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# Unintended Lawlessness of Stand Your Ground: Justitia Fiat Coelum Ruat

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**UNINTENDED LAWLESSNESS OF STAND YOUR GROUND:  
JUSTITIA FIAT COELUM RUAT<sup>1</sup>**

ANN MARIE CAVAZOS<sup>†</sup>

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1. Douglas O. Linder, *ESSAY ON THE TRIALS OF THE CENTURY: Without Fear or Favor: Judge James Edwin Horton and the Trial Of The “Scottsboro Boys,”* 68 UMKC L. REV. 549, 578 (2000) (citing JOHN TEMPLETON GRAVES II, *THE FIGHTING SOUTH* 208-09 (1943)) (*Justitia Fiat Coelum Ruat* translates to “Let Justice Be Done Though the Heavens May Fall”). The Honorable James Edwin Horton stated that his mother had taught him this phrase, which she said was her father’s motto. *Id.* at 578. Judge Horton further stated that “it has frequently come to mind in difficult situations.” *Id.* Judge Horton is known for his heroic decision in the Scottsboro trial in which he sought justice against the hatred that had swept the South. *Id.* at 549. The Scottsboro trials involved nine black teenagers who had been accused of rape by two Caucasian women in 1931. *Id.* at 550. After the setting Patterson’s sentence, Judge Horton set aside the conviction and granted a new trial. *Scottsboro Timeline*, PBS, <http://www.pbs.org/wgbh/amex/scottsboro/timeline/index.html> (last visited Aug. 30, 2015). He also postponed the trials of the other defendants because tensions in town were running too high to expect a “just and impartial verdict.” *Id.*

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## I. INTRODUCTION

Many stories have been written romanticizing aspects of lawlessness in the Wild West, where individualism was prized and justice was dispensed vigilante-style. One aspect of that story still persists today: the general idea that a man will be excused for using force to defend his home. This doctrine is known as the “castle law.”<sup>2</sup> Over time, lawmen in various state legislatures have codified versions of the judicial doctrine, expanding the definition of what can be considered a “home” and addressing the steps the modern vigilante must take to avail himself of the defense. These laws typically go by the moniker, “Stand Your Ground.”

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2. *Castle Doctrine*, BLACK’S LAW DICTIONARY (10th ed. 2014).

In 2005, the Florida Legislature enacted a law that allowed persons who are faced with confrontation to meet force with force, without a duty to retreat.<sup>3</sup> This law applies to persons that are in a location where they have a right to be, and when the use of force is necessary to prevent death, great bodily harm, or the commission of a forcible felony.<sup>4</sup> The law authorizes law enforcement agencies to investigate the use of deadly force. However, it prohibits the agency from making an arrest unless the agency determines that probable cause exists and that the force used was unlawful.<sup>5</sup> The essence of the law is to provide the person who lawfully used deadly force (the enforcer) with immunity from criminal prosecution<sup>6</sup> and civil action. The law further provides for the award of attorney's fees, court costs, compensation for loss of income, and other expenses to the defendant in a civil suit.<sup>7</sup>

This law is codified in Florida Statutes sections 776.012 and 776.013 and is also known as the "Stand Your Ground Law."<sup>8</sup> The law reads as follows:

(1) A person is presumed<sup>9</sup> to have held a reasonable fear of imminent peril of death or great bodily harm to himself or

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3. FLA. STAT. ANN. § 776.013 (West 2014). (effective Oct. 1, 2005).

4. *Id.*

5. *Id.*

6. FLA. STAT. ANN. § 776.032(1) (West 2014) (The Chapter defines the term "criminal prosecution" to include arresting, detaining in custody, and charging or prosecuting the defendant.).

7. FLA. STAT. ANN. § 776.032(3) (West 2014).

8. FLA. STAT. ANN. § 776.013 (West 2014).

9. *See* FLA. STAT. ANN. § 776.013(2) (West 2014). This presumption does not apply if:

- (a) The person against whom the defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or
- (b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used or threatened; or
- (c) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- (d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle,<sup>10</sup> or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(3) 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.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.<sup>11</sup>

This law drew notoriety after a Hispanic-Caucasian neighborhood watch captain killed a black, unarmed teenager during an altercation on

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*Id.*

10. See FLA. STAT. ANN. § 776.013(5) (West 2014). As used in this section, the term:

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

*Id.*

11. See FLA. STAT. ANN. § 776.013 (West 2014) (paraphrased for clarity).

February 26, 2012.<sup>12</sup> At that time, most knew very little of the Stand Your Ground law, but nevertheless felt an injustice had taken place.<sup>13</sup>

Prior to the enactment of the Stand Your Ground laws, *victims of crimes* who kill or injure their attackers could be liable to their attackers or criminally prosecuted.<sup>14</sup> But the enactment of Stand Your Ground laws across the United States has shielded certain individuals from arrest, prosecution, and even civil liability.<sup>15</sup> In American jurisprudence, a person does not have the duty to retreat when another is seeking to inflict harm upon the home dweller or his property within the confines of the dwelling, but can use the force necessary to repel the harm, even if it results in deadly force.<sup>16</sup> Many states, with Florida leading the way, have expanded this jurisprudence known as the “Castle Doctrine,”<sup>17</sup> so that a person’s “castle” may extend to areas outside of one’s dwelling.<sup>18</sup> Therefore, the same rule at the heart of the castle doctrine, no duty to retreat and the use of deadly force, can now be applied outside of that proverbial “castle.”<sup>19</sup>

Forty-six states have adopted the “Castle Doctrine”<sup>20</sup> and twenty-three states have gone further by enacting legislation that adopts the Stand Your Ground Law, thus expanding the parameters of the castle.<sup>21</sup>

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12. Patrik Jonsson, *Who Is George Zimmerman, and Why Did He Shoot Trayvon Martin?*, CHRISTIAN SCI. MONITOR (MAR. 24, 2012), <http://www.csmonitor.com/usa/2012/0324/who-is-george-zimmerman-and-why-did-he-shoot-trayvon-martin>.

13. *Id.*

14. *See, e.g.*, U.S. v. Peterson, 483 F.2d 1222, 1234-35 (D.C. Cir. 1973) (“Even the innocent victim of a vicious assault had to elect a safe retreat if available, rather than resort to defensive force which might kill or seriously injure.”).

15. *See, e.g.*, FLA. STAT. ANN. § 776.032(1) (West 2014) (providing persons who lawfully used deadly force with immunity from criminal prosecution or civil action).

16. *Peterson*, 483 F.2d at 1236.

17. Jeannie Suk, *The True Woman: Scenes From the Law of Self-Defense*, 31 Harv. J.L. & Gender 237, 242 (2008).

18. *See Shoot First: ‘Stand Your Ground’ Laws and Their Effect on Violent Crime and The Criminal Justice System*, EVERYTOWN FOR GUN SAFETY (Sept. 18, 2013), <http://everytown.org/documents/2014/10/shoot-first.pdf>. (The twenty-three States are: Alabama, Alaska, 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. This article erroneously excludes the state of Utah). *See* UTAH CODE ANN. § 76-2-402 (West 2010).

19. *Id.*

20. *Understanding Castle Doctrine and Duty to Retreat*, CCHSAFETY.COM (Apr. 19, 2015), <http://cchsafety.com/top-must-reads/understanding-castle-doctrine-and-duty-to-retain/>.

21. *See Shoot First*, *supra* note 18. *But see* UTAH CODE § 76-2-402 (West 2010). (Florida passed the first Stand Your Ground Law in 2005.).

The question becomes whether Stand Your Ground laws have done more to protect its citizenry or whether it promotes a society that parallels the perennial image of the “Wild West?” Florida’s Stand Your Ground law has brought to the forefront many questions in the last number of years as to whether this law needs to be repealed as an ancient worldview and way of responding to an intruder or an attacker. Others argue that the Second Amendment in which the “right to bear arms” is codified, is essential to the rights of every American and cannot be, as outlined in this provision of the Bill of Rights, be “infringed upon.”<sup>22</sup> The concern is whether the 21st century ideology of Stand Your Ground law is rational within our postmodern framework of civility or whether it represents an outmoded frontier/survival approach to defending oneself. Stand Your Ground law must rely on objective criteria as opposed to subjective feelings or mere perception. We do not live in the Wild West and civil society/community demands change to accommodate the times. Does this change entail repealing or revising the Stand Your Ground law?

This paper will examine Florida’s Stand Your Ground law by analyzing the origins and purpose of the law, vis-a-vis comparative analysis, and by discussing the application of this law. It will compare the stories of victims and further dissect the necessity and benefits of the Stand Your Ground laws, and examine in particular how it has affected the citizens of Florida and the nation. This Article will examine unforeseen outcomes derived from the enactment of a law meant for the common good and will further discuss how the Castle Doctrine evolved into the current Stand Your Ground laws. It will use a comparative approach to examine the origins of Stand Your Ground laws; and provide anecdotal cases of how the law has been applied in Florida, which has led to disparate, conflicting, and confusing results in many Florida courts.

To better understand self-defense laws, it is important to understand how they evolved from the “Castle Doctrine.” An analysis of the Castle Doctrine and the Stand Your Ground laws is necessary to understand the transition of victim to culprit.

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22. See U.S. CONST. amend. II. While the Constitution provides that, “[a] well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed;” this right can be regulated. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

*A. The Origin Story: It All Started With The Castle Doctrine*

It is said that laws reflect the culture of society.<sup>23</sup> The duty to “retreat to the wall” is known as the Castle Doctrine.<sup>24</sup> This was the first safety net legally constructed for both victim and perpetrator.<sup>25</sup> It required retreating before a person could legitimately kill in self-defense.<sup>26</sup> The Castle Doctrine, which states that the rule of retreat does not apply to use of deadly force in the home, is rooted in common law and evolved through case law to be eventually codified in statutory law.<sup>27</sup> This section will discuss the seminal cases from various states that demonstrate this evolution of self-defense laws and how they influenced Florida’s courts in creating and applying the Stand Your Ground law. These cases, from the facts outlined below, illustrate how the roles of victims and attackers interchange.

*1. Iowa 1967: Defendants May Use Deadly Force Only to Apprehend Specific Felonies or to Prevent Harm to Human Life.*

For about ten years, Marvin Katko had observed a house on a large piece of property that he believed to be uninhabited and abandoned.<sup>28</sup> One day, he and a friend went onto the property and found several old bottles and fruit jars, which they took to add to their collection of antiques.<sup>29</sup> On July 16, 1967, at about 9:30 pm, they made a second trip to the property.<sup>30</sup> This time, Katko and his friend entered the old house by removing a wooden board from a porch window.<sup>31</sup> While the friend looked around the kitchen area, Katko decided to search another part of the house, where they had not ventured before.<sup>32</sup> Upon opening the north bedroom door, a shotgun went off striking Katko in the right leg.<sup>33</sup>

The house and property belonged to Bertha L. Briney, who had inherited the house where her grandparents and parents had lived.<sup>34</sup> Over those preceding ten years, Bertha’s husband, Edward Briney, had continuously attempted to maintain the property and home, but a series

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23. Elaine M. Chiu, *Culture in Our Midst*, 17 U. FLA. J.L. & PUB. POL’Y 231 (2006).

24. *Id.* at 242.

25. *Id.*

26. *Id.*

27. *Id.* at 248.

28. *Katko v. Briney*, 183 N.W.2d 657, 658 (Iowa 1971).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 658-59.

34. *Id.*

of trespassing and housebreaking incidents resulted in the loss of household items and vandalism to the property.<sup>35</sup> The Brineys attempted to protect the property by boarding up windows and doors, and by placing no trespassing signs in several areas on the property.<sup>36</sup>

Eventually, the Brineys decided to set up a shotgun trap in the north bedroom by securing a shotgun to an iron bed with the barrel pointed at the door, and rigged it with wire from the doorknob to the trigger so that it would fire when the door was opened.<sup>37</sup> The spring gun could not be seen from the outside of the home and no warning of its presence was posted.<sup>38</sup>

Although Katko knew he had committed a crime by entering the home and removing items, he filed a successful civil lawsuit against the Brineys.<sup>39</sup> Subsequently, the civil suit was appealed to the Iowa Supreme Court, which affirmed the lower tribunal.<sup>40</sup> In reaching its decision, the Iowa Supreme Court reviewed the trial court's transcripts.<sup>41</sup> In the statement of issues, the trial court stated that Katko and his companion had committed a felony when they broke into and entered the Brineys' house.<sup>42</sup> In instructing the jury, the trial court referred to the early case history of the use of spring guns.<sup>43</sup> The trial court stated that under the law, the use of spring guns was prohibited except to prevent the commission of felonies of violence and where human life is in danger, but that breaking and entering was not to be considered a felony of violence.<sup>44</sup> The trial court further instructed the jury as follows:

'You are hereby instructed that one may use reasonable force in the protection of his property, but such right is subject to the qualification that one may not use such means of force as will take human life or inflict great bodily injury. Such is the rule even though the injured party is a trespasser and is in violation of the law himself.'

