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MARYANNE MORSE
DEPT. CIRCUIT COURT
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BY SEMINOLE CO. FL
D.C.

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

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO.: 2012-001083-CFA

GEORGE ZIMMERMAN,

Defendant.

_____ /

**DEFENDANT’S SPECIFIC RESPONSE TO STATE’S MOTION IN LIMINE
REGARDING SELF-SERVING HEARSAY STATEMENTS OF DEFENDANT**

COMES NOW the Defendant, GEORGE ZIMMERMAN, by and through his undersigned counsel, and files this response to the state’s motion to exclude self-serving hearsay statements of defendant and states the following:

On May 10, 2013 the state filed a “generic” motion to exclude self-serving hearsay statements of the defendant. The motion did not identify any particular statements but it appeared that the state intended to prevent the defense from offering any of Mr. Zimmerman’s many recorded statements to law enforcement, verbal statements to co-workers and friends at some remote time from the event where he explained the circumstances surrounding the shooting of Trayvon Martin in self-defense. This would include Mr. Zimmerman’s statements that Trayvon Martin confronted Mr. Zimmerman, punched him in the nose, struck his head on the concrete sidewalk several times and that Mr. Zimmerman shot Mr. Martin while lying on his back with Trayvon Martin straddling him. And that while this was happening, Mr. Zimmerman was yelling for help.

At the hearing on the state's motion on May 28, 2013, the defense agreed that Mr. Zimmerman's exculpatory statements, remote in time, would not be admissible absent proper evidentiary predicate.

However, in its motion the state also said "Moreover, the statements would not be admissible as part of the *res gestae* in the instant case or under any recognized hearsay exception." At the hearing on May 28, 2013 the defense objected to this broad statement and explained to the Court that while the defense agreed that there are various statements made by Mr. Zimmerman that would not be admissible absent a specific showing, there may indeed be *res gestae* statements that are admissible and that the defense didn't want the Court's Order excluding self-serving hearsay statements to be construed to include admissible *res gestae* statements. The Court was advised that the defense wanted an opportunity to address the *res gestae* statements prior to the commencement of the trial. As the Court is aware, *res gestae* type statements made soon after an event are admissible notwithstanding that they are hearsay. Florida Statutes 90.803 (1), (2), and (3). That they may be "self-serving" or exculpatory is not a reason for exclusion. *Alexander v. State*, 627 So.2d 35 (1st DCA 1993). *Stiles v. State*, 672 So.2d 850 (4th DCA 1996).

Witness 13 and his wife heard a commotion in the back of their townhome. They heard yelling and then heard a shot. Witness 13 grabbed a flashlight and went outside to see what had happened. Within seconds of the shooting, W13 approached Mr. Zimmerman who was staggering, bleeding and breathing hard. The witness observed blood on Mr. Zimmerman's face and the back of his head consistent with someone having been injured in a fight. Mr. Zimmerman asked W13 if he was bleeding? Witness 13 said "yes"¹ and W13 asked Mr.

¹ This witness took a picture of the back of Mr. Zimmerman's head with his cell phone showing Mr. Zimmerman's head covered with blood. This was the first picture of Mr. Zimmerman taken

Zimmerman what had happened? Mr. Zimmerman told W13 that the other person was “beating me up” and he shot him.

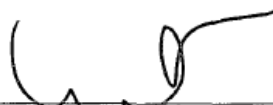
Within a minute or so, Sanford Police Officer Tim Smith arrived on foot at the location where Mr. Zimmerman and W13 were standing². Officer Smith spoke with Mr. Zimmerman at the scene upon his arrival. Mr. Zimmerman acknowledged being the person who fired the shot and that he had a firearm on him. Mr. Zimmerman spontaneously stated that he had yelled for help and that no one helped him.

Both witnesses were disclosed by the state in discovery and were deposed.

These statements of Mr. Zimmerman are precisely like those found to be admissible in the cases cited above and are clearly part of the *res gestae* in the case before the Court. The statements are admissible pursuant to Florida Statute 90.803 (1), (2), and (3).

WHEREFORE, Mr. Zimmerman respectfully requests this Honorable Court to deny the state’s motion in limine as to the *res gestae* statements of Mr. Zimmerman.

Respectfully submitted,



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after the shooting. The witness also took a picture of Trayvon Martin lying face down on the grass in back of another witness’s unit. This was the first picture of Trayvon Martin taken following the shooting. Both pictures were obtained by law enforcement and are evidence in the case.

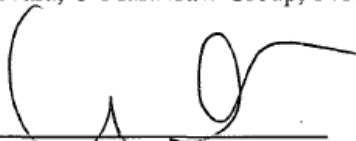
² Mr. Zimmerman had called the police several minutes before and asked that an officer respond to the Retreat at Twin Lakes community. Officer Smith was en route at the time of the shot.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/email/hand delivery this 21st day of June, 2013 to Bernie de la Rionda, Assistant State Attorney, John Guy, Assistant State Attorney, Office of the State Attorney, 220 East Bay Street, Jacksonville, Florida 32202-3429, and Mark M. O'Mara, O'Mara Law Group, 1416 E. Concord St., Orlando, FL 32803.



DONALD R. WEST