

[22] Affidavit of Probable Cause, *supra* note 20, at 1.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.* Zimmerman's comments to the dispatcher became the famous subject of malicious editing by NBC and its Florida affiliates. The audio splicing made Zimmerman out to have racially profiled Martin, and it included doctored statements such as "This guy looks like he's up to no good . . . . He looks black" and false reports that Zimmerman said "f****** coons" in reference to Martin. Zimmerman Complaint, *supra* note 9, at 2, 14. Zimmerman brought suit in Seminole County Circuit Court for defamation and intentional infliction of emotional distress. *Id.* The bulk of the manipulated editing of Zimmerman's statements ironically occurred on March 22, 2013, *id.* at 15, the same day that State Attorney for the Eighteenth Judicial Circuit Norm Wolfinger recused himself and Jacksonville State Attorney Angela Corey was appointed instead to prosecute George Zimmerman. *See* Fla. Exec. Order No. 12-72 (2012) [hereinafter Exec. Order 12-72], http://www.flgov.com/wp-content/uploads/orders/2012/12-72-martin_10-2.pdf.

[28] Affidavit of Probable Cause, *supra* note 20, at 2.

[29] *Id.*

[30] *Id.*

Zimmerman confronted Martin, and a fight broke out.[31] Witnesses in the area described hearing an argument and calls for help.[32] Martin's mother identified the person calling for help as her son Trayvon.[33]

Zimmerman shot Martin in the chest and admitted to the shooting.[34] Upon arresting Zimmerman, police found a holstered gun inside his waistband.[35] A spent casing recovered at the scene was found to have been fired from Zimmerman's gun.[36] Finally, a gunshot wound was determined by a medical examiner to have been Trayvon Martin's cause of death.[37]

B. Defendant's Version[38]

Viewed in the light most favorable to George Zimmerman, the neighborhood watch patrol that led to the tragic death of Trayvon Martin on February 26, 2012 was imminently necessary.[39] In response to growing concerns about recent break-ins, observation of suspicious persons, and robberies that had occurred in the Retreat at Twin Lakes community, a Neighborhood Watch program was sanctioned by the Sanford Police Department ("SPD").[40] Zimmerman, the community's Neighborhood Watch coordinator,[41] was in the middle of running an errand when he first observed Trayvon Martin.[42]

---

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] This version of facts combines emails and other documents compiled by the defense, including George Zimmerman's statement to police given shortly after the shooting incident.

[39] *See* Email from George Zimmerman, Neighborhood Watch Patrol (Feb. 7, 2012, 2:45 PM), *available at* http://www.gzdocs.com/documents/0513/discovery_3/feb_7_email.pdf (describing a daytime robbery and encouraging residents to take appropriate security measures); Email from George Zimmerman, Neighborhood Watch Patrol (Feb. 20, 2012, 3:12 PM), *available at* http://www.gzdocs.com/documents/0513/discovery_3/feb_20_email.pdf (noting the apprehension of the suspected thief).

[40] In 2011, Zimmerman voiced his concerns about a past incident involving the SPD in an email to Police Chief Bill Lee. Chief Lee responded with praise and thanks for Zimmerman's work as a neighborhood watch volunteer coordinator. *See* Email from Bill R. Lee, Jr., Chief of Police, City of Sanford, to George Zimmerman 1, 2 (Sept. 19, 2011, 1:05 PM) [hereinafter Lee-Zimmerman Emails], *available at* http://www.gzdocs.com/documents/0513/defense_discovery/general/2011-09-20_triplettj_email_re-dorivalw.pdf; *see also* Zimmerman Statement, *supra* note 18 (noting, in a statement given after the shooting, that neighbors formed the "Neighborhood Watch Program" in response to growing fears about the rising crime level in the Retreat at Twin Lakes).

[41] Lee-Zimmerman Emails, *supra* note 40, at 2.

[42] Zimmerman Statement, *supra* note 18, at 1.

While driving to the grocery store, Zimmerman saw Martin, a male between 5'11" and 6'2", walking casually in the rain and looking into houses.[43] Pursuant to SPD instructions given to him about suspicious persons,[44] Zimmerman called the SPD non-emergency number.[45] While Zimmerman related details about Martin to the dispatcher, Martin fled to a darkened area of the sidewalk.[46] As Zimmerman attempted to gain his bearings and give the dispatcher his exact location, Martin reappeared and began to circle Zimmerman's vehicle.[47] Zimmerman, who was still in his vehicle, could not hear whether Martin said anything while he circled.[48]

Martin disappeared again between two houses.[49] While Martin was out of sight, the dispatcher again asked Zimmerman for his location.[50] Zimmerman could not remember the name of the street, so he got out of his vehicle to look for a street sign, informing the dispatcher of his actions.[51] The dispatcher then asked Zimmerman for a description of the suspicious person and the direction he had headed.[52] Zimmerman told the dispatcher he was unable to do so based on his still-limited observations.[53] The dispatcher told Zimmerman not to follow Martin because an officer was on the way.[54] Zimmerman obeyed the dispatcher and headed back to his vehicle.[55]

Martin then emerged from the darkness and confronted Zimmerman, saying, "You got a problem."[56] Zimmerman replied, "No," and in response, Martin asserted, "You do now."[57] Zimmerman realized that the situation had escalated beyond mere suspicion of danger and into an immediate threat, so he attempted to dial 911, forgoing the SPD non-emergency number.[58] Martin punched him in the face, and Zimmerman fell to the ground on his back.[59] Martin then climbed on top of Zimmerman as

---

43 *Id.*
44 *Id.*
45 *Id.*
46 *Id.* at 1–2.
47 *Id.* at 2.
48 *Id.*
49 *Id.*
50 *Id.*
51 *Id.*
52 *Id.*
53 *Id.*
54 *Id.*
55 *Id.*
56 *Id.*
57 *Id.*
58 *Id.* at 3.
59 *Id.*

Zimmerman yelled for help repeatedly.[60] Martin told Zimmerman to "shut the f*** up,"[61] and as Zimmerman tried to sit up, Martin grabbed his head and slammed it into the concrete sidewalk several times.[62] Martin slammed Zimmerman's head back down onto the concrete sidewalk each time Zimmerman tried to sit up.[63]

Zimmerman tried to slide out from under Martin, who was still on top of him.[64] As he did so, Zimmerman continued to yell for help, prompting Martin to cover Zimmerman's mouth and nose in an attempt to stop the noise, and, in Zimmerman's opinion, his breathing.[65] Martin saw Zimmerman's gun and reached for it, saying, "You gonna die tonight, motherf*****."[66]

Zimmerman believed that Martin was about to act on the statement "you gonna die tonight, motherf*****."[67] In light of that deathly assurance, Zimmerman drew his gun and fired one shot into Martin's torso.[68] SPD soon arrived to disarm and detain Zimmerman.[69]

II. PROCEDURAL IRREGULARITIES IN THE *ZIMMERMAN* CASE

Pretrial proceedings and the trial record in the *Zimmerman* case contained substantial irregularities. These perplexing issues were the subject of remedial strategies by the defense at trial, and they could have served as a basis for reversal on appeal.[70] Controversy and confusion plagued the case from the initial decision to charge Zimmerman to the trial.[71]

---

60 *Id.*

61 *Id.*

62 *Id.*

63 *Id.*

64 *Id.*

65 *Id.*

66 *Id.*

67 *Id.* at 3–4.

68 *Id.* at 4.

69 *Id.*

70 *See* FLA. STAT. ANN. § 924.33 (Westlaw through Ch. 255, 2014 Spec. "A" Sess.) (instituting Florida's standard for reversal on appeal).

71 *See* Elliott C. McLaughlin, *Ex-Sanford Police Chief: Zimmerman Probe "Taken Away From Us*," CNN (July 11, 2013, 12:03 PM), http://www.cnn.com/2013/07/10/justice/sanford-bill-lee-exclusive/.

