

WHY FLORIDA IS CHARGING ZIMMERMAN DIRECTLY INSTEAD OF BY GRAND JURY



As you may have heard by now, the Washington Post has broken the news that Florida officials, to wit Special Prosecutor Angela Corey, will charge George Zimmerman in the

Trayvon Martin killing. The charging is expected late this afternoon, but could be as late as tomorrow. Here is the key information from the Washington Post report:

Florida special prosecutor Angela Corey plans to announce as early as Wednesday afternoon that she is charging neighborhood watch volunteer George Zimmerman in the shooting of Trayvon Martin, according to a law enforcement official close to the investigation.

It was not immediately clear what charge Zimmerman will face.

Both the AP and CBS News have confirmed that Zimmerman will be charged and the AP is reporting the news conference announcing the charge will be at 6:00 pm EST today. Further, the Miami Herald is reporting there will be one single charge filed in the matter, although they do not report what the charge is.

Now, here is why this is occurring, and it is exactly what I predicted from the moment Special Prosecutor Corey's office let it be known that she, on behalf of the state, would not be availing herself of the grand jury process, an

announcement made Monday.

The bottom line is this: a direct information/complaint is a cleaner, and safer, way for Corey to proceed.

The facts are muddled, and the evidence set for the case was compromised, by incompetent investigation by police from the outset. There is, at this point, no question (and, really, there may never have been) any doubt but that Zimmerman had at least at a nominal minimum, an allegeable self defense claim. That does not mean it is valid, but it does mean that it is legally cognizable.

With the screwed up and compromised evidence status, combined with all the public attention and attendant lobbying of law and factual interpretation, it would be brutal for a prosecutor to take the matter to a grand jury. The first thing a good defense lawyer would do upon knowledge of a pending grand jury presentation is salt the prosecutor with every fact and argument humanly imaginable in his client's behalf – in writing – and demand that it be presented to the grand jury along with the state's case. You do that on a high profile case like this with a sloppily worded affirmative defense like Florida's "Stand Your Ground" law, and there is every reason to believe a grand jury would decline.

But, the odds are far different if a prosecutor, in this case Corey, takes the path of filing an direct information and foregoing the grand jury. A direct information, with a duly issued arrest warrant from the court of competent jurisdiction, gives the case the instant imprimatur of legitimacy, and guarantees that it will be determined by an experienced magistrate, and not lay citizens on a grand jury. This is exactly why I argued to Jeff Toobin Monday night that it was a superior path.

Now, a little further depth on what is at play, and for that I will turn to an excellent, and correct, analysis by Reuters on this subject:

To mix metaphors, Stand Your Ground is no Slam Dunk.

The controversial 2005 Florida law grants immunity to people who use deadly force in self defense. In the days since George Zimmerman shot and killed 17-year old Trayvon Martin, critics and supporters both seem to have assumed that if Zimmerman is charged, he could easily seek and win immunity from prosecution under Stand Your Ground.

But don't be so sure. Interviews with nearly a dozen veteran defense lawyers who have experience litigating Stand Your Ground cases suggest winning immunity could be quite difficult.

"Judges do not readily grant these (immunity) motions because they know they can pass it on to the jury," said Carey Haughwout, the public defender for Palm Beach County.

So far, Zimmerman has not charged with any wrongdoing. A special prosecutor, Angela Corey, is still investigating the incendiary case, which carries heavy racial overtones and has stirred a national outcry.

But if charges are filed and Zimmerman does choose to seek immunity, he will face challenges at almost every stage, lawyers said.

The first hurdle will be a special evidentiary hearing in front of a judge, where Zimmerman will have the opportunity to argue that he deserves immunity. But to convince the judge, Zimmerman will have to present a "preponderance of evidence" that he acted in self defense, which under the law means he has to show he had "reasonable belief" that such force was necessary. That is a high bar, and difficult to prove, criminal defense

attorneys said.

In cases where the facts are in dispute – and even if they don't seem to be – the judge is likely to deny the Stand Your Ground immunity motion, said Ralph Behr, a Florida criminal defense attorney who has filed eight motions for immunity, all of which have been denied. More typically, a judge will choose to have the case go to trial, where the defendant must take his or her chance with a jury, just like other criminal defendants, he said.

"Most judges, I think, are comfortable letting the adversarial system play out before a jury rather than make decisions themselves," said Behr.

Bingo! I literally could not have said it better myself. Hats off to Reuters for some fine analysis. See, filing the charge via information guarantees it gets to a court. The first step is almost certainly (and Florida criminal code is a bit, um, confusing, but seems consistent with the norm) that Zimmerman would be given an initial appearance within 48 hours of his actual physical arrest, and would be set for a preliminary hearing within ten days of the date of his initial appearance (unless he waives said time limit and requests an extension). The magistrate is going to want no part of being the final arbiter, and will want to pass this on to a jury trial level court. And, as the Reuters analysis explains, things actually favor the case getting to the jury. This is almost surely why the case is proceeding as it is. And, no, it is not, as Think Progress blithely stated, because Angela Corey definitively decided "Stand Your Ground" is inapplicable; it is about making a further court decide that issue as Reuters explained.

One last thing, in addition to the above discussion, it simply is not, and never has been, that the infamous Florida "Stand Your

Ground” law is the controlling boogeyman that nearly every commentator has made it out to be. David Kopel, at Volokh Conspiracy, says:

Media coverage of Florida’s self-defense laws in recent weeks has often been very inaccurate. While some persons, particularly from the gun prohibition lobbies, have claimed that the Martin/Zimmerman case shows the danger of Florida’s “Stand your ground” law, that law is legally irrelevant to case. So let’s take a look at what the Florida laws actually say.

I do not want to expend the space to cover all that David did again here, but do go read his lengthy piece on the full nature of Florida homicide and self defense law, it is very good. While I do not agree with every thing Kopel says it is, on the whole, spot on as to how Zimmerman/Martin is really a normal self defense/justification case. And so it is.

Lastly, a prediction. As related above, it appears there will be a single count charged in Corey’s information against Zimmerman. That is certainly not unusual nor distressing in the least if you are experienced in such matters. Actually, it is predictable. I predict that charge will be a single count of manslaughter under Florida Revised Statute 782.07 and aggravated under subsection (3) because Trayvon Martin was under the age of 18 years old.

So, that is why we are where we are, and my predictions for where this case is going, and why.