American Bar Association
Coalition on Racial and Ethnic Justice

Presents

Do or Die: Analysis of the Stand Your Ground Statutes

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Saturday, August 4, 2012
9 a.m. until Noon

Swissotel Chicago
323 East Wacker Drive
Lucerne Ballroom I
Ballroom Level
Chicago, Illinois
AGENDA

WELCOME & INTRODUCTIONS
HONORABLE DAVID PERKINS
Chairperson of COREJ &
Program Co-Moderator

GREETINGS
HONORABLE MICHAEL HYMAN
Chair-Elect of COREJ

OVERVIEW OF COREJ & PROGRAM
LEIGH-ANN BUCHANAN
Program Chairperson of COREJ
& Program Co-Moderator

INTRODUCTION OF KEYNOTE SPEAKER
HONORABLE DAVID PERKINS

KEYNOTE SPEAKER
DARYL D. PARKS
Parks & Crump, LLC &
Immediate Past President,
National Bar Association
INTRODUCTION OF PANELISTS

LEIGH-ANN BUCHANAN

Salvador Cicero, Principal,
Cicero Law Firm P.C.

Theodore Jamison III,
President and Managing
Attorney, Theodore Roosevelt
Jamison 3rd, P.C.

William Martin
Of Counsel, Jones Day

Daryl Parks
Parks & Crump, LLC

Rory Smith
Associate Dean,
The John Marshall Law School

Rev. Janette Wilson
Senior Advisor to Rev. Jesse
Jackson, Sr

QUESTIONS & ANSWERS

Leigh-Ann Buchanan

WRAP-UP & CLOSING

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Hon. Michael Hyman
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Additional information may be obtained from
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Dear Conference Participant:

Thank you for joining us on August 4, 2012, in Chicago for this thought-provoking event. The American Bar Association’s Coalition on Racial and Ethnic Justice (COREJ) is pleased to present “Do or Die: Analysis of the Stand Your Ground Statutes.”

Thanks to the hard work of the Chairperson of COREJ’s Program Committee, Leigh-Ann Buchanan, this program was specifically designed to enlighten its participants regarding “Stand Your Ground” statutes which now exist in more than twenty-five states and recently, have received increased national attention.

In an environment where the debate about race and justice issues continues to penetrate the collective mind of our nation, this dynamic and interactive roundtable will feature an honest and engaging dialogue concerning the legal framework of such Stand Your Ground laws as it relates to the equal application of criminal laws and current attitudes towards individualized justice.

With your participation, recommendations and comments, we anticipate productive discourse between our dynamic panel of speakers and attendees. Please be sure to complete the evaluation form and return it to our registration desk.

Thank you for participating and for your continued interest and support.

Sincerely,

Honorable David A. Perkins
Chairperson
ABA Coalition on Racial and Ethnic Justice
AMERICAN BAR ASSOCIATION
COALITION ON RACIAL AND ETHNIC JUSTICE (COREJ)

WISHES TO EXTEND A NOTE OF SINCERE APPRECIATION TO OUR SPONSORS FOR THEIR SUPPORT AND ASSISTANCE

WALMART

AND

PAULETTE BROWN
A presidential Task Force on Minorities in the Justice system was created in 1992 in the aftermath of the Rodney King disturbances. Shortly thereafter, a report was issued with recommendations by the Task Force. In 1994 the Task Force was re-named the Council on Racial and Ethnic Justice (now the Coalition or COREJ). The Coalition was designed to implement the recommendations and develop partnerships among community groups, civil rights organizations, businesses, religious organizations, and bar associations for the purpose of eliminating racial and ethnic bias in the justice system. Its primary goal is to serve as a catalyst for eliminating racial and ethnic bias in the justice system with a focus on systemic change.

COREJ (1) assists with the development of educational programs; (2) provides public forums for dialogue between legal institutions and non-legal groups; and (3) provides technical assistance and advice on how to implement specific programs, strategies, and partnerships that eliminate racial and ethnic bias.

Since its inception, COREJ has been on the cutting edge of social justice issues. It has focused on a number of substantive and diverse issues such as racial profiling, access to the justice system, overrepresentation of juveniles of color, indigent defense, racial profiling and the war on terrorism, teen violence, the impact of foreclosures on communities of color, voting disenfranchisement and the impact of technology, election protection, injustices and discrimination in Tulia, Texas and restoring justice and equity by providing strategies for disaster preparedness and response that reduce patterns of discrimination and unfairness in the delivery of disaster aid and services e.g. Katrina Project.

**RECENT PROGRAMS**

- Justice Equality and A More Perfect Union: Community Recovery and Restoration After A Crisis (February 2012, New Orleans, LA)
- Raising The Bar on Foreclosure Prevention Efforts – Implementing Pro Bono Programs To Help Michigan Homeowners, Hosted by Federal Reserve Bank of Chicago- Detroit Branch (October, 28, 2011, Detroit, MI)
- HELP! I Need A Housing LIFELINE! (October 29, 2011, Detroit, MI)
- The War Against Foreclosures: Combating Foreclosures and Mortgage Crisis in Communities of Color (July 31, 2011, Baltimore, MD)
- Combating Foreclosures and the Mortgage Crisis in Communities of Color (February 12, 2011, Atlanta, GA)
- Stop Teen Violence: Time To Deliver (August 7, 2010, Golden Gate Law School, San Francisco, CA)
- Stop Teen Violence: Time To Deliver (May 3, 2010, Youthville Detroit, Detroit, MI)
- Stop Teen Violence: Time To Deliver (November 20, 2009, Chicago State University, Chicago, IL)

**SIGNIFICANT PROJECTS**

- Joint Project with the 10CORE Law Student Organization on Foreclosure
  - *Overrepresentation of Juveniles of Color in the Juvenile Justice System*
  
  After an alarming number of national studies and reports revealed evidence that there is an overrepresentation of juveniles of color in the juvenile justice system and the justice system, the Coalition implemented a two-prong attack on the problems confronting juveniles of color. The first prong focuses on strategies that prevent young people of color from being trapped in the justice system; and the second prong focuses on strategies that divert young people of color and prevent
their initial entrance into the juvenile justice system. A complete listing of juvenile justice programs sponsored by COREJ is attached.

**Election Protection Project**

COREJ developed a partnership in conjunction with the Lawyers’ Committee and five ABA sections, divisions and entities to remove barriers to the electoral process for citizens of color who sought to participate in the 2004 election. COREJ, along with the Section of Individual Rights & Responsibilities and the Election Law Committee renewed their partnerships for the 2008 Elections and broadened the scope of the Project.

The goals of the 2008 Election Protection Project were: (1) Safeguard voters’ rights before, during and after Election Day by giving voters the information and resources they needed to cast meaningful ballots; and (2) Provide a comprehensive support system for eligible voters across the country that included support for registration programs, developing voter education materials, and providing direct legal assistance to protect the rights of voters. A primary goal for COREJ was to train volunteer lawyers who worked with voters on a national and local level to monitor polling places, educate voters, facilitate dialogues with state and local election officials, provide legal support to poll monitors and help answer the Lawyers’ Committee Hotline.