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35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

‘An owner of premises is prohibited from willfully or intentionally injuring a trespasser by means of force that either takes life or inflicts great bodily injury; and therefore a person owning a premise is prohibited from setting out ‘spring guns’ and like dangerous devices which will likely take life or inflict great bodily injury, for the purpose of harming trespassers. The fact that the trespasser may be acting in violation of the law does not change the rule. The only time when such conduct of setting a ‘spring gun’ or a like dangerous device is justified would be when the trespasser was committing a felony of violence or a felony punishable by death, or where the trespasser was endangering human life by his act.’<sup>45</sup>

During the trial, the jury’s findings of fact included a finding that the Brineys had acted with malice and with wanton and reckless disregard that was supported by substantial evidence.<sup>46</sup> The Iowa Supreme Court affirmed the judgment.<sup>47</sup>

The decision rendered in *Katko v. Briney* was rooted in the doctrine requiring non-offending parties to retreat.<sup>48</sup> The duty to retreat requires that one must retreat from an attack and provides that the use of deadly force is only permissible in self-defense if doing so is either impossible or would pose danger to the non-offending party.<sup>49</sup> This common law principle is still followed by some states but has been expanded to expound on specific nuances. One such nuance is the Castle Doctrine.

Prior to the enactment of Florida’s Stand Your Ground law, the duty to retreat was adopted to the extent that one was permitted to use non-deadly force when necessary, or deadly force in delineated circumstances, against another individual, while acting in self-defense, but required retreat prior to using such force.<sup>50</sup> This meant that deadly

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45. *Id.* at 659.

46. *Id.*

47. *Id.*

48. 6A C.J.S. ASSAULT § 109 (2015).

49. 40 C.J.S. HOMICIDE § 216 (2015).

50. *Weiand v. State*, 732 So.2d 1044, 1049 (Fla. 1999); FLA. STAT. § 776.012 (1997).

The statute previously read:

A person is justified in the use of 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 another against such other’s imminent use of unlawful force. However, the person is justified in the use of deadly force only if 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.

*Id.*

force was permitted only in instances where it would unreasonable for one to avoid the offending conduct or where he was present with imminent risk of danger likely to cause great bodily harm or death.<sup>51</sup>

An exception to this law arose with the Castle Doctrine. The Castle Doctrine developed as a means to limit the duty to retreat, and thereby expand the rights of those who invoke its power.<sup>52</sup> Florida has defined the Castle Doctrine as a privilege one enjoys when in one's own dwelling place, such that:

[W]hen one is violently assaulted in his own house or immediately surrounded premises, he is not obliged to retreat but may stand his grounds and use such force as prudence and caution would dictate as necessary to avoid death or great bodily harm. . . . A man is under no duty to retreat when attacked in his own home. His home is his ultimate sanctuary.<sup>53</sup>

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51. FLA. STAT. ANN. § 776.012 (West 2004).

52. *Id.*

53. *Weiland* 732 So.2d at 1050; *see* *Butler v. State*, 493 So.2d 451, 453 (Fla. 1986); *see also* *State v. James*, 867 So.2d 414, 416 (Fla. Dist. Ct. App. 3d Dist. 2003).

2. *Colorado 1986: Defendants Who Use Deadly Force Must Prove Entitlement to Immunity.*<sup>54</sup>

During the evening and early morning hours of April 19 and April 20, 1986, several people gathered to drink at Michael and Josslyn Volosin's residence.<sup>55</sup> Late in the evening, three of the men left the party and went to the Guenther's home, which was located across the street and two houses to the north of David and Pam Guenther's home.<sup>56</sup> One of them began banging on the Guenther's car, shouting obscenities, and challenging David Guenther to come out of the house.<sup>57</sup> The men finally left after Pam Guenther told them that her husband was not at home and that she was going to call the police.<sup>58</sup> After the police arrived and discussed the initial incident with Pam Guenther, the police went to the Volosins' home and also talked to Josslyn Volosin.<sup>59</sup> Eyewitnesses were in conflict as to the events that followed.<sup>60</sup> At some point after the police left, Pam Guenther screamed for help, and her husband fired four shots

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54. *People v. Guenther*, 740 P.2d 971, 980 (Colo. 1987) (citing COLO. REV. STAT. ANN. § 18-1-704.5(3) (West 1985) and discussing its legislative history). The case provided:

In explaining the need for the proposed legislation, the co-sponsor of the statute, Senator Brandon, stated at a legislative committee hearing on the bill that under current Colorado law a homeowner might not be convicted in the situation addressed by the bill, but would in any event be required to hire an attorney and perhaps "put his home on the block" in order to avoid a jail sentence. Tape recording of Senate Committee on State Affairs Hearing, April 2, 1985 (remarks of Sen. Brandon). This statement clearly suggests that the bill was intended to spare a homeowner the financial burden of a trial. After the bill was redrafted in response to concerns expressed by district attorneys, Representative Mielke explained at a Conference Committee meeting that the committee members had eliminated earlier language creating a presumption that a homeowner's use of deadly physical force against an intruder was reasonable and had redrafted the provision to state that the person "shall not be prosecuted—shall be immune from prosecution." Audio recording: Legislative Conference Committee Meeting (May 22, 1985) (remarks of Rep. Mielke). This legislative history thus supports the inference that the General Assembly understood, and obviously intended, that the immunity provision of section 18-1-704.5(3) would protect a home occupant from the burden of defending a criminal prosecution when it was determined that the conditions for statutory immunity were established.

*Id.* at 976.

55. *Id.* at 973.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

from the front doorway.<sup>61</sup> One shot hit and wounded Michael Volosin, who was lying on the ground next to the Guenthers' porch.<sup>62</sup> Robbie Alan Wardwell, a guest of the Volosins, was wounded by a second shot as he was walking across the Guenthers' front yard to help Josslyn Volosin break up the fight.<sup>63</sup> A third shot killed Josslyn Volosin.<sup>64</sup> The district court found that Michael Volosin had made an unlawful entry into the Guenthers' residence and that the defendant had a reasonable belief that Volosin was committing a crime against Pam Guenther and using physical force.<sup>65</sup> The district court concluded as follows:

[S]ection 18-1-704.5(3)<sup>66</sup> does not simply provide an affirmative defense to criminal charges, but grants immunity from prosecution for the crimes charged; that this statute does not impermissibly interfere with the prosecutor's executive function in determining whether to file criminal charges in a given case; that the statutory immunity applied to charges based on force directed not only against an actual intruder into the Guenthers' home but also to charges based on force directed against other persons involved in the incident who did not enter the Guenther home; that it was the prosecution's burden to disprove beyond a reasonable doubt the facts constituting the

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61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. COLO. REV. STAT. ANN. § 18-1-704.5 (West 1985). The statute provides:

(1) The general assembly hereby recognizes that the citizens of Colorado have a right to expect absolute safety within their own homes.

(2) Notwithstanding the provisions of section 18-1-704, any occupant of a dwelling is justified in using any degree of physical force, including deadly physical force, against another person when that other person has made an unlawful entry into the dwelling, and when the occupant has a reasonable belief that such other person has committed a crime in the dwelling in addition to the uninvited entry, or is committing or intends to commit a crime against a person or property in addition to the uninvited entry, and when the occupant reasonably believes that such other person might use any physical force, no matter how slight, against any occupant.

(3) Any occupant of a dwelling using physical force, including deadly physical force, in accordance with the provisions of subsection (2) of this section shall be immune from criminal prosecution for the use of such force.

(4) Any occupant of a dwelling using physical force, including deadly physical force, in accordance with the provisions of subsection (2) of this section shall be immune from any civil liability for injuries or death resulting from the use of such force.

*Id.*

basis for the application of the statutory immunity; and that the prosecution had failed to meet its burden.<sup>67</sup>

The district court ultimately dismissed all the charges against David Alan Guenther.<sup>68</sup>

In 1987, the People appealed to the Colorado Supreme Court the judgment dismissing the charges of second degree murder, first degree assault, and the commission of a crime of violence filed against David Alan Guenther.<sup>69</sup> The court concluded that the burden of proof should be placed on the defendant to prove his entitlement to immunity by a "preponderance of the evidence."<sup>70</sup> Additionally, the Colorado Supreme Court noted that the district court erroneously imposed upon the prosecution the burden of proving beyond a reasonable doubt that the defendant's conduct did not satisfy the statutory conditions for immunity.<sup>71</sup> The Colorado Supreme Court held that:

[W]hen section 18-1-704.5(3) is invoked prior to trial as a bar to a criminal prosecution, the burden is on the defendant seeking the benefit of the statutory immunity to establish by a preponderance of evidence that: (1) another person made an unlawful entry into the defendant's dwelling; (2) the defendant had a reasonable belief that such other person had committed a crime in the dwelling in addition to the uninvited entry, or was committing or intended to commit a crime against a person or property in addition to the uninvited entry; (3) the defendant reasonably believed that such other person might use physical force, no matter how slight, against any occupant of the dwelling; and (4) the defendant used force against the person who actually made the unlawful entry into the dwelling.<sup>72</sup>

The Court also stated that:

[I]f the pretrial motion to dismiss on grounds of statutory immunity is denied, the defendant may nonetheless raise at trial, as an affirmative defense to criminal charges arising out of the defendant's use of physical force against an intruder into his home, the statutory conditions set forth in section 18-1-

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67. *Guenther*, 740 P.2d at 973-74.

68. *Id.* at 974.

69. *Id.* at 972.

70. *Id.*

71. *Id.*

72. *Id.* at 981.

704.5(2). In such an instance, the burden of proof generally applicable to affirmative defenses would apply to the defense created by section 18-1-704.5(2). The defendant would be required to present some credible evidence supporting the applicability of section 18-1-704.5(2); and, if such evidence is presented, the prosecution would then bear the burden of proving beyond a reasonable doubt the guilt of the defendant as to the issue raised by the affirmative defense as well as all other elements of the offense charged. § 18-1-407, 8B C.R.S. (1986).<sup>73</sup>

The judgment of dismissal was reversed and the case was remanded to the district court for further proceedings in accordance with the holding of the Colorado Supreme Court.<sup>74</sup>

### 3. *Iowa 2010: Defendant Who Gave Fair Warning is Acquitted but Loses Everything in the Process*

Many have asked why Stand Your Ground laws were created. Some extremists believe that these laws are a ruse to justify the killing of minorities. Others believe it is a campaign by gun manufacturers and gun owners in support of the Second Amendment, and the right to bear arms.<sup>75</sup> One of the first cases that led the way for these Stand Your Ground laws and theories was the case of Jay Rodney Lewis.<sup>76</sup> When Lewis moved from Kansas to West Des Moines, Iowa, he had a permit to carry a concealed weapon.<sup>77</sup> In the fall of 2010, Lewis became employed at an Internal Revenue Service call center.<sup>78</sup> Shortly after, a simple traffic incident would change Lewis' life forever. One gunshot changed his stance in society from that of a victim to a culprit.

Shortly before midnight on October 29, 2011, Lewis was heading home in his blue Ford Mustang when he passed and overtook a Ford

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73. *Id.*

74. *Id.* at 982.

75. See *Are 'Stand Your Ground' Laws a Good Idea?* U.S. NEWS & WORLD REP., <http://www.usnews.com/debate-club/are-stand-your-ground-laws-a-good-idea> (last visited Mar. 22, 2015); see also *Are 'Stand Your Ground' laws a bad idea?* DEBATE.ORG, <http://www.debate.org/opinions/are-stand-your-ground-laws-a-bad-idea> (last visited Mar. 22, 2015).

