

Thesis

"Stand your ground" an easy way to hide behind the law.

Too often, gang members, angry neighbors and other deadly aggressors have avoided prosecution by using the Stand Your Ground provision. Criminals can start a confrontation and then the last person standing offers the only version of events.

I. Introduction

Stand your ground law encourages escalation of the aggression instead of help to terminate actions.

My essay is based on the “stand your ground law”, Are there some individuals that invoke this law to avoid criminal liability? The stand-your-ground law it is a defense or immunity to criminal charges and civil suit. Is this law being abused? Difference between Stand your ground law and the castle doctrine, that a person has no duty to retreat whatsoever when their home is attacked. The law should maintain the principles of self-defense, but at the same time it should prevent aggressors from using Stand Your Ground as immunity shield.

It is well known by the public the case State of Florida v. George Zimmerman^[1] that was a criminal prosecution of George Zimmerman on the charge of second-degree murder stemming from the shooting of Trayvon Martin on February 26, 2012. It is also known that Mr. Zimmerman was found not guilty. Mr. Zimmerman defense was based on a controversial Florida law known as “stand your ground”. This law gives individuals the right to use deadly force to defend themselves without any requirement to evade or

retreat from a dangerous situation, the stand-your-ground law it is a defense or immunity to criminal charges and civil suit.

On this research I will research cases in where individuals committed crimes but try to invoke this law to avoid criminal liability, in other words they hide behind this law to commit crimes. In one of those cases *State v. Hill, JR.* ^[2], the State appeals the trial court dismissal of an aggravated battery with firearm charge against the defendant pursuant to Florida's Stand your ground law, section 776.013, Florida statutes (2009). Because the defendant was a convicted felon in possession of a firearm at the time of the shooting, the defendant was precluded from use of the Stand your Ground defense.

II. THE LAW

Prior to the enactment of the Stand Your Ground law, the justifiable use of deadly force by and against a civilian was governed by section 776.012. Section 776.012, Florida Statutes (2004), permitted the use of deadly force if a person "Reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony". In addition, the Florida Supreme Court recognized a common law duty to retreat that required a person to "retreat to the wall" or use "every reasonable means within his or her power to avoid the danger." *Weiand v. State.* ^[3] there was an exception to the duty to retreat for a person claiming self-defense in his or her own residence; that exception was part of the "castle doctrine."

II.1. The "castle doctrine" has been explained as follows:

“A person's dwelling house is a castle of defense for himself and his family, and an assault on it with intent to injure him or any lawful inmate of it may justify the use of force as protection, and even deadly force if there exist reasonable and factual grounds to believe that unless so used, a felony would be committed.”

II. 2. Stand Your Ground law

In 2005, the Florida legislature enacted the Stand Your Ground law which amended sections 776.012 and .031 and created sections 776.013 and .032. Ch. 2005. [4]

II. 2.1. 776.012 Use of force in defense of person.—A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

- (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or
- (2) Under those circumstances permitted pursuant to s. 776.013.

II.2.2. 776.013 No duty to retreat.

Florida statute 776.013(3) says: (a) person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

II.2.3. 776.032 Immunity from criminal prosecution and civil action for justifiable use of force.—

(1) A person who uses force as permitted by Stand Your Ground Law is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer.

III. Statistics

An investigation of the Tampa Bay Times in the November 7, 2013 edition, they published the following information: [5]

Those who invoke "stand your ground" to avoid prosecution have been extremely successful. Nearly 70 percent have gone free.

Defendants claiming "stand your ground" are more likely to prevail if the victim is black. Seventy-three percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white.

In nearly a third of the cases the Times analyzed, defendants initiated the fight, shot an unarmed person or pursued their victim and still went free.

Two-thirds of the defendants used guns, though weapons have included an ice pick, shovel and chair leg.

The oldest defendant was an 81-year-old man; the youngest, a 14-year-old Miami youth who shot someone trying to steal his Jet Ski.

Table 1 describes the likelihood a homicide is ruled justified when there is a single victim and single shooter, they are both male, they are strangers, and a firearm is used. In the six years of FBI data, this fact pattern occurred in 2,631 cases.