A. To Charge or Not to Charge?

1. Information or Grand Jury Indictment: A Balancing Test

On March 13, 2012, the SPD decided not to charge Zimmerman, citing a lack of probable cause to refute self-defense.[72] SPD handed the case over to the State Attorney for the Eighteenth Judicial Circuit, Norm Wolfinger.[73] Wolfinger announced that he would submit the Zimmerman-Martin matter to a Seminole County grand jury on April 10, 2012.[74] However, Wolfinger's recusal was suddenly announced in Governor Rick Scott's Executive Order 12-72 on March 22, 2012.[75] Before the grand jury convened, Jacksonville State Attorney Angela Corey was appointed to handle the case in Wolfinger's place,[76] and by April 11, the day after the grand jury would have convened under Wolfinger's supervision,[77] Corey charged Zimmerman by information with second-degree murder.[78]

---

[72] *Id.* Sanford Chief of Police Bill Lee noted that while his lead investigator had recommended a manslaughter charge, the evidence before him could not overcome the facts supporting Zimmerman's self-defense claim. Lee further lamented that "[t]he police department needed to do a job, and there was some influence—outside influence and inside influence—that forced a change in the course of the normal criminal justice process . . . . [The] investigation [of the Zimmerman-Martin matter] was taken away from us. We weren't able to complete it." *Id.*; *see also Ex-Sanford Police Chief Tells Local 6 Why He Didn't Arrest George Zimmerman*, CLICK ORLANDO (July 10, 2013, 6:37 PM), http://www.clickorlando.com/news/exsanford-police-chief-tells-local-6-why-he-didnt-arrest-george-zimmerman/-/1637132/20923726/-/f0eymsz/-/index.html (stating that arresting Zimmerman based on the facts as they stood "would have subjected the city to possible litigation for unlawful arrest").

[73] *See* Press Release, Statement from State Attorney Norm Wolfinger (March 20, 2012) [hereinafter Wolfinger Statement], *available at* http://www.sa18.state.fl.us/press/id/313.

[74] *Id.*

[75] Exec. Order 12-72, *supra* note 27, at pmbl. Wolfinger had decided to allow the *Zimmerman* case to go to a grand jury, where many believed it unlikely that an indictment would be returned. Wolfinger Statement, *supra* note 73. His decision to use the grand jury was overruled by Executive Order 12-72, and a new State Attorney was assigned who would push charges through no matter the cost. *See* Exec. Order 12-72, *supra* note 27, at § 1. Scant explanation was given for Wolfinger's recusal. Although the reason of avoiding "any appearance of conflict of interest or impropriety" was given, the alleged conflict of interest and impropriety were never elaborated upon publicly. *Id.* at pmbl. The *Zimmerman* case effectively ended Wolfinger's career. In the whirlwind of controversy surrounding the *Zimmerman* case, Wolfinger decided not to pursue re-election after Corey finished her tenure. *See* Press Release, Retirement Announcement of State Attorney Norman R. Wolfinger (Apr. 20, 2012), *available at* http://mynews13.com/content/dam/news/static/cfnews13/documents/norm-wolfinger-election-announce.pdf.

[76] Exec. Order 12-72, *supra* note 27, at § 1.

[77] Wolfinger Statement, *supra* note 73.

[78] Information, State v. Zimmerman, No. 1712F04573, 2012 WL 1207410 (Fla. Cir. Ct. Apr. 11, 2012) (issuing capias for Zimmerman's arrest that contained the details of the information charged against him). Zimmerman was also likely overcharged with second-degree murder. *See* Alan Dershowitz, *On Prosecutor Angela Corey's Rant About My Criticism of Her*, HUFFINGTON POST (June 5, 2012, 4:38 PM), http://www.huffingtonpost.com/alan-

An examination of the Florida legislative committee notes on indictments and informations indicates that the decision to charge a person by information rather than by grand jury indictment, while within a Florida prosecutor's discretion, is disfavored when employed by prosecutors not elected in the jurisdiction.[79] The traditional use of informations allowed the elected prosecutor to swear under oath to the existence of probable cause for minor crimes, saving the time and expense of convening the grand jury.[80] After all, it would simply be impossible for Wolfinger to convene the grand jury for every crime committed in his jurisdiction. The Florida legislature accordingly implied that an *elected* State Attorney may bypass the grand jury and charge by information for any non-capital crime.[81]

In the *Zimmerman* case, however, Angela Corey was an appointed and unelected prosecutor with no allegiance or accountability to the people

---

dershowitz/prosecutor-angela-corey-r_b_1571942.html; Bellamy v. Florida, 977 So. 2d 682, 684 (Fla. Dist. Ct. App. 2008) (holding that an "impulsive overreaction to an attack or injury" was insufficient to prove the second-degree murder prerequisites of ill will, spite, or hatred, reversing the defendant's conviction of second-degree murder, and remanding for the entry of a judgment of conviction for manslaughter).

[79] *See* FLA. R. CRIM. P. 3.140. The Committee Notes on the adoption of Rule 3.140 indicate a preference for initiating prosecution by grand jury indictment rather than by information: "While practicalities dictate that most non-capital felonies and misdemeanors will be tried by information or affidavit, if appropriate, even if an indictment is permissible as an alternative procedure, it is well to retain the grand jury's check on prosecutors in this area of otherwise practically unrestricted discretion." FLA. R. CRIM. P. 3.140 committee notes at (a)(2). Nonelected prosecutors should be especially wary. "[P]rosecution by information is not recommended because of the aforementioned doubt as to the authority of a nonelected prosecutor to use an information as an accusatorial writ." *Id.*

State Attorney Corey was not elected in the 18th Judicial Circuit of Florida, where the *Zimmerman* case unfolded. Corey was elected in the 4th Judicial Circuit, which embraces the Jacksonville area, and she effectively overrode the power of the Seminole County grand jury by making her own probable cause determination. *See* Bennett L. Gershman & Joel Cohen, *Charging George Zimmerman: Why Bypass the Grand Jury?*, HUFFINGTON POST (Apr. 24, 2012, 5:05 PM), http://www.huffingtonpost.com/bennett-l-gershman/george-zimmerman-grand-jury_b_1445714.html.

> [T]he prosecutor has chosen in a controversial case of such magnitude—even the president has spoken about this case—to use Florida's escape hatch [charging a crime by information], thereby foregoing a procedure designed by the Magna Carta to protect a defendant from unwarranted accusations. We do not suggest that George Zimmerman deserves more justice than "the next guy" in Florida who also likely won't be indicted by a grand jury; we are merely wondering why a procedure so ingrained in our law and culture as a protection of an accused—any accused—can be so easily bypassed.

Id.

[80] FLA. R. CRIM. P. 3.140; *see* Joan E. Jacoby, *The American Prosecutor in Historical Context*, 39 PROSECUTOR 28, 36 (2005) (explaining that use of informations to prosecute crime became prevalent in the 1920s because they were "less expensive and more efficient").

[81] *See* FLA. R. CRIM. P. 3.140 committee notes at (a)(1)–(2).

of Seminole County,[82] whose input she discarded when she cancelled the *Zimmerman* grand jury.[83] It remains unclear whether a grand jury would have returned an indictment.[84] Regardless of whether it was reasonable to charge second-degree murder—a crime with a maximum penalty of life imprisonment[85]—by information, the fuse beneath what seemed to be a simple yet tragic story of self-defense had been lit,[86] and the pressure on Corey to charge Zimmerman was immense.

> [T]he February 26, 2012, shooting death of Trayvon Martin demonstrates the immense pressures—both proper and improper—that weigh on prosecutors' discretion. In the weeks following Martin's death, there were racially charged debates scrutinizing Florida's so called "stand your ground" law, circumstances surrounding the shooting itself, and the ensuing police investigation. There was intense criticism of the local prosecutor's initial decision not to lay any charges against George Zimmerman, who claimed to have shot Martin in self-defense. In the forty-five day period between Martin's death and Zimmerman's April 11 arrest, not only did a special prosecutor replace the local prosecutor, but the local police chief temporarily stepped down. Martin's family, joined by activist groups, eventually claimed that a combination of public pressure, media exposure, and protests somehow played a role in Zimmerman's arrest.[87]

2. Sufficiency of the Probable Cause Affidavit

Public pressure undoubtedly played a role in Angela Corey's decision to quickly end and re-frame an investigation that conclusively pointed toward a legitimate act of self-defense.[88] The probable cause affidavit used

---

[82] *See* Exec. Order 12-72, *supra* note 27.

[83] *See* Gershman & Cohen, *supra* note 79.

[84] *See, e.g.*, Doug Mataconis, *Trayvon Martin Case Will Not Go to Grand Jury*, OUTSIDE THE BELTWAY (Apr. 9, 2012), http://www.outsidethebeltway.com/trayvon-martin-case-will-not-go-to-grand-jury/ (noting that a grand jury may not have even returned an indictment against Zimmerman).

[85] FLA. STAT. ANN. § 782.04(2) (Westlaw through Ch. 255, 2014 Spec. "A" Sess.).

[86] *See* Paul Farhi, *How Martin Case Became Martin Story*, WASH. POST, Apr. 13, 2012, at C05.