76. Jeff Eckhoff, *Update: Man acquitted in shooting is 'happy to be free', but now is homeless*, DES MOINES REG. (Feb. 22, 2012), [http://www.desmoinesregister.com/article/20120222/NEWS01/302220033/1048/ENT02/?odyssey=nav%7Chead&nlick\\_check=1](http://www.desmoinesregister.com/article/20120222/NEWS01/302220033/1048/ENT02/?odyssey=nav%7Chead&nlick_check=1).

77. *Id.*

78. *Id.*

Taurus driven by James Scott Ludwick, a 35 year old convicted felon and former soldier.<sup>79</sup> Instead of letting Lewis go by, Ludwick sped up and ended up slamming into Lewis' car as Lewis started to make a left turn.<sup>80</sup> When both vehicles had stopped due to the impact, Ludwick and Justin Lossner, one of four passengers in Ludwick's car, got out and began punching Lewis' car windows.<sup>81</sup> It was not until Lewis pulled out his .380 caliber pistol that Ludwick decided to stop, and appeared to back off.<sup>82</sup> However, as Lewis exited his vehicle to evaluate the damage, he noticed that Ludwick and Lossner were trying to attack him from behind.<sup>83</sup> Lewis called 911, and was heard yelling, "Just stay where you are. Get back! Get back! I'm going to start shooting!"<sup>84</sup>

While Lewis explained the situation to a police dispatcher, an exchange of profanities took place, followed by Lewis screaming, "Get away from me. Get away from me!"<sup>85</sup> As Ludwick charged Lewis, Lewis fired his gun in self-defense.<sup>86</sup> Ludwick was taken to the hospital, where he was found to have a blood-alcohol level of 0.189.<sup>87</sup> West Des Moines police arrested Lewis for failing to back off and avoid the gunplay.<sup>88</sup>

Lewis was charged with two counts of intimidation with a dangerous weapon, and one count of being armed with intent.<sup>89</sup> The court set bail, which required Lewis to post \$225,000 in cash.<sup>90</sup> Unfortunately, Lewis, who only made \$32,359 a year at the IRS, did not have the requisite funds and remained in jail.<sup>91</sup>

One week after the shooting, an eviction notice was posted on Lewis' apartment door.<sup>92</sup> This notice portrayed Lewis as a "clear and present danger to the health or safety of the other tenants" because of his connection with "an assault with a weapon within 1,000 feet of the property described above" and his arrest.<sup>93</sup> The eviction papers were filed

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79. *Id.* Court records show Ludwick's criminal history includes multiple convictions for felony theft. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

with the court on November 14, 2010.<sup>94</sup> Even though the lawyers for the apartment complex knew of Lewis' arrest, a certified letter was sent to the apartment address where two attempts were made to "serve" him.<sup>95</sup> No one from the complex ever contacted Lewis at the jail.<sup>96</sup> Because of this, Lewis was unaware of the eviction, and the apartment complex won a default judgment against him when he failed to appear in court on November 22, 2010.<sup>97</sup>

Lewis learned about the eviction on November 30, 2010, when he spoke on the phone with the deputy serving the eviction warrant.<sup>98</sup> The deputy wanted to know whether Lewis had any relatives who could retrieve his belongings from the 11th Street curb where they had been placed.<sup>99</sup> Lewis told him that all of his relatives were in Kansas.<sup>100</sup> The evicting deputy seized four handguns, three rifles, a shotgun, and a machete that had been left in the apartment.<sup>101</sup> All of Lewis' clothing, furniture, as well as a laptop containing his fourth novel, a western, disappeared.<sup>102</sup> Lewis stated, "[T]hat was several decades of my life that got flushed down the toilet."<sup>103</sup> A local program that routinely allowed first-time offenders to be freed refused to free Lewis. This program was based on the premise that people with jobs and strong support systems are not flight risks.<sup>104</sup> Ironically, Lewis was not allowed to enter the program because he no longer had a home due to the eviction.<sup>105</sup> On November 23, 2010, Lewis' bond was lowered to \$35,000, but he still was unable to post bond to be released.<sup>106</sup>

Prosecutors eventually dropped most of the charges, but trial was set on the remaining count - reckless use of a firearm causing injury.<sup>107</sup> The two-day trial ended with a verdict in Lewis' favor. The jury found that Lewis' actions were completely appropriate.<sup>108</sup> Jury forewoman Nancy Alberts stated that Lewis had given Ludwick and his friend fair warning,

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94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

which was clearly heard on the 911 call.<sup>109</sup> Polk County Attorney, John Sarcone, said that he “accepted the jury’s verdict but that the case deserved to go to trial because Lewis’ actions raised a sufficient number of questions.”<sup>110</sup> “We just don’t allow people to go shoot people,” he said.<sup>111</sup> “Using deadly force is a last resort.”<sup>112</sup> It shouldn’t be the first resort.”<sup>113</sup>

On February 9, 2011, after spending 112 days in jail, Lewis was finally released.<sup>114</sup> Unfortunately, as a result of all that he had endured, Lewis had to spend the night in his car.<sup>115</sup> Because he was now homeless, Lewis sought a spot in a homeless shelter.<sup>116</sup> Lewis, who represents the average American, walked out of jail homeless and unemployed.<sup>117</sup> “I’m happy to be free, really happy, to be breathing free air,” Lewis said, “[b]ut I don’t feel whole yet.”<sup>118</sup> Where is the justice in incomplete freedom?

Randall Wilson, a lawyer for the Iowa chapter of the American Civil Liberties Union, said Lewis’ story is “not an unusual constellation of problems for a person in jail to have.”<sup>119</sup> According to Wilson, “the statistics show that people suffer these types of hardships when people remain in jail.”<sup>120</sup> Lewis’ story is a paradigm of what can happen when an innocent person goes from being the victim to the culprit. Cases similar to Jay Rodney Lewis demonstrate that a safety net is needed for the victims of crimes. Stand Your Ground laws were viewed as the means to provide that safety net. What impact did this case have on the community and why did it lead to the Stand Your Ground law?

### *B. The Canon Continues: Florida’s Legislature Enacts Stand Your Ground*

The use of deadly force without the need to retreat prior to the enactment of Stand Your Ground was previously only justified in one’s home, or where a person reasonably believed that such force was necessary to prevent imminent death or great bodily harm to himself or

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109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

another, or to prevent the imminent commission of a forcible felony.<sup>121</sup> Thus, in a case where deadly force was used outside the home, the question was whether deadly force was reasonable and escape was unreasonable under the given circumstance.<sup>122</sup> This is a question of fact.<sup>123</sup>

There is no set laws or elements *per se* for self-defense. Rather, it is a creature of circumstance whereby every situation is different. The common law provided a plethora of case law, along with the principles and background therein, to be applied to current issues of self-defense as a collective wisdom.

Case law, like collective wisdom, is a collection of circumstances over a period of time. Moreover, time has afforded judges and fact-finders the opportunity to thoroughly examine theories and scenarios of self-defense, in addition to the circumstances that allow for the preservation of the most precious asset: life.

What judges espoused as the duty to retreat across the centuries was that the duty to retreat was not actually a duty, but rather an understanding that the lives in question were not in imminent danger of great bodily harm or death. Rather, it was more than reasonable that the presumed danger could have actually been avoided, preserving the life of both the perpetrator and the victim. This is the unsaid wisdom that the Florida Legislature has abandoned with the enactment of Stand Your Ground laws.

Stand Your Ground laws were created with the intent of protecting victims of crimes. Although this was commendable, the result has led to confusion in the application of the law. Senate Bill (SB) 436<sup>124</sup> has thrown out wisdom and started anew. Cases in which the Stand Your Ground defense is asserted are consequently viewed as cases of first impression. Still, every case is afforded the benefit of the doubt weighing heavily in favor of the living witness.

Stand Your Ground applies equally to all, and therefore, any defendant may claim its benefits. In addition, it extends the Castle Doctrine that now goes beyond the borders of the home. Stand Your Ground expanded the Castle Doctrine into the streets, allowing deadly force to be used anywhere that the defendant has a right to be.<sup>125</sup> Stand Your Ground gives the authority to use deadly force in circumstances

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121. FLA. STAT. ANN. § 776.012 (West 2004).

122. FLA. STAT. ANN. § 776.012 (West 2004).

123. *Harris v. State*, 78 So. 526 (Fla. 1918).

124. S.B. 436, 2005 Leg. (Fla. 2005).

125. FLA. STAT. ANN. § 776.013(3) (West 2005); see *Williams v. State*, 982 So. 2d 1190 (Fla. Dist. Ct. App. 2008).

where the defendant previously had a duty to retreat.<sup>126</sup> Stand Your Ground laws were created to protect victims of crimes. Although the intent was commendable, the final result has led to confusion in the application of the law.

The following Florida cases illustrate the application of Stand Your Ground law by Florida courts and its procedural evolution into its current form.

### *1. Enacting the Stand Your Ground Law*

Specifically, in the preamble to the substantive legislation, the session law notes, “The Legislature finds that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.”<sup>127</sup>

### *2. Enforcement: Conflict Regarding Pre-Trial Immunity; Florida’s First District Court of Appeal – Motion to Dismiss for Immunity Must be Denied Based on Clear and Convincing Conflicting Evidence*

In *Peterson v. State*, the First District Court of Appeals, applying the Stand Your Ground law, stated that the wording selected by the Florida Legislature makes clear that the legislative intent was to establish a true immunity and not merely an affirmative defense.<sup>128</sup>

In *Peterson*, the State charged the defendant with one count of attempted first degree murder after Peterson shot his brother.<sup>129</sup> Peterson moved to dismiss the information on the grounds that he was immune from criminal prosecution pursuant to section 776.032<sup>130</sup> because the shooting occurred when the defendant’s brother assaulted him after being asked to leave defendant’s home.<sup>131</sup> The trial court conducted a hearing at which the parties did not present live evidence, but instead presented the depositions of Peterson’s eyewitness, the alleged victim, and the

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126. FLA. STAT. ANN. § 776.013 (West 2005).

127. *Peterson v. State of Florida*, 983 So. 2d 27, 29 (Fla. Dist. Ct. App. 1st Dist. 2008) (quoting Home Protection; Use or Threatened use of Deadly Force; Presumption of Fear or Great Bodily Harm, ch. 2005-27 § 5, at 202, Laws of Fla, codified at FLA. STAT. ANN. § 776.013 (West 2006)).

128. *Id.* at 29.

129. *Id.* at 28.

130. FLA. STAT. ANN. § 776.032 (West 2006).

131. *Peterson*, 983 So.2d at 28.

victim's sister.<sup>132</sup> Notably, the trial court opined "that no rule or procedure had yet been enacted to guide trial courts in deciding a claim of immunity brought under section 776.032(1)."<sup>133</sup> The trial court determined that immunity had not, as a matter of fact, been established, since the testimony of the alleged victim was clear and reasonable. Thus, based on this determination, the court concluded that immunity had not been established as a matter of law and denied the motion to dismiss.<sup>134</sup>

Peterson filed a petition for a writ of prohibition in the First District Court of Appeals arguing he was entitled to immunity as a matter of law.<sup>135</sup> The District Court of Appeals held that the trial court correctly handled the motion to dismiss.<sup>136</sup>

### *3. Fourth District Court of Appeal— Motion to Dismiss for Immunity Must be Denied Based on Disputed Issues of Material Fact*

In 2006, Clarence Dennis was charged with the attempted first-degree murder stemming from a domestic violence incident with Gloria McBride.<sup>137</sup> At trial, to support his claim of self-defense, Dennis and his witness, George Daniels, testified that Gloria McBride instigated the physical altercation by hitting Dennis with a beer bottle.<sup>138</sup> However, the State introduced testimony contradicting Dennis' claim of self-defense.<sup>139</sup> Dennis filed two motions to dismiss the information pursuant to section 776.032(1),<sup>140</sup> on the basis that his actions constituted a justified use of force.<sup>141</sup> Ultimately, the trial court denied Dennis's motion for judgment of acquittal, and the jury found that Dennis committed the lesser included offense of felony battery.<sup>142</sup>

Clarence Dennis appealed his conviction and sentence for felony battery to the Fourth District Court of Appeals.<sup>143</sup> Dennis' appeal raised two issues, and the district court of appeals affirmed both.<sup>144</sup> The district court wrote an opinion on the issue of whether the trial court erred in denying Dennis' motion to dismiss his claim of statutory immunity

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132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Dennis v. State*, 51 So.3d 456, 457 (Fla. 2010).

