

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

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STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO.: 2012-001083-CFA

GEORGE ZIMMERMAN,
Defendant.

VERIFIED MOTION TO DISQUALIFY TRIAL JUDGE

COMES NOW the Defendant, GEORGE ZIMMERMAN, by and through his undersigned counsel pursuant to Florida Rule of Judicial Administration 2.330(d)(1) and moves to disqualify this Honorable Court from presiding in this case and as grounds therefore would state as follows:

Background

George Zimmerman was charged by Information¹ on April 11, 2012 with Second Degree Murder, a violation of Florida Statute 782.04. Mr. Zimmerman faces life in prison upon conviction.

¹ This case has been controversial from the beginning largely because of misinformation. Although George Zimmerman was fully cooperative with law enforcement and had no control over whether or when he might be arrested, there was such a public outcry for his arrest in some circles that a bounty was placed for his "capture." He was variously called a racist and cold-blooded murderer in the mainstream media by those with little or no credible information about what actually happened. Mr. Zimmerman and his family have received numerous death threats. He had to leave his job, live in hiding and was withdrawn from college. Indeed, Florida Governor Rick Scott intervened and appointed Angela Corey, State Attorney in the 4th Circuit as Special Prosecutor to replace the State Attorney for the Eighteenth Circuit. Ms. Corey exercised her discretion and filed an Information charging Mr. Zimmerman with Second Degree Murder

The charge arose from an incident on February 26, 2012 which resulted in the death of Trayvon Martin. Mr. Zimmerman explained to the police that he shot Mr. Martin in self-defense after he was punched in the face and continued to be battered by Mr. Martin. Prior to the shot, Martin was seen by a witness to the incident straddling and beating Mr. Zimmerman who lay on the ground on his back. Mr. Zimmerman explained that he had cried out for help repeatedly before firing his gun and that no one came to help. Those cries for help were recorded in the background of another witness' 911 call and lasted for at least 40 seconds before the shot was fired. At the scene, EMTs observed that Mr. Zimmerman had bleeding lacerations to the back of his head consistent with his head being struck on or by a hard object, facial cuts and a swollen, bleeding broken nose. No arrest was made at the scene. Thereafter, Mr. Zimmerman continued to cooperate with law enforcement including the Sanford Police Department and the Florida Department of Law Enforcement. Mr. Zimmerman was interviewed on several occasions, participated in a re-enactment of the events of February 26, 2012, and agreed to submit to voice stress analysis. Mr. Zimmerman did everything he was asked to do in the days following the shooting of Trayvon Martin and did so without benefit of legal counsel.

After a hearing on April 20, 2012 this Court granted bail in the amount of \$150,000 plus additional conditions to include GPS monitoring. Mr. Zimmerman was permitted to live outside the State of Florida.

rather than presenting the case to the Grand Jury. If the exculpatory evidence of self-defense had been presented to the Grand Jury it may have resulted in a "No True Bill" or, at most, an indictment for a lesser offense. As the case was not presented to the Grand Jury, Mr. Zimmerman did not have the opportunity to testify on his own behalf and perhaps avoid prosecution altogether. The affidavit used to establish probable cause has been widely criticized for failing to include information consistent with Mr. Zimmerman's explanation of self-defense including reports of his injuries. See, attached probable cause affidavit.

On April 27, 2012, at a previously scheduled hearing, Mr. Zimmerman's counsel disclosed to the Court that he was now holding in trust approximately \$123,000 of funds that had been donated to Mr. Zimmerman that had not been disclosed to the Court at the bond hearing on April 20, 2012. As counsel explained, shortly after his release on bond, Mr. Zimmerman volunteered this information to counsel, and promptly forwarded these funds by cashier's check by overnight delivery. After divesting himself of these funds, Mr. Zimmerman remained on bond without violation until his bond was revoked on June 1, 2012 for failing to advise the Court of the existence of these donated funds at the time of the April 20, 2012 bond hearing.