The three primary ABA Partners for the Election Project developed a plan for recruiting volunteer lawyers and law students and the major activities began in June 2008. An Election Protection website was launched on the ABA website.

- **Katrina Project**

  The goal of the project was to educate, conduct outreach and coordinate resources and services across the country to assist those survivors that received disparate treatment in the midst and aftermath of Hurricane Katrina. These goals were accomplished by holding a national conference and three CLE programs, conducting outreach, and publishing a Report.

**NATIONAL CONFERENCES**

- **Third National Conference – “Making the Invisible Visible: A Dialogue About Lessons Learned in the Aftermath of Katrina”**

  **Conference Overview:** The Coalition brought together approximately 200 judges, lawyers and their clients, health care workers, social workers, doctors, psychiatrists, psychologists, high school, college and law students, community groups, religious organizations, public and private leaders, survivors, responders and others who have devoted time to assisting victims of Katrina. The primary goals of the Conference: (1) conduct a productive dialogue among the survivors, planners (commissioners), and the participants; (2) produce a Report which identifies the type of problems that might emerge due to race and ethnicity, how to avoid inequities based on race and ethnicity, and how to mitigate the problems; and (3) assist the survivors of Katrina with the rebuilding of their lives, restore justice and provide equity and respect to those victims that have been treated unjustly.

  **Educational Programs:** Three successful panel presentations have been presented (1) ABA Midyear Meeting in Chicago, 2006 titled “Equity for Racial & Ethnic Survivors of Katrina;” (2) a jointly sponsored program with the National Bar Association as a Webcast Program “Hurricane Relief Seminar,” March, 2006 in Chicago; and (3) “Surviving Together; Healing Together” COREJ convened this special panel of experts in New Orleans to provide an in-depth status report of the communities that suffered disproportionately economically, legally, educationally and medically from Hurricane Katrina.

  **Report:** The Final Report of the Conference contains specific recommendations from the speakers, participants and survivors. The Report titled “Making the Invisible Visible: A New Approach to Disaster Planning and Response,” contains an analysis of issues ranging from communications and
language skills, to resource allocation, to pre-existing economic and social inequities. A number of excellent recommendations were received from the Conference. The recommendations were included in the Report that was issued in August 2007

Second National Conference on the Impact of Race and Ethnicity on the Justice System
In March 2002, the Coalition held a highly successful conference in Baltimore. The conference was diverse, intergenerational, interactive and action-oriented. Recommendations from the Conference were used as blueprints for COREJ programs and projects. A report is available on the Conference.

- First National Conference on the Impact of Race and Ethnicity on the Justice System
In Los Angeles, CA 1999, after holding two “think tank” meetings, COREJ convened an extraordinary conference. Two reports are available: Report on the Impact of Race and Ethnicity on the Justice System provides a brief overview; and the Draft of the National Conference Proceedings with Recommendations.

Several major follow-up projects were developed from the 1999 conference:

1. Enhancing Access to the Justice System through Technology: Would Technology Have Changed the Outcome of the Vote in Florida?
2. Data Collection Project on Color/Racial Profiling: The Tulia, Texas Project
3. Friends of the Council

Honorable David A. Perkins, Chairperson
Rachel Patrick, Director
Rachel.Patrick@americanbar.org
Website: http://www.americanbar.org/groups/diversity/racial_ethnic_justice.html
To: ABA Center for Racial and Ethnic Diversity
ABA Commission on Racial & Ethnic Diversity
ABA Council on Racial and Ethnic Diversity

From: David Perkins, Chairperson
Coalition on Racial & Ethnic Justice

Date: April 7, 2012

Re: White Paper Concerning the American Bar Association’s Reaction to the Trayvon Martin Case and Position on “Stand Your Ground” Legislation

The Coalition on Racial & Ethnic Justice (COREJ) submits this White Paper to encourage the American Bar Association to respond to the significant legal and social justice issues raised by the Trayvon Martin tragedy. COREJ also urges the ABA to adopt an official position on state “Stand Your Ground” laws, which lie at the heart of the debate over the perceived injustice surrounding the death of Trayvon Martin. The temporary prosecutorial immunity achieved by Trayvon’s attacker has garnered national attention and extended and intensified the dialogue concerning equal justice. While the facts behind this tragedy continue to be investigated and debated, the complex interplay of race and justice is reason enough for the ABA to bring its expertise and resources to the
discussion. Race and justice issues plague our nation. We cannot stand by in silence.

Over one month ago, on February 26, 2012, Trayvon Martin, a seventeen year old, African American young man was killed by a fatal gunshot wound to the chest. The shooter, George Zimmerman, a neighborhood watch captain pursued Martin, first by vehicle, then by foot, simply because Martin - walking home from the corner store - appeared suspicious. Notwithstanding the 911 dispatcher’s directives to stand down, Zimmerman proceeded to confront Martin, inciting an altercation with the unarmed teenager which led to Martin’s death.

Zimmerman has since claimed self-defense to justify his use of deadly force in confronting an unarmed teenaged Martin. Zimmerman has sought refuge under Florida’s Stand Your Ground law, § 776.012, Florida Statutes (2011). Without questioning Zimmerman’s perfunctory assertions of self-defense and self-proclaimed entitlement to statutory immunity, local law enforcement officers have not yet arrested Zimmerman for the death of Martin, nor have local prosecutors moved forward with pressing charges.

Enacted in 2005, in part as a result of vigorous lobbying by the National Rifle Association, Florida’s Stand Your Ground law, like similar statutory counterparts in other jurisdictions, effectively expands the individual right of self-defense by abolishing common-law duty to retreat before using deadly force. The result: “under Florida law, ‘[a] person who uses force as permitted in § 776.012 ... is justified in using such force and is immune from criminal prosecution and civil action for the use of such force.’ ” Penley v. Eslinger, 605 F.3d 843, 854 (11th Cir. 2010) (quoting Fla. Stat. § 776.032(1)). Like similar statutes in other states, Section 776.012, Florida Statutes, authorizes an individual, including concealed weapon permit holders, to meet force with force so long as the individual is somewhere he or she has a legal right to be, is not engaged in
unlawful activity, and has a "reasonable belief" that the use of deadly force is necessary to prevent serious bodily injury or imminent death. Fla. Stat. § 776.012.

Under the statute, if a person uses deadly force and invokes the law, the law enforcement agency may, but is not obligated to "use standard procedures for investigating the use of force," and further "may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful." Fla. Stat. § 776.012. Indeed, Florida courts have interpreted the law to afford immunity from arrest, detention, or prosecution. Dennis v. State, 51 So.3d 456, 462 (Fla. 2010) (the Stand Your Ground law "expressly grants defendants a substantive right to not be arrested, detained, charged, or prosecuted as a result of the use of legally justified force. The statute does not merely provide that a defendant cannot be convicted as a result of legally justified force."). See also Velasquez v. State, 9 So.3d 22, 24 (Fla. 4th DCA 2009). ("By defining "criminal prosecution" to include the arrest, detention, charging, or prosecution of the defendant, the Stand Your Ground statute allows for an immunity determination at any stage of the proceeding."); Horn v. State, 17 So.3d 836 (Fla. 2d DCA 2009) ("our legislature intended to create immunity from prosecution rather than an affirmative defense").

