

Deconstructing the George Zimmerman and Trayvon Martin Case: Understanding Florida's Criminal and Civil Justice System, Stand Your Ground and the Fight For Victim's Rights

**By Jason Turchin, Esq.
July 18, 2013**

Tens of thousands of people have taken to Twitter, Facebook and other media expressing both support and disappointment for the George Zimmerman verdict. With calls for rallies in support of Trayvon, the public is becoming immersed in a post trial culture which is leading to activism and anger toward the legal system. Therefore, as a result of this case, a new interest in our legal system and analysis into the current laws which affect how we act and understand our boundaries has been incited. The purpose of this article is to help non-lawyers better understand Florida's criminal justice system to make sense of why George Zimmerman was acquitted, and to help us move forward to continue fighting for victim's rights.

To those disappointed by the criminal court verdict in Trayvon Martin's case, it is critical to remember that the jury made their decision based upon the evidence presented to support the charges against the accused. However, in my opinion based on my extensive victims' rights advocacy work, the focus should have been on a civil claim on behalf of this crime victim and his family, if the goal of the trial was to prevent another tragedy such as what happened to Trayvon and protect our children. In general, a criminal trial does not provide families and the public with all of the answers. This type of trial seeks to punish a criminal and provide limited restitution, but does not necessarily focus on the crime itself.

The role of the State Attorney and the rights of victims in criminal cases in Florida are not synonymous. The Florida State's Attorney represents the State of Florida, not the victim. Their role in part is to pursue criminal charges against suspected criminals for committing crimes against the State of Florida. This is why the Zimmerman case was State of Florida versus George Zimmerman, and not Trayvon Martin versus George Zimmerman.

When pursuing criminal charges, the State Attorney looks to the State's statutes to see whether the accused criminal's actions satisfy all elements of any of the enumerated laws, and whether they could prove these elements beyond a reasonable doubt. When investigating the crime, their job is to seek answers for the State of Florida to the extent necessary to secure the evidence to satisfy the elements of the crime.

Over the years, I have represented many families of shootings and murder victims. One of the biggest challenges we face in both civil and criminal cases is that there are generally only two people who know what happened: one of them is dead and one has a Constitutional protection against self incrimination. Had George Zimmerman kept quiet and simply stated that he wished to remain silent immediately after the incident, he may never have been charged. There were many possibilities for a defense: self-defense (obviously), Trayvon Martin shot himself with George Zimmerman's gun, or maybe the gun accidentally discharged during the struggle. It does not seem likely the

State of Florida could prove its case beyond a reasonable doubt without a witness to the actual shooting.

Instead of remaining silent, George Zimmerman spoke and gave his account of what transpired the night of the shooting. He was subsequently charged with Second Degree Murder. In order to successfully prosecute George Zimmerman, the State of Florida would have had to prove under Florida Statute section 782.04(2) that the unlawful killing of a human being, was perpetrated by any act imminently dangerous to another and evidenced a depraved mind regardless of human life. There was minimal, if any, evidence to support this charge. This charge for 'depraved mind' murder may be more appropriate where someone throws a boiling hot kettle of oil which is on fire onto someone's head. Perhaps they only intended on burning the other person, but the act was imminently dangerous to another and was an act which generally only someone with a 'depraved mind' would ever commit.

Manslaughter is a lesser included offense and was included in the jury charge against George Zimmerman. Under Florida Statute section 782.07, manslaughter requires the killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification under the law, and is not a case of excusable homicide or murder. This statute specifically provides defenses of legal justification or excusable homicide, like self-defense.

Instead of the statutes which the State Attorneys chose to charge Zimmerman with, the State of Florida's better claim as supported by the evidence may have been a charge of Aggravated Manslaughter of a Child under Florida Statute 782.07(3). This statute provides that a person who causes the death of any person under the age of 18 by culpable negligence, by an intentional act that could reasonably be expected to result in physical or mental injury to a child, commits aggravated manslaughter of a child. This is a first degree felony.

In order to find "culpable negligence," there must generally be a gross and flagrant violation of a duty of care that causes injury, a course of conduct showing reckless disregard of human life, such wantonness or recklessness as to equal the intentional violation of the rights of others, or an entire want of care raising the presumption of indifference to consequences. If the State of Florida focused on the proper training of an apartment complex security officer, industry standards in apartment complex security, and the recklessness of George Zimmerman in ignoring the proper protocol and trying to take security matters into his alleged untrained hands, the jury may have found the requisite reckless or intentional violation of the rights of Trayvon Martin to walk through the property of The Retreat.

The State Attorney's job is not to get all of the answers for the victims, nor to investigate the crime itself to see how it occurred, why it happened, what or who could have prevented it, and how to prevent crimes like this from happening in the future. That is the role of a Crime Victim's Rights Attorney in the civil case. The media focus thusfar has been on the role of the State Attorney and the criminal case, however the main focus should be on the civil case and crime analysis.