On June 29, 2012 a hearing was held on Mr. Zimmerman's Motion to Set Reasonable Bond. At said hearing, Mr. Zimmerman presented evidence related to the accounting and tracking of the donated funds at issue; evidence of Mr. Zimmerman's excellent compliance with the GPS monitoring program; a financial affidavit setting forth his current financial circumstances; and evidence in support of his claim of self-defense. This evidence included, in part, Mr. Zimmerman's various statements to law enforcement; witness statements to the Sanford Police Department and follow up interviews by FDLE and the State Attorney's Office; the testimony of EMT Kevin O'Rourke regarding Mr. Zimmerman's injuries on the night of February 26, 2012; the testimony of Robert Zimmerman, the father of defendant George Zimmerman, who testified that he was certain the voice heard crying out for help in the background of the recorded 911 call was his son's; photos of Trayvon Martin from the surveillance video at the nearby 7-11 on the night of the incident showing Mr. Martin's size and height; and, the autopsy report of the Medical Examiner showing that other than the gunshot wound, the only injury to Trayvon Martin was an abrasion on his knuckle. The State did not offer evidence to rebut Mr. Zimmerman's self-defense claim.

Mr. Zimmerman Has a Reasonable Fear That He Cannot

Get a Fair Trial or a Fair Stand Your Ground Hearing by this Court

On July 5, 2012 this Court filed its Order Setting Bail. In said Order, the Court makes gratuitous, disparaging remarks about Mr. Zimmerman's character; advocates for Mr. Zimmerman to be prosecuted for additional crimes; offers a personal opinion about the evidence for said prosecution; and continues 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 this Court is biased against him and because of this prejudice he cannot receive a fair and impartial trial or hearing by this Court.

Prior Motion to Disqualify

Florida Rule of Judicial Administration 2.330(c) requires disclosure of the dates of previous motions to disqualify and the date of any order on such motions. On April 16, 2012 undersigned filed Defendant's Verified Motion to Disqualify Trial Judge based upon a potential conflict of interest raised by the then assigned trial judge. Said motion was filed pursuant to Florida Rule of Judicial Administration 2.330(d)(2) and was granted on April 18, 2012.

Legal Standard for this Motion to Disqualify

Florida Rule of Judicial Administration 2.330(f) provides that the "judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action."

A motion for disqualification must be granted if the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial from the judge. *Nunez v. Backman*, 645 So.2d 1063,1064 (Fla. 4th DCA 1994). In ruling on a motion to disqualify, a court is limited to determining the legal sufficiency of the motion itself and may not pass on the truth of the facts alleged. *Parker v. State*, 3 So.3d 974, 982 (Fla. 2009). “The standard... is whether the facts alleged, which must be assumed to be true, would cause the movant to have a well-founded fear that he or she will not receive a fair trial at the hands of the judge.... Further, this fear of judicial bias must be objectively reasonable.”

Generally a statement by the judge that he feels a party has lied in a case indicates bias against the party. See, *Brown v. St. George Island, Ltd.*, 561 So.2d 253, 257 (Fla. 1990); *Campbell Soup Co. v. Roberts*, 676 So.2d 435, 436 (Fla. 2d DCA 1995); *Deauville Realty Co. v. Tobin*, 120 So.2d 198, 202 (Fla. 3d DCA 1960). In a recent case, the Third DCA held that a defendant’s motion for disqualification, which was based upon comments by the trial judge at a hearing on plaintiff’s motion for sanctions that the judge had faith “as long as my fingernail” that the defendant had produced documents sought by the plaintiff was sufficient to grant the motion for disqualification. *Tallahassee Memorial Healthcare, Inc. v. Alexander*, 51 So.3d 644, 645 (Fla. 3d DCA 2011).

Additionally, in *Campbell Soup Co.*, 676 So.2d at 435, the Second DCA found that a statement by the trial judge expressing doubt as to the reliability of Petitioner’s affidavit coupled with the judge expressing that one of the attorneys was an “innocent victim” warranted removal of the trial judge. In *Owens-Corning Fiberglas Corp. v. Parsons*, 644 So.2d 340 (Fla. 1st DCA 1994), the court disqualified the trial judge because of the judge’s bias against the defendant. In

response to the plaintiff's motion to strike a defense witness who had not previously been disclosed to plaintiff the court stated to defense counsel:

THE COURT: What I'm about to say is not a reflection on you professionally or personally. I have the highest regard for you as a man and as a lawyer. I have very minimal respect for your client. I think they have abused the system. I think they abuse you. I think they put you in an untenable position for a man of your stature professionally in this community, but I know you can't control that...

