

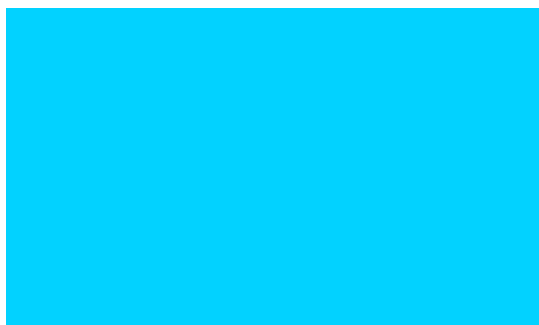
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## The George Zimmerman Trial - A New Jersey Perspective

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New Jersey residents who may be watching or reading published accounts of the ongoing trial of George Zimmerman in the State of Florida, who stands accused of the murder of Trayvon Martin, may be wondering how a similar case might be treated if it had occurred here in New Jersey.

### Zimmerman's permit to carry a handgun

One of the most important aspects of the Zimmerman case is that Mr. Zimmerman was lawfully carrying a concealed handgun pursuant to a carry permit issued to him by the State of Florida. According to [published news reports](#), 919,831 people held permits to carry a concealed weapon in Florida as of March of 2012, or roughly one of every 15 adults in the state. According to the article, in Florida, the authority to issue handgun carry permits is invested in the Florida Department of Agriculture and Consumer Services.

By contrast, here in New Jersey, residents are subject to some of the strictest gun control laws in the country. As of 2011, only approximately 32,000 valid carry permits existed. Our statutes allow only a Superior Court judge to issue a handgun carry permits, after applicants first obtain approval from their local chief of police. N.J.S.A. 2C:58-4d lists the grounds for issuance of a carry permit:

The court shall issue the permit to the applicant if, but only if, it is satisfied:

- [1] that the applicant is a person of good character who is not subject to any of the disabilities set forth in section 2C:58-3c [such as those for one who has been convicted of a crime or is drug dependent],
- [2] that [the applicant] is thoroughly familiar with the safe handling and use of handguns, and
- [3] that [the applicant] has a justifiable need to carry a handgun.

The third requirement – that the applicant has a “justifiable need” to carry a handgun – is often relied upon to deny an otherwise qualified and law-abiding citizens a carry permit. “Justifiable need” has been interpreted to mean “an urgent necessity for self-protection”, to include proof of specific threats or previous attacks demonstrating a special danger to the applicant's life that cannot be avoided by other means. Generalized fears for personal safety are inadequate, and a need to protect property alone does not suffice.

Consequently, based upon published accounts of the George Zimmerman case, it is virtually certain that he would never have been granted a permit to carry a handgun if he were living in New Jersey.

### **Authority to use deadly force**

In 2005, then-Governor Jeb Bush signed a bill giving Florida citizens more leeway to use deadly force in public. The law, known as the "stand your ground" bill, authorizes the use of deadly force to defend ones self in public places without first trying to retreat or escape. While Zimmerman has apparently [waived his right to seek a pretrial ruling](#) on whether his "stand your ground" defense can be established. If the court had ruled that the defense applied, Martin would not even have faced a trial. Because the pretrial hearing was waived, the issue remains in the case as part of the trial.

By contrast, in New Jersey, our statutes require that before anyone may resort to deadly force, the person is under a duty to retreat. Different rules apply to law enforcement officers and people inside of their own homes.

Therefore, based on the accounts of Zimmerman's encounter with Trayvon Martin that have appeared in the media, it would appear he might have a significant problem establishing a defense that he was entitled to use deadly force. There are also issues surrounding whether Zimmerman may be regarded as the initial aggressor, since he apparently ignored a [police dispatcher's direction not to pursue Martin](#). Under New Jersey law, the use of deadly force may not be justifiable if the person using the deadly force provoked the use of force against himself by intending to cause serious injury to the other person.

### **Trial Jurors**

[Much has been written](#) about the fact that Zimmerman is being tried before a jury comprised entirely of women. While that may be an interesting issue for some, it is perhaps more surprising to see that the trial jury is made up of only six jurors. Here in New Jersey, any defendant facing trial for an indictable offense (commonly thought of as a felony) is entitled to a trial before 12 jurors. In Florida, pursuant to [state statute](#), the accused is entitled to trial by a 12 person jury only when facing a potential death sentence, and the charges Zimmerman faces do not expose him to a death sentence. Since the verdict must be unanimous, the laws of statistics compel the conclusion that the prosecution would have a more difficult time securing a conviction if the trial was here in New Jersey because the evidence would have to satisfy twelve different jurors instead of six. [Here is](#) a summary of legal developments that relate to the number of jurors the Constitution requires be seated on a criminal jury.

### **Pretrial Discovery**

Zimmerman and his attorneys have been fortunate enough to benefit from Florida's very liberal criminal discovery rules. Florida is one of a handful of states that routinely permit pretrial depositions in criminal cases, whereby the defense attorney, prior to trial, can question prosecution witnesses under oath to find out what they know. Those who watch the ongoing Zimmerman trial may see defense attorneys cross-examine prosecution witnesses using prior statements given at a deposition. Being able to question witnesses under oath prior to their trial testimony is a valuable tool for Florida criminal defense attorneys.

Here in New Jersey, while we have fairly liberal discovery rules in criminal cases, our rules do not permit routine depositions. Depositions are permitted, but only in very narrow circumstances. Under Court Rule 3:13-2, a deposition can be ordered by the court "if it appears to the judge . . . that a material witness is likely to be unable to testify at trial because of death or physical or mental incapacity" and the court finds that the deposition "is necessary to prevent manifest injustice."

It can be interesting to see the different rules and procedures that are in place in different states.

### **Attorney**

- Darren M. Gelber