[87] Charles E. MacLean & Stephen Wilks, *Keeping Arrows in the Quiver: Mapping the Contours of Prosecutorial Discretion*, 52 WASHBURN L.J. 59, 60–61 (2012) (footnotes omitted). *But see* Josh Levs, *Trayvon Martin Case Has a Tough, Controversial Prosecutor*, CNN (Apr. 11, 2012, 6:26 PM), http://www.cnn.com/2012/04/10/justice/florida-teen-shooting-prosecutor/ (detailing Corey's reputation for aggressive behavior, overcharging, and unsustainably increasing the jail population to the highest in Florida for jurisdictions like hers, as well as her controversial decision to prosecute a 12-year-old child as an adult for first-degree murder).

[88] *See* Lisa Lucas & Helen Kennedy, *George Zimmerman Charged: Trayvon Martin's Killer Will Be in Court Thursday to Face Second-Degree Murder Charges*, N.Y. DAILY NEWS (Apr. 11, 2012, 2:29 PM), http://www.nydailynews.com/news/national/george-zimmerman-face-charges-trayvon-martin-death-reports-article-1.1059897 (quoting Corey as saying, "We

to charge Zimmerman on April 11, 2012 was rife with rushed conclusions that were tenuously supported at best by the results of the investigation to date.[89]

On two occasions in the affidavit, the investigators swore under oath that the reason Zimmerman stalked Martin was because Zimmerman incorrectly thought Martin was a criminal.[90] No such evidence of criminal profiling had been discovered by the investigation to that point, and no evidence ever materialized to suggest that Zimmerman targeted Martin because he believed Martin was actively committing a crime.[91] The affidavit also contained misleading and irrelevant testimony from a witness who had been on the phone with Martin and described how Martin was afraid of Zimmerman.[92] Corey's affidavit also omitted evidence of Zimmerman's injuries, apparently in an attempt to put the best version of her case forward.[93]

The affidavit effectively alleged that Zimmerman developed the complete *mens rea* for second-degree murder, with its requisite malice, depravity of mind, and deliberate indifference for human life,[94] in the six

---

did not come to this decision lightly. We do not prosecute by public pressure, nor by petition"; but later quoting Al Sharpton as saying, "they decided to review [Zimmerman's charges] based on public pressure, . . . Had there not been pressure, there would not have been a second look").

[89] *See* James Joyner, *Dershowitz: Zimmerman Arrest Affidavit "Irresponsible and Unethical,"* OUTSIDE THE BELTWAY (Apr. 13, 2012), http://www.outsidethebeltway.com/dershowitz-zimmerman-arrest-affidavit-irresponsible-and-unethical/.

[90] Affidavit of Probable Cause, *supra* note 20, at 1–2.

[91] *See* Mr. Zimmerman's Reply to State's Response to Defendant's Motion to Take Additional Deposition at 1–2, State v. Zimmerman, No. 2012-001083-CFA (Fla. Cir. Ct. Dec. 10, 2012), http://www.flcourts18.org/PDF/Press_Releases/12_10_12_Mr_Zimmermans_Reply_To_States_Response_to_Defendants_Motion_To_Take_Additional_Deposition.pdf.

[92] *See* Affidavit of Probable Cause, *supra* note 20, at 2.

[93] *See id.* "Before she submitted the probable cause affidavit, Corey was fully aware that Zimmerman had sustained serious injuries to the front and back of his head." Dershowitz, *supra* note 78. The affidavit "deliberately omitted all references to Zimmerman's injuries which were clearly visible in the photographs she and her investigators reviewed. . . . By omitting this crucial evidence, Corey deliberately misled the court." *Id.*

> She denied that she had any obligation to include in the affidavit truthful material that was favorable to the defense. She insisted that she is entitled to submit what, in effect, were half truths in an affidavit of probable cause, so long as she subsequently provides the defense with exculpatory evidence. She should go back to law school, where she will learn that it is never appropriate to submit an affidavit that contains a half truth, because a half truth is regarded by the law as a lie, and anyone who submits an affidavit swears to tell the truth, the whole truth and nothing but the truth.

Id.

[94] *See* FLA. STAT. ANN. § 782.04(2) (Westlaw through Ch. 255, 2014 Spec. "A" Sess.) (instituting Florida's second-degree murder statute); Instructions Read to Jury by the Honorable Debra S. Nelson, Circuit Judge at 6, State v. Zimmerman, No. 2012 CF 1083

or seven minutes between Zimmerman's first glimpse of Martin and the confrontation between the two.[95] In reality, Zimmerman was simply annoyed that yet another unknown person was snooping around his neighborhood.[96] It was later revealed that Zimmerman was wrong about whether Martin belonged in the Retreat at Twin Lakes,[97] but as the jury was instructed, the actuality of the danger faced by Zimmerman was not at issue—only whether it was objectively reasonable for Zimmerman to believe that someone unauthorized was prowling his neighborhood and might pose a danger to him.[98] The affiants also incorrectly swore that Zimmerman disobeyed the SPD dispatcher and continued to follow Martin, in direct contradiction of Zimmerman's statement to police.[99]

B. Prejudice in the Seminole County Circuit Court?

No fewer than three different judges presided over the *Zimmerman* case.[100] Before Judge Debra Nelson was seated as the third and final presiding judge, Judge Jessica J. Recksiedler recused herself and Judge Kenneth R. Lester was removed by order of the 5th District Court of Appeal.[101] While in the defense's view, Judge Recksiedler may have been a relatively benign presence,[102] her replacement, Judge Kenneth R. Lester, was no such character.

AXXX (Fla. Cir. Ct. July 12, 2013) [hereinafter Zimmerman Final Jury Instructions], *available at* http://www.flcourts18.org/PDF/Press_Releases/Zimmerman_Final_Jury_Instructions.pdf.

95 Frances Robles, *A Look at What Happened the Night Trayvon Martin Died*, TAMPA BAY TIMES (April 2, 2012, 10:51 AM), http://www.tampabay.com/news/publicsafety/crime/a-look-at-what-happened-the-night-trayvon-martin-died/1223083.

96 *See* Affidavit of Probable Cause, *supra* note 20, at 2.

97 *Id.* at 1.

98 *See* Zimmerman Final Jury Instructions, *supra* note 94, at 12.

99 *Compare* Affidavit of Probable Cause, *supra* note 20, at 2 (alleging that Zimmerman blatantly disregarded the dispatcher's instructions and continued to follow Martin), *with* Zimmerman Statement, *supra* note 18, at 2 (stating that he walked back to his car as soon as the dispatcher told him an officer was on the way).

100 *See* Order Granting Defendant's Verified Motion to Disqualify Trial Judge at 3, State v. Zimmerman, No. 12-CF-1083-A, 2012 WL 1425281 (Fla. Cir. Ct. Apr. 18, 2012); State v. Zimmerman, 114 So. 3d 1011, 1011 (Fla. Dist. Ct. App. 2012).

101 Order Granting Defendant's Verified Motion to Disqualify Trial Judge, *supra* note 100, at 2–3 (granting motion to disqualify the first judge, Hon. Jessica J. Recksiedler, because her husband was a law partner with a public expert commentator on the *Zimmerman* case, among other reasons); *Zimmerman*, 114 So. 3d at 1011 (reversing the denial of a motion to disqualify Judge Kenneth R. Lester, Jr. and ordering that a new trial judge be appointed to preside over the *Zimmerman* case).

102 *See* Joe Palazzolo, *Meet the Judge Who Drew George Zimmerman's Case*, WALL STREET J.L. BLOG (Apr. 12, 2012, 6:25 PM), http://blogs.wsj.com/law/2012/04/12/meet-the-judge-who-drew-george-zimmermans-case/.

1. Judge Kenneth R. Lester's Order Setting Bail

Judge Lester made several prejudicial statements about George Zimmerman in an order issued on July 5, 2012, in which he increased Zimmerman's bond from $150,000 to $1,000,000.[103] The substance of the judge's statements was reflected in a defense motion:

> On July 5, 2012, [the trial court] filed its Order Setting Bail. In said Order, the Court ma[d]e[] gratuitous, disparaging remarks about Mr. Zimmerman's character; advocate[d] for Mr. Zimmerman to be prosecuted for additional crimes; offer[ed] a personal opinion about the evidence for said prosecution; and continue[d] to hold over Mr. Zimmerman's head the threat of future contempt proceedings. In doing so, the Court has created a reasonable fear in Mr. Zimmerman that [it] is biased against him . . . [and that] he cannot receive a fair and impartial trial or hearing by [the trial court].[104]

Judge Lester's scathing eight-page order presented a thorough indictment of Zimmerman based almost entirely upon improper character evidence.[105] Judge Lester toed the line of impartiality, going so far as to suggest that probable cause existed to charge Zimmerman with another crime, if not fully crossing that line[106] and performing a prosecutorial function.[107] After a hearing, the 5th District Court of Appeal granted Zimmerman's petition for writ of prohibition against Judge Lester, albeit in "a close call."[108]

2. Demeanor of Judge Debra Nelson at Trial

Judge Nelson, known "as a tough-on-defendants judge" on even her best day,[109] was remarkably tough and impatient with Zimmerman's defense team throughout the trial. While ruling favorably on many of the State's motions, she showed little sympathy for Zimmerman's

---

[103] *See* Order Setting Bail, at 2–3, 8, State v. Zimmerman, No. 12-CF-1083-A (Fla. Cir. Ct. July 5, 2012), http://www.flcourts18.org/PDF/Press_Releases/SKMBT_363-V12070510360.pdf.