Id. at 341. The Court also expressed that the defendant's credibility with the court is "about as thin as a balloon." Id. The Florida Supreme Court has held that a statement by the judge indicating a party has lied in a case generally indicates a bias against the party. Brown, supra at 257. In Brown, the court held that an alleged statement by the judge that he "wouldn't believe [petitioner] anyway" in response to an affidavit that petitioner's attorney attempted to present, warranted the judge's disqualification for prejudice.

Discussion

The Court chose language in its July 5, 2012 Order to describe the Defendant in ways that reflect the Court's opinion of Mr. Zimmerman's character as much as his conduct. "Under any definition, the Defendant has flouted the system." Flouted is defined at Merriam-Webster.com as "to treat with contemptuous disregard; to indulge in scornful behavior."

The Court went on to say that, "The Defendant has tried to manipulate the system when he has been presented the opportunity to do so." The Court completely ignores Mr. Zimmerman's voluntary disclosure and subsequent surrender of the donated funds to his lawyer before their existence was discovered by the Court and disregards his otherwise exemplary conduct on bail prior to bail being revoked. Of grave concern to Mr. Zimmerman is that there is no corroboration for the Court's bold conclusion that "Although there is no record of flight to avoid prosecution, this Court finds that circumstances indicate that the Defendant was preparing to flee

to avoid prosecution, but such plans were thwarted.”² Further, the Court also denigrates Mr. Zimmerman’s voluntary statements to law enforcement, that he surrendered twice to law enforcement when requested and his willingness to take all tests offered, including the taking of a CVSA. Seemingly, this Court believes those actions to be disingenuous, self-serving manipulations as well. The Court makes sweeping generalizations about Mr. Zimmerman based on limited information and disregards the evidence that contradicts those conclusions.

The Court states that the money used to post bail “...is not money which the Defendant has earned through his hard work and savings, so forfeiting it for failing to appear would not impact the Defendant’s life in the same manner as a similarly-situated defendant who puts his house up for collateral to obtain a surety bond.” Page 7, (f). However, the Court fails to note that Mr. Zimmerman’s previous bond was secured with a mortgage on his parents’ home and that his family’s home would thereby be forfeited if he failed to appear. Further, the Court ignores the reality that those funds are the only funds available to Mr. Zimmerman to survive, to eat, to pay for utilities and to provide his family shelter.

As the Court noted, at the bond hearing on June 29, 2012, the defense introduced evidence in support of Mr. Zimmerman’s claim of self-defense. The defense did this in response to this Court’s statement in its June 11, 2012 Order Revoking Bond that the State’s evidence against the Defendant was strong and, moreover, that the Court could have denied bond altogether based on the extraordinarily high standard set in *Arthur v. State*, 390 So.2nd 717 (Fla.

²Did the requirement of GPS thwart the plan to flee? If so, there was no objection to that condition at the first bond hearing, to the contrary, defense counsel proposed GPS monitoring and had taken steps to confirm that it could be in place and still protect Mr. Zimmerman’s location. Further, as the Court was aware, Mr. Zimmerman remained in contact with law enforcement prior to his arrest and continued to cooperate with the investigation. When it was announced at a press conference that he had been charged with Second Degree Murder, Mr. Zimmerman traveled to Jacksonville to turn himself in. When the Court ordered him to report to jail within 48 hours of his bond being revoked on June 1, 2012, he did.

1980) where the Florida Supreme Court said that in order to hold an individual accused of a life or capital felony without bail, the proof of guilt must be evident or the presumption great. The state is held under this standard to a **greater** degree of proof than that required to establish guilt beyond a reasonable doubt. *Stallings v. Ryan*, 979 So.2d 1167, 1169 (3rd DCA 2008). There was little evidence regarding the strength of the State's case at the initial bond hearing other than a bare-bones probable cause affidavit and the testimony of State Attorney Investigator Dale Gilbreath, a witness called by the defense. During his testimony, Gilbreath acknowledged that the State had no evidence to contradict the conclusion that Trayvon Martin was the aggressor and threw the first punch, and no evidence to contest that Mr. Zimmerman was headed back to his car when Mr. Martin attacked him. Since the April 20th hearing, the State had provided a substantial part of its discovery, including several interviews with Mr. Zimmerman and the witness statements of those who saw (or heard) parts of the event involving Mr. Zimmerman and Mr. Martin.