As written, Florida’s Stand Your Ground laws provide no protection from what has occurred in the Trayvon Martin case. By invoking the statutory immunity promulgated by the Stand Your Ground law, Zimmerman, an individual who has admitted to causing the death of an unarmed African American teenager through use of deadly force has remained free from arrest, detention, and subverted a cause hearing before an officer of the Court for over thirty days.

In the wake of national outcry, the apparent wheels of justice have slowly begun to move. The Sanford police chief has temporarily stepped down from public office in the
midst of public scrutiny concerning the seemingly insufficient investigation and inability to make a probable cause determination. The Seminole County State Attorney has withdrawn from prosecuting the Trayvon Martin case. The Department of Justice and the Federal Bureau of Investigation have intervened and commenced individual investigations into the circumstances surrounding Trayvon Martin’s homicide. Following suit, Florida’s Governor has now requested the Florida Department of Law Enforcement examine the Trayvon Martin case and has appointed a special prosecutor; the Jacksonville, Florida, State Attorney’s Office. A date certain has been set to convene a grand jury on April 10, 2012, to determine if probable cause exists to lay criminal charges against Zimmerman relating to the death of Martin.

The Trayvon Martin case has spawned national attention and sparked fervent dialogue regarding attitudes about race, bias, guns and self-defense protections afforded by state and federal laws. Perhaps most pressing and relevant to the ABA’s fundamental policy goals, is the unfettered discretion exercised by law enforcement officials pursuant to the Stand Your Ground law to determine the viability of an individual’s entitlement to statutory immunity from prosecution notwithstanding the use of deadly force against another. The nation is slowly confronting the inevitable consequences of a state law that shifts the presumption of innocence onto the perpetrator or aggressor and forces the victim to prove beyond a reasonable doubt that he or she has indeed been victimized. There is something about the fundamental unfairness of this incident that has invoked such a virulent response. Analogized by national media as the twenty-first century Emmitt Till, Trayvon Martin humanizes the struggle for equal justice amidst apoplectic attitudes about how race and ethnicity impact the criminal justice system. The ABA has embraced this struggle, support for which is engrained in the organizational mandates of numerous
ABA entities, in particular, those entities that operate under the ambit of the Diversity Center.

While the ABA ought not comment on whether a person should or should not be charged with a crime based on reports of evidence without having access to the investigative file or all salient factual details, the ABA should comment upon and encourage lawmakers at the state and federal level to both the ramifications of such Stand Your Ground law and address the propensity for misapplication due to lack of procedural safeguards or underlying racial or ethnic bias of those enforcing such laws.

Approximately 23 states which have enacted similar Stand Your Ground laws. Thus, it behooves the ABA to take action toward adopting an official position concerning the ramifications of such statutes and the level of discretion afforded to non-judicial officials in immunizing potentially guilty individuals from criminal prosecution. This is particularly true here, where Florida’s Stand Your Ground law, like many others, leaves the initial determination of its application and grant of immunity to the discretion of law enforcement officials and is silent as to whether the use of deadly force is permitted under circumstances in which the perceived “aggressor” is unarmed. Even Florida courts are cognizant of the need to revisit the statute to more definitely limit its application and incorporate procedural protections to safeguard the rights of the victim until a legal determination is made by the appropriate judicial authority. *Horn v. State*, 17 So.3d 836 (Fla. 2d DCA 2009) (despite “broad temporal application, running from before arrest through trial, there is no legislative guidance as to the statute’s implementation.”).

Underlying the Trayvon Martin case are issues concerning racial profiling, implicit bias, and equitable treatment under the law. In a societal environment where implicit bias exists, but is not regularly acknowledged, a statute which effectively approves the use of force based upon presumed fear and authorizes responding law enforcement officers to
serve as the initial arbiters of whether a person's use of deadly force was reasonable or excessive, invites misapplication and abuse, as is evidenced by the Martin case. By synthesizing the central legal issue into simple terms, it follows that that Stand Your Ground laws removes from the providence of the officers of the Court, that is, those familiar with the applicable legal standards, or the jury (as to genuine issue of material fact), the determination of whether the facts and circumstance justify the use of deadly force. Instead, Florida’s Stand Your Ground statute allows law enforcement officers and an individual who claims to have experienced a perceived threat, whether reasonably or unreasonably and whether arising from implicit or express bias, or not to act as extrajudicial arbiters of the law.

Taking action in response to the Trayvon Martin case will not undermine or negatively impact any stated ABA policy or foundational goals. Rather, calling attention to this issue will further the ABA’s efforts to eliminate actual and perceived racial and ethnic bias in the criminal justice system and Goal III objectives.

COREJ urges the ABA to issue a public statement in response to the issues raised by the Trayvon Martin case. In furtherance of establishing an official position on state “Stand Your Ground” laws, COREJ also urges the ABA to convene an ad-hoc commission or taskforce to investigate the ramifications of such legislation. COREJ further intends to present a Resolution on the subject of Stand Your Ground legislation to the ABA House of Delegates at the August, 2012 Annual Meeting in Chicago, and seeks support for such anticipated Resolution and proposed commission or taskforce.
Roster

Keynote Speaker

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Partner
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Leigh-Ann A. Buchanan

Leigh-Ann Buchanan concentrates her practice in complex commercial and transnational litigation, white-collar criminal defense, and international commercial arbitration. Her experience includes practice in both state and federal courts, as well as state and federal civil appeals.

Representative Experience

- Representation of international cargo airline in litigation to vacate ex parte judgment
- Representation of Latin American foodstuff distribution investor in litigation to abate proceedings on international abstention grounds
- Representation of a private banking institution in litigation to recover damages for breached of representations and warranties arising from secondary market loan portfolio sales
- Representation of public executive in state whistleblower litigation
- Representation of real estate investment hotelier in private arbitration through trial to recover damages from unconsummated sale of a Caribbean resort hotel
- Representation of secured creditor in cross-border bankruptcy litigation to liquidate collateral and satisfy claim
- Representation of shareholders in derivative litigation relating to fraud, waste, and mismanagement by company affiliates
- Representation of heavy construction equipment distributor in enforcement of non-compete and non-solicitation agreements

Professional & Community Involvement

- Wilkie D. Ferguson Jr. Bar Association
  - Vice President (2012-2013)
  - Group I Director (2011-2012)
- American Bar Association
- Council on Racial & Ethnic Justice
  - Programming Chair (2011-2012)
  - United for Haiti Project Coordinator (2010-2011)
- American Inns of Court, Spellman-Hoeveler Chapter