As we look at table 1, it is noticeable the increased of murders due to the Stand your ground Law.

Table 1.

Percentage of Homicides Ruled Justified, Martin Case Attributes, 2005–10

| | Total | Non–Stand Your Ground states | Stand Your Ground states |
|----------------|-------|------------------------------|--------------------------|
| White on white | 16.28 | 12.95 | 23.58 |
| White on black | 42.31 | 41.14 | 44.71 |
| Black on white | 8.57 | 7.69 | 11.10 |
| Black on black | 10.14 | 10.24 | 9.94 |

Source: 2005–10 FBI Supplementary Homicide Reports.

III.1. Unequal treatment and inconsistencies.

Discrepancies among cases cannot all be explained by small differences in the circumstances. Some are clearly caused by different interpretations of the law. For example in the case That Derrick Hansberry thought John Webster was having an affair with his estranged wife, so he confronted Webster on a basketball court in Dade City in 2005. A fight broke out and Hansberry shot his unarmed rival at least five times. Ultimately, a jury acquitted Hansberry, but not before police and prosecutors weighed in. Neither thought Hansberry could reasonably argue self-defense because he took the gun with him and initiated the confrontation. A judge agreed, denying him immunity at a hearing.

Compare that case to Deounce Harden's. In 2006, he showed up at Steven Deon Mitchell's Jacksonville carwash business and started arguing over a woman.

When the fight escalated, Harden shot and killed Mitchell, who was unarmed. Prosecutors filed no charges.

Similar inconsistencies can be found across the state:

During an argument at a 2009 party in Fort Myers, Omar Bonilla fired his gun into the ground and beat Demarro Battle, then went inside and gave the gun to a friend. If Battle feared for his life, he had time to flee. Instead, he got a gun from his car and returned to shoot Bonilla three times, including once in the back.

Battle was not charged in the slaying.

When Gerald Terrell Jones shot his marijuana dealer in the face in Brandon this year, he was charged with attempted murder and aggravated assault. A jury later acquitted him. But a judge had rejected Jones' "stand your ground" motion, in part, because he was committing a crime at the time.

In a case involving a juvenile, the court erred on his claim of Stand your Ground since the juvenile was not engaged in an unlawful activity, he had the right to be on school bus, had no duty to retreat and he had the right to meet force with force to prevent great bodily injury harm to himself, T.P. v. State. [6]

Not only is it generally unclear how an officer is to make the probable cause determination when a person accused of assault raises the Stand your Ground Law, and it is less clear when the alleged trespasser is in retreat, Reagan v. Mallory. [7]

III.2. Questionable and abuse cases

In one of the cases that criminals try to abuse the law, the State of Florida, v. Harvey M. Hill, Jr., defendant case was dismissed due to the protection of the stand your ground defense but later he was convicted in appeal due to be a felon in possession of the weapon. In another case Little v. State, [8], the defendant was found guilty of murder but as pertains to the circumstances, even though Little's use of force was not permitted in section 776.013(3), he was permitted in section 776.012(1) of SYG and he was allowed to have a retrial.

In Dorsey v. State, [9] defendant was convicted of 2 counts of second degree murder; it was found that the trial court erred in instructing the jury on the justifiable use of deadly force, specifically regarding the duty to retreat under the "Stand Your Ground" law. Accordingly, the defendant's convictions were reversed for second degree murder and remand for a re-trial on manslaughter charges.

In another intent to abuse the Stand your Ground law the defendant shot the victim when the victim was waking away from the garage towards his truck but the facts did not establish that defendant was entitled to immunity, *State v. Heckman*. [10]

In many cases of abuse or questionable cases where the SYG is been claimed, whatever lawmakers' expectations "stand your ground" arguments have resulted in freedom or reduced sentences for some unlikely defendants, for example Anthony Gonzalez Jr. was part of a 2010 drug deal that went sour when someone threatened Gonzalez with a gun. Gonzalez chased the man down and killed him during a high-speed gun battle through Miami streets. Before the "stand your ground" law, Miami-Dade prosecutors would have had a strong murder case because Gonzalez could have retreated instead of chasing the other vehicle. But Gonzalez's lawyer argued he had a right to be in his car, was licensed to carry a gun and thought his life was in danger.