As the Court correctly points out on Page 5 of the July 5, 2012 Order, on the issue of bail Florida Statute 903.046(2)³ requires the Court to consider the nature and circumstances of the offense charged and the weight of the evidence against the Defendant. The Court does neither. Although the Court had the sworn statements of witnesses, including one who said that he saw the person later identified as Trayvon Martin straddling Mr. Zimmerman and hitting him "MMA style" while Zimmerman was on the ground and on his back; the written and recorded statements of the Defendant which are largely consistent with the other witness statements; the 911 call where Mr. Zimmerman can be heard crying for help for almost 40 seconds prior to the gun shot; the pictures of Mr. Zimmerman's beaten and bloody face and head; and the autopsy report saying

³ The Order cites Florida Statute 943.046(2) but it is assumed that the reference is a scrivener's error.

that Mr. Martin had no injuries other than an abrasion to his knuckle and a single gunshot wound which showed powder burns to his clothing and skin—again consistent with Mr. Zimmerman’s statement that the shot was fired from close range while he was on his back on the ground.

The Court fails to weigh any of this evidence of innocence in its evaluation of bail and suggests that it doesn’t matter since that “[t]he Defendant shot and killed the victim is virtually undisputed.” The Court further notes, “The only issue is the viability of the Defendant’s self-defense/Stand Your Ground claim,” but fails to discuss it further or assign any weight to these considerations in setting bond. The overall impression of this, and a reason why Mr. Zimmerman feels he cannot get a fair trial, is that the Court spent a lot of time and a lot of words crafting an Order that was harsh and morally indignant in tone yet wholly fails to address one of the most important criteria in fashioning reasonable bailthe compelling evidence showing that the Defendant has a viable, credible claim of self-defense. Notwithstanding his vilification through misinformation early on in the media, the evidence provided at this early stage of discovery by the State (and reviewed by this Court) shows that Mr. Zimmerman is likely innocent. Surely, that should factor in somehow.

The Court departed from its role as an impartial, objective minister of justice when it stated on two occasions in its Order that in the Court’s personal opinion there is probable cause to believe that the Defendant committed a violation of Florida Statute 903.035(3), a third degree felony punishable by five years in prison. This is tantamount to instructing the State that Mr. Zimmerman should be prosecuted for this offense. Comments like these are taken seriously by the Defendant, and further convinces him that he cannot get a fair trial from this Court. The Court made a similar comment about his wife at the June 1, 2012 bond revocation hearing when it said,

In this particular situation, as I stated, I'm surprised that the State did not file what I thought they were going to file, but I assume they can file it in the future if they deem it to be necessary, as far as what actions they are going to proceed against Ms. Zimmerman in this particular situation, because **there's no doubt in the Court's mind that she's aware of what transpired** and what happened. Page 69, transcript of June 1, 2012 bail hearing, (emphasis added.)

Within days, Ms. Zimmerman was charged with perjury, a felony punishable by five years in prison and was arrested. She is on bond pending further proceedings in her case and her lawyer would not let her appear at Mr. Zimmerman's bond hearing. While there may not be any actual connection between the Court's suggestion that Ms. Zimmerman be prosecuted and her eventual prosecution, it is certainly reasonable for Mr. Zimmerman to think there may be, and to fear that the Court is suggesting to the State that it would please the Court for him to be prosecuted under Florida Statute 903.035(3) and that as a result the Court is biased against him and that he can't get a fair trial.

Further, the Court has announced in its Order that it may still exercise its contempt power, suggesting that at any time the Court could hold Mr. Zimmerman in contempt and send him back to jail. On page 5 of the Order, it states that "this Court has, **thus far**, declined to exercise its contempt powers..." and further actions by the Court could include the "possibility of **future contempt proceedings**." (emphasis added). Might this happen if the State decides not to charge Mr. Zimmerman with a violation of Florida Statute 905.035(3) and the Court thinks it should have; or if Mr. Zimmerman somehow otherwise displeases the Court; or if his lawyers do? Holding this over Mr. Zimmerman creates a profound chilling effect on this case, on the defense presentation and cements Mr. Zimmerman's fear that he won't get a fair trial from this Court.

