

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

CASE NO.: 2012 CF 1083 AXXX

STATE OF FLORIDA

vs.

GEORGE ZIMMERMAN

Instructions read to jury by The Honorable Debra S. Nelson, Circuit Judge.

DATED at Sanford, Florida on _____, 2013.

CIRCUIT JUDGE

Members of the Jury, I thank you for your attention during this trial.

Please pay attention to the instructions I am about to give you.

STATEMENT OF CHARGE

George Zimmerman, the defendant in this case, has been accused of the crime of Second Degree Murder.

INTRODUCTION TO HOMICIDE

In this case, George Zimmerman is accused of Second Degree Murder.

A killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find Trayvon Martin was killed by George Zimmerman, you will then consider the circumstances surrounding the killing in deciding if the killing was Murder in the Second Degree or was Manslaughter, or whether the killing was excusable or resulted from justifiable use of deadly force.

JUSTIFIABLE HOMICIDE

The killing of a human being is justifiable and lawful if necessarily done while resisting an attempt to murder or commit a felony upon George Zimmerman, or to commit a felony in any dwelling house in which George Zimmerman was at the time of the attempted killing.

EXCUSABLE HOMICIDE

The killing of a human being is excusable, and therefore lawful, under any one of the three following circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the attempted killing is not done in a cruel and unusual manner.

“Dangerous weapon” is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before George Zimmerman may be found guilty of Second Degree Murder or any lesser crime.

SECOND DEGREE MURDER

To prove the crime of Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Trayvon Martin is dead.
2. The death was caused by the criminal act of George Zimmerman.
3. There was an unlawful killing of Trayvon Martin by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is “imminently dangerous to another and demonstrating a depraved mind” if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Second Degree Murder, it is not necessary for the State to prove George Zimmerman had an intent to cause death.

POSSESSION OF A FIREARM
AND DISCHARGE CAUSING DEATH

If you find that George Zimmerman committed Second Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he discharged a firearm, and in doing so, caused great bodily harm to, or the death of, Trayvon Martin, you should find George Zimmerman guilty of Second Degree Murder with discharge of a firearm causing great bodily harm or death.

If you find that George Zimmerman committed Second Degree Murder, and you also find beyond a reasonable doubt that during the commission of the crime, he discharged a firearm, you should find George Zimmerman guilty of Second Degree Murder with discharge of a firearm.

If you find that George Zimmerman committed Second Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he actually possessed a firearm, you should find George Zimmerman guilty of Second Degree Murder with actual possession of a firearm.

A “firearm” is legally defined as any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive.

To “actually possess” a firearm means that George Zimmerman

- (a) carried a firearm on his person; or
- (b) had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that George Zimmerman committed the main crime of which he is accused, there may be evidence that he committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if George Zimmerman is guilty of any lesser included crime. The lesser crime indicated in the definition of Second Degree Murder is:

Manslaughter

JUSTIFIABLE HOMICIDE

The killing of a human being is justifiable and lawful if necessarily done while resisting an attempt to murder or commit a felony upon George Zimmerman, or to commit a felony in any dwelling house in which George Zimmerman was at the time of the attempted killing.

EXCUSABLE HOMICIDE

The killing of a human being is excusable, and therefore lawful, under any one of the three following circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the attempted killing is not done in a cruel and unusual manner.

“Dangerous weapon” is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

MANSLAUGHTER

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. Trayvon Martin is dead.
2. George Zimmerman intentionally committed an act or acts that caused the death of Trayvon Martin.

George Zimmerman cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide:

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon George Zimmerman, or to commit a felony in any dwelling house in which George Zimmerman was at the time of the killing.

The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

In order to convict of manslaughter by act, it is not necessary for the State to prove that George Zimmerman had an intent to cause death, only an intent to commit an act that was not merely negligent, justified, or excusable and which caused death.

If you find George Zimmerman committed Manslaughter, and you also find beyond a reasonable doubt that during the commission of the Manslaughter, George Zimmerman carried, displayed, used, threatened to use, or attempted to use a firearm, you should check the appropriate box on the verdict form which I will discuss with you later in these instructions.

The definition of a "firearm" has been previously provided in these instructions.

JUSTIFIABLE USE OF DEADLY FORCE

An issue in this case is whether George Zimmerman acted in self-defense. It is a defense to the crime of Second Degree Murder, and the lesser included offense of Manslaughter, if the death of Trayvon Martin resulted from the justifiable use of deadly force.

“Deadly force” means force likely to cause death or great bodily harm.

A person is justified in using deadly force if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.

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

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

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of George Zimmerman and Trayvon Martin.

If in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether George Zimmerman was justified in the use of deadly force, you should find George Zimmerman not guilty.