138. *Id.* at 464.

139. *Id.*

140. FLA. STAT. ANN. § 776.032 (West 2006).

141. *Dennis*, 51 So.3d at 457.

142. *Id.* at 459.

143. *Id.* at 457.

144. *Dennis v. State*, 17 So.3d 305, 306 (Fla. Dist. Ct. App. 2009).

brought under section 776.032 because there were disputed issues of material fact.<sup>145</sup> The district court found no error in the trial court's decision to deny the motion to dismiss citing its decision in *Velasquez v. State*,<sup>146</sup> stating "that a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of material fact."<sup>147</sup>

Subsequently, Dennis filed a motion for rehearing and/or certification of conflict and/or motion for clarification.<sup>148</sup> The district court denied the motion for rehearing and/or clarification and certified conflict with the decision of the First District Court of Appeals in *Peterson v. State*.<sup>149</sup> The Florida Supreme Court accepted jurisdiction under Article V of the Florida Constitution,<sup>150</sup> but postponed its decision on whether oral argument would be heard.<sup>151</sup> This case illustrates the confusion regarding the application of statutory immunity. The First District Court of Appeals addresses the conflict.

#### 4. *First District Court of Appeals (2009): Motion to Dismiss for Immunity Cannot be Denied Even with Conflicting Evidence*

On the evening of July 20, 2007, Jimmy Hair and Rony Germinal visited a nightclub.<sup>152</sup> While at the club, Germinal exchanged harsh words with Charles Harper.<sup>153</sup> After the club closed, Germinal and Hair were departing the area when Harper came over to the car and entered it.<sup>154</sup> Harper's friend Frye pulled Harper away but Harper managed to escape Frye's grasp and reentered the vehicle on the driver's side.<sup>155</sup> Hair, who was in the passenger side of the car, had a handgun on his seat.<sup>156</sup> As Hair and Harper struggled inside the vehicle, Frye tried to pull Harper from the vehicle but Harper ended up being shot and killed by

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145. *Id.*; see also *Dennis v. State*, 51 So.3d 456, 464 (Fla. 2010). ("Dennis did not contend that the trial was unfair or that his ability to present his claim of self-defense was limited in any way by the trial court's pretrial ruling. Additionally, Dennis did not assert that at a pretrial evidentiary hearing he would have presented evidence different from or additional to the evidence he presented at trial.")

146. *Velasquez v. State*, 9 So.3d 22 (Fla. Dist. Ct. App. 4th Dist. 2009).

147. *Dennis*, 17 So.3d at 306.

148. *Id.* at 310.

149. *Peterson v. State of Florida*, 983 So. 2d 27 (Fla. Dist. Ct. App. 1st Dist. 2008).

150. FLA. CONST. art. V, § 3(b)(4).

151. *Dennis v. State*, 29 So.3d 290 (Fla. 2009); *Dennis*, 51 So.3d at 458.

152. *Hair v. State of Florida*, 17 So.3d 804, 805 (Fla. Dist. Ct. App. 1st Dist. 2009).

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.* (Jimmy Hair held a permit to carry a concealed weapon.).

Hair.<sup>157</sup> According to Hair, he was attempting to strike Harper with the handgun when it discharged.<sup>158</sup>

Jimmy Hair, in his defense, filed a motion to dismiss claiming immunity from prosecution, which was ultimately denied by the trial court.<sup>159</sup> The trial court reasoned that statutory immunity was inappropriate where Hair was attempting to use the gun to strike Harper when it accidentally discharged.<sup>160</sup> The trial court further found that there were disputed issues of fact, which precluded the granting of pretrial immunity.<sup>161</sup> Hair subsequently filed a writ of prohibition with the First District Court of Appeals, contending that he was immune from prosecution on charges of first degree murder under section 776.032(1).<sup>162</sup>

The First District Court of Appeals stated that the trial court's denial was incorrectly based on the existence of disputed issues of material fact, and was contrary to the express holding in *Peterson*.<sup>163</sup> The court reasoned that a motion to dismiss based on Stand Your Ground immunity cannot be denied because of the existence of disputed issues of material fact.<sup>164</sup> The district court held that the Stand Your Ground law gave Hair immunity from prosecution for first degree murder.<sup>165</sup> The appellate court further stated that the statute makes no exception from the immunity when the victim is in retreat at the time the defensive force is employed.<sup>166</sup> Based on its holding, the district court ordered Hair's release.<sup>167</sup>

##### 5. *The "Stand your Ground" Defense*

The First District Court of Appeals in the 2009 case, *Mederos*, set out the procedure for a Stand your Ground defense.<sup>168</sup> The district court stated:

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157. *Id.* at 805.

158. *Id.* at 805-06. (These were details from the evidentiary hearing on the Motion to Dismiss.).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* at 804-05.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Mederos v. State of Florida*, 102 So.3d 7, 10 (Fla. Dist. Ct. App. 2012).

The appropriate procedural vehicle to raise immunity under section 776.032 is a pretrial motion to dismiss under rule 3.190(b), Florida Rules of Criminal Procedure. When a defendant claims immunity from prosecution under the Stand Your Ground Law, a trial court is to conduct an evidentiary hearing, the purpose of which is to consider factual disputes. A writ of prohibition is the proper vehicle for challenging a trial court's denial of a motion to dismiss a charge made on the ground of immunity from prosecution pursuant to the Stand Your Ground Law. As the court made clear in *Hair*, a review of a trial court's order on a motion claiming immunity under the statute is governed by the same standard which applies in an appeal from an order denying a motion to suppress. Under this standard of review, the trial court's findings of fact must be supported by competent substantial evidence, while conclusions of law are subject to *de novo* review.<sup>169</sup>

However, as stated in *Darling*, the Stand Your Ground law requires that the person invoking the defense not be engaged in an unlawful activity.<sup>170</sup>

Prior to the enactment of section 776.013,<sup>171</sup> Florida common law provided that a person could not resort to deadly force without first using every reasonable means within his or her power to avoid the danger, including retreat to the wall.<sup>172</sup> But the common law duty to retreat was not absolute; there was no duty to retreat where a defendant had retreated to the wall, or where retreat would have been futile.<sup>173</sup>

Current jury instructions after 2005 state in pertinent part:

If you find that the defendant was engaging in an unlawful activity or was attacked in a place where he did not have the right to be then you must consider if the defendant had a duty to retreat. If the defendant was placed in a position of imminent danger or death or great bodily harm and it would have increased

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169. *Id.* (internal citations omitted).

170. *Darling v. Florida*, 81 So.3d 574 (Fla. Dist. Ct. App. 2012) (citing FLA. STAT. ANN. § 776.041(3) (West 2007)); *see also* *Dorsey v. State*, 74 So.3d 521 (Fla. Dist. Ct. App. 2011) (holding that possession of a firearm by a convicted felon qualifies as an unlawful activity within the "stand your ground" law); *Florida v. Hill*, 95 So.3d 434 (Fla. Dist. Ct. App. 2012) (holding as convicted felon in possession of a firearm, defendant was precluded from use of the Stand Your Ground defense).

171. FLA. STAT. ANN. § 776.013 (West 2014).

172. *Dorsey v. Florida*, 74 So.3d 521, 526 (Fla. Dist. Ct. App. 2011).

173. *Id.* at 527.

his own danger to retreat then his use of force likely to cause death or great bodily harm was justifiable.<sup>174</sup>

Therefore, if a defendant was engaged in an unlawful activity or was in a place where he did not have a right to be at the time of the attack, the duty to retreat still applies.<sup>175</sup>

In *State v. Gallo*,<sup>176</sup> the trial judge held an evidentiary hearing in which he made determinations of credibility, weighed the numerous pieces of conflicting evidence, and set forth extensive factual findings in a nine-page written order based upon a preponderance of the evidence.<sup>177</sup> The trial judge ruled that Gallo was immune from prosecution because he had used deadly force in the manner statutorily authorized by section 776.032.<sup>178</sup>

The Second District Court of Appeals affirmed the lower tribunal's decision stating:

The legislature's enactment of section 776.032 placed the burden of weighing the evidence in "Stand Your Ground" cases squarely upon the trial judge's shoulders. In this case, that burden

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174. *Id.*

175. *Id.* (citing *Ady. v. Am. Honda Fin. Corp.*, 675 So.2d 577, 581 (Fla. 1996) ("A court will presume that such a statute was not intended to alter the common law other than by what was clearly and plainly specified in the statute.")).

176. *Florida v. Gallo*, 76 So. 3d 407, 408 (Fla. Dist. Ct. App. 2011). The facts of the case provide that

[A]t around 2:30 in the morning, Mr. Gallo and Mr. Barbour confronted each other outside of a busy night club in the Newtown area of Sarasota. They argued regarding a debt that Mr. Barbour owed Mr. Gallo. As tempers flared the argument became more physical. Eventually the minor tussling stopped and more serious threats began. The situation reached a climax, breaking out into a gunfight between at least four men in the middle of the street. Men were ducking behind cars and firing over their shoulders as they ran for cover. An officer nearby heard several of the shots and arrived at the scene quickly. When he arrived, he found Mr. Barbour on the ground in the middle of the street suffering from multiple gunshot wounds. The officer ran back to his car to collect medical equipment, but a large, hostile crowd surrounded Mr. Barbour and prevented the officer from returning to render aid. Mr. Barbour succumbed to his injuries. By the time law enforcement could secure the area, there was no sign of any of the firearms. However, law enforcement discovered twenty-six shell casings of four different types in the vicinity.

*Id.*

177. *Id.* at 409. *Cf. Jenkins v. Florida*, 942 So.2d 910 (Fla. Dist. Ct. App. 2006) (stating it was the State's burden to overcome defendant's prima facie case of self-defense by proving beyond a reasonable doubt that the defendant was not acting in lawful self-defense by presenting competent substantial evidence).

178. *Id.*

required the trial judge to make order out of the chaos that occurred in Sarasota on one fateful night in 2010. The trial judge performed that duty without legal error.<sup>179</sup>

6. *Appeals: Florida Supreme Court; the First and Fourth District Courts of Appeal in Conflict.*

In *Dennis v. State*, the question before the Florida Supreme Court was, “whether the trial court should conduct a pretrial evidentiary hearing and resolve issues of fact when ruling on a motion to dismiss asserting immunity from criminal prosecution pursuant to section 776.032,<sup>180</sup> commonly known as the ‘Stand Your Ground’ statute.”<sup>181</sup> A conflict existed between the Fourth District Court of Appeals, which held that the existence of disputed issues of material fact required the denial of a motion to dismiss,<sup>182</sup> and the First District Court of Appeals which held that the existence of disputed issues of material fact did not warrant denial of a motion to dismiss asserting immunity under section 776.032.<sup>183</sup>

In reaching its decision, the Florida Supreme Court turned to the Colorado Supreme Court for guidance.<sup>184</sup> The Colorado Supreme Court’s decision in *People v. Guenther* held that Colorado’s immunity statute, which was similar to Florida’s Stand Your Ground law, authorized a trial court at the pretrial stage to dismiss a criminal prosecution, and that the statute did not merely create an affirmative defense.<sup>185</sup> The Colorado Supreme Court further determined that a defendant would have the burden of establishing the factual prerequisites to the immunity claim by a preponderance of the evidence.<sup>186</sup>

Using the Colorado Supreme Court’s reasoning, the Florida Supreme Court similarly held that a defendant may raise the question of statutory immunity at pretrial and the trial court would have to determine whether the defendant has shown by a preponderance of the evidence that the immunity attached.<sup>187</sup>

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179. *Id.*

180. *Dennis v. State*, 51 So.3d 456, 458 (Fla. 2010).

181. *Id.*

182. *Dennis v. State*, 17 So.3d 305 (Fla. Dist. Ct. App. 2009); *see also Dennis*, 51 So. 3d at 458.

183. *Peterson v. State of Florida*, 983 So. 2d 27 (Fla. Dist. Ct. App. 1st Dist. 2008); *see also Dennis*, 51 So. 3d at 458.

184. *Dennis*, 51 So.3d at 458.

185. *Id.* (citation omitted).

186. *Id.* at 460 (citation omitted).