After all, this Court would preside over and is the trier of fact in any immunity proceeding under Florida Statute 776.032. In that proceeding, the Defendant has the burden to convince the Court by a preponderance of the evidence that he is entitled to the protections of the statute. *Peterson v. State*, 983 So. 2d 27, (Fla. 1st DCA 2008), *Dennis v. State*, 51 So. 3d 456 (Fla. 2010). Those protections are significant. If the Defendant prevails at that hearing, he is immune from criminal prosecution and civil action. Mr. Zimmerman fears that the Court has already decided that he is not worthy of belief regardless of the type of proceeding or the corroborating evidence that would support his testimony. The opinions formed by this Court regarding Mr. Zimmerman's character and credibility evident in the July 5, 2012 Order should play no role in the immunity hearing unless there is competent evidence offered in that proceeding in which to evaluate his testimony. It is unlikely that any aspect of the bail proceedings that have so clearly angered this Court would be admissible in an immunity hearing, yet this Court has already formed a negative opinion of Mr. Zimmerman that Mr. Zimmerman fears would carry over to the immunity hearing and would deny him a fair determination on the merits.

Respect and confidence in our judicial system depends on not just actual fairness and impartiality, but also on the perception that our system is fair. That includes the public's perception, but starts with that of the litigants. A judge must not only be impartial, but he should leave the impression of his impartiality upon all who attend court. *Anderson v. State*, 287 So. 2d 322, 324 (Fla. 1st DCA 1973). It would be hard to imagine a situation where it would be more important that the public and the accused believe in the fairness of the process regardless of the outcome. The public has already become involved in this discussion given the high interest it has taken in the case and the ready access to Internet forums for expressing those views.

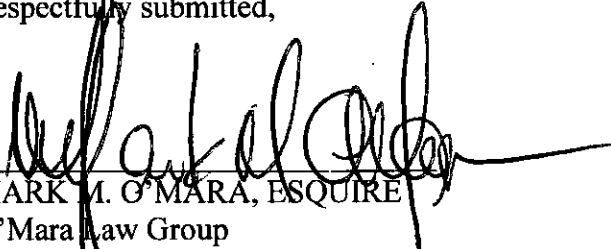
A judge is held to a high standard of impartiality. "Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question." Hayslip v. Douglas, 400 So.2d 553, 557 (Fla. 4th DCA 1981).


Because of the facts and reasons set forth herein, Mr. Zimmerman has lost faith in the objectivity of this Court and has a reasonable, well-founded fear that he will not receive a fair trial by this Court. Accordingly, pursuant to Florida Rule of Judicial Administration 2.330(d)(1) and 2.330(f), this Court must be disqualified.

WHEREFORE, the Defendant respectfully requests this Honorable Court enter its Order granting disqualification.

The undersigned counsel for the Defendant certify that this Motion and Mr. Zimmerman's statements are made in good faith.

Respectfully submitted,


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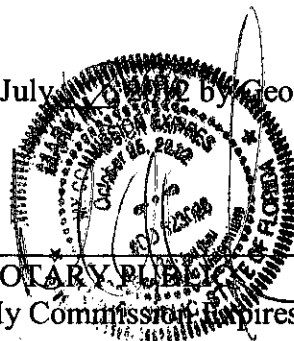
STATE OF FLORIDA
COUNTY OF SEMINOLE

I, GEORGE ZIMMERMAN, having been duly sworn do hereby state that the foregoing facts are true and correct and that I have a reasonable fear that I will not receive a fair trial or hearing because of the prejudice or bias of this Court for the reasons stated above.



GEORGE ZIMMERMAN

Sworn to or affirmed and signed before me on July 2, 2012 by George Zimmerman.

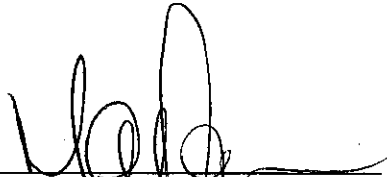


NOTARY PUBLIC
My Commission Expires

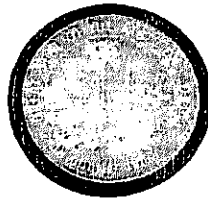
Personally known
 Produced identification
 Type of identification produced _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Defendant's Verified Motion to Disqualify Trial Judge has been furnished by U.S. Mail/Facsimile this 13th day of July, 2012 to Bernie de la Rionda, Assistant State Attorney and John Guy, Assistant State Attorney, Office of the State Attorney, 220 East Bay Street, Jacksonville, Florida 32202-3429 and to the Honorable Kenneth R. Lester, Jr., Circuit Judge, Seminole Criminal Justice Center, 101 Bush Boulevard, Sanford, Florida 32773.