Awards & Recognition

- National Security Law Moot Court Competition, First Place Winner, Best Brief Award
- Frederick Douglass National Moot Court Competition, Regional Finalist, National Semi-Finalist
- John T. Gaubatz Moot Court Competition, Quarter-finalist
- Clyde C. Atkins Advanced Moot Court Competition, Semi-Finalist, Best Oralist
- Phillip Bloom Litigation Award
- James Weldon Johnson Fellowship, Best Oral Advocate
Presentations

- Panelist, Law Firm Practice, University of Miami School of Law, 2009

Prior Affiliations

- Rivero Mestre LLP
- Certified Legal Intern, Miami-Dade County Office of the Public Defender, County Jail Division
- Judicial Intern for The Honorable Robert A. Mark, U.S. Bankruptcy Court, Southern District of Florida
Salvador A. Cicero

Salvador Cicero is the Principal of The Cicero Law Firm, P.C. Salvador Cicero is a graduate of the Matias Romero Institute for Diplomatic Studies in Mexico City (2000) and holds a Juris Doctor and a Certificate in International Trade and Development from The Ohio State University Moritz College of Law (1998). He received a B.A. in Latin American Studies at the University of New Mexico (1994). He is admitted to practice law in Illinois and the US Federal District Courts for the Northern District of Illinois (trial bar) and Eastern District of Wisconsin.

Mr. Cicero formerly served as Research Fellow of the American Bar Foundation and Director of the American Bar Association’s Project to Combat Trafficking in Persons in Ecuador. The Program was designated as an international Best Practice by the U.S. Department of State and the Organization of American States (OAS). Mr. Cicero was also a career member of the Foreign Service of Mexico.

He has published various Law Review articles and other academic articles in the U.S., Colombia, Mexico and Argentina. He has lectured in programs throughout the American Hemisphere, most notably as an anti-trafficking expert for the OAS and as a trainer for United Nations’ Peacekeeping Forces. He has been an invited commentator on national Civil Rights issues (testified before the US Commission on Civil Rights, Spring 2012), as well as anti-trafficking legislation in both Mexico and Ecuador.

He is a well-known media commentator on legal affairs and has appeared in national media outlets such as the Univision National News, Telemundo and National Public Radio. Mr. Cicero serves as member of the 2012 ABA YLD Chicago Host Committee, and served in the ABA House of Delegates 1997-1998. He is the Immediate Past-President of the Hispanic Lawyers Association of Illinois (2012-2013).

Among his awards and distinctions is the 2011 Martin Luther King DREAM Award for Public Service, the 2007 El Humanitario Award, the Ohio State University Alumni Association’s William Oxley Thompson Award for Early Career Achievement (2004), and the American Bar Association’s Silver Key (1998) and Bronze Key (1997).
Theodore R. Jamison III

Theodore R. Jamison, III is President and Managing Attorney of Theodore Roosevelt Jamison 3rd, P.C. A law firm concentrating in the litigation of state and federal white collar and general criminal defense, plaintiff's insurance litigation as well as commercial litigation. The firm also provides legal counsel to small businesses regarding formation, regulatory compliance, risk management, fraud prevention, investigation and the civil prosecution thereof.

Summary

Admitted to practice in the State of Illinois, Supreme Court of Illinois, US District Court Northern District of Illinois, US District Court Central District of Illinois, 7th Circuit Court of Appeals, Member - General and Federal Trial Bar.

Specialties

Concentration in Federal and State white collar crimes, state felonies, misdemeanors and traffic; police brutality litigation; workers' compensation; SSI and SSDI; corporate compliance and risk management; employment discrimination; insurance law (plaintiffs and defense); Defense Base Act (DBA) war hazard zone insurance litigation
William C. Martin

William Martin is a trial lawyer by training and a problem solver by practice who divides his time between corporate criminal investigations and civil litigation. He has extensive experience in conducting internal investigations, counseling corporate clients on compliance issues, and defending corporations against government investigations concerning the Foreign Corrupt Practices Act, antitrust violations, health care fraud, securities fraud, and defense contracting fraud. William's civil practice includes matters involving commercial litigation, intellectual property, corporate criminal investigations, the False Claims Act (including qui tam lawsuits), financial and commercial fraud litigation, shareholder derivative suits, and securities litigation.

William has served as counsel to corporations and other corporate entities including audit committees, corporate boards of directors, and compliance officers regarding internal investigations in a broad variety of civil and criminal matters including corporate malfeasance, accounting irregularities, and regulatory and compliance matters. Prior to joining Jones Day, William served as an assistant U.S. attorney in San Francisco. While in the U.S. Attorney's Office, he held primary responsibility for all aspects of the investigation and prosecution of matters relating to white-collar crime, firearms, and illegal narcotics in the Northern District of California.

Prior to joining the U.S. Attorney's Office, William was a federal clerk at the trial and appellate levels. William played Division I football for Stanford University and remains an active alumnus of the university and team. He also is an aspiring musician who plays the piano and tenor saxophone.

Areas of Focus
Trial Practice
Corporate Criminal Investigations
Internal Investigations, Corporate Compliance Programs & Employee Misconduct
Foreign Corrupt Practices Act Counseling & Defense
Health Care Litigation & Government Investigations Defense

Education
University of Michigan (J.D. 2000); Stanford University (B.S. in Computer Systems Engineering 1994)

Bar Admissions
Illinois

Clerkships
Law Clerk to: Judge Ann Claire Williams, U.S. Court of Appeals, Seventh Circuit (2004 term) and Judge James F. Holderman, U.S. District Court, Northern District of Illinois (2000-2002 term)

Government Service
Assistant United States Attorney, Northern District of California, San Francisco (2006
Daryl D. Parks

Daryl Parks is a founding and managing partner of Parks & Crump, LLC. He hails from Haines City, Florida, and attended Florida A&M University on a Presidential Scholarship. While there, Mr. Parks was the first Student Body President elected to two consecutive terms and founded the National Coalition of Black College Student Governments. In 1992, Mr. Parks was selected as Alpha Phi Alpha Fraternity’s National College Brother of the Year and received his Bachelor degree in political science and economics. He graduated from the Florida State University College of Law in 1995 and had his first client only one day after being sworn into The Florida Bar.

After founding Parks & Crump law firm, Daryl Parks quickly established a reputation as a methodical businessman and relentless attorney. Over the years, he’s had several articles written about his extremely successful legal career. One Tallahassee Democrat article is entitled “Even With His Success, Attorney Parks Keeps Focus.” The article brings up part of Mr. Parks inspiration for his work. It points out that “His mother’s death – after her insurance company refused to pay for a liver transplant – underscores the value he finds in his personal injury law practice.” Mr. Parks explains, “It’s trial lawyers who challenge the big companies for the people who couldn’t mount that challenge on their own. Somebody has to hold those doctors and big companies accountable.”

Attorney Parks is admitted to practice in the State of Florida, the Federal Courts for the Middle and Northern Districts of Florida and the United States Supreme Court. He has appeared for special purposes before courts in the states of Georgia, Maryland, Missouri and New Jersey.