187. *Id.*

After review of *Petersen* and *Dennis*, the Florida Supreme Court concluded “that the procedure set out by the First District in *Peterson* best effectuated the intent of the Legislature and that the trial court erred in denying Dennis an evidentiary hearing on his claim of statutory immunity.”<sup>188</sup> The Florida Supreme Court held that when immunity under the Stand Your Ground law is properly raised by a defendant, the trial court must decide the matter by confronting and weighing only factual disputes.<sup>189</sup> The court may not deny a motion simply because factual disputes exist.<sup>190</sup> The Florida Supreme Court concluded that the *Peterson* trial court complied with the requirement of the statute.<sup>191</sup> The trend throughout the District Courts of Appeals is the challenge of unmasking the confusion surrounding the issue of statutory immunity and how it is to be interpreted and applied.

### 7. *Third District Court of Appeals*

On July 1, 2006, Leroy LaRose, carrying a revolver, drove to a Liberty City housing project to buy marijuana.<sup>192</sup> On a previous occasion, LaRose had encountered gunfire when visiting the area.<sup>193</sup> After arriving at his destination, he was confronted from afar by Damon Darling as to his purpose; however, the discussion escalated to a shootout.<sup>194</sup> A bystander was killed during the shootout and Darling was later arrested and went to trial before a jury on charges of second degree murder of the bystander, with manslaughter as a lesser included offense, and attempted second degree murder of LaRose, with attempted manslaughter, aggravated assault, and aggravated battery as lesser included offenses.<sup>195</sup>

The defense moved for dismissal before the trial, based upon Stand Your Ground immunity, arguing that Darling was not responsible for the deadly shooting because he fired in response to a perceived threat from the other shooter.<sup>196</sup> The trial court denied the motion.<sup>197</sup> After trial, the jury found Darling guilty of manslaughter of the bystander and

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188. *Id.* at 463. (The Florida Supreme Court did not quash the Fourth District’s decision affirming Dennis’s conviction and sentence because the erroneous denial of a motion to dismiss may be harmless error as the record demonstrated that the trial court’s summary denial was harmless.).

189. *Id.* at 459.

190. *Id.*

191. *Id.*

192. *Darling v. Florida*, 81 So.3d 574 (Fla. Dist. Ct. App. 2012).

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* at 574.

197. *Id.*

aggravated assault of LaRose.<sup>198</sup> Additionally, the jury found that Darling possessed a firearm in connection with the death of the bystander and discharged a firearm in connection with the aggravated assault.<sup>199</sup>

Darling subsequently appealed numerous claims based on errors committed by the trial court. Of these alleged errors, the Third District Court of Appeals only addressed the following: 1) denial of Darling's Stand Your Ground motion; 2) denial of Darling's motion to interview jurors; and 3) admission of evidence regarding Darling's status as a convicted felon.<sup>200</sup> The focus here is only on the courts analysis of the denial of Darling's Stand Your Ground motion.

The appellate court acknowledged that justification for using deadly force in self-defense, including the Stand Your Ground defense, does not apply to a person who provokes the attack.<sup>201</sup> Generally, the question of self-defense is one for the jury.<sup>202</sup> However, there are two exceptions to this rule. The first is where there is no means of escape other than the use of deadly force, and the second is if the provoking person withdraws from physical contact or unequivocally indicates his desire to withdraw from the confrontation, but the alleged victim continues or resumes the use of force.<sup>203</sup> Most importantly, the Stand Your Ground law requires that the person invoking the defense not be engaged in an unlawful activity.<sup>204</sup>

In *Darling*, the lawfulness was an issue because Darling was a convicted felon and possession of a weapon was unlawful.<sup>205</sup> The trial court determined that evidence of Darling's convicted-felon status was admissible for the jury to properly evaluate whether Darling's use of force was justified under the circumstances and to determine the credibility of Darling's version of events.<sup>206</sup> The Third District Court

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198. *Id.*

199. *Id.* (Defense counsel filed a motion to interview the jurors, supported by an affidavit from his secretary who received the calls regarding two jurors who had not disclosed in voir dire they knew each other, were overheard stating their intent to convict regardless of the evidence. The trial court denied the motion and denied defense's motion for new trial.).

200. *Id.* at 574.

201. *Id.* (citing FLA. STAT. ANN. § 776.041(2) (West 2007)).

202. *Id.* at 578-79 (citing *Payton v. State*, 200 So. 2d 255, 256 (Fla. Dist. Ct. App. 1967)); *Liotta v. State*, 939 So. 2d 333, 334 (Fla. Dist. Ct. App. 2006).

203. *Id.* at 574 (citing FLA. STAT. ANN. § 776.041(2) (West 2007)).

204. *Id.* (citing FLA. STAT. ANN. § 776.041(2) (West 2007)); *Dorsey v. State*, 74 So.3d 521 (Fla. Dist. Ct. App. 2011) (holding that possession of a firearm by a convicted felon qualifies as an unlawful activity within the stand your ground law).

205. *Id.* at 574.

206. *Id.* at 579. (The evidence was not a central feature of the trial even though it was referenced in closing argument.).

affirmed Darling's convictions and stated that the trial court's actions did not result in reversible error.<sup>207</sup>

### 8. *Appealing the Stand Your Ground Defense*

In cases where a defendant, prior to trial, moves to dismiss charges under the Stand Your Ground law, and the trial court denies the motion after an evidentiary hearing, a defendant can then petition the corresponding appellate district court for a writ of prohibition.<sup>208</sup> The appellant, filing such a writ, would argue entitlement to immunity from prosecution under the Stand Your Ground law.<sup>209</sup> After review, the appellate court would then issue an order to show cause to the State.<sup>210</sup> The State would, in turn, be required to respond within the allowed time.<sup>211</sup> The appellate court would next consider the State's response to the petition and, ultimately, would either grant or deny the petition on the merits.<sup>212</sup>

Subsequently, if the writ of prohibition is granted, the lower court must follow the appellate court decision.<sup>213</sup> If the writ of prohibition is denied on the merits, the case proceeds to trial where the jury is instructed on the issue of self-defense.<sup>214</sup> If the jury rejects the claim of self-defense, the defendant faces adjudication on the crimes charged.<sup>215</sup>

Thereafter, a defendant cannot raise, in a subsequent appeal, the issue of whether the trial court erred in denying defendant's request for immunity under the Stand Your Ground law if the issue was raised in the pre-trial prohibition proceeding.<sup>216</sup> It is the nature of the relief sought, not the specific remedy requested that determines which writ is

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207. *Id.*

208. *Rice v. State*, 90 So.3d 929, 930 (Fla. Dist. Ct. App. 2012).

209. *Id.* (stating that the petition acknowledged that the trial court followed the procedure dictated by *Peterson v. State*, 983 So.2d 27 (Fla. Dist. Ct. App. 2008), but argued that the court erred in its determination that defendant was not entitled to immunity).

210. *Id.* at 930.

211. *Id.*

212. *Id.* (citing *Tsavaris v. Scruggs*, 360 So.2d 745, 747 (Fla. 1977) ("Where a case is pending in the criminal court against a person claiming immunity . . . it would be the duty of the criminal court involved to give effect to such immunity if it existed. Should the criminal court in such a case refuse to recognize the immunity the further action of that court in prosecuting the cause would amount to an excess of jurisdiction which then would be subject to restraint by prohibition.") (citation omitted)).

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

appropriate.<sup>217</sup> In *Topps v. State*,<sup>218</sup> the Florida Supreme Court reaffirmed “that res judicata bars consideration of an issue in a subsequent proceeding where the issue was raised and denied on the merits in a prior extraordinary writ proceeding.”<sup>219</sup> Hence, res judicata procedurally bars re-litigation of the Stand Your Ground immunity issue on appeal.<sup>220</sup>

On the other hand, the State can appeal a trial court decision where it finds that a defendant is immune from prosecution.<sup>221</sup> On appeal, the trial court’s legal conclusion is reviewed *de novo*, but its findings of fact are presumed correct and can only be reversed if the findings were not supported by competent substantial evidence.<sup>222</sup> “In conducting its review, an appellate court must restrain itself from the natural human impulse to consider that its own view of the facts is superior to that of a trial judge.”<sup>223</sup> The appellate court in its reviewing capacity must yield as long as there is competent substantial evidence to support the findings made by the trial “judge who was on the scene.”<sup>224</sup>

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217. *Id.* (citing Fla. R. App. P. 9.100(g)(3) (requiring an extraordinary writ petition to specify “the nature of the relief sought,” and even if the petition could somehow have been construed as seeking mandamus relief, an appellate court would be required to treat it as if it properly sought prohibition relief pursuant to Florida Rule Appellate Procedure 9.040(c)).

218. *Topps v. State*, 865 So. 2d 1253 (Fla. 2004).

219. *Id.*

220. *Rice v. State*, 90 So.3d 929, 930 (Fla. Dist. Ct. App. 2012). Even if the issue was not procedurally barred, there could be an affirmation on the conviction and sentence pursuant to *Dennis v. State* because, at that point, any error in the denial of the motion to dismiss would be harmless. *See Dennis v. State*, 51 So.3d 456, 463-64 (Fla. 2010) (affirming conviction despite trial court’s failure to hold a pre-trial evidentiary hearing on the defendant’s claim of immunity under the Stand Your Ground law because the defendant received a fair trial at which the jury implicitly rejected his self-defense claim that was based on the same evidence that would have been presented at the pre-trial hearing).

221. *State v. Vino*, 100 So.3d 716 (Fla. Dist. Ct. App. 2012). This case involves Florida Power and Light (“FPL”) employees and the defendant Vino. FPL has a statutory right to enter the property of its customers. *Id.* at 717 fn. 1 (citing FLA. STAT. ANN. § 361.01 (West 2010)). FPL employees’ version of events that transpired in this case claimed that although Vino was made aware of who they were, he continued to assault them. *Id.* Vino’s version of events differs, as he alleges he was not aware of who these men were but saw a man within his fenced in property, and since he had been the victim of crimes against his person and property on prior occasions, he discharged his weapon into the ground to let the man know he was serious. *Id.* Vino ordered them off the property once he knew they were FPL employees but claims he did not use any criminal behavior toward the FPL employees as they exited. *Id.*

222. *Id.* at 719 (citing *Mederos v. Florida*, 102 So.3d 7, 10 (Fla. Dist. Ct. App. 2012); *Loredov v. State*, 836 So.2d 1103, 1104 (Fla. Dist. Ct. App. 2003)).

223. *Id.* (citing *Herzog v. Herzog*, 346 So. 2d 56 (Fla. 1977)).

224. *Id.* (citing *Herzog*, So. 2d at 57). In *Vino*, the appellate court approved the trial court’s legal conclusion holding that Vino may claim the stand your ground defense only

The lack of clarity and inconsistent interpretations of the Stand Your Ground statute both illustrate and have resulted in consequences that the legislature may not have intended.

### *C. Disparate Sides Unite But Unintended Consequences Flow*

#### *1. The Surprising Story of Prohibition*

In the 20<sup>th</sup> century, prohibition epitomized the law of unintended consequences.<sup>225</sup> By 1830, the average American over fifteen years of age consumed approximately seven gallons of pure alcohol a year, which is three times the amount consumed by Americans today.<sup>226</sup> Alcohol abuse, primarily by men, wreaked havoc on the lives of many, especially women who had limited legal rights and were wholly dependent on their husbands.<sup>227</sup> The Temperance Movement began with churches<sup>228</sup> encouraging drinkers to help each other resist temptation, but soon, this encouragement turned into a demand for local, state, and national governments to prohibit alcohol outright.<sup>229</sup> By the 1840's, the demand became a fervor.<sup>230</sup>

From this fervor, the Anti-Saloon League (ASL) was formed.<sup>231</sup> The ASL became the most successful single issue lobbying organization in American history, forming alliances with very diverse groups such as the Ku Klux Klan, the National Association for the Advancement of Colored

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up to the point he learned the individuals on his property were FPL employees. However, the Appellate Court stated that the "State is free to either amend or refile its information to include only the events after VINO's immunity ended." *Id.* at 719–720 (citing Fla. R. Crim. P. 3.140) (authorizing amendment to an information on the motion of the prosecuting attorney or defendant at any time prior to trial); *State v. Anderson*, 537 So.2d 1373, 1375 (Fla.1989) ("[T]he state may substantively amend an information during trial, even over objection of the defendant, unless there is a showing of prejudice to the substantial rights of the defendant. This proposition is even more relevant when, as here, the amendment occurs prior to trial.").

