

ZIMMERMAN BOND REVOCATION & WHY BOND WILL LIKELY BE REINSTATED

George Zimmerman's bond was revoked last Friday, June 1, 2012. It created a cacophony of cable and network news, and resulting politicized claims and analysis on both sides of the aisle over the blogosphere. All to be expected; it is what they, and we, do. Thing is, that discussion has been substantially removed from the reality of an actual criminal case in a traditional county level state trial court.

The two grounds reported for the bond revocation were duplicity on number and status of passports surrendered and misrepresentation as to financial status to the court for purposes of, and during, the initial bond hearing.

But the passport issue was a dead herring to begin with and never should have been discussed in terms otherwise. At the hearing Friday, the issue was explained and even the trial judge, Ken Lester, definitively stated that it was not a basis in the least, but rather the revocation was based on perceived financial misrepresentations.

That is fair as there was no substantial basis to the passport issue. Zimmerman gave the superseding passport to O'Mara upon discovering it, when he and his wife were packing to move to an undisclosed location, necessitated by physical violence and death threats. O'Mara avowed to the court he had possession of the passport, and that avowal and the evidence he presented of Zimmerman having Fed-Exed it to him coupled with O'Mara having prepared a motion to submit the document, that was prepared upon receipt from Zimmerman, was accepted by the court. Judge Lester explicitly said the passport was not his concern but, rather, the perceived

financial information discrepancy was the basis of revocation.

The real question at this point is whether Zimmerman will again be granted bond, or whether he will remain revoked and remanded to custody pending trial. How the final result on bond plays out depends on how the defense explains and pitches their case. By my calculation, there were exactly two ways that could go. One, admit material blame and, while minimizing, apologize to the court and seek acceptance; or, two, deny any improper conduct and explain and rationalize the conduct. Give some credit to the defense counsel, Mark O'Mara and, yes, the defendant, George Zimmerman, they went with door number one:

Zimmerman's defense team will file a motion today for a second bond hearing. While Mr. Zimmerman acknowledges that he allowed his financial situation to be misstated in court, the defense will emphasize that in all other regards, Mr. Zimmerman has been forthright and cooperative. He gave several voluntary statements to the police, re-enacted the events for them, gave voice exemplars for comparison and stayed in ongoing contact with the Department of Law Enforcement during his initial stage of being in hiding. He has twice surrendered himself to law enforcement when asked to do so, and this should demonstrate that Mr. Zimmerman is not a flight risk. He has also complied with all conditions of his release, including curfew, keeping in touch with his supervising officers, and maintaining his GPS monitoring, without violation.

The audio recordings of Mr. Zimmerman's phone conversations while in jail make it clear that Mr. Zimmerman knew a significant sum had been raised by his original fundraising website. We feel the failure to disclose these funds was

caused by fear, mistrust, and confusion. The gravity of this mistake has been distinctly illustrated, and Mr. Zimmerman understands that this mistake has undermined his credibility, which he will have to work to repair.

That sounds horribly inculpatory; but it may well turn out to be less damaging than it appears. Take what I say with a grain of salt, because I think through the lens of a defense attorney. But, through that lens, Zimmerman should, must, and will again be given bond.

Zimmerman has not been charged with, much less convicted of, another crime while on release. Indeed, while Zimmerman may have sat in court during the initial bond hearing on April 20 like a “potted palm”, as Judge Lester put it, he made no affirmative statements regarding anything substantive to do with the financial information or other release bases. At worst you can say Zimmerman is culpable of omission by silence. But, as easy as it is to forget and/or discount, criminal defendants have a right to silence. That is what is commonly referred to every day in liberal circles as “due process” and “the rule of law”. And all presumptions should run to the favor of the accused, not the state.

Judge Lester indicated he would afford Zimmerman a new hearing on the issue, and attorney O’Mara has indicated he will request just that.

The pertinent statute on bail in Florida is:

Section 903.035: Applications for bail; information provided; hearing on application for modification; penalty for providing false or misleading information or omitting material information.—

(1)(a) All information provided by a defendant, in connection with any application for or attempt to secure bail, to any court, court personnel, or

individual soliciting or recording such information for the purpose of evaluating eligibility for, or securing, bail for the defendant, under circumstances such that the defendant knew or should have known that the information was to be used in connection with an application for bail, shall be accurate, truthful, and complete without omissions to the best knowledge of the defendant.

(b) The failure to comply with the provisions of paragraph (a) may result in the revocation or modification of bail.

(2) An application for modification of bail on any felony charge must be heard by a court in person, at a hearing with the defendant present, and with at least 3 hours' notice to the state attorney.