Attorney Parks is on the Board of Directors for the Florida Justice Association (FJA) and the Bethel AME Community Development Corporation. He is a member of the Tallahassee Barristers and the American Bar Association. Attorney Parks is currently the Vice-President of Finance for the National Bar Association and has previously served its on board and as General Counsel. He is the past Chair of the Minority Caucus for the American Justice Association (AJA – formerly ATLA). He has also served on the board of the Florida Bar Foundation and the Florida Bar Admissions Committee.

Attorney Parks continues his commitment to serving his alma mater as the Vice-Chair of the Board of Trustees for Florida A&M University and is a board member of the Florida A&M University (FAMU) Foundation, Inc. He is also the past Chair of the FAMU Boosters.

In the community, Attorney Parks is the Chairman of the board for the Leon County Sickle Cell Foundation and serves on the board for the Tallahassee Urban League.
Hon. David A. Perkins

Hon. David A. Perkins is the Chair of the American Bar Association Coalition on Racial and Ethnic Justice. As a member of COREJ Hon. Perkins was involved in the development and implementation of several Juvenile Justice Programs that were presented at ABA meetings around the Country.

Hon. Perkins is a Referee for the Third Circuit Court of Wayne County Michigan, where he presides over Delinquency, Neglect and Abuse cases in Juvenile Court. Hon. Perkins has held this position for over 13 years. He previously held the position of Magistrate for the 30th District Court, located in Highland Park Michigan. He served as an Assistant Corporation Counsel for the County of Wayne Michigan before going into private practice. As an Assistant Corporation Counsel he represented the County in civil law suits and provided legal advice to various departments within the County. Hon. Perkins while in private focused on general civil matters, probate and juvenile cases. Additionally, Hon. Perkins has also served as a Judge Advocate in the Michigan Air National Guard where he provided legal advice and representation to Base Commanders and members of the unit.

Hon. Perkins received a degree in biology from Rutgers University and his law degree from Howard University. Since graduating from Howard University, he has actively been involved in: the American Bar Association; State Bar of Michigan (SBM); Wolverine Bar Association; D. Augustus Straker Bar Association; SBM Young Lawyers and the General Practice Section of the SBM. Hon. Perkins is a past president of both the D. Augustus Straker Bar Association and the Association of Black Judges of Michigan. He has also a past Chair of the SBM Young Lawyers, and the General Practice Section of the SBM. He is a former delegate for the SBM to the ABA House of Delegates. Hon. Perkins also served as an elected member of the Representative Assembly of the SBM. The Michigan Supreme Court appointed him in September 2010 to the SBM Board of Commissioners. Hon. Perkins was a member of the ABA Steering Committee for the Unmeet Legal Needs Of Children. As a member of the Steering Committee he contributed to the report “America’s Children Still at Risk.”

Hon. Perkins volunteers on Monday evenings to preside over a Juvenile Drug Court Docket for the Third Judicial Circuit Court. This docket allows young people who have been charged with a matter in Juvenile Court and have substance abuse issues an opportunity at sobriety. Hon. Perkins serves as a mentor for at risk youth. He has also served as an instructor for the ABA/CLEO summer program. Hon. Perkins was a volunteer jurist for a Saturday morning teen-court program that was conducted in Wayne County. Further, Hon. Perkins has also served as a volunteer for two hospice organizations.

Hon. Perkins is an active member of several civic and community organizations. He presently serves on the board of directors for The Reggie McKenzie Foundation and The LifeSKills School Board. Additionally Hon. Perkins is a charter member of the Detroit Chapter of the NAADPC. Hon. Perkins is a lay minister in his Church. Hon. Perkins has received several awards for his work with youth. Hon. Perkins frequently acts as motivational speaker for youth.

Hon. Perkins is very passionate about making a better way for the youth in our society. Further he is determined that all young voices in our society shall have a forum to be heard.
Dean Rory D. Smith is currently associate dean for outreach and planning and director of diversity affairs and outreach programs at The John Marshall Law School. Dean Smith is responsible for diversity student recruitment, retention, and programming. He has developed a series of outreach programs, including the National Undergraduate Diversity Mock Trial Competition. Dean Smith also initiated The John Marshall Law School Diversity Roundtable Discussion Series, which, among other things, has examined the State of Diversity in the Legal Profession. At John Marshall, Dean Smith also created programs targeted to traditionally under-represented students the Legal Skill Success Camp for entering law students of color and the co-developed the Academic Enhancement Program. He is the co-founder of the Chicago Consortium of Law School Diversity Professionals. Dean Smith is the Co-Chair of the Anti-Racism Commission of the Episcopal Diocese of Chicago. Dean Smith is also a founding board member of the Legal Prep Charter Academies. He also serves as a member of the American Bar Association’s Council on Racial and Ethnic Diversity in the Educational Pipeline. In June of 2012, Dean Smith was elected 3rd Vice President of the Cook County Bar Association.

At The John Marshall Law School, Dean Smith advises the dean of the law school on policy, procedural, and operational issues of the institution. As an associate dean, he has previously been responsible for institutional research, disability accommodations, bar examination preparatory programs, and institutional advancement, including fundraising, alumni, event management and publications. In addition to his other responsibilities, Dean Smith also teaches a course entitled: “Mass Incarceration and Race in the United States” and another course entitled: “Real Estate Transaction”. He brings more than 28 years of experience in all facets of real estate law, including private practice from 1996 to the present and serving as associate regional counsel for the Prudential Insurance Company of America, Chicago Realty Group Office, from 1988–1996. While at Prudential, Dean Smith established a Minority Law Firm Engagement Program for Prudential’s General Counsel. From 1983–1998, he served as attorney and real estate lending officer for the Continental Bank, which was merged into the Bank of America in the early 1990s. Prior to joining The John Marshall Law School, Dean Smith was a partner at the law firm of Albert, Bates, Whitehead and McGaugh, concentrating on real estate finance, real estate transactions and business law matters.

Dean Smith received his B.A., M.B.A./M.M. and J.D. from Northwestern University.
Rev. Dr. Janette C. Wilson, Esq.

Rev. Dr. Janette C. Wilson currently serves as the Senior Advisor to Rev. Jesse L. Jackson Sr., Rev. Janette C. Wilson began her career as a chemist, which led to various teaching positions at all levels – from elementary school to college – in the Chicago area, to the legal profession and finally to Christian ministry. Her employment record is as diverse as her educational background. Dr. Wilson has taught schools, served as an environmental chemist, a pump engineer, trial lawyer (for 15 years), hosted a weekly cable television broadcast (for 15 years), administered a union based medical center (for 8 years) and been engaged in the struggle for civil and human rights all of her life. Dr. Wilson has served as Associate Pastor of Grace Calvary United Methodist, and Cosmopolitan Community Church, Associate Pastor for Family Ministry for the 1st Baptist Congregational United Church of Christ in Chicago and currently the Associate Pastor of Leadership Development and Strategic Planning for the Providence MB Church. She recently served as the 1st African American female Dean of the Doctor of Ministry Program for United Theological Seminary in Dayton, Ohio.