Florida's Three Avenues of Victim Justice

Florida has three main ways a victim can get justice: the criminal case, the civil case, and Florida's Crime Victim Compensation Fund. The goal of the criminal case is to punish a criminal for committing a crime against the State of Florida. Sometimes victims get closure knowing a perpetrator will go to prison, or they got the punishment they deserve. It does not always provide all answers that the victims and/or their families so desperately seek.

Florida crime victims have very limited rights in the criminal justice system. Florida's Crime Victim Bill of Rights provides rights to victims and their families such as the right to be present at various stages of the criminal case, to be heard at certain stages, and certain other rights, but only "to the extent that these rights do not interfere with the constitutional rights of the accused." While a State Attorney may take the desires and demands of a victim's family into consideration when deciding on an appropriate plea offer or charges, their main client is the State of Florida and not the victim.

Although the criminal case is over, the information learned through the criminal case investigation is important and invaluable as the Estate of Trayvon Martin may continue their fight in the civil case. The focus in the civil case is on the crime itself. The civil case strives to investigate the incident and surrounding circumstances, to fight for justice for the victim and his family, to seek compensation for the victim and his family for pain and suffering and economic losses, and if applicable, to pursue punitive damages to punish the assailant and those who acted with a willful and wanton disregard for the public's safety in contributing to the crime.

In addition to the civil case, Florida's Crime Victim Compensation Fund provides limited financial support to victims of crime and their families. This includes disability, wage loss, financial support loss, and expenses for funeral, burial, medical and dental services, and mental health services. In order to qualify, the victim's conduct must not have contributed to the situation that brought about his or her own injury or death.

While the State Attorney looks at the criminal to determine if a crime was committed against the State of Florida, a Victim's Rights Attorney continues the investigation well beyond the perpetrator. We look at the entire circumstances of the incident to determine how and why it occurred. The civil claim would be brought in the name of Trayvon Martin's Estate and would seek to get answers for his family and to hold those who caused or contributed to his death responsible.

Where should the investigation go from here?

A complete and thorough background check on the apartment complex is necessary to get the Trayvon Martin family the answers they deserve. Through public records requests, the family and the public should be entitled to learn about the background of the property, their licensing, any prior citations, any prior code enforcement issues, prior crimes and prior warnings pertaining to the security and maintenance of the property. The family should submit a public records request to the State Attorney's Office for any and all information and investigative files pertaining to the George Zimmerman case. Many of the documents which may have been claimed as privilege during the pendency of the criminal trial may now be made public record. This includes evidence which was

not used or revealed during the criminal case.

The family should also submit a public records request to the City of Sanford Code Enforcement and the Seminole County Code Enforcement for any and all citations, violations, warnings, and the like pertaining to the apartment complex. They should also perform a public records request to the Department of Business and Professional Regulations for a complete copy of the file on this complex to learn about all their proper licensing, ownership and other interests in the property. Public records requests to the Sanford Police Department, Florida Department of Law Enforcement, and Seminole County Sheriff's Department should be performed to obtain a complete copy of their files including any all reports and witness statements, crime scene photographs, Computer-Aided Dispatch (CAD) reports, and investigative photographs. An investigation should be made of The Retreat at Twin Lakes to determine their knowledge of the neighborhood watch program, and their involvement in the program. An expert analysis may be warranted to opine as to the appropriate role of a neighborhood watch representative to determine the extent to which George Zimmerman overstepped his boundaries.

Through proper and skilled analysis by those experienced in handling negligent security and civil murder cases, the family and the public should get the answers that they deserve as to why this happened and how it could have been prevented to make sure that no other family feels the pain and heartache that the Martin family continues to face.

Since the question of security at The Retreat at Twin Lakes was a focal point of the Zimmerman trial, a Request for Production in the civil claim should be made for a complete copy of the security budget for the complex, as well as any security risk assessments for the property for the past five years, any security change recommendations, any bids for security companies, any reports as a result of those bids, and many other security-based requests. This data will help build a complete picture to determine what defects there were in the The Retreat at Twin Lakes community and what changes can be made in other communities to prevent others from being killed by rogue security officers.

The Two Year Deadline

Florida Law generally bars any wrongful death claim after two years in civil court. This means that Trayvon Martin's Estate may have only two years from the day he was killed to file a civil lawsuit against any person, entity or company that may be responsible or may have otherwise contributed to his death. Any claims made after that deadline might be stricken by the courts and barred forever.

Who is Responsible for Trayvon Martin's Death?