[104] Verified Motion to Disqualify Trial Judge at 4, Zimmerman v. Florida, No. 2012-001083-CFA (Fla. Cir. Ct. July 13, 2012).

[105] *See* Order Setting Bail, *supra* note 103, at 2–3; FLA. STAT. ANN. § 90.404(1) (Westlaw through Ch. 254, 2014 2d Reg. Sess.).

[106] *But see Zimmerman*, 114 So. 3d at 1012 (Evander, J., dissenting) ("I do not believe the order 'crossed the line' so as to require the granting of [Zimmerman's] motion.").

[107] *See* Order Setting Bail, *supra* note 103, at 4 n.4, 7.

[108] *See Zimmerman*, 114 So. 3d at 1011.

[109] Yamiche Alcindor & Steph Solis, *Zimmerman Judge is No-Nonsense*, USA TODAY, July 5, 2013, at 5A.

underfunded,[110] overworked defense team.[111] As the 10:00 PM hour approached on July 10, 2013, attorney Don West was attempting to argue for the admissibility of evidence about Trayvon Martin that had been recently disclosed and possibly withheld.[112] Judge Nelson walked out of the courtroom in the middle of West's plea to rein in the frenetic pace of the proceedings.[113]

Judge Nelson later made headlines by forcing Zimmerman to address her and tell her whether he planned to testify, over strenuous and confused objections from the defense.[114] Despite assurances from law enforcement and Judge Nelson that he had the absolute right to remain silent, Zimmerman was forced to speak directly to the judge after attempting to allow his lawyers to respond to an interrogation-style line of questioning directed at him.[115] The Florida Rules of Criminal Procedure have long prohibited prosecutors from referencing the failure or refusal of the criminal defendant to testify,[116] and Florida appellate precedent makes it equally impermissible, if not much more prejudicial, for the presiding judge to comment on a criminal defendant's failure to testify on his own behalf.[117] Although the jury was not in the courtroom during the exchange between Judge Nelson and Zimmerman, the judge's tone toward the defense was condescending at best.[118] At worst, and more likely, it was illustrative of the Court's attitude toward Zimmerman and his lawyers throughout the trial, as it placed the Court in a place of dominance over the defendant.

---

[110] *See* Jeff Weiner, *Zimmerman's Lawyers Say They're "Out of Money," Need $120K for Trial*, ORLANDO SENTINEL, May 30, 2013, at B3.

[111] *See Tempers Flare at Zimmerman Trial as Defense Attorneys Complain to Judge About Long Hours*, MIAMI HERALD (July 10, 2013, 2:58 AM), http://www.miamiherald.com/news/local/community/miami-dade/article1953140.html.

[112] *Id.*

[113] *Id.*

[114] Seni Tienabeso & Matt Gutman, *George Zimmerman Tells Judge He Won't Testify*, ABC NEWS (July 10, 2013), http://abcnews.go.com/US/george-zimmerman-tells-judge-testify/story?id=19626204.

[115] National Review, *Judge Confronts Zimmerman*, YOUTUBE (Jul. 10, 2013), http://www.youtube.com/watch?v=UgDuu6i8MtE.

[116] FLA. R. CRIM. P. 3.250 (prohibiting prosecutors from commenting about a defendant's failure to testify in court) (adopted 1968).

[117] McClain v. Florida, 353 So. 2d 1215, 1217–18 (Fla. Dist. Ct. App. 1977) (reversing conviction and ordering a new trial when, in the presence of the jury, the presiding judge commented on the defendant's failure to testify).

[118] *See* National Review, *Judge Confronts Zimmerman*, *supra* note 115.

3. Evidentiary Issues: Spoliation of *Brady* Material, Sanctions, and Rule 404

a. Withholding of the Martin Cell Phone Evidence

On May 23, 2013, in response to a round of notably late discovery that came very close to the beginning of the trial, the defense filed a motion for sanctions against the State, alleging that the prosecutors had withheld exculpatory evidence.[119] The motion of May 23 marked the second time the prosecutors had been accused of withholding *Brady* material[120] in the

---

[119] Motion for Sanctions Against State Attorney's Office for Discovery Violations and Request for Judicial Inquiry Into Violations at 2–4, State v. Zimmerman, No. 2012-001083-CFA (Fla. Cir. Ct. May 23, 2013) [hereinafter Defendant's Motion for Judicial Inquiry], http://www.gzdocs.com/documents/0513/motion_for_sanctions.pdf. The defense's motion of May 23 was the last of a series of attempts to remedy irregularities in discovery caused by the prosecutors' conduct. *See* Defendant's Motion for Sanctions Against State Attorney's Office for Discovery Violations, State v. Zimmerman, No. 2012-001083-CFA (Fla. Cir. Ct. March 25, 2013) [hereinafter Defendant's First Motion for Sanctions], http://www.gzdocs.com/documents/0313/mot_for_sanctions_discovery.pdf (describing the allegedly willful concealment of the State's knowledge that one of its witnesses had lied in multiple different depositions, as well as the withholding of several FBI and Florida Department of Law Enforcement reports containing exculpatory information); Defendant's Motion for Sanctions Against State Attorney's Office for Payment of Attorney Fees and Costs at 2–4, State v. Zimmerman, No. 2012-001083-CFA (Fla. Cir. Ct. Mar. 26, 2013) [hereinafter Defendant's Motion for Payment of Attorney Fees], http://www.gzdocs.com/documents/0313/mot_for_sanctions_fees.pdf.

The defense motion of March 26, 2013 noted that the attorneys had incurred $4,555 in attorney fees and costs when the prosecution refused to allow a video deposition to proceed. Defendant's Motion for Payment of Attorney Fees, *supra* at 4. The deposition sought testimony from, among others, State Witness 8, *see id.* at Ex. A, known as "star witness" Rachel Jeantel, who turned out to be particularly detrimental to the State's case due to her proclivity for lying under oath, *see* Manuel Roig-Franzia, *Friend of Martin Offers Key Testimony*, WASH. POST, June 27, 2013, at A04.

[120] The value to the defendant of receiving full and timely disclosure of *Brady* material is immense. "The [Supreme] Court in *Brady v. Maryland* imposed on prosecutors the duty to disclose exculpatory evidence." Mark D. Villaverde, Note, *Structuring the Prosecutor's Duty to Search the Intelligence Community for* Brady *Material*, 88 CORNELL L. REV. 1471, 1482 (2003) (footnote omitted).

> Because the government has vastly superior investigative resources with which to discover information concerning alleged crimes, and because in most cases exculpatory information in the prosecution's possession will be unknown to defense counsel, one of the most valuable rights that a criminal defendant enjoys is his constitutional right to all evidence in the government's possession that is material either to his guilt or punishment.

Id. at 1481–82 (footnotes omitted).

Professor Gershman, however, notes his skepticism of the extent to which prosecutors actually fulfill the duty imposed upon them by *Brady*:

> *Brady's* announcement of a constitutional duty on prosecutors to disclose exculpatory evidence to defendants embodies, more powerfully than any other constitutional rule, the core of the prosecutor's ethical duty to seek justice rather

Zimmerman case.[121] This new gamut of evidence, which highlighted Martin's school truancy, drug use, and proclivity for fighting, was discovered by Ben Kruidbos, Angela Corey's Information Technology Director.[122] When reports Kruidbos generated about photos, cell phone data, and other evidence in the *Zimmerman* case were turned over to the defense in incomplete form, Kruidbos was concerned that he could be held liable for withholding evidence.[123] In a closely related yet allegedly non-retaliatory measure, Corey fired Kruidbos for reasons not linked to his exposure of evidence unfavorable to Trayvon Martin's memory.[124] Kruidbos later sued Corey for violating a Florida statute that prevents the termination of an employee who testifies pursuant to a subpoena.[125] The late disclosure of evidence about Martin caused strategic issues for the defense that spilled over to the trial.

b. Character Evidence in the Zimmerman *Trial*

1. Prosecution's Case-in-Chief

The trial prosecutors in the *Zimmerman* case were assistant State Attorneys on Angela Corey's staff, and their case theory involved the presentation of evidence about a criminal defendant, Zimmerman, which flirted with the traditional prohibition against the use of unfairly

---

> than victory. Nevertheless, prosecutors over the years have not accorded *Brady* the respect it deserves. Prosecutors have violated its principles so often that it stands more as a landmark to prosecutorial indifference and abuse than a hallmark of justice.