Dr. Wilson is employed as the Manager of School Climate for the Chicago Public Schools. She organized the volunteer legal clinic for the National Rainbow PUSH Coalition Inc. and became its first volunteer director for a number of years. Prior to her employment with the Chicago Public Schools, Rev. Attorney Wilson was the Acting General Counsel for Chicago State University. Prior to that, she was Executive Director of Operation PUSH. In this role, she implemented day-to-day operations of the organization, created community development networking programs, and created local and national voter registration and education seminars, and introduced alternative sentencing programs in cooperation with various religious organizations. Rev. Wilson spent most of her adult life as a civil rights advocate. She has utilized her investigative skills developed during her years as an environmental scientist, her negotiating skills developed while practicing as a criminal defense attorney and her conscience as a Christian, to assist minorities in receiving social justice and economic parity. Rev. Wilson’s commitment to youth is unquestionable. She has spent her adult life hiring, mentoring, employing, and establishing internship programs for youth.

Dr. Wilson accepted the call to the ministry in 1994, when she preached her first sermon on October 5, 1994, at the Fellowship Missionary Baptist Church in Chicago, Illinois. She was ordained by the Reverend Clay Evans, Pastor of Fellowship, September, 1997. She was awarded a Doctorate of Divinity from United Theological Seminary in Dayton, Ohio in May of the same year.

In 1971, Dr. Wilson received her Bachelor’s degree in Chemistry from MacMurray College in Jacksonville, Illinois. Four years later, she earned a Master of Arts Degree in Environmental Science/Planning from Governor’s State University and in 1980, received her Juris Doctorate from the John Marshall Law School and was admitted to the Illinois Bar the same year.
STAND YOUR GROUND LAWS: LICENSE TO KILL

BY: RORY DEAN SMITH

A “stand your ground” law allows a person to use deadly force in self-defense without being obligated to retreat when faced with a reasonable perceived threat. Stand your ground laws expand upon the “Castle doctrine,” which states that a person can legally use deadly force in self-defense when his or her home is being invaded. In the United States, more than half of our state legislatures have some form of “Castle doctrine” or “stand your ground” law. (1)

A recent article in the Tampa Bay Times reminded us that Stand your ground laws were promoted by Florida state legislators “as a legal protection for law abiding Floridians who were forced, through no fault of their own, to defend their family and property.” (2) As promoted, “stand your ground” laws seem innocent and appropriate. However, the law has had seemingly unintended consequences. The unintended consequences have resulted in victims shifting their behavior from a defensive behavior to an aggressive behavior. The unintended consequences also include an increase in deadly violence. The law has unleashed a new behavior that I will call the Victim Vigilante. Under cloak of the “stand your ground” law has encouraged victims to strike out on their own against a suspected criminal. Human nature clicks in and Victim Vigilantes are unable to simply defend, instead they go on the offensive and step beyond the law to exact revenge for current or previous injuries. The stand your ground laws so not state that you can chase and hunt down a fleeing criminal but all too often Victim Vigilantes are given the protection of the stand your ground laws. This protection of the Victim Vigilante creates a license to kill in the name of the “stand your ground” law. Recognizing that the human psyche draws on implicit bias, stereotypes and fear to all too often bring out worst behavior in the victim
under the name of “standing your ground”(5). The “stand your ground” laws in 20 states tell frightened individuals there is no duty to retreat (1), such that if you truly called to stand your ground then you are also called to fight. All too often that will be perceived as being encouraged to kill or be killed.

The Tampa Bay Times article also revealed research by Kameel Stanley and Connie Humburg who found that “people... with records of crime and violence… have benefited the most”… from the Florida stand your ground laws. The research looked at 100 cases where the stand your ground law was used a defense in the case of a fatal shooting. Of those 100 cases, almost 60% an alarming amount, of those cases involved defendant-killers had an arrest record prior to the fatal shooting.(2) They found that 30 of those Victim Vigilantes had been arrest records that included alleged violent crimes prior to the fatal shooting in which the stand your ground law was invoked as a defense. In response to these statistics, former South Florida U.S. Attorney Kendall Coffey stated “The Legislators wrote this law envisioning honest assertions of self-defense, not an immunity being seized mostly by former criminal defendants trying to lie their way out of a murder.” (2)

If these are the unintended consequences, what were the intended consequences? In law school we look at the public policy and economic benefits. It can be argued that empowering people to protect themselves and their property may make people feel safer. However, shifting from defense to offense exposes victims to greater danger and blurs the line of between self-defense and criminal vigilante behavior. It can also be argued that the economic beneficiaries of the stand your ground laws would be companies that sell weapons that can be used in self-defense.
The American Legislative Exchange Council

After Florida passed its law, the American Legislative Exchange Council (ALEC) adopted its legislative language as one of the model bills it proposes to legislators across the country on behalf of its member associations, in this case the NRA. Several corporate sponsors have withdrawn from the American Legislative Exchange Council (“ALEC”). ALEC has been criticized for drafting and supporting conservative legislation nationwide. It has been criticized for its connection to “stand your ground laws” like that in Florida after the death of Trayvon Martin. ALEC has also received criticism due to its promotion of voter ID legislation.

General Motors has been the latest corporate sponsor to withdraw its support from ALEC. Coca-Cola withdrew from the group on April 4, 2012. Pepsi, Kraft Foods, Intuit, Wal-Mart, McDonalds, Walgreens, and the Bill and Melinda Gates Foundation have also withdrawn from the group. According to a blog post from Think Progress, a liberal blog that is a part of the Center for American Progress Action Fund in Washington, D.C., a total of 31 companies have left ALEC within the last four months.

Racial Bias and Stand Your Ground Laws

According to the National Conference of State Legislatures, approximately 20 states have legislation with provisions that do not require civilians to retreat from an intruder before fighting back while they are lawfully present in any place. These 20 states include: Alabama, Arizona (2010), Florida (2005), Georgia (2006), Indiana (2012), Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma (2006), South Carolina, Tennessee, Texas, Utah, and West Virginia. Eight of those 20 states, including
Florida, specifically use the words “Stand Your Ground” in their statutes. These eight states are all in the south and include: Alabama, Florida, Georgia, Kansas, Kentucky, Louisiana, Oklahoma, and South Carolina. (4)

In early 2012, Minnesota lawmakers passed a law that resembled a stand your ground-type law. That law, however, was vetoed by the governor. Last year, the New Hampshire legislature in both houses successfully proceeded to override the governor’s veto. The law expands the Castle Doctrine by providing lawful citizens the right to use deadly force in self-defense in their home and also any place they have a legal right to be. (4)