(3) Any person who intentionally provides false or misleading material information or intentionally omits material information in connection with an application for bail or for modification of bail is guilty of a misdemeanor or felony which is one degree less than that of the crime charged for which bail is sought, but which in no event is greater than a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

At the original bond hearing on April 20, the court found, as a matter of law, the proof was not so evident nor presumption great as to permit denial of bond, as the state had sought.

Nothing has changed that fact as to the sole count of crime charged against Zimmerman, i.e. one count of second degree homicide by depraved mind. The same glaring infirmities which were present originally are still present now.

I cannot see how the court could possibly find basis for reversal of its original finding that there was not "proof evident and presumption great" such as would be required to hold Zimmerman on a no bond finding. There exists simply nothing that has changed in this regard, much less that is materially sufficient, to disturb said original finding. Zimmerman should (I would argue, based on what I see, must) get bail again.

That leaves the nature of terms and conditions for bail. Will Lester change those – namely the amount? I would argue Judge Lester is a heck of a lot more fenced in here, too, than people think. Bail conditions are NOT punishment, they are by law supposed to only be what is sufficient to guarantee appearance of the defendant. Zimmerman has been nothing, if not stand up in his submission to authority of both the police and jurisdiction of the court – from the instant of the shooting where he stood right there, admitted he did it, properly handed over his weapon and submitted to multiple interviews at the repeated request of the state. Then he self surrendered appropriately upon the direct complaint being filed. Now he has, once again, properly appeared and surrendered when requested to do so. That is a solid record of appearance.

There is not one shred of evidence imaginable at this point to indicate Zimmerman will abscond or fail to appear; in fact, the evidence is exactly the opposite: all indicia are that he will appear anytime and every time required. Zimmerman himself does not appear to have committed any new crime, as he made no affirmative statements on financial situation at the original April 20 bond hearing, even if his wife, Shellie, very arguably did. George Zimmerman himself may have sat there like a

“potted palm”, but that is about it. Remember, a criminal defendant has an absolute right to silence.

On what possible basis does the court substantially increase the severity of bond at this point? There is no evidence Zimmerman will fail to appear. He had a right to silence. Interestingly, when Judge Lester revoked the bond Friday, he indicated he may want to hear from Zimmerman at the next bond hearing. That was a very peculiar statement. There already exists a presumption of bail, and Zimmerman cannot be compelled in any way to speak. I think Lester will reconsider the indication Zimmerman must speak. That said, O’Mara may well let Zimmerman speak, but that will be his decision, not compelled by the court.

For the foregoing reasons, I think Zimmerman will again have bail set on the underlying second degree murder count. What is disturbing, from a defense standpoint, is that there should have to be new bond. Judge Lester was petulant and inappropriate to revoke Zimmerman’s bond without affording him an opportunity to respond and explain. Due process in a criminal setting demands adequate notice and ability to defend at “critical stages” of the process. Bond determinations are, by law, just such a “critical stage”. But the state moved for revocation Friday morning, and the matter was heard and decided by the court less than four hours later, thus denying the defense a chance to respond to the state’s written motion, or arrange to have Zimmerman himself appear. The hearing was supposed to have been a mundane one to determine witness identification redactions from upcoming publicly disclosed documents, and the court had previously agreed there was no need for Zimmerman to be present for that.

The court should have simply noted the issue and ordered O’Mara to produce his client for a later scheduled hearing as opposed to revoking the bond without appropriate due process. That the court did so has profound consequences for

Zimmerman. As the original bond was posted with the assistance of a bail bond agent, the moment it was revoked, Zimmerman lost the 10% fee he paid to the agent. To post a new bond, assuming the court indeed sets one, will undoubtedly require another 10% of the bond amount be paid to the bail bondsman. The original bond was \$150,000.00, so Zimmerman is out \$15,000.00. It is easy to say there is no sympathy here for Zimmerman, but that is not the point. The system did not provide adequate notice, opportunity or due process, and such is unfortunate.

Nobody here has distinguished themselves – the Zimmermans were disingenuous, if not dishonest, about their financial situation, the state sandbagged the defense on the bond revocation motion, and the court allowed and enabled the sandbagging. With the tempers calmed, the facts sorted out and firmed up, and a new hearing held, the court should grant new bail to Zimmerman. In fact, it arguably should not even increase the amount of bail as bail is only to be in the amount necessary to insure the defendant's appearance, and Zimmerman has clearly proven he not a flight risk. I predict bond will be set; not sure what Lester will do about the amount.