Mark M. O'Mara, Esquire
Attorney for Defendant



ANGELA B. COREY
STATE ATTORNEY

STATE OF FLORIDA VS. GEORGE ZIMMERMAN

EIGHTEENTH JUDICIAL CIRCUIT, SEMINOLE COUNTY FLORIDA

AFFIDAVIT OF PROBABLE CAUSE – SECOND DEGREE MURDER

Before me, personally appeared T.C. O'Steen and K.D. Gilbreath, who after being duly sworn; deposes and says:

Your affiants, Investigators T.C. O'Steen, and Dale Gilbreath are members of the State Attorney Office – Fourth Judicial Circuit, appointed in this case by State Attorney Angela B. Corey, who was assigned this case under Executive Order of the Governor 12-72.

Investigator O'Steen was previously employed by the Jacksonville Sheriff's Office, and has 35 years of law enforcement experience, including 20 years handling homicide investigations. Investigator Gilbreath was previously employed by the Jacksonville Sheriff's Office, and has 36 years of law enforcement experience, including 24 years handling homicide investigations.

Your Affiants, along with other law enforcement officials have taken sworn statements from witnesses, spoken with law enforcement officers who have provided sworn testimony in reports, reviewed other reports, recorded statements, phone records, recorded calls to police, photographs, videos, and other documents in detailing the following:

On Sunday 2/26/12, Trayvon Martin was temporarily living at the Retreat at Twin Lakes, a gated community in Sanford, Seminole County, Florida. That evening Martin walked to a nearby 7-11 store where he purchased a can of iced tea and a bag of skittles. Martin then walked back to and entered the gated community and was on his way back to the townhouse where he was living when he was profiled by George Zimmerman. Martin was unarmed and was not committing a crime.

Zimmerman who also lived in the gated community, and was driving his vehicle observed Martin and assumed Martin was a criminal. Zimmerman felt Martin did not belong in the gated community and called the police. Zimmerman spoke to the dispatcher and asked for an officer to respond because Zimmerman perceived that Martin was acting suspicious. The police dispatcher informed Zimmerman that an officer was on the way and to wait for the officer.

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

During this time, Martin was on the phone with a friend and described to her what was happening. The witness advised that Martin was scared because he was being followed through the complex by an unknown male and didn't know why. Martin attempted to run home but was followed by Zimmerman who didn't want the person he falsely assumed was going to commit a crime to get away before the police arrived. Zimmerman got out of his vehicle and followed Martin. When the police dispatcher realized Zimmerman was pursuing Martin, he instructed Zimmerman not to do that and that the responding officer would meet him. Zimmerman disregarded the police dispatcher and continued to follow Martin who was trying to return to his home.

Zimmerman confronted Martin and a struggle ensued. Witnesses heard people arguing and what sounded like a struggle. During this time period witnesses heard numerous calls for help and some of these were recorded in 911 calls to police. Trayvon Martin's mother has reviewed the 911 calls and identified the voice crying for help as Trayvon Martin's voice.

Zimmerman shot Martin in the chest. When police arrived Zimmerman admitted shooting Martin. Officers recovered a gun from a holster inside Zimmerman's waistband. A fired casing that was recovered at the scene was determined to have been fired from the firearm.

Assistant Medical Examiner Dr. Bao performed an autopsy and determined that Martin died from the gunshot wound.

The facts mentioned in this Affidavit are not a complete recitation of all the pertinent facts and evidence in this case but only are presented for a determination of Probable Cause for Second Degree Murder.

By:  _____

Investigator T.C. O'Steen, Affiant

By:  _____

Investigator Dale Gilbreath, Affiant

Sworn to and subscribed before me

This 11th day of April, 2012.

Jennifer Weigel

Notary Public, State of Florida at Large

My Commission expires:

6/10/14