Bennett L. Gershman, *Litigating* Brady v. Maryland*: Games Prosecutors Play*, 57 CASE W. RES. L. REV. 531, 531 (2007) (footnote omitted). He states further that a prosecutor's *Brady* duty "is so malleable that it affords prosecutors an extremely broad opportunity to exercise discretion in ways that impede—rather than promote—the search for truth. Not surprisingly, violations of *Brady* are the most recurring and pervasive of all constitutional procedural violations." *Id.* at 533.

[121] *See* Defendant's Motion for Judicial Inquiry, *supra* note 119, at 4–5.

[122] Tom Watkins & Nancy Leung, *IT Director Who Raised Questions About* Zimmerman *Case Is Fired*, CNN (July 15, 2013, 10:16 AM), http://www.cnn.com/2013/07/13/justice/zimmerman-it-firing/; Rene Stutzman & Jeff Weiner, *New Evidence in* Zimmerman *Case: Trayvon Texted About Fighting, Smoking Marijuana*, ORLANDO SENTINEL (May 23, 2013), http://articles.orlandosentinel.com/2013-05-23/news/os-george-zimmerman-trial-trayvon-20130523_1_zimmerman-case-trayvon-martin-george-zimmerman.

[123] Watkins & Leung, *supra* note 122.

[124] *See* Letter from Cheryl R. Peek, Managing Dir., Fla. State Attorney's Office, to Ben Kruidbos, Dir. of Info. Tech., Fla. State Attorney's Office 1, 5 (July 11, 2013), *available at* http://i.cdn.turner.com/cnn/2013/pdf/7/13/kruidbos.ltr.pdf.

[125] Complaint for Damages at 1–2, Kruidbos v. Corey, No. 2013-CA-007407, 2013 WL 3948108 (Fla. Cir. Ct. Aug. 1, 2013) (claiming Corey violated FLA. STAT. ANN. § 92.57 (Westlaw through Ch. 255, 2014 Spec. "A" Sess.)).

prejudicial or misleading evidence.[126] Florida Evidence Code 90.404 allows that once the accused has properly brought into question the character of the victim for some trait pertinent to the defense posture, the prosecution may offer contradictory evidence to rebut that trait in the claimed victim.[127] Without Zimmerman having "opened the door" to his character or past acts, the prosecution was inexplicably allowed to introduce evidence of Zimmerman's past through witness testimony during its case-in-chief.[128] Evidence presented included Zimmerman's denied application for a job as a police officer and for a ride-along with the SPD, as well as his enrollment in courses on criminal justice and law enforcement.[129] All this evidence presumptively supported the State's uncharged, implicit, yet obvious contention that, in addition to being a murderer, George Zimmerman was guilty of impersonating a police officer.[130]

The prosecution's strategy appeared to be an attempt to impeach Zimmerman based on allegedly inconsistent statements Zimmerman made about his knowledge of Florida self-defense laws in an interview with Sean Hannity.[131] While the alleged inconsistencies may have been

---

[126] *E.g.*, FED. R. EVID. 403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice . . . [or] misleading the jury . . . .").

[127] FLA. STAT. ANN. § 90.404 (Westlaw through Ch. 255, 2014 Spec. "A" Sess.).

[128] *See* Cara Buckley, *Zimmerman Studied "Stand Your Ground" in Class, Florida Court Is Told*, N.Y. TIMES, July 4, 2013, at A15; *Day 17: George Zimmerman Trial Part 2*, at 09:33-11:15, WFTV, http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-2/v5nwG/ (last visited Nov. 14, 2014).

[129] *See Day 16: George Zimmerman Trial Part 11*, at 28:00-29:21, WFTV, http://www.wftv.com/videos/news/day-16-george-zimmerman-trial-part-11/v5kTR/ (last visited Nov. 14, 2014).

[130] *See id.*

[131] *See Day 16: George Zimmerman Trial Part 12*, at 00:00-01:50, WFTV, http://www.wftv.com/videos/news/day-16-george-zimmerman-trial-part-12/v5kX6/ (last visited Nov. 14, 2014). Assistant State Attorney Richard Mantei is quoted as mangling character evidence rules, blandly asserting that the fact that Zimmerman "applied to be a police officer before . . . wasn't some sort of passive thing," and neither was Zimmerman's tendency to speak in police jargon, nor the fact that he knew about the phrase "justifiable use of force," and therefore these were all facts "the jury ought to know." *See Judge Allows School Records in Zimmerman Trial*, FOX NEWS LATINO (July 3, 2013), http://latino.foxnews.com/latino/news/2013/07/03/judge-allows-school-records-in-zimmerman-trial/. Defense attorney Mark O'Mara responded by noting that character evidence about Trayvon Martin had been treated with a notably higher level of deference than the constitutionally protected defendant, Zimmerman:

> To the extent that [the State] is trying to put before this jury that [Zimmerman] went to community college seeking a legal studies degree is of no relevance to [the jury]; this event is supposed to have occurred within seven or eight minutes . . . . We have taken pains not to get into Trayvon Martin's school records and his past because we know that they carry a level of protection that they're supposed to . . . [the fact that Zimmerman] went to college and even that

merely admissible (not necessarily admissible *and* relevant) at their basest,[132] an incorrect ruling on their relevance was handed down by Judge Nelson when she admitted the records.[133] While Florida's Evidence Code 90.404 allows the use of evidence of a defendant's other acts to prove a material fact in issue, including preparation and knowledge,[134] the State offered no evidence to suggest that Zimmerman's college coursework and aspiration to be a police officer played a role in the sudden, random encounter with Martin years later.[135] Zimmerman's school records were not probative of a material fact in a second-degree murder case, and their admission was likely error.[136]

2. Defense Case-in-Chief: Overcoming the Obstacles of Spoliated Evidence

On July 3, 2013, Judge Nelson ruled that content obtained from Martin's cell phone was inadmissible, including photographs of guns, marijuana, and text messages about street fighting and beating up a homeless man.[137] Such evidence was highly relevant to Zimmerman's theory that Martin had a propensity for violence and was the first aggressor on February 26, 2012, and the majority of it was excluded.[138] Its exclusion also seemingly ran counter to Florida precedent:

> A homicide defendant is afforded wide latitude in the introduction of evidence supporting his self-defense theory. Where there is even the slightest evidence of an overt act by the victim which may be reasonably

---

> [Zimmerman] wanted to drive along with the cops somehow is a negative thing—somehow suggests that it's bad that [Zimmerman] wanted to go to college. I don't see any relevance . . . .

Day 16: George Zimmerman Trial Part 11, *supra* note 129, at 28:00–29:21 (transcribed from video by author). Judge Nelson admitted the records as evidence of Zimmerman's knowledge of Stand Your Ground law in Florida and his desire to be involved with law enforcement. *See Day 17: George Zimmerman Trial Part 2*, at 16:50-17:15, WFTV, http://www.wftv.com/videos/news/day-17-george-zimmerman-trial-part-2/v5nwG/ (last visited Nov. 14, 2014).

[132] *See* FLA. STAT. ANN. § 90.803 (Westlaw through Ch. 254, 2014 2d Reg. Sess.) (creating Florida's hearsay exception for statements of a party opponent).

[133] *See* sources cited *supra* note 131 and accompanying text.

[134] FLA. STAT. ANN. § 90.404 (Westlaw through Ch. 255, 2014 Spec. "A" Sess.).

[135] The "knowledge-of-the-Stand-Your-Ground-law-and-desire-to-secure-gainful-employment-as-a-police-officer" element of second-degree murder has yet to be added to the Florida criminal statutes, but anything could happen in 2015.

[136] *See* sources cited *supra* note 131 and accompanying text; *infra* Part III.A.

[137] Order on State's Motions in Limine Heard on May 28, 2013, State v. Zimmerman, No. 12-CF-1083-A, 2013 WL 2729208 (Fla. Cir. Ct. June 5, 2013) (granting the State's motion in limine to prevent the defense from mentioning that Trayvon Martin had been previously suspended from school, communicated about, or previously used, marijuana, and possessed or wore a set of gold teeth, as well as Martin's school performance records and text messages about fighting).