IV. States with Stand Your Ground Laws

According to the National Conference of State Legislatures, 22 states have laws that allow that "there is no duty to retreat (from) an attacker in any place in which one is lawfully present." The states are Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah and West Virginia, according to the National Conference of State Legislatures. [11]

At least nine of those state laws include language stating one may "stand his or her ground": Alabama, Florida, Georgia, Kansas, Kentucky, Louisiana, Oklahoma, Pennsylvania and South Carolina, according to the National Conference of State Legislatures.

Some of the questionable cases of Stand Your Ground law on these states: [12]

In November 2007, a Houston-area man pulled out a shotgun and killed two men whom he suspected of burglarizing his neighbor's home. Joe Horn, a 61-year-old retiree, called 911 and urged the operator to "Catch these guys, will you? Cause, I am not going to let them go." Despite being warned to remain inside his home, Horn stated he would shoot, telling the operator, "I have a right to protect myself too, sir. The laws have been changed in this country since September the first, and you know it."

Two months earlier, the Texas Legislature passed a Stand Your Ground law removing a citizen's duty to retreat while in public places before using deadly force. In July 2008, a Harris County grand jury declined to indict Horn of any criminal charges.

In Louisiana early this year, a grand jury cleared 21-year-old Byron Thomas after he fired into an SUV filled with teenagers after an alleged marijuana transaction went sour. One of the bullets struck and killed 15-year-old Jamonta Miles. Although the SUV was allegedly driving away when Thomas opened fire, Lafourche Parish Sheriff Craig Webre said to local media that as far as Thomas knew, someone could have jumped out of the vehicle with a gun. Thomas, said the sheriff, had "decided to stand his ground."

Louisiana's Stand Your Ground law was enacted just a year after Florida introduced its law.

In March 2012, Bo Morrison was shot and killed by a homeowner in Wisconsin who discovered the unarmed 20-year-old on his porch early one morning. According to friends, Morrison was trying to evade police responding to a noise complaint at a neighboring underage drinking party. The homeowner, thinking Morrison was a burglar, was not charged by the local district attorney.

In April, 22-year-old Cordell Jude shot and killed Daniel Adkins Jr., a pedestrian who walked in front of Jude's car just as Jude was pulling up to the window of a Taco Bell drive-thru in Arizona. Jude claimed Adkins had waved his arms in the air, wielding what Jude thought was a metal pipe, it was actually a dog leash. Jude shot the 29-year-old Adkins, who was mentally disabled, once in the chest. As of May, an arrest had not been made in the April 3 shooting. Arizona passed a Stand Your Ground law in 2010.

V. Pro stand Your Ground

John Allan Peschong ^[13] who served in President Ronald Reagan's administration states that "Stand Your Ground" laws simply extend castle doctrine protections out of the home and into any place individuals lawfully have a right to be, provided they are not engaging in criminal activity.

When victims are faced with a split-second decision whether to defend themselves or their families from violent acts, the law should be unambiguous, empowering them to take action.

In California (which does not have a "Stand Your Ground" law), a woman who shoots an aggressor attempting to sexually assault her could be criminally and civilly liable under some circumstances. This is precisely why "Stand Your Ground" laws are needed;

wouldn't it be better to err on the side of victims in these horrific cases? Far from being a "shoot first" law, stand your ground gives the benefit of the doubt to the victim."

State legislators who supported Florida's law cite a 23 percent drop in violent crime over the first five years the law was in effect; they contend that criminals were cowed by the knowledge that citizens could legally shoot them in self-defense.

Florida state Rep. Dennis Baxley, who co-sponsored the original bill, says the jump in justifiable homicides (Florida civilians committed an average of 12 justifiable homicides a year. Two years after the law's passing, that number surged to more than 40 a year) simply proves that the law is working. "The perpetrator suffered instead of the person they were victimizing," said Baxley. "That's what those numbers mean." Supporters note that the law contains safeguards designed to counter vigilantism and prevent criminals from murdering someone and then claiming self-defense. [14]

VI. Against Stand your ground Law

The following article resumes most of the feelings that citizens against Stand your ground believe: [15]

Stand Your Ground laws should be repealed because:

1. The law requires that enforcement officials prove that a suspect did not act in self-defense. You cannot prove motive with confidence on the basis of circumstantial evidence when the other guy happens to be dead.