Researchers at Texas A&M University released results of a study in June relating to Stand Your Ground Laws. According to that study, murder rates and non-negligent manslaughter rates increased by 8 percent in states with stand your ground laws. That translates to additional 600 homicides per year in states that have enacted stand your ground laws. The study analyzed nationwide FBI data from 2000-2009. The study suggests that the increased murder rates can mean that either more people are using deadly force in self-defense or that there is an increased likelihood that situations will escalate to violence in states with stand your ground laws. One thing that is clear from the study is that homicide is a primary consequence of strengthening self-defense laws. (4)

John Roman, a senior fellow at the Urban Institute’s Justice Policy Center, at the request of PBS’ Frontline, analyzed a pool of 43,500 homicides by race in states with stand your ground laws and in states without such laws. Roman wanted to control several variables including the races of the victims and shooters. Roman used regression analysis as a technique to analyze the correlation between different data. Roman findings resemble existing racial disparities in
homicide convictions in the United States with the exception that Whites who kill African Americans in Stand Your Ground states are more likely to be found justified in their killings. In states without stand your ground laws, whites are 250 percent more likely to be considered justified in killing a black person compared to a white person who kills another white person. The percentage increases to 354 percent for states with stand your ground laws. Roman cautions, however, that the data does not show the circumstances surrounding the killings. (4)

*Study conducted by John Roman*
The increase in victim vigilantes and increased homicides are arguably unintended consequences that may or may not have been reasonably foreseeable during legislative deliberation. To the extent, of course, that legislative deliberation occurred. We can now see that the “stand your ground” laws have unleashed vigilante victims on perceived threatening individuals who are killed under the cloak of these laws but will never get their day in court. Now that we see the magnitude of these “unintended consequences” it is time to change or repeal these laws across the country. Trayvon Martin and the other victims of criminal vigilante conduct are not to be merely cast aside as “unintended consequences”. Trayvon Martin is a warning to all of us. The stand your ground laws should not be used as a license to kill nor drafted in a way that encourages the creation of vigilante victims.

Footnoted sources:

- (3) http://content.usatoday.com/communities/driveon/post/2012/07/gm-general-motors-stand-your-ground-conservative/1
- (4) http://www.pbs.org/wgbh/pages/frontline/criminal-justice/is-there-racial-bias-in-stand-your-ground-laws/
- (5) http://www.usnews.com/debate-club/are-stand-your-ground-laws-a-good-idea
### List of “Stand Your Ground” Laws - Alphabetical by State

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<td>[§ 2307.60.1] § 2307.601, when there is no duty to retreat before using force in self-defense defense of another or defense of residence.</td>
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<td>Oklahoma Statutes</td>
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<td>Oklahoma Statutes</td>
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<td>Oregon Statutes</td>
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<td>161.225 Use of physical force in defense of premises.</td>
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<td>161.229 Use of physical force in defense of property.</td>
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<td>Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence occupied vehicle or place of business.</td>
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<td>Wyoming Statutes</td>
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Castle doctrine

A Castle Doctrine (also known as a Castle Law or a Defense of Habitation Law) is an American legal doctrine that designates a person's abode (or, in some states, any place legally occupied, such as a car or place of work) as a place in which the person has certain protections and immunities and may in certain circumstances use force, up to and including deadly force, to defend against an intruder without becoming liable to prosecution.[1] Typically deadly force is considered justified, and a defense of justifiable homicide applicable, in cases "when the actor reasonably fears imminent peril of death or serious bodily harm to himself or another".[1] The doctrine is not a defined law that can be invoked, but a set of principles which is incorporated in some form in the law of most states.

The term derives from the historic English common law dictum that "an Englishman's home is his castle". This concept was established as English law by 17th century jurist Sir Edward Coke, in his The Institutes of the Laws of England, 1628.[2] This was carried by colonists to the New World, who later removed "Englishman" from the phrase, which thereby became simply the Castle Doctrine.[2] The term has been used to imply a person's absolute right in England to exclude anyone from their home, although this has always had restrictions, and since the late twentieth century bailiffs have also had increasing powers of entry.[3]

The term "Make My Day Law" arose at the time of the 1985 Colorado statute that protects people from any criminal charge or civil suit if they use force — including deadly force — against an invader of the home.[4] The law's nickname is a reference to the line "Go ahead, make my day" uttered by actor Clint Eastwood's character Harry Callahan in the 1983 film Sudden Impact, inviting a suspect to make himself liable to deadly retaliation by attacking Callahan.

Conditions of use

Each state differs in the way it incorporates the castle doctrine into its laws, what premises are covered (abode only, or other places too), what degree of retreat or non-deadly resistance is required before deadly force can be used, etc.

Typical conditions that apply to some Castle Doctrine laws include:

- An intruder must be making (or have made) an attempt to unlawfully or forcibly enter an occupied residence, business or vehicle.
- The intruder must be acting illegally—for example, the Castle Doctrine does not give the right to use force against officers of the law acting in the course of their legal duties.
- The occupant(s) of the home must reasonably believe the intruder intends to inflict serious bodily harm or death upon an occupant of the home.
- Additionally, some states apply the Castle Doctrine if the occupant(s) of the home reasonably believe the intruder intends to commit a lesser felony such as arson or burglary.
- The occupant(s) of the home must not have provoked or instigated an intrusion, or provoked or instigated an intruder to threaten or use deadly force.

In all cases, the occupant(s) of the home must be there legally, must not be fugitives from the law or aiding or abetting another person in being a fugitive from the law, and must not use force upon an officer of the law performing a legal duty.

Immunity from civil lawsuit

In addition to providing a valid defense in criminal law, many laws implementing the Castle Doctrine, particularly those with a "Stand-Your-Ground clause", also have a clause which provides immunity from any lawsuit filed on behalf of the assailant for damages or injury resulting from the lawful use of non-excessive force. Without this clause an assailant can sue for medical bills, property damage, disability, and pain and suffering as a result of the injuries inflicted by the defender, or their next-of-kin may sue for wrongful death in the case of a fatality. Even if
successfully rebutted, the defendant (the homeowner defender) may have to pay high legal costs as a result of such lawsuits; without immunity, such civil action could be used for revenge against a defender acting lawfully.

Use of force in self-defense which causes damage or injuries to other parties who were not acting criminally may give rise to prosecution and damages.

**Duty-to-retreat**

"Castle laws" remove the duty of a person legally at home not to use deadly force on an illegal intruder if he can safely retreat instead.\(^5\)

**Stand-your-ground**

In some states in the United States, one can use deadly force in any location one is legally allowed to be without first attempting to retreat. Such laws remove the requirement that the threat must occur on one's own property.

**Effect on crime rates**

The law's effect on crime rates is disputed between supporters and critics of the law. The third edition of More Guns, Less Crime (University of Chicago Press, 2010) by John Lott provides the only published, refereed academic study on these laws.\(^6\) The research shows that states adopting "Stand Your Ground"/"Castle doctrine" laws reduced murder rates by 9 percent and overall violent crime by 11 percent, and that occurs even after accounting for a range of other factors such as national crime trends, law enforcement variables (arrest, execution, and imprisonment rates), income and poverty measures (poverty and unemployment rates, per capita real income, as well as income maintenance, retirement, and unemployment payments), demographic changes (broken down by race, gender and age), and the national average changes in crime rates from year-to-year and average differences across states (the fixed year and state effects).