[138] *See id.*

> regarded as placing the accused apparently in imminent danger of losing his life or sustaining great bodily harm, *all doubts as to the admissibility of evidence bearing on his theory of self-defense must be resolved in favor of the accused*.[139]

Evidence indicating Zimmerman's apprehension of Martin includes his statement that he thought Martin was on drugs.[140] When Martin, possibly high, later advanced threateningly at Zimmerman, Judge Nelson correctly allowed the defense to inform the jury that cannabis was found in Martin's system on the night of February 26, 2013.[141]

Unfavorable evidence rulings and shady dealings by opposing counsel were only a small part of the case. Zimmerman's main obstacle was dealing with a second-degree murder charge that never should have been brought against him.

III. SECOND-DEGREE MURDER ANALYSIS

A. Elements of and Defenses to Second-Degree Murder in Florida[142]

To obtain a conviction for second-degree murder in Florida, it must first be established that the victim is dead; second, the death of the victim must have been caused by the defendant's criminal act; and third, the act must have been "imminently dangerous to another and demonstrating a depraved mind without regard for human life."[143] During the *Zimmerman* trial, the debate mainly focused on whether the third element of second-degree murder was proven.[144]

---

[139] Arias v. State, 20 So. 3d 980, 984 (Fla. Dist. Ct. App. 2009) (emphasis added) (quoting Warren v. State, 577 So. 2d 682, 684 (Fla. Dist. Ct. App. 1991)).

[140] *See* Isabelle Zehnder, *George Zimmerman's 911 Call Transcribed*, THE EXAMINER, (Mar. 24, 2012), http://www.examiner.com/article/george-zimmerman-s-911-call-transcribed (describing Zimmerman as saying, "[t]his guy [referring to Trayvon Martin] looks like he's up to no good or he's on drugs or something").

[141] Amanda Sloane & Graham Winch, *Judge Allows Evidence of Trayvon Martin's Marijuana Use*, CNN (July 9, 2013, 6:54 AM), http://www.cnn.com/2013/07/08/justice/zimmerman-trial/. Florida case law supports Judge Nelson's decision. *See Arias*, 20 So. 3d at 983–84 (admitting toxicology results when used to confirm the defendant's perception of the victim, whom he had never seen before, as appearing intoxicated and under the influence of cocaine).

[142] The *Zimmerman* jury was also instructed on the elements of and defenses to manslaughter, the defenses to which are the same as those for second-degree murder. Manslaughter will not be discussed in detail in this Note, *see* Zimmerman Final Jury Instructions, *supra* note 94, at 10–11.

[143] THE SUPREME COURT COMM. ON STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES, FLA. STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 7.4 [hereinafter FLA. STANDARD JURY INSTRUCTIONS], http://www.floridasupremecourt.org/jury_instructions/chapters/entireversion/onlinejurryinstructions.pdf; *see* Zimmerman Final Jury Instructions, *supra* note 94, at 6; *see also* FLA. STAT. ANN. § 782.04(2) (Westlaw through Ch. 254, 2014 2d Reg. Sess.) (Florida's second-degree murder statute).

[144] *See Day 16: George Zimmerman Trial Part 11*, *supra* note 129, at 24:00–25:52.

Florida courts divide the third element of second-degree murder into three sub-elements. To be "imminently dangerous . . . and evinc[ing] a 'depraved mind'" without regard for human life, an act must be one that, first, "a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another"; second, "is done from ill will, hatred, spite, or an evil intent"; and third, "is of such a nature that the act itself indicates an indifference to human life."[145] Each "imminently dangerous/depraved mind" element must be proven by the State for an act to be classified as such.[146] Determining whether an act is imminently dangerous and demonstrative of a depraved mind is a case-by-case, totality-of-the-circumstances inquiry, and relevant considerations include "the relationship between the defendant and victim," "the relative harm-causing potential" of the two, and whether the defendant was sufficiently provoked.[147]

The affirmative defense of justifiable homicide by means of self-defense is also available in Florida.[148] A person may use deadly force in her defense without first retreating when resisting what she reasonably believes is an attempt to murder her or commit a felony against her.[149] Alternatively, Florida juries can find that if a defendant imperfectly self-defends by meeting some but not all of the elements of self-defense, a murder charge can be mitigated to manslaughter.[150] Also along mitigation

---

[145] Chaffin v. State, 121 So. 3d 608, 613 (Fla. Dist. Ct. App. 2013) (quoting Wiley v. State, 60 So. 3d 588, 591 (Fla. Dist. Ct. App. 2011)); *see* Zimmerman Final Jury Instructions, *supra* note 94, at 6.

[146] Zimmerman Final Jury Instructions, *supra* note 94, at 6; *See Chaffin*, 121 So. 3d at 613.

[147] 16 FLA. JUR. 2D § 475 (2014). *See* Zimmerman Final Jury Instructions, *supra* note 94, at 12 (instructing the jury that they may consider "the relative physical abilities and capacities of George Zimmerman and Trayvon Martin").

[148] FLA. STAT. ANN. § 776.012 (Westlaw through Ch. 255, 2014 Spec. "A" Sess.); Zimmerman Final Jury Instructions, *supra* note 94, at 4, 9, 12–13; *see* FLA. STANDARD JURY INSTRUCTIONS 3.6(f), *supra* note 143.

[149] § 776.012; Zimmerman Final Jury Instructions, *supra* note 94, at 4, 9, 12–13.

[150] *See* Zimmerman Final Jury Instructions, *supra* note 94, at 8, 10–13. At common law,

> [i]f [a] defendant had acted in response to [provocation], a court would hold the defendant's loss of control reasonable per se—to justify a finding of heat of passion and the reduction of the crime to manslaughter—so long as the jury found that the defendant was subjectively enraged. . . . This standard ultimately would leave the question of the adequacy of provocation to the jury.
>
> . . . .
>
> The modern law of manslaughter incorporates a standard of reasonableness . . . Reasonable provocation, the key element, is "provocation which causes a reasonable man to lose his normal self-control; and, although a reasonable man who has thus lost control over himself would not kill, yet his homicidal response to the provocation is at least understandable."

lines, Florida courts hold that an impulsive overreaction to an attack or injury falls short of the ill will, hatred, spite, or evil intent required to prove the third element of second-degree murder.[151]

B. Acts that Constitute Second-Degree Murder and Those that Don't

Successful second-degree murder prosecutions in Florida often involve an existing negative relationship between the defendant and the victim.[152] In one case, the defendant went to the home of the victim's ex-wife to take the ex-wife and her daughter for a day at the beach.[153] The defendant and the victim had confronted each other violently in the past, and the defendant had started carrying a pistol for protection as a result.[154] When the defendant arrived at the home, he saw the victim arguing with the victim's ex-wife on the sidewalk.[155] The defendant was in his car about thirty feet away from the two as they argued.[156] The victim grabbed the ex-wife's arm and twisted it, at which point the defendant emerged from his car and threatened the victim with his pistol drawn.[157] The unarmed victim ran toward the defendant, and once the victim was eight to twelve feet away, the defendant shot him four times, killing him.[158]

In a succinct opinion, the District Court of Appeal held that a reasonably prudent person would not have believed it was necessary to kill.[159] The court further held that shooting an unarmed man four times while he stood eight to twelve feet away was sufficient evidence of a depraved mind to survive a motion for acquittal.[160]

Laurie J. Taylor, Comment, *Provoked Reason in Men and Women: Heat-of-Passion Manslaughter and Imperfect Self-Defense*, 33 UCLA L. REV. 1679, 1686–87 (1986) (footnotes omitted).

[151] Leasure v. State, 105 So. 3d 5, 17 (Fla. Dist. Ct. App. 2012). The idea that an impulsive overreaction does not constitute second-degree murder pervades Florida case law, further lending credence to the theory that Angela Corey overcharged Zimmerman. *See also* Poole v. State, 30 So. 3d 696, 698–99 (Fla. Dist. Ct. App. 2010) (holding that defendant's stabbing of a victim who lunged at him in close quarters was not sufficient to constitute second-degree murder but was an impulsive overreaction to the attack).

[152] *See, e.g.*, Soberon v. State, 545 So. 2d 490, 491–92 (Fla. Dist. Ct. App. 1989); Light v. State, 841 So. 2d 623, 626 (Fla. Dist. Ct. App. 2003) ("Although exceptions exist, the crime of second-degree murder is normally committed by a person who knows the victim and has had time to develop a level of enmity toward the victim.").

[153] *Soberon*, 545 So. 2d at 491.

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.* at 491–92.

[158] *Id.* at 492.