There are several people and companies who may be responsible for Trayvon Martin's death. The family of Trayvon Martin should not just investigate George Zimmerman, but also the complex where the shooting occurred, and the security company and maintenance company that should have provided adequate and reasonable security on the property. The property appears to have had a history of significant violent crime according to media reports throughout the criminal trial.

This, if true, would have put the property owner on notice that this was an unsafe community. If the property owner knew or should have known that there were security issues and that violent crime was foreseeable, they should have had adequate security.

Through analysis of the criminal history of property and surrounding area, and of the public record request results, we may be able to determine whether or not this crime was foreseeable and preventable. What we learned through the criminal case, and through the media, is that George Zimmerman felt compelled to start a neighborhood watch program in his community. This appears to have grown out of frustration for the numerous violent crimes that were occurring in his private neighborhood. We should question why an individual citizen and resident of this complex took security services into his own hands when this apartment complex had a duty to provide security services to its residents once it was put on notice that they were issues with crime in the community.

If the community knew that there were security issues and that George Zimmerman volunteered to start a crime watch program, and based on this information the complex decided not to hire another security company, then they may appear to have delegated their duty to provide adequate security to an individual who did not have proper and adequate training in apartment complex security protocol. If true, then the apartment complex may have significant civil liability for the death of Trayvon Martin at the hands of George Zimmerman.

What causes of action could the Martin family have in a civil action?

There are several possible causes of action the Estate of Trayvon Martin could pursue for wrongful death. This includes theories of negligence, battery, assault, and intentional infliction of emotional distress against George Zimmerman, possible civil rights violations, possible Hate Crime Statute claims, and negligence and inadequate security claims against the apartment complex and property management company, and security company if there was one.

The burden of proof is much lower than that which is necessary to prosecute George Zimmerman criminally. In the criminal case, the State of Florida must prove the alleged crimes beyond a reasonable doubt. This is a very high standard. In the civil action, however, the Estate of Trayvon Martin only needs to prove their case by the greater weight of the evidence. If the scales tilt 51% in one direction, the plaintiff may win. The civil court also recognizes comparative fault, which means a jury may consider the fault of all parties (including Trayvon) and apportion fault based on which person or entity contributed to Trayvon's death. This is a much easier threshold to overcome.

I will address some of the potential claims to help understand the legal analysis. To state a claim for battery under Florida law, the Estate of Trayvon Martin would need to allege and prove that there was an infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent. This could be proved by the shooting of Trayvon Martin; that is, the infliction of harmful contact with the intent to cause such contact.

A claim for assault may also be lodged against George Zimmerman based on the perceived threat of bodily harm to Trayvon Martin by George Zimmerman's alleged pursuit. Under Florida law, a civil claim for assault may be made where there was an overt act directed toward the victim which created a well-founded fear that violence is imminent. If Trayvon Martin felt that violence was imminent, evidenced by his statements to his friend on the phone that there was a "creepy a-- cracka" following him, his Estate may have a civil claim for assault against George Zimmerman. Trayvon may have hid in the bushes to confront George Zimmerman out of fear that this unknown person was trying to hurt or kill him. The fact that he may have struck first does not negate his argument that he had a well-founded fear that violence was imminent. He may have struck first to prevent what he believed was an inevitable attack. His fears may have been well-founded now that we know George Zimmerman was armed with a gun at the time he was following Trayvon.

To the extent that the family of Trayvon Martin believes that George Zimmerman committed an assault or battery or other enumerated misdemeanor or felony on Trayvon Martin evidenced by racial prejudice, they may have a claim under Florida's Hate Crime Statute. Florida Statute section 775.085(2) provides that a person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of the section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney's fees and costs.

In order to present a claim for intentional infliction of emotional distress, there must be (1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe. Courts have also required that the conduct be so outrageous in character, and so extreme in degree that it is considered "atrocious and utterly intolerable in a civilized community." A civil jury could find George Zimmerman's actions deliberate and outrageous, and one which caused severe emotional distress. A main question may be whether his conduct was so atrocious and utterly intolerable. To shoot and kill an unarmed teenager lawfully walking through a neighborhood after confronting the teenager without prior justification or provocation may rise to this level of intolerability.

Florida's "Stand Your Ground" law protects Trayvon Martin, but may not protect George Zimmerman

There have been reports that George Zimmerman may raise a "Stand Your Ground" defense to any civil action filed against him. Florida Statute section 776.032 provides immunity from criminal prosecution and civil action for justifiable use of force under certain circumstances. This use of deadly force is limited to those found in Florida Statutes sections 776.012, 776.013, or 776.031.