225. See Jonathan Eig, *Fiorello La Guardia*, PBS, <http://www.pbs.org/kenburns/prohibition/people/#detail=2085902822-laguardia> (last visited Aug. 30, 2015). Eig opined that "You just don't know what you're gonna get when you pass a law that seems pretty straightforward." *Id.*

226. DANIEL OKRENT, *LAST CALL: THE RISE AND FALL OF PROHIBITION 8* (Scribner 1st ed. 2010).

227. *Roots of Prohibition*, PBS, <http://www.pbs.org/kenburns/prohibition/roots-of-prohibition/> (last visited Mar. 22, 2015).

228. OKRENT, *supra* note 226, at 12-13. The Temperance Movement had grown and was rooted in America's Protestant churches. *Id.*

229. *Id.* at 13-14.

230. *Id.* at 12-13.

231. *Id.* at 36.

People, the International Workers of the World, Democrats, Republicans, Progressives, Populists, and suffragists.<sup>232</sup> ASL ranks also included many of America's most powerful industrialists: Andrew Carnegie, Henry Ford, and John D. Rockefeller, Jr.<sup>233</sup> All of these groups and individuals had the sole objective of a constitutional amendment that would ban the manufacture, transportation, and sale of alcohol.<sup>234</sup> With the First World War, anti-German sentiment rose, and ASL effectively propagated a connection between beer, brewers, Germans, and treason.<sup>235</sup>

On January 17, 1920, at 12:01 A.M., the 18th Amendment went into effect creating a prohibition on intoxication liquors.<sup>236</sup> However, no one foresaw the negative impact that prohibition would have on America.<sup>237</sup> Fiorella La Guardia,<sup>238</sup> Mayor of New York City, once said that Prohibition created "contempt and disregard for the law all over the country."<sup>239</sup> Prohibition affected many aspects of society, including law enforcement.<sup>240</sup> Money proved to be too tempting and a corrupting influence at all levels of government, including the Federal Bureau of Prohibition.<sup>241</sup> Likewise, the growth of the illegal liquor trade during the Prohibition era made criminals out of millions of Americans as was seen

232. *Id.* at 52; see also *Roots of Prohibition*, PBS, <http://www.pbs.org/kenburns/prohibition/roots-of-prohibition> (last visited Mar. 22, 2015).

233. *Roots of Prohibition*, *supra* note 232.

234. *Id.*

235. OKRENT, *supra* note 226, at 100-03.

236. U.S. Const. amend XVIII, *repealed by* U.S. CONST. amend. XXI.

237. OKRENT, *supra* note 226.

238. *Fiorella La Guardia*, PBS, <http://www.pbs.org/kenburns/prohibition/people/#detail=2085902822-laguardia> (last visited Mar. 22, 2015). Fiorella La Guardia, 1882 – 1947, served in Congress from 1916 through 1918, and again from 1922 through 1930, before becoming Mayor of New York for three terms which lasted from 1934 to 1945. *Id.*

A vocal critic of the Volstead Act, in 1926 he called twenty newspapermen and photographers into Room 150 of the House Office Building in Washington, D.C. and mixed 'near beer' with malt extract, which when fermented, became beer. He downed a glass and then did the same demonstration in New York City, arguing that Prohibition created "contempt and disregard for the law all over the country." La Guardia secured his place in history as a tough-minded reform mayor who helped clean out corruption, bring in gifted experts, and fix upon the city a broad sense of responsibility for its own citizens. His administration engaged new groups that had been kept out of the political system, gave New York its modern infrastructure, and raised expectations of new levels of urban possibility.

*Id.*

239. *Id.*

240. OKRENT, *supra* note 226, at 271.

241. *Id.*

by the overflowing courtrooms and jails.<sup>242</sup> Even the legal system could not keep up, as many defendants in prohibition cases waited over a year to be brought to trial.<sup>243</sup> As a result, the judicial system turned to plea bargaining, which became a common practice for the first time.<sup>244</sup> Although prohibition was meant to foster temperance, it instead fostered excess and intemperance.<sup>245</sup> The solution ultimately made the problem worse. Prohibition failed because its unintended consequences outweighed any benefit.<sup>246</sup> On the lighter side of prohibition's unintended consequences, was the "moonshine-fueled birth" of NASCAR.<sup>247</sup> Many of the pre and early participants were involved in bootlegging to some extent, from mechanics who worked on vehicles that transported the moonshine to the drivers themselves.<sup>248</sup>

In the 21st century, Stand Your Ground is the new standard of unintended consequences by creating mass confusion that stems from the courthouses to our homes, and denying private citizens the ability for redress. Stand Your Ground is not the first law to see a plethora of social phenomena. As noted earlier, Prohibition is the best known law that created such a negative impact that it was overturned as a result.<sup>249</sup>

## 2. *The Surprising Aftermath of Stand Your Ground: State vs. Zimmerman*<sup>250</sup>

On the night of February 27, 2012, in Sanford, Florida, unarmed black teenager Trayvon Martin left the home of his father to go to a convenience store.<sup>251</sup> Sadly, Trayvon never returned.<sup>252</sup> His father, Tracy Martin, discovered the next day that Trayvon had gotten into an altercation with George Zimmerman, a volunteer neighborhood

242. Michael Lerner, *Unintended Consequences*, PBS, <http://www.pbs.org/kenburns/prohibition/unintended-consequences/> (last visited Mar. 22, 2015).

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. Rick Houston, *Nascar's Earliest Days Forever Connected To Bootlegging*, NASCAR (Nov. 01, 2012), [http://www.nascar.com/en\\_us/news-media/articles/2012/11/01/moonshine-mystique.html](http://www.nascar.com/en_us/news-media/articles/2012/11/01/moonshine-mystique.html).

248. *Id.*

249. See U.S. CONST. amend XVIII, *repealed by* U.S. CONST. amend. XXI.

250. *Zimmerman v. State*, 114 So. 3d 1011 (Fla. Dist. Ct. App. 2012).

251. Jonsson, *supra* note 12.

252. See Patrik Jonsson, *Trayvon Martin Shooting: Should Victim's High School File be Made Public?*, CHRISTIAN SCI. MONITOR (Oct. 19, 2012), <http://www.csmonitor.com/USA/Justice/2012/1019/Trayvon-Martin-shooting-Should-victim-s-high-school-file-be-made-public>.

watchman.<sup>253</sup> After an alleged scuffle, Zimmerman was reported to have pulled out a gun and shot Trayvon in the chest at close range.<sup>254</sup> Martin had no weapon.<sup>255</sup>

One fact that is unknown by many is that prior to the death of Trayvon Martin, there had been burglaries in that gated community.<sup>256</sup> Zimmerman acted as the neighborhood watch captain to patrol and combat these incidents.<sup>257</sup> It was said that Zimmerman knew he was not supposed to pursue, but instead, to call police if an incident arose.<sup>258</sup> However, Zimmerman had already been recognized for his efforts and those of others that had followed a burglar, which led to the arrest of a young black man, who was charged with burglaries in the neighborhood.<sup>259</sup>

Police refused to prosecute Zimmerman, citing Florida's 2005 Stand Your Ground law.<sup>260</sup> After the shooting, Trayvon's parents, Tracy Martin and Sybrina Fulton, rallied civil rights leaders to speak out about what they viewed as an injustice based on the Stand Your Ground laws.<sup>261</sup> Trayvon's parents even launched a new website, ChangeforTrayvon.com, in which they stated that the Stand Your Ground laws "allow individuals to shoot first and ask questions later."<sup>262</sup> The shooting even sparked protests in dozens of cities across the country.<sup>263</sup>

The subsequent decision to prosecute Zimmerman led critics to allege prosecutorial overreach, saying evidence and testimony raised

253. *See id.*

254. *See id.*

255. *See* Gromer Jeffers, Jr., *In Arlington, Jeb Bush says 'stand your ground' invalid in Trayvon Martin case*, DALLAS MORNING NEWS (Mar. 23, 2012, 4:54 P.M.), <http://www.dallasnews.com/news/community-news/arlington/headlines/20120323-in-arlington-jeb-bush-says-stand-your-ground-invalid-in-trayvon-martin-case.ece>.

256. *See* Jonsson, *supra* note 12.

257. *See id.* Cf. Yamiche Alcindor, *Trial turns to Zimmerman's neighborhood-watch role*, USA TODAY (June 25, 2013), <http://www.usatoday.com/story/news/2013/06/25/zimmerman-trial-trayvon-neighborhood-watch/2455163/>.

258. Alcindor, *supra* note 257.

259. *Id.*; *see also* Frank Taffe, *Zimmerman neighbor, fmr. Neighborhood Watch captain: Prior burglaries were by 'young black males;' 'if you plant corn, you get corn'*, CNN PRESSROOM (Apr. 3rd, 2012, 09:42 AM), <http://cnnpressroom.blogs.cnn.com/2012/04/03/zimmerman-neighbor-fmr-neighborhood-watch-captain-prior-burglaries-were-by-young-black-males-if-you-plant-corn-you-get-corn/>.

260. *See* Jeffers, *supra* note 255.

261. *See* Jonsson, *supra* note 12.

262. *Id.*

263. *Id.*

doubt about which man was the aggressor.<sup>264</sup> Zimmerman's lawyers were noted for saying that the injuries sustained by their client on the night of the shooting, specifically the skull lacerations and the broken nose, proved that he was acting in self-defense.<sup>265</sup> The prosecution argued that Zimmerman initiated the altercation, escalated it, and then used a gun to kill an unarmed child.<sup>266</sup>

The central tenet of the case, based on witness testimony, was that Martin had Zimmerman on the ground.<sup>267</sup> One witness even said that Martin was beating on Zimmerman "MMA-style" (mixed martial arts).<sup>268</sup> On April 11, 2012, George Zimmerman was charged by information with Second Degree Murder of Trayvon Martin, a violation of section 782.04 of the Florida Statutes.<sup>269</sup> If convicted, Zimmerman faced life in prison.<sup>270</sup> Zimmerman explained to the police that he shot Martin in self-defense after he was punched in the face and continued to be battered by Martin.<sup>271</sup> Prior to the fatal shot, Martin was witnessed as being on top of Zimmerman while straddling and beating him as he lay on the ground.<sup>272</sup> When questioned by the police, Zimmerman said he believed Martin was trying to reach for his gun when he pulled it out and fired.<sup>273</sup>

Zimmerman further explained that he had cried out for help repeatedly before firing his gun and that no one came to help.<sup>274</sup> Those cries for help were recorded in the background of another witness's 911 call and lasted for at least forty seconds before the shot was fired.<sup>275</sup> At the scene, EMTs observed that Zimmerman had bleeding lacerations to the back of his head consistent with his head being struck on or by a hard object, facial cuts, and a swollen, bleeding, broken nose.<sup>276</sup>

Zimmerman was not arrested and continued to cooperate with law enforcement, including the Sanford Police Department and the Florida Department of Law Enforcement.<sup>277</sup> Zimmerman was interviewed on

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264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. Defendant's Verified Motion to Disqualify Judge, *State v. Zimmerman*, no. 2012-001083, 2013 WL 2648320 (Fla. Cir. Ct. App. 2012).

270. *See id.*

271. *See Alcindor, supra* note 257.

272. Defendant's Verified Motion, *supra* note 269.

273. Jeffers, *supra* note 255.

274. *Id.*

275. *Id.*

276. Defendant's Verified Motion, *supra* note 269.

277. *Ex-Sanford police chief tells Local 6 why he didn't arrest George Zimmerman*, CLICKORLANDO (July 12, 2013, 9:12 A.M.),

several occasions, participated in a re-enactment of the events of February 26, 2012, and agreed to submit to voice stress analysis.<sup>278</sup> Zimmerman did everything he was asked to do in the days following the shooting of Trayvon Martin and did so without the benefit of legal counsel.<sup>279</sup>

Judge Debra S. Nelson set June 10, 2013, as the start of George Zimmerman's trial on the second-degree murder charge.<sup>280</sup> After this hearing, Zimmerman's defense team tweeted that they would likely ask for a "stand your ground" hearing in April or May.<sup>281</sup> If the hearing had taken place and had the judge sided with Zimmerman, the murder charge would have been dismissed and there would have been no trial.<sup>282</sup> Despite the media circus, the trial went on.<sup>283</sup> On July 13, 2013, George Zimmerman was found not guilty in the shooting death of Trayvon Martin by a jury of six women in Sanford, Florida.<sup>284</sup>

### 3. *No Redress for Criminal Victims*

The statutory law of immunity completely severs the defendant from civil liability if he or she injures or takes the life of another and successfully asserts the Stand Your Ground defense.<sup>285</sup> Thus, the defendant is free from any civil cause of action or claim that may result in liability upon a defendant meeting his burden by a preponderance of the evidence or a lack of probable cause showing by the prosecution.<sup>286</sup>

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<http://www.clickorlando.com/news/zimmerman/ex-sanford-police-chief-tells-local-6-why-he-didnt-arrest-george-zimmerman->

278. See Petition for Writ of Certiorari, *State v. Zimmerman*, no. 2012-001083, 2013 WL 2648320 (Fla. Cir. Ct. App. 2012), [http://www.5dca.org/Clerk/George%20Zimmerman%2013-1233/13-1233\\_Petition\\_for\\_Writ\\_of%20Certiorari.pdf](http://www.5dca.org/Clerk/George%20Zimmerman%2013-1233/13-1233_Petition_for_Writ_of%20Certiorari.pdf).