[159] *See id.*

[160] *See id.*

In another case, the defendant was charged with second-degree murder for killing one of his friends.[161] The District Court of Appeal found that the defendant hit the victim over the head with his pistol, causing the pistol to accidentally discharge and kill the victim.[162] The third element of second-degree murder was at issue, and the evidence was insufficient to support a finding of either a depraved mind or indifference to human life.[163]

C. George Zimmerman's Actions Did Not Constitute Second-Degree Murder

Viewed through the eyes of the women of the jury,[164] Zimmerman's shooting of Trayvon Martin likely satisfied the first and second elements of second-degree murder.[165] The absence of proof of the third element, the requirement of a depraved mind, likely played a substantial role in determining the verdict of not guilty.[166] In line with Florida case law demonstrating lack of proof of the third element of second-degree murder, Zimmerman's lack of prior knowledge of Martin undermined the claim that he acted with a depraved mind.[167]

Lending credence to Zimmerman's self-defense argument, at least five of the six jurors believed that Zimmerman was the person screaming on the 911 recording of the incident.[168] The defense's expert in forensic pathology, Dr. Vincent DiMaio, additionally testified that Zimmerman had six separate injuries that were consistent with being punched and

---

[161] Wiley v. State, 60 So. 3d 588, 589–90 (Fla. Dist. Ct. App. 2011).

[162] *Id.* at 591.

[163] *See id.* at 592. The defendant's second-degree murder conviction in *Wiley* was reversed; however, the defendant had also been convicted of third-degree murder, and he was resentenced on remand. *Id.*; *see also* Michael Pearson & Greg Botelho, *With Manslaughter an Option, Prosecution Uses Zimmerman's Words*, CNN (July 12, 2013, 2:49 AM), http://www.cnn.com/2013/07/11/justice/zimmerman-trial/ (detailing the *Zimmerman* prosecution's attempt to include third-degree murder based on child abuse as a lesser included crime).

[164] *See* Adam Harris Kurland, *Not the Last Word, but Likely the Last Prosecution: Understanding the U.S. Department of Justice's Evaluation of Whether to Authorize a Successive Federal Prosecution in the Trayvon Martin Killing*, 61 UCLA L. REV. DISC. 206, 219 (2013) (looking ahead to a potential federal prosecution of Zimmerman for civil rights violations, which ultimately did not occur, and describing the differences between a twelve-person federal jury and the Florida-standard six-person jury, which consisted of all females in the *Zimmerman* trial).

[165] *See* Zimmerman Final Jury Instructions, *supra* note 94, at 6; Dana Ford, *George Zimmerman Was "Justified" in Shooting Trayvon Martin, Juror Says*, CNN (July 17, 2013, 8:54 AM), http://www.cnn.com/2013/07/16/us/zimmerman-juror/.

[166] *See* Ford, *supra* note 165.

[167] *See supra* Part III.B.

[168] *See* Greg Richter, *Zimmerman Juror: Race Played No Role*, NEWSMAX (July 15, 2013, 8:44 PM), http://www.newsmax.com/newsfront/zimmerman-juror-race-trayvon/2013/07/15/id/515186.

having his head slammed into the concrete.[169] In truth, the injuries Zimmerman sustained to his head and nose greatly exceeded the statutory requirement of reasonable fear of great bodily harm.[170] DiMaio also testified that that the configuration of the gunshot wound was consistent with Zimmerman's statement that Martin was on top of Zimmerman.[171] Zimmerman even stated that he prayed that someone videotaped his encounter with Martin, an implicit assertion that a video of the incident would reveal no illegal behavior on his part.[172]

Viewed in the light most favorable to Zimmerman, an ordinary person would almost certainly not believe that getting out of one's car to read a street sign indicates with reasonable certainty an intention to kill or do serious bodily injury to another.[173] Even if there existed evidence to support the prosecution's claim that Zimmerman profiled and stalked Martin with the belief that Martin was a criminal, no evidence exists to support the contention that Zimmerman did so with the intent to assault or commit a crime against Martin.[174] More notably, and most importantly, the evidence presented by the defense created reasonable doubt about who was the aggressor.[175] However, if the jury believed that Zimmerman's actions constituted imperfect self-defense, the lesser-included crime of manslaughter may have fit the facts.[176] The prosecution even attempted to lobby the judge for an unprecedented "way out" of their gross overcharging of Zimmerman: an instruction on the lesser-included crime of third-degree murder based on child abuse.[177] The only evidence supporting the child abuse claim was the fact that Trayvon Martin was

---

[169] *See Zimmerman Defense Likely Will Wrap Up Case Wednesday, Attorney Says*, FOX NEWS (July 9, 2013), http://www.foxnews.com/us/2013/07/09/11-calls-becoming-heart-zimmerman-trial/.

[170] *See* FLA. STAT. ANN. § 776.012 (Westlaw through Ch. 255, 2014 Spec. "A" Sess.).

[171] *Zimmerman Defense Likely Will Wrap Up Case Wednesday, Attorney Says*, *supra* note 169.

[172] *See* Arelis R. Hernández, *George Zimmerman Says Trayvon Martin Told Him "You Got Me" After Shooting*, ORLANDO SENTINEL (June 21, 2012, 12:16 PM) http://articles.orlandosentinel.com/2012-06-21/news/os-george-zimmerman-defense-documents-20120621_1_shooting-death-statements-defense.

[173] *See supra* notes 49–51 and accompanying text.

[174] *See supra* notes 41–69 and accompanying text.

[175] *See* Richter, *supra* note 168.

[176] *Cf.* Dorsey v. Florida, 74 So. 3d 521, 528 (Fla. Dist. Ct. App. 2011) (ordering new trial of second-degree murder defendant who was later convicted of manslaughter); Taylor, *supra* note 150, at 1686–87.

[177] *See* Pearson & Botelho, *supra* note 163; FLA. STAT. ANN. § 782.04(3)(h) (Westlaw through Ch. 255, Spec. "A" 2014 Sess.) (Florida's felony murder statute); FLA. STAT. ANN § 827.03(1)(a) (Westlaw through Ch. 254, 2014 2d Reg. Sess.) (Florida's aggravated child abuse statute).

under the age of eighteen, and Judge Nelson correctly declined to allow the jury to consider it.[178]

IV. A PHILOSOPHICAL CHRISTIAN PERSPECTIVE ON *STATE V. ZIMMERMAN*

A. The Foundations of Self-Defense and the Zimmerman *Case*

Philosophers, political theorists, and even theologians around the world have supported and upheld the right to self-defense.[179] George Zimmerman's actions in defending himself were not unprecedented in light of the near-universally held belief that a person is entitled to defend herself from threatened bodily harm.[180] However, in any situation in which someone has died, a more careful examination of the justification for self-defense is necessary.

German legal scholar and political philosopher Samuel Pufendorf's perspective on self-defense is perhaps most instructive in attempting to reconcile Zimmerman's actions. Pufendorf decried the idea that self-defense was an excuse by which enterprising "vigilantes" could take the law into their own hands and punish criminals.[181] Pufendorf acknowledged that although retreat in the face of danger is preferred over the use of deadly force, it is usually impossible.[182] Justice Oliver Wendell Holmes echoed that sentiment when he wrote that "[d]etached reflection cannot be demanded in the presence of an uplifted knife."[183]

Emmerich de Vattel, a Swiss diplomat who exerted significant influence on the philosophies of the American Founding Fathers, further argued that when law enforcement was nowhere to be found, the citizen must be able to repel a violent attacker.[184] Violent confrontation causes confusion and demands quick action, and Professor Robinson succinctly

---

[178] *See* Pearson & Botelho, *supra* note 163.

[179] *See* David B. Kopel, *Evolving Christian Attitudes Towards Personal and National Self-Defense*, 45 CONN. L. REV. 1709, 1761–62 (2013); David B. Kopel et al., *The Human Right of Self-Defense*, 22 BYU. J. PUB. L. 43, 83–84 (2007); Shane Mcgee et al., *Adequate Attribution: A Framework for Developing a National Policy for Private Sector Use of Active Defense*, 8 J. BUS. L. & TECH. 1, 14 (2013); Paul H. Robinson, *Criminal Law Defenses: A Systematic Analysis*, 82 COLUM. L. REV. 199, 235 (1982); Craig A. Stern, *Torah and Murder: The Cities of Refuge and Anglo-American Law*, 35 VAL. U. L. REV. 461, 482–85 (2001).

[180] *See* Kopel et al., *supra* note 179, at 44.

[181] *See id.* at 43, 84–85 (noting an alarming modern international trend away from recognizing a human right to self-defense and possession of defensive arms, but detailing scholars' preference for and defense of such rights throughout history).

[182] *Id.* at 83–84; *see also* McGee et al., *supra* note 179, at 14 (noting, as did Blackstone, that the inability of the "future process of law" to address the immediacy of a situation justifies opposing "one violence with another").

[183] Brown v. United States, 256 U.S. 335, 343 (1921).