2. They protect shooters from civil suits, where the burden of proof for a civil judgment is lower. This means that when the state doesn't press charges, no civil options remain to the victim's family.
3. Many of the victims have been unarmed, according to Orlando Sentinel investigation.
- 4.. Clueless gun owners, like George Zimmerman, who are inclined to ignore or misunderstand regulations regarding use of a firearm, will falsely believe they have rights that they do not, in reality, possess.
5. They encourage vigilantism by codifying a set of assumptions that magnifies the real degree of threat posed by "suspicious" persons possessed of unknown intent. This effect is exacerbated by racial profiling, as well as outright racism, and further fueled by the now infamous "hoodie effect."
6. People under investigation for having committed a crime involving the use of a firearm already possess a presumption of innocence.
7. They serve to reinforce the brutality of American society, driven by a paranoid sense of threat experienced by certain armed civilians.

VII. Conclusions.

By allowing and perhaps encouraging violent situations to escalate in public, such laws undermine public safety. The list of resulting tragedies is long and, unfortunately, has victimized too many who are innocent.

Stand Your Ground laws, also known as “Shoot First” laws; they should be called Last Man Standing Laws, because the last man standing in a fatal altercation calls the shots, so to speak.

Stand your Ground is not a good law, it is misuse, protects the attackers, increased violence and do not work on behalf of the citizen that is in search of peaceful settlement of a conflict.

VIII. References.

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- The Week Magazine.

- The Tribune, Perspective from a conservative BY JOHN PESCHONG, August 11, 2013

- National Conference of State Legislatures, *Posted August 30, 2013.*

- www.Lexis.com.

IX. Endnotes

[1] State of Florida v. George Zimmerman (2012-CF001083-A)

[2] State v. Hill, JR. [1] , 95 So. 3d 434 - Fla: Dist. Court of Appeals, 4th Dist. 2012. case was dismissed by the stand your ground defense but later he was convicted due to be a felon in possession of the weapon.

[3] Weiland v. State, 732 So. 2d 1044, 1049, 1050 (Fla. 1999). There is still a common law duty in Florida to reasonably use any means to avoid danger, including retreat prior to use of deadly force.

[4] The 2013 Florida Statutes, Title XLVI, crimes, Chapter 776, JUSTIFIABLE USE OF FORCE,

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0776/Sections/0776.032.html

[5] The Tampa Bay Times, "Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied" (November 7, 2013)

<http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>

[6] T.P. v. State, 2013 FLA. App. LEXIS 11228 (Fla. 4th DCA July 17, 2013).

[7] Reagan v. Mallory, 2011 U.S. App. LEXIS 12041 (11th Cir. June 13, 2011) (unpublished).

[8] Little v. State, Case No. 2D11-5098. District Court of Appeal of Florida, Second District.

[9] Dorsey v. State (No. 4D09-1940. October 19, 2011)

[10] State v. Heckman, 993 So. 2d 1004, 2007 Fla. App LEXIS 19316 (Fla. 2nd DCA 2007)

[11] National Conference of State Legislatures. <http://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.aspx>. *Posted August 30, 2013*

[12] ProPublica.org. <http://www.propublica.org/article/five-stand-your-ground-cases-you-should-know-about> by Suevon Lee ProPublica, June 8, 2012, 11:31 a.m.

[13] The Tribune, <http://www.sanluisobispo.com/2013/08/11/2627362/pro-con-stand-your-ground-laws.html> Perspective from a conservative BY JOHN PESCHONG, August 11, 2013

[14] The Week Magazine, <http://theweek.com/article/index/227159/stand-your-ground-laws-do-they-offer-a-license-to-kill>, By The Week Staff | April 27, 2012

[15] "Ten Reasons to Repeal Stand Your Ground Laws" APRIL 11, 2012 5:24 PM

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