279. *Id.*

280. See *Tentative June trial set for neighborhood watch volunteer George Zimmerman in Trayvon Martin case*, ABC15 (Oct. 17, 2012), <http://www.abc15.com/dpp/news/national/tentative-june-trial-set-for-neighborhood-watch-volunteer-george-zimmerman-in-trayvon-martin-case>.

281. *See id.*

282. See Petition for Writ of Certiorari, *supra* note 278.

283. Doug Spero, *How TV News Failed Trayvon Martin, George Zimmerman, and American People*, CHRISTIAN SCI. MONITOR (July 22, 2013), <http://www.csmonitor.com/Commentary/Opinion/2013/0722/How-TV-news-failed-Trayvon-Martin-George-Zimmerman-and-American-people>.

284. Yamiche Alcindor, *George Zimmerman found not guilty*, USA TODAY (July 14, 2013, 10:19 P.M.), <http://www.usatoday.com/story/news/nation/2013/07/13/george-zimmerman-found-not-guilty/2514163/>.

285. FLA. STAT. ANN. § 776.032(3) (West 2014).

286. *See id.*

The doors of the court are closed to the victim and his family. The aggrieved may not bring suit for claims such as wrongful death, personal injury, inter alia.<sup>287</sup> Contrary to the immunity statute is Article I, section 21 of the Florida Constitution, which provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”<sup>288</sup>

Florida’s Constitution guarantees access to the court for redress of any injury.<sup>289</sup> It has deemed access to the court a constitutional right of the People of Florida.<sup>290</sup> With the Stand Your Ground law, the legislature has enacted a law that abridges a constitutional right to redress injury. The Stand Your Ground law, as currently written, prohibits a victim from pursuing a civil claim against a defendant because he or she was granted immunity by a criminal court.

Fortunately, the Florida Supreme Court has ruled on this particular right to access the courts, holding:

[T]he Legislature is without power to abolish ... a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.<sup>291</sup>

That is to say that the legislature may not abridge or abolish access to the courts without first providing a compelling, overpowering public necessity and showing that there is no alternative to meet the public necessity. The legislature is required to provide a reasonable alternative to protect the rights of the People to redress an injury that has been abridged or abolished.<sup>292</sup>

In terms of civil redress, take for instance the right to recover for wrongful death under Florida law:

When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an

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287. FLA. STAT. ANN. § 776.032 (West 2015).

288. FLA. CONST. art. I, § 21.

289. *Id.*

290. *See id.*

291. *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

292. FLA. CONST. art. I, § 23.

action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.<sup>293</sup>

In addition to the stated requirements for abolishing or abridging a cause of action or claim, there is a condition precedent to the rule set forth in *Kluger*,<sup>294</sup> which is that the civil cause of action or claim “be provided by statutory law predating the adoption of the Declaration of Rights of the [1968] Constitution of the State of Florida, or where such right ... [is] a part of the common law of the State pursuant to Fla. Stat. § 2.01, F.S.A.”<sup>295</sup> Thus, it would be contrary to established law for the legislature to deny access to the court for wrongful death to a class of people because it is a statutory right that existed before the adoption of the 1968 Constitution, especially when it is enforced according to the principles of common law.<sup>296</sup>

#### 4. *Popular Myth 1: Minorities Can be Killed with Impunity*

After the death of Trayvon Martin, many Floridians blamed the Stand Your Ground law for the shooting. The law came under further scrutiny when people began to argue that it allowed for the killings of minorities. In both instances, the presumptions are incorrect.

The law was narrowly tailored to protect law-abiding citizens.<sup>297</sup> There was confusion in the application of the Stand Your Ground law and law enforcement, as well as the court, struggled with its application.

#### 5. *Popular Myth 2: Shooter Can Pursue Perpetrator after Retreat*

It is not just law enforcement and the media that add to the confusion about the law. Some gun proponents argue that Stand Your Ground allows a person to shoot when they are confronted, even after the aggressor has retreated.<sup>298</sup> During an interview with various gun trainers, the consensus appeared to be simple; if the culprit has the right to come towards them, they too have the right to go towards them, even after they

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293. FLA. STAT. ANN. § 786.19 (West 2015).

294. *Kluger*, 281 So.2d at 4.

295. *Id.*

296. *Graham v. A. Lusi, Ltd.*, 206 F.2d 223, 225 (5th Cir. 1953).

297. *Vanguard/ The Right to Kill: Stand Your Ground USA*, VIMEO (2013), <http://vimeo.com/58599291>.

298. *Id.*

retreated.<sup>299</sup> As the case law demonstrates, once a situation is de-escalated, Stand Your Ground no longer applies to the initial confrontation. Provoking the culprit is not defensible under the law.

Some believe that Stand Your Ground discriminates against the poor who depend on public defenders.<sup>300</sup> For example, there is the case of Chyvas Peoples.<sup>301</sup> Peoples pulled out a pocketknife from a key chain when eight gang members were beating him up.<sup>302</sup> He was ultimately arrested and sent to prison for thirty years<sup>303</sup> for killing one of the perpetrators in self-defense.<sup>304</sup> Debra Peoples, Chyvas' mother, stated that the public defender was overwhelmed and did not use the Stand Your Ground defense.<sup>305</sup> Ms. Peoples was also convinced that law enforcement did not understand the law.<sup>306</sup> In 2012, Ms. Peoples and others mounted a protest in order to get public support for her son.<sup>307</sup> The concern was based on the legal representation that Chyvas received at his initial trial where the public defender did not invoke the Stand Your Ground defense, and further advised Chyvas not to take the stand.<sup>308</sup> Chyvas Peoples' wife, Kristy Peoples, stated that "[t]hey're having a lot of trouble interpreting Stand Your Ground now in 2012, and in 2006 and 2008 they definitely didn't know how to interpret it. We just want justice."<sup>309</sup>

The Stand Your Ground law was not created for unfettered vigilantism. Former Governor Jeb Bush, who signed this law back in 2005, stated that, "Stand Your Ground means stand your ground. It doesn't mean chase after somebody who's turned their back."<sup>310</sup> State

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299. *Id.*

300. *Stand Your Ground*, TAMPA BAY TIMES, [http://www.tampabay.com/stand-your-ground-law/cases/case\\_133](http://www.tampabay.com/stand-your-ground-law/cases/case_133) (last visited May 3, 2014).

301. *Vanguard*, *supra* note 297.

302. *Id.*

303. DC N.o. L11925, Peoples, Chyvas A., FLA. DEPT. CORRECTIONS, <http://www.dc.state.fl.us/ActiveInmates/detail.asp?Bookmark=1&From=list&SessionID=702954973> (last visited May 3, 2014).

304. *Vanguard*, *supra* note 297.

305. *Id.*

306. *Id.*

307. Caitlin Johnston, *Man Convicted of Stabbing Death Outside Ybor Club Wants 'Stand Your Ground' Defense*, TAMPA BAY TIMES (July 31, 2012), <http://www.tampabay.com/news/courts/criminal/man-convicted-of-stabbing-death-outside-ybor-club-wants-stand-your-ground/1243490>.

308. *Id.*

309. *Id.*

310. Jeffers, *supra* note 255.

Representative Dennis K. Baxley<sup>311</sup> sponsored the Stand Your Ground legislation. He has made it clear that “there is nothing in that Statute that authorizes you to pursue, confront, or provoke another person.”<sup>312</sup>

#### 6. *Read All About It: How Journalists Contribute to the Myth*

The media has propagated the Stand Your Ground law and its application. In the Tampa Bay Times, an article entitled, “Florida ‘Stand Your Ground’ law yields some shocking outcomes depending on how this law is applied” is one example.<sup>313</sup> This article was based on a compilation of cases where the newspaper reporter felt that the Stand Your Ground law was used as a defense or justification.<sup>314</sup> The article boasts that “[t]he truth of how the law has been used over the past six years was unknown until now,” and that it is “the most comprehensive list of ‘stand your ground’ cases ever created.”<sup>315</sup> The Tampa Bay Times incorporated into its article, a link to its “Stand Your Ground Law Case Files.”<sup>316</sup> Although the article claims that approximately two hundred cases were reviewed, the information contained in the article’s case files are not complete.<sup>317</sup>

For example, in 2009, there was a shooting that took place in, Pasco County.<sup>318</sup> Seth Sigmon, age twenty-nine, and John Croft, age eighty-one, were next-door neighbors who did not get along.<sup>319</sup> There was a previous incident where Croft claimed that Sigmon’s dog had gone onto his property and killed his goats.<sup>320</sup> On the day of the incident, Croft had warned Sigmon about Sigmon’s nine-year-old playing too close to the property line.<sup>321</sup> Standing outside his fenced-in yard, Sigmon confronted Croft, who allegedly had drawn a .22-caliber handgun.<sup>322</sup> When Sigmon

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311. Representative Dennis K. Baxley, FLA. HR, <http://www.myfloridahouse.gov/Sections/Representatives/details.aspx?MemberId=4200> (last visited May 3, 2014).

312. *Vanguard*, *supra* note 297.

313. Kris Hundley, *Florida ‘Stand Your Ground’ Law Yields Some Shocking Outcomes Depending on how Law is Applied*, TAMPA BAY TIMES (June 1, 2012), <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depend-on/1233133>.

314. *Id.*

315. *Id.*

316. *Id.*

317. *Id.*

318. *Stand Your Ground*, *supra* note 300.

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

asked Croft if he was going to shoot, Croft shot approximately three times.<sup>323</sup> After his arrest, Croft stated he became angry and scared after Sigmon, who weighed approximately one hundred pounds more than him, prodded and cursed at him, so he pulled out the gun.<sup>324</sup> Croft was arrested and charged with manslaughter.<sup>325</sup> On May 24, 2012, a Pasco County jury convicted Croft of manslaughter.<sup>326</sup>

Unlike the portrayals of the case file, the defense of Stand Your Ground was not used in the case involving John Croft and Seth Sigmon.<sup>327</sup> The case file claims that at the trial, the defense attorney had argued that “it could have been a case of ‘Stand Your Ground’”<sup>328</sup> This alleged statement by no means demonstrates that Stand Your Ground was used as a defense. The reporter misstated what was allegedly said to bolster the article’s statistics. Case files, like this one, only add to the confusion of the Stand Your Ground law.<sup>329</sup>

The article claims that nearly seventy percent of those who invoke Stand Your Ground to avoid prosecution have been extremely successful and that defendants are more likely to prevail if the victim is black.<sup>330</sup> The article further uses its own “statistics to state that seventy-three percent of those who killed a black person faced no penalty compared to fifty-nine percent of those who killed a white person.”<sup>331</sup> Again, these statistics are not based on hard facts but on the authors’ interpretations of stories.<sup>332</sup> It is important to note how race and ethnicity play a role in misapplying the statistics. In the Tampa Bay article, Stand Your Ground claimant Greyston Garcia is depicted as a Hispanic male.<sup>333</sup> However, on the Miami Dade Clerk of Court website for criminal case information, Garcia is listed as a black male and a white male.<sup>334</sup>

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323. *Id.*

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. Hundley, *supra* note 313.

331. *Id.*

332. See, Brett Kimberling, *Deep Analysis of the Tampa Bay Times Stand Your Ground Database (III)*, ALLERGIC TO BULL, L., LIFE & LOC. SPECTATOR SPORT CALLED POL. (July 21, 2013), [http://allergic2bull.blogspot.com/2013/07/deep-analysis-of-tampa-bay-times-stand\\_21.html](http://allergic2bull.blogspot.com/2013/07/deep-analysis-of-tampa-bay-times-stand_21.html).