[184] Kopel et al., *supra* note 179, at 90.

described the unfortunate and overwhelming circumstances inherent when one defends oneself: "self-defense provide[s] the necessary means of recognizing the coercive and confusing conditions inherent in self-defense situations: being forced to act while under attack."[185]

Acceptance of these traditional positions in favor of self-defense can be seen in the *Zimmerman* jury's response (in the form of an acquittal) to several coercive and confusing circumstances faced by Zimmerman: The "uplifted knife" of the blows Trayvon Martin dealt to Zimmerman, the absence of any citizen or police officer responding to Zimmerman's cries for help, and Zimmerman's confusion as to why Martin was running around, hiding from him, and circling his car in the pouring rain.[186] These difficult conditions lent legitimacy to Zimmerman's claim of self-defense, and they led to the only verdict that fit the facts: not guilty.

B. Did (Will) Zimmerman (Ever) Get His Just Deserts?

Viewed in the light most favorable to the Creator of the defendant and the victim, there is no winner, loser, or positive outcome in the *Zimmerman* case. If George Zimmerman was acquitted despite malicious intent, then there was no justice for Trayvon Martin. However, if Zimmerman legitimately defended himself, then the legal system produced justice for him.[187]

Regardless of whether George Zimmerman was made to be a "scapegoat" or Trayvon Martin was "demonized," the real tragedy is that a young man, created in God's image,[188] was deprived of the opportunity to live his life to the full.[189] Notwithstanding the verdict, George Zimmerman's heart, intent, and motive can only be truly judged and fully known by him and by God.[190] George Zimmerman will have to give an account of his life before God,[191] including the true motive behind his actions on February 26, 2012.

---

[185] Robinson, *supra* note 179, at 235.

[186] *See* Ford, *supra* note 165; *supra* notes 43–69 and accompanying text.

[187] *See* Benjamin V. Madison, III, *Color-Blind: Procedure's Quiet but Crucial Role in Achieving Racial Justice*, 78 UMKC L. REV. 617, 626–29 (2010) (discussing theological and biblical justifications for equality for all before the law, regardless of race, and especially the right of every person to receive justice).

[188] *Genesis* 1:27 (all references to the Bible herein are according to the New International Version); *see also Galatians* 3:28.

[189] *John* 10:10. Jesus spoke generally of the eternal salvation that would become available for those who professed Him as Savior, *Romans* 10:9, but the inference remains that there are still many good works to be done for the Kingdom by the person who works out their salvation on earth. *See Colossians* 3:1–17.

[190] *See 2 Corinthians* 5:10.

[191] *Romans* 14:10–12.

The legal perspective is not the final story in the *Zimmerman* case. The Bible, which is inerrant, "God-breathed and . . . useful for teaching, rebuking, correcting and training in righteousness,"[192] provides a proper frame of reference for matters of life and death such as those implicated by the *Zimmerman* case. Out of the wide variety of Mosaic laws, Old Testament teachings on murder are some that still carry weight in contemporary society.[193]

The Bible differentiates between the consequences of intentional and unintentional killings on several occasions.[194] Murder[195] and retaliation[196] are prohibited throughout the Bible, and Jesus advised the disciples to turn the other cheek and not seek revenge when evil was done to them.[197] Furthermore, one who struck a fatal blow was to be put to death.[198] However, killing a thief in the act at nighttime rendered the killer not guilty of bloodshed because the act was done in defense of his property.[199] If a fatal blow was struck unintentionally, God would allow the person who struck the blow to avoid punishment and seek refuge.[200]

Zimmerman's actions appear to parallel scenarios of justifiable killing contemplated both biblically and by the Florida legislature.[201] Although the jury indicated that it accepted Zimmerman's account of his actions, any analysis thereof is difficult, whether under a biblical or Floridian model, because of the abundance of circumstantial evidence in the case.

Zimmerman was clearly justified in responding to a threat against his life under the Florida self-defense statute.[202] Could a reasonable juror

---

[192] *2 Timothy* 3:16.

[193] *See* Thomas C. Berg, *Religious Conservatives and the Death Penalty*, 9 WM. & MARY BILL RTS. J. 31, 38 n.35 (2000) ("Most theological proponents of the death penalty believe that many details of the Mosaic law were abrogated but the covenant with Noah was retained, thus . . . preserving [the death penalty's] legitimacy in principle for murder.").

[194] *See, e.g.*, *Exodus* 21:12–13. For a biblical discussion of the line between capital homicide and excusable self-defense that parallels the *Zimmerman* case, see generally Stern, *supra* note 179, at 482–85.

[195] *Deuteronomy* 5:17; *Exodus* 20:13; *see Matthew* 5:21 (teaching of Jesus in which He restates the Mosaic prohibition against murder).

[196] *See Romans* 12:19 ("Do not take revenge, my friends, but leave room for God's wrath, for it is written: 'It is mine to avenge; I will repay,' says the Lord.").

[197] *Luke* 6:27–29.

[198] *Exodus* 21:12–13 (accounting for a justifiable killing by noting that the fatal blow might be struck unintentionally).

[199] *See Exodus* 22:2–3; Kopel et al., *supra* note 179, at 106–07.

[200] *See Exodus* 21:12–13.

[201] *See, e.g.*, FLA. STAT. ANN. § 776.012 (Westlaw through Ch. 255, 2014 Spec. "A" Sess.); *supra* notes 199–200 and accompanying text; *infra* notes 203–06 and accompanying text.

[202] *See supra* Parts III.B, III.C.

deny that the statement "you gonna die tonight, motherf*****"[203] creates a fear of death in the target? The target of the threat should receive immunity from punishment for retaliating, if and when the threat is acted upon.[204]

An examination of the Bible's teachings about murder and violence also reveals that it is unlikely Zimmerman would have faced immediate punishment. The shooting of Trayvon Martin likely was an "unintentional fatal blow" contemplated by Exodus 21:12–13.[205] The distinction between self-defense and gratuitous killing is a difficult one to make, however. Pope John Paul II discussed the apparent inconsistency found when one kills in self-defense:

> [T]o kill a human being, in whom the image of God is present, is a particularly serious sin. *Only God is the master of life!* Yet . . . [t]here are in fact situations in which values proposed by God's Law seem to involve a genuine paradox. This happens . . . in the case of *legitimate defence*, in which the right to protect one's own life and the duty not to harm someone else's life are difficult to reconcile in practice. Certainly, the intrinsic value of life and the duty to love oneself no less than others are the basis of *a true right to self-defence*. . . . Unfortunately it happens that the need to render the aggressor incapable of causing harm sometimes involves taking his life. In this case, the fatal outcome is attributable to the aggressor whose action brought it about, even though he may not be morally responsible because of a lack of the use of reason.[206]

The idea that the victim may be responsible for his own death is not easily digestible. In the *Zimmerman* case, many Americans rejected that idea out of hand and instead searched for other sins for which they could convict the defendant—racism, vigilante-ism, and child abuse.

CONCLUSION

The *Zimmerman* case was overhyped in light of facts that strongly indicated self-defense, rife with reversible error and questionable

---

[203] *See* Zimmerman Statement, *supra* note 66, at 3.

[204] *See* § 776.012. Even less emphasis is placed upon the reasonableness of the apprehension of imminent harm or death in the Bible—one may kill an intruder ("thief") if the intruder is caught while breaking in, without the intruder having threatened the life or safety of the property owner. *See Exodus* 22:2–3.

[205] *See Exodus* 21:12–13 ("Anyone who strikes a man and kills him shall surely be put to death. However, if he does not do it intentionally, but God lets it happen, he is to flee to a place I will designate.").

[206] POPE JOHN PAUL II, *EVANGELIUM VITAE* ON THE VALUE AND INVIOLABILITY OF HUMAN LIFE 55–56 (1995), *available at* http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html; *see also* Ford, *supra* note 165 (quoting Juror B37 as stating that while Zimmerman was merely guilty of not using common sense, Martin played a major role in the incident because he was the aggressor).

behavior by the prosecution (and even the Court), and prejudged in the court of public opinion—but correctly decided. The case was not a referendum on race relations except in the minds of those who chose to make it so by ignoring the weaknesses of the prosecution's case. The beleaguered defense team was able to secure an acquittal despite shady dealings by the prosecution, substantial resistance from the Court, and no assurance of payment from Zimmerman. Although the case was unorthodox in the way it proceeded, *State v. Zimmerman* was an excellent example of how America's impartial justice system is meant to work: forgoing the circus of the court of public opinion for the honest analysis of concrete facts, thereby preserving the rights of the innocent.

Brandon T. Wrobleski[*]

[*] With compliments to Mark O'Mara and Don West for trying one of the most intensely scrutinized criminal cases since *People v. Simpson*. Many thanks to Professors Duane, Stern, Hensler, and everyone else whose ear I bent for advice while writing this Note.