However, if from the evidence you are convinced beyond a reasonable doubt that George Zimmerman was not justified in the use of deadly force, you should find him guilty if all the elements of the charge have been proved.

PLEA OF NOT GUILTY; REASONABLE DOUBT; AND BURDEN OF PROOF

George Zimmerman has entered a plea of not guilty. This means you must presume or believe George Zimmerman is innocent. The presumption stays with George Zimmerman as to each material allegation in the Information through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome George Zimmerman's presumption of innocence, the State has the burden of proving the crime with which George Zimmerman is charged was committed and George Zimmerman is the person who committed the crime.

George Zimmerman is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find George Zimmerman not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of George Zimmerman may arise from the evidence, conflict in the evidence, or the lack of evidence.

If you have a reasonable doubt, you should find George Zimmerman not guilty. If you have no reasonable doubt, you should find George Zimmerman guilty.

DATE OF CRIME

The State must prove that the crime was committed on February 26, 2012.

VENUE

It must be proved, only to a reasonable certainty, that the alleged crime was committed in Seminole County.

WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness' s testimony agree with the other testimony and other evidence in the case?
6. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court?

It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his or her testimony.

You may rely upon your own conclusion about the witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

EXPERT WITNESSES

Expert witnesses are like other witnesses, with one exception - the law permits an expert witness to give his or her opinion.

However, an expert's opinion is only reliable when given on a subject about which you believe him or her to be an expert.

Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

GEORGE ZIMMERMAN NOT TESTIFYING

The Constitution requires the State to prove its accusations against George Zimmerman. It is not necessary for George Zimmerman to disprove anything. Nor is George Zimmerman required to prove his innocence. It is up to the State to prove George Zimmerman's guilt by evidence.

George Zimmerman exercised a fundamental right by choosing not to be a witness in this case. You must not view this as an admission of guilt or be influenced in any way by his decision. No juror should ever be concerned that George Zimmerman did or did not take the witness stand to give testimony in the case.

GEORGE ZIMMERMAN'S STATEMENTS

A statement claimed to have been made by George Zimmerman outside of court has been placed before you. Such a statement should always be considered with caution and be weighed with great care to make certain it was freely and voluntarily made.

Therefore, you must determine from the evidence that George Zimmerman's alleged statement was knowingly, voluntarily and freely made.

In making this determination, you should consider the total circumstances, including but not limited to

1. whether, when George Zimmerman made the statement, he had been threatened in order to get him to make it, and
2. whether anyone had promised him anything in order to get him to make it.

If you conclude George Zimmerman's out of court statement was not freely and voluntarily made, you should disregard it.

RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.
2. This case must be decided only upon the evidence that you have heard from the testimony of the witnesses and have seen in the form of the exhibits in evidence and these instructions.
3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.
4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.
5. Your duty is to determine if George Zimmerman has been proven guilty or not, in accord with the law. It is the Judge's job to determine a proper sentence if George Zimmerman is found guilty.
6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.
7. Your verdict should not be influenced by feelings of prejudice, bias or sympathy. Your verdict must be based on the evidence, and on the law contained in these instructions.

NOTES

During this trial, I have permitted you to take notes. You will be allowed to take those notes into the jury room during deliberations. You are instructed that your notes are a tool to aid your individual memory. You should not compare your notes with those of other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Notes are for the note taker's personal use in refreshing his or her recollection of the evidence. They are not evidence. Above all, your memory should be your greatest asset in your recollection of the evidence.

CAUTIONARY INSTRUCTION

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

VERDICT

You may find George Zimmerman guilty as charged in the Information or guilty of such lesser included crime as the evidence may justify or not guilty.

If you return a verdict of guilty, it should be for the highest offense which has been proven beyond a reasonable doubt. If you find that no offense has been proven beyond a reasonable doubt, then, of course, your verdict must be not guilty.

Only one verdict may be returned as to the crime charged. This verdict must be unanimous, that is all of you must agree to the same verdict. The verdict must be in writing and for your convenience the necessary forms of verdict have been prepared for you. They are as follows:

SUBMITTING THE CASE TO THE JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is choose a foreperson who will preside over your deliberations. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. It is also the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict, and to bring the verdict form back to the courtroom when you return.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you during deliberations. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

If you need to communicate with me, send a note through the bailiff, signed by the foreperson. If you have questions, I will talk with the attorneys before I answer, so it may take some time. You may continue your deliberations while you wait for my answer. I will answer any questions, if I can, in writing or orally here in open court.

Your verdict finding George Zimmerman either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

During the trial, items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations. These exhibits will be sent into the jury room with you when you begin to deliberate.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case.

Even if you do not like the laws that must be applied, you must use them. For two centuries we have lived by the Constitution and the law. No juror has the right to violate rules we all share.