333. *Stand Your Ground*, *supra* note 300.

334. *Case Number F-11-002441*, MIAMI-DADE CLERK CT. CRIM. JUST., <https://www2.miami-dadeclerk.com/cjis/CaseSearch.aspx> (last visited Aug. 30, 2015).

The media article does offer a disclaimer.<sup>335</sup> It states that a “comprehensive analysis of ‘Stand Your Ground’ decisions is all but impossible.”<sup>336</sup> It claims that when law enforcement and prosecutors decide not to press charges, records are not always kept, and records on how many “Stand Your Ground” motions have been filed or their outcomes are also not maintained.<sup>337</sup> These facts are important to understand the circumstances that surround “cases” they are assessing. Some of the case files appear to show that the victims were not committing a crime that led to the confrontation, that there were opportunities to retreat, and/or that the defendants were not on their properties.<sup>338</sup>

Moreover, under cases “justified,” a note viewable when scrolling mouse over the justified box discloses that justified could mean “[c]ase was dismissed or defendant was acquitted or found innocent, granted immunity, or not charged.”<sup>339</sup> This does not support the article’s stance that all of these defendants were let go because of the Stand Your Ground defense.<sup>340</sup> It is misleading without a doubt and dangerous, as readers can be led to believe that they will not be held accountable because the Stand Your Ground law allows them to pursue, confront, provoke, and ultimately, kill.<sup>341</sup>

### 7. *Taking it to the Streets: Police Interpretation of the Law*

Many believe that law enforcement is versed in the laws of the land. However, Stand Your Ground is the exception. Law enforcement has discretion when it comes to deciding whether an individual will be arrested or whether a crime has been committed. In the Trayvon Martin case, George Zimmerman was not immediately arrested.<sup>342</sup> The Sanford Police Department used its discretion when it determined, based on a

335. Hundley, *supra* note 313.

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. See Nicole Flatow & Rebecca Leber, *5 Disturbing Facts About The State Of Stand Your Ground On The Second Anniversary Of Trayvon's Death*, THINKPROGRESS (Feb. 26, 2014), <http://thinkprogress.org/justice/2014/02/26/3332391/trayvon-martin-years/>.

341. Jeffrey Toobin, *The Facts in the Zimmerman Trial*, NEW YORKER (July 16, 2013), <http://www.newyorker.com/online/blogs/comment/2013/07/the-facts-in-the-george-zimmerman-trial.html>.

342. Serge F. Kovaleski, *Trayvon Martin Case Shadowed by Series of Police Missteps*, N.Y. TIMES (May 16, 2012), [http://www.nytimes.com/2012/05/17/us/trayvon-martin-case-shadowed-by-police-missteps.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/05/17/us/trayvon-martin-case-shadowed-by-police-missteps.html?pagewanted=all&_r=0).

preliminary investigation, that Zimmerman acted in self-defense.<sup>343</sup> Self-defense existed prior to Stand Your Ground. The main difference is that to claim self-defense, a person had a duty to retreat, if possible, while with Stand Your Ground, a person does not have this duty, even if the opportunity presents itself.

Miami Police Department Commander, Ervens Ford, was interviewed for a documentary regarding the Stand Your Ground law.<sup>344</sup> During the interview, Cmdr. Ford stated that in his opinion “Stand Your Ground will allow a lot of guilty people to walk.”<sup>345</sup> His concern was founded on a case he handled involving the aforementioned Greyston Gracia. Garcia was twenty-five when he fatally stabbed Pedro Roteta, a man who had stolen a radio from Garcia’s car on January 25, 2012.<sup>346</sup> Cmdr. Ford stated that Garcia was set free because of the Stand Your Ground law, even though Roteta had ran away and Garcia pursued him.<sup>347</sup> Based on a store security video, Roteta appeared to turn and surrender, but Garcia stabbed him anyway.<sup>348</sup> Some sources claim that Roteta had swung a bag containing radios at Garcia,<sup>349</sup> while others claim that Roteta swung the bag at Garcia’s head.<sup>350</sup> In March of 2012, Miami-Dade Judge Teresa Mary Pooler cited the “Stand Your Ground” law in dismissing the case against Garcia, stating that when Roteta swung a four-to-six pound bag of stolen car radios at Garcia just before the stabbing, it amounted to a lethal threat.<sup>351</sup> Based on his own experiences, Cmdr. Ford stated that “the law expanded self-defense to defend the criminal.”<sup>352</sup>

#### 8. *Taking it to the Courts: Prosecutor and Defense Positions on the Law*

The Stand Your Ground law created a doubled-edge statutory immunity that cuts like a knife when the justifiable use of force is utilized. This immunity operates to preclude the prosecution from

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343. *Id.*

344. *Vanguard*, *supra* note 297.

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Stand Your Ground*, *supra* note 300.

350. Barry Leibowitz, *Greyston Garcia, who won Fla. 'stand your ground' case, killed in suspected gang crossfire*, CBS NEWS (June 29, 2012), <http://www.cbsnews.com/news/greyston-garcia-who-won-fla-stand-your-ground-case-killed-in-suspected-gang-crossfire/>.

351. *Stand Your Ground*, *supra* note 300.

352. *Vanguard*, *supra* note 297.

charging, arresting, prosecuting, or detaining the defendant absent probable cause.<sup>353</sup> The immunity is truly complete.<sup>354</sup> It is not necessary to assert immunity at trial, but rather, it operates as an immunity that precludes criminal and civil prosecution.<sup>355</sup> Specifically, the “legislature intended to create immunity from prosecution rather than an affirmative defense, and, therefore, the preponderance of the evidence standard applies to immunity determinations.”<sup>356</sup>

Under Section 776.032, “criminal prosecution” includes the arrest, detention, charging, or prosecution of the defendant.<sup>357</sup> At no point may the defendant’s freedom be significantly deprived, nor may the government engage the defendant in a non-consensual manner.<sup>358</sup> Hence, the legislature has essentially authorized the immunity determination to be made by law enforcement officers, prosecutors, judges, and juries at any stage of prosecution since they must have at least probable cause to arrest.<sup>359</sup>

Expanding the Castle Doctrine’s application creates more circumstances where the presumptions of fear of great bodily harm or death can be applied consequentially, which increases the probability of a justifiable use of deadly force determination. Today’s culture of anger and resentment towards criminals has led to this Stand Your Ground legislation, and as illustrated in the Rodney Lewis case, protection from prosecution when the victim is arrested as the culprit<sup>360</sup> causes mass confusion and public outcry.<sup>361</sup> But, as illustrated in the Trayvon Martin

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353. FLA. STAT. ANN. § 776.032(2) (West 2006).

354. Peterson v. State, 983 So.2d 27, 29 (Fla. Dist. Ct. App. 2008).

355. FLA. STAT. ANN. § 776.032 (West 2006).

356. Gray v. State, 13 So.3d 114, 115 (Fla. Dist. Ct. App. 2009).

357. FLA. STAT. ANN. § 776.032 (West 2014).

358. See *id.*

359. See *id.*

360. Eckhoff, *supra* note 76.

361. Steve Osunsami, *Florida Woman Sentenced to 20 years for Firing Warning Shot Wants Bail*, ABC NEWS (Nov. 12, 2013), <http://abcnews.go.com/US/florida-woman-sentenced-20-years-firing-warning-shot/story?id=20859087>. Marissa Alexander, mother of three, from Jacksonville, Florida, claimed self-defense after firing a warning shot to scare off her abusive husband. See Seni Tienabeso, *Court Overturns 20-year Sentence for Woman Who Fired ‘Warning Shots’ at Husband*, ABC NEWS (Sept. 26, 2013), <http://abcnews.go.com/US/court-overturns-20-year-sentence-woman-fired-warning/story?id=20387742>. She was convicted of aggravated assault in March 2012 and sentenced to 20 years in prison. *Id.* This conviction sparked outraged and cries of the community of a racial double-standard in light of the exoneration of George Zimmerman. *Id.* An appellate court granted Ms. Alexander a new trial. *Id.* Her sentence was highlighted a year later as an example of the unfairness of Florida’s Stand Your Ground law after George Zimmerman was acquitted of murdering Trayvon

incident, presumptions of fear of great bodily harm or death are just that of an individual's subjective presumption, unreasonable fear, or even delusion. It is true that a court of law weighs the evidence at a hearing, but this does not bring back the deceased. Going back to the duty to retreat at least minimizes the hasty reaction to kill first.

Another unintended consequence of Stand Your Ground resolves around the jury instructions<sup>362</sup> in the George Zimmerman case.<sup>363</sup> George Zimmerman waived his right to a Stand Your Ground pretrial immunity hearing.<sup>364</sup> However, his jury instructions contained the Stand Your Ground defense.<sup>365</sup> Waiving the pre-trial immunity hearing does not suggest that the entire defense is waived.<sup>366</sup> The self-defense argument was used and, ultimately, led to Zimmerman's acquittal.<sup>367</sup>

Martin in 2013. *Id.* Outrage aired on social media and among some lawmakers on Capitol Hill. *Id.*

U.S. Rep. Corrine Brown, D-Fla., 'lashed out at Florida State Attorney Angela Corey, who oversaw the failed prosecution of George Zimmerman and the prosecution in this case, saying, '[a]rresting and prosecuting her when no one was hurt does not make any sense. . . . What was certainly absent from the courtroom during Marissa's trial was mercy and justice. Indeed, the three-year-plea deal from State Attorney Angela Corey is not mercy, and a mandatory 20-year sentence is not justice.'

*Id.*

Notably, in granting a new trial, Judge James H. Daniel stated, "[w]e reject her contention that the trial court erred in declining to grant her immunity from prosecution under Florida's Stand Your Ground law, but we remand for a new trial because the jury instructions on self-defense were erroneous." *Id.*

362. *Jury Instructions for George Zimmerman Trial*, EIGHTEENTH JUDICIAL CIR. CT., [http://www.flcourts18.org/PDF/Press\\_Releases/Zimmerman\\_Final\\_Jury\\_Instructions.pdf](http://www.flcourts18.org/PDF/Press_Releases/Zimmerman_Final_Jury_Instructions.pdf) (last visited on May 3, 2014).

363. Mark Memmott, *READ: Instructions For The Jury In Trial Of George Zimmerman*, NPR (July 12, 2013, 7:10 AM), <http://www.npr.org/blogs/thetwo-way/2013/07/12/201410108/read-instructions-for-the-jury-in-trial-of-george-zimmerman>.

364. *Zimmerman to Argue Self-Defense, Will Not Seek 'Stand Your Ground' Hearing*, CNN (May 1, 2013), <http://www.cnn.com/2013/04/30/justice/florida-zimmerman-defense/>; see also Dan Abrams, *No, Florida's Stand Your Ground Law Did Not Determine Either Zimmerman or Dunn Cases*, ABC NEWS (Feb. 17, 2014), <http://abcnews.go.com/US/floridas-stand-ground-law-determine-zimmerman-dunn-cases/story?id=22543929>.

365. *Jury Instructions*, *supra* note 362.

366. *Rice v. State*, 90 So.3d 929, 930 (Fla. Dist. Ct. App. 2012).

367. Greg Botelho and Holly Yan, *George Zimmerman Found Not Guilty of Murder in Trayvon Martin's Death*, CNN (July 14, 2013), <http://www.cnn.com/2013/07/13/justice/zimmerman-trial/index.html>.

## II. CONCLUSION

The public outcry after Zimmerman's acquittal sent polarizing shockwaves through the United States. The controversial verdict ignited angry protests and violent riots across the country. White Americans, as well as minorities with diverse cultural and racial backgrounds, struggled with the verdict. They questioned the legal and societal impact of Florida's Stand Your Ground law. The confusing application of this law caused a great uproar when the outcome of the Marissa Alexander and George Zimmerman cases exposed a gross disparity between the interpretation and application of the law. Similarly, Prohibition created such a negative impact that it was overturned. The unintended confusion, misapplication, and interpretation of the Stand Your Ground law galvanized the public's cry for fairness and justice. Justice requires that the law be repealed. In the alternative, the law should be revised in a manner that avoids unintended, interpretive confusion and disparate outcome.