The force used against Trayvon Martin may not fall within the permitted uses of deadly force. Section 776.012 states that a person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. It states further that a person is justified in the use of

deadly force and does not have a duty to retreat if "he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself[.]" Since George Zimmerman used deadly force, the first section may not apply. It will be a jury question in a civil claim as to whether he believed deadly force was necessary to prevent imminent death or great bodily harm. The issue was never decided in the criminal case. George Zimmerman was simply found not guilty of 2nd degree murder or manslaughter because the State of Florida did not provide sufficient proof of guilt, but no specific determination was made by the jury as to whether the use of force was justified. Section 776.013 does not apply to George Zimmerman since it deals with using force in one's dwelling and Section 776.031 does not apply since it deals with using force to defend someone else.

Florida Statute section 776.013(3), on the other hand, actually would have protected Trayvon Martin's right to use deadly force against George Zimmerman. This section of the Stand Your Ground law states that a person who is not engaged in an unlawful activity (i.e. Trayvon Martin) and who is attacked in any other place where he or she has a right to be (i.e. The Retreat at Twin Lakes common area) has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony. If Trayvon Martin felt threatened and approached George Zimmerman to meet force with force, he may have been justified in doing so under this section.

Despite popular opinion and commentary, Florida's Stand Your Ground law was never at issue in the criminal case. Rather, it was the enumerated defenses of excusable homicide and lawful justification; that is, self-defense. If a civil case is filed, it will likely be raised as a defense by George Zimmerman, but may be countered by Trayvon Martin's entitlement under the law to meet force with force.

What types of damage can the family of Trayvon Martin recover in the civil claim?
Florida's wrongful death act provides for certain damages to the family of someone killed as a result of negligence or gross negligence. These include compensatory damages and punitive damages.

Under [Florida's Wrongful Death Act](#), Florida Statute section 768.21 provides that his survivors would be entitled to loss of support and services if he was providing any, mental pain and suffering for each parent, medical and funeral expenses, and net accumulations for the estate, among other possible damages.

The killing of Trayvon Martin may also warrant punitive damages against George Zimmerman to send a message to the public that this behavior will not and should not be tolerated. A jury could find that George Zimmerman should be punished and should pay the family of Trayvon Martin punitive damages for his willful and wanton disregard for the safety of the public and of Trayvon Martin. A jury may also find that the complex itself is responsible for punitive damages for their willful and wanton disregard for the safety of the public especially if there were numerous violent crimes on their property and they turned a willful blind eye to this safety issue.

The confidential settlement may prevent full appreciation of facts

We are now learning that the family of Trayvon Martin may have confidentially settled a civil claim against The Retreat at Twin Lakes. The terms remain confidential so we may never know exactly what or who was included in the settlement, or the amount. Speculative reports suggest that the settlement was at least \$1,000,000.00 based on a letter circulating from The Retreat at Twin Lakes or their insurance company.

A settlement of the civil case against The Retreat at Twin Lakes may now bar the Estate of Trayvon Martin from seeking additional information from them or from pursuing claims against other parties. Before drawing conclusions as to the how and why of a crime, we must fully investigate the incident and evaluate a complete set of facts. Any missing piece can alter the analysis.

I understand the need to investigate further, as there were inconsistencies in both George Zimmerman's statements and the action of the Martin family. Contrary to the assertions that George Zimmerman was a rogue cop or a vigilante, the Martin family may have confidentially pursued a civil case against The Retreat at Twin Lakes for the actions of George Zimmerman acting in the course and scope of his apparent authority of The Retreat at Twin Lakes. To win that claim, they may have alleged that The Retreat at Twin Lakes by action or willful blindness acquiesced to the security services performed by George Zimmerman. It is likely that the Martin family pursued a claim against The Retreat under a theory of "vicarious liability". This means that they believed George Zimmerman was acting on behalf of The Retreat as an employee or agent by providing some sense of security over the property without adequate training or supervision.

Moving Forward

If the public wants answers, the public record requests and civil claims are generally the best means to that end. Hopefully the Martin family's attorneys will pursue the public records requests and civil claims so the Martin family and the community can fully appreciate the facts of the incident. Only then can we really analyze the facts to determine how this killing occurred, why it occurred and how to protect our children, regardless of race, to make sure that no innocent child is killed in his or her own neighborhood while walking home from a grocery store.

About the Author

Jason Turchin is a passionate Florida-based [Victim's Rights Attorney](#) who has handled more than 4,500 [accident](#), [injury](#) and [wrongful death](#) cases on behalf of victims of negligence and their families. He holds a bachelor's degree in criminology and criminal justice from [University of Maryland](#), a law degree from [University of Miami School of Law](#), and is a member of the [National Crime Victim Bar Association](#). He previously worked with famed criminal defense attorney Roy Black. Jason focuses his practice on fighting for the rights of victims throughout the United States. His practice is based out of Fort Lauderdale, Florida with satellite offices in New York City, Washington DC, Orlando, Miami and Key West. His website is www.VictimAid.com and can be reached at (888) 99-VICTIM.