

Key Mistakes Sway Jury in Zimmerman Trial: Jury Prevented from Considering Race and “First Aggressor”

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A Southern jury of six women – none of them black – found 28-year-old George Zimmerman’s shooting of unarmed 17-year-old Trayvon Martin to be justifiable homicide because he acted in self-defense.

The jurors were prohibited from considering race. They were instructed only on the parts of self-defense law that helped Zimmerman, and the chief police investigator improperly testified that he believed Zimmerman.

Jury prevented from considering race

None of the jurors thought race played a role in the case, Juror B-37 told CNN’s Anderson Cooper. In fact the question of Zimmerman profiling Martin because he was African-American didn’t even come up in deliberations, the juror said.

No wonder it never came up. At the beginning of the trial, the judge forbade the prosecution from speaking about racial profiling. Only the word “profiling” could be used, Judge Debra S. Nelson ruled. “Criminal profiling is based on behavior,” NAACP President Benjamin Jealous said on Democracy Now! “Racial profiling is based on color and on race. And the reality is that it appears that George Zimmerman had a pattern of confusing color with grounds for suspicion.”

The entire trial from start to finish was sanitized of any mention of race.

Zimmerman told the 911 operator, “These fucking punks” and “these assholes, they always get away,” when he spotted Martin walking down the street in Sanford, Florida, that fateful evening. “Looks like he’s up to no good or he’s on drugs or something,” Zimmerman said. “Something’s wrong with him.” When an investigator later asked Zimmerman what he meant by those words, the shooter replied, “I don’t know.”

But the prosecutor was forbidden from telling the jury that the “something” that was “wrong” may have been the color of Martin’s skin. The Rev. Dr. Raphael G. Warnock, senior pastor at the Rev. Dr. Martin Luther King Jr.’s Ebenezer Baptist Church in Atlanta, told the New York Times, “Trayvon Benjamin Martin is dead because he and other black boys and men like him are seen not as a person but a problem.”

Howard Simon, executive director of the ACLU of Florida, noted, “George Zimmerman saw a young black male as a threat to his community.”

Clifford Alexander, who worked as a lawyer in the Lyndon Johnson White House, said in an interview with the Washington Post, "The clear reason why Zimmerman had the audacity to approach this child was that he saw the color of his skin as a threat."

Two days after the shooting, Zimmerman's cousin, known as Witness No. 9, told a Sanford police officer in a telephone call, "I know George. And I know that he does not like black people." She added, "He would start something. He's a very confrontational person. It's in his blood. Let's just say that. I don't want this poor kid and his family to just be overlooked."

But the judge sanitized the case and everyone involved was forced to ignore the elephant in the room. Indeed, after the verdict, Mark O'Mara, Zimmerman's defense attorney, made the preposterous statement that if his client were black, "he never would've been charged with a crime."

Jury prevented from considering first aggressor

Florida's self-defense law prohibits "initial aggressors" from using force if their own conduct has provoked that force. So if a defendant "initially provokes the use of force" against himself, he cannot claim to have acted in self-defense, unless he withdraws or retreats.

The prosecution asked the judge to instruct the jury that it could consider who was the first aggressor in the altercation between Zimmerman and Martin. If the judge had agreed to give that instruction, the jury might have concluded that, by following Martin, Zimmerman provoked a physical response from Martin. The defense objected to the instruction, and the judge decided not to give the first aggressor instruction.

The jury was instructed to consider only whether Zimmerman reasonably believed deadly force was necessary to prevent imminent death or great bodily harm to himself - when he later tussled with Martin on the ground. The jury was also told Zimmerman had no duty to retreat, that he could stand his ground, and meet force with force- including deadly force - if he was not engaged in an unlawful activity and was attacked in a place he had a right to be. Finally, the judge instructed the jury that if it had a reasonable doubt about whether Zimmerman was justified in using deadly force, they should find him not guilty.

The instructions prevented the jury from considering whether Zimmerman was the first aggressor when he got out of his truck and began following Martin. When Zimmerman told the 911 operator, "Shit, he's running," the operator asked, "Are you following him?" Zimmerman said that he was. "OK, we don't need you to do that," the operator told Zimmerman. But Zimmerman followed Martin nevertheless. Rachel Jeantel testified that Martin told her on the cellphone he was being followed by a "creepy ass cracker."

The jury was only given partial instructions on self-defense - those parts that helped Zimmerman. They were prevented from considering whether Zimmerman might have been the first aggressor, which would have negated his claim of self-defense.

Ultimately, nothing mattered to the jury, Juror B-37 told Cooper, except whether Zimmerman feared for his life in the seconds before he shot Martin.

Juror B-37 said that Zimmerman was guilty of nothing more than "not using good judgment." She added, "Both were responsible for the situation they had gotten themselves into."

Officer permitted to make credibility judgment

Sanford police officer Chris Serino, the chief investigator on the case, testified that, given all the evidence, he believed Zimmerman was telling the truth. It is well-established that witnesses cannot make credibility judgments – it invades the jury’s exclusive province of determining the credibility and weight of any evidence. But the prosecution didn’t object to Serino’s testimony until the next morning, at which point the judge told the jury to disregard it. Yet the damage was done, and Serino again testified that there were no significant inconsistencies in Zimmerman’s statements to police.

From the beginning, Serino did not believe there was enough evidence to file criminal charges against Zimmerman. The officer told the FBI that he was pressured into making the arrest. Zimmerman finally was charged for Martin’s death only after a powerful national outcry, and the governor’s appointment of a special prosecutor – 40 days following the killing.

Serino testified, “In this case, [Zimmerman] could have been considered the victim also.” Likewise, Juror B-37 felt sorry for both of them – the dead boy and the shooter alike.

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