**Origins**

According to Matthew Henry's—and others’—understanding of the Torah, the prohibition of murder made an exception for legitimate self-defense. A homeowner who struck and killed a thief caught in the act of breaking in at night was not guilty of bloodshed. "If a thief is caught breaking in and is struck so that he dies, the defender is not guilty of bloodshed; but if it happens after sunrise, he is guilty of bloodshed."\(^7\)

A man's house is his castle, and God's law, as well as man's, sets a guard upon it; he that assaults it does so at his peril.

— Matthew Henry’s Commentary on Exodus 22

The American interpretation of this doctrine is largely derived from the English Common Law as it stood in the 18th century. In Book 4, Chapter 16\(^8\) of William Blackstone's Commentaries on the Laws of England, he states that the laws "leave him (the inhabitant) the natural right of killing the aggressor (the burglar)" and goes on to generalize in the following words:

And the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with immunity: agreeing herein with the sentiments of ancient Rome, as expressed in the works of Tully:\(^9\) *quid enim sanctius, quid omni religione munitus, quam domus unusquisque civium*\(^10\) For this reason no doors can in general be broken open to execute any civil process; though, in criminal causes, the public safety supersedes the private. Hence also in part arises the animadversion of the law upon eaves-droppers, nuisancers, and incendiaries: and to this principle it must be assigned, that a man may assemble people together lawfully without danger of raising a riot, rout, or unlawful assembly, in order to protect and defend his house; which he is not permitted to do in any other case.
Not only was the doctrine considered to justify defense against neighbors and criminals, but any of the crown's agents who attempted to enter without a proper warrant as well. It should be noted that prohibitions of the Fourth Amendment to the United States Constitution share a common background with current castle doctrine laws.

State-by-state positions

For the states with a Castle Doctrine, an external link is provided to the text of the specific statute, if available. If a direct link is unavailable, for example if the destination website uses JavaScript, the statute name and/or number is listed.

This list was last verified to be current on June 21, 2008.

States with a Stand-your-ground Law

No duty to retreat, regardless of where attack takes place.

• Alabama[11]
• Arizona[12]
• Florida[13]
• Georgia[14]
• Indiana[15]
• Kentucky[16][17]
• Louisiana[18]
• Michigan[19][20]
• Montana[21]
• New Hampshire[22](A proposed law was vetoed in 2011, but the veto was overridden and the new law took effect November 2011.)[23][24]
• Oklahoma[25]Title 21§1290.1 et seq
• Pennsylvania[26](Recent legislation extends Castle Doctrine to occupied vehicles and the workplace, and stand-your-ground rights extended to anywhere the defender has a right to be, with specified exceptions.)
• South Carolina  (Persons not "required to needlessly retreat.")
• Texas[28](Established for individual's habitation in 1995 by House Bill 94[29] and extended to vehicle or workplace effective September 1, 2007 by Senate Bill 378[30][31] Senate Bill 378 also abolishes the duty to retreat if the defendant can show he: (1) had a right to be present at the location where deadly force was used; (2) did not provoke the person against whom deadly force was used; and (3) was not engaged in criminal activity at the time deadly force was used.[32])
• Utah[33]
• Washington[34](Homicide justifiable in the lawful defense of self or other persons present; and there is imminent danger of such design being accomplished ...or in the actual resistance of an attempt to commit a felony... or upon or in a dwelling, or other place...)

States with a Castle Law

No duty to retreat if in the home.

• Alaska[35]- Alaska Statute 11.81.335(b) provides that an individual has no duty to retreat before using deadly force if they are in their home, their workplace, protecting a child or protecting a family member. The 27th Alaska Legislature is currently considering H.B. 80 "An Act relating to self defense in any place where a person has a right to be."[36] which would essentially eliminate the duty to retreat for any place a person is legally, making Alaska a "stand your ground" state. However, an identical measure, H.B. 381[37], failed to pass the 26th Alaska Legislature.
• California [38] California Penal Code § 198.5 sets forth that unlawful, forcible entry into one's residence by someone not a member of the household creates the presumption that the resident held a reasonable fear of imminent peril of death or great bodily injury should he or she use deadly force against the intruder. This would make the homicide justifiable under CPC § 197 [39] CALCRIM 506 [40] gives the instruction, "A defendant is not required to retreat. He or she is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger ... has passed. This is so even if safety could have been achieved by retreating." However, it also states that "[People v. Cebeleck] specifically held that burglaries which 'do not reasonably create a fear of great bodily harm' are not sufficient 'cause for exaction of human life." The court held that because the defendant had constructed a gun-firing trap, the doctrine did not apply because mechanical devices are without mercy or discretion.[41]

• Colorado [42] "...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." 18-1-704.5 Use of deadly physical force against an intruder. [43]

• Connecticut [44]

• Georgia [45] (a person who is attacked has no duty to retreat; [...] has a right to meet force with force, including deadly force;)

• Hawaii [46] (Retreat required outside the home if it can be done in "complete safety.")

• Illinois [47] (Use of deadly force justified. Specific legislation prevents filing claim against defender of dwelling. Illinois has no requirement of retreat.)

• Iowa [48] (No duty to retreat from home or place of business in defense of self or a "third party").

• Kansas [49] (§ 21-5223. A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, place of work or occupied vehicle if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or another.)

• Maine [50] (Deadly force justified to terminate criminal trespass AND another crime within home, or to stop unlawful and imminent use of deadly force, or to effect a citizen's arrest against deadly force; duty to retreat not specifically removed)[51]

• Maryland [52] See Maryland self-defense (Case-law, not statute, incorporates the common law castle-doctrine into Maryland self-defense law. Invitees or guests may have duty to retreat based on mixed case law.)

• Massachusetts [53]

• Minnesota [54] No duty to retreat before using deadly force to prevent a felony in one's place of abode; no duty to retreat before using deadly force in self defense in one's place of abode [55] This isn't as clear as it appears, however. There are four cases in Minnesota where duty of retreat was upheld.[56]

• Mississippi [57] (to use reference, select "Code of 1972" and search "retract")

• Missouri [58] (Extends to any building, inhabitable structure, or conveyance of any kind, whether the building, inhabitable structure, or conveyance is temporary or permanent, mobile or immobile (e.g., a camper, RV or mobile home), which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night, whether the person is residing there temporarily, permanently or visiting (e.g., a hotel or motel), and any vehicle. The defense against civil suits is absolute and includes the award of attorney's fees, court costs, and all reasonable expenses incurred by the defendant in defense of any civil action brought by a plaintiff.)

• Nevada [59]

• New Jersey [60] ("Statutes" link in sidebar, see New Jersey Statutes 2C:3-4, retreat required if actor knows he can avoid necessity of deadly force in complete safety, etc. EXCEPT not obliged to retreat from dwelling, unless the initial aggressor)
• North Carolina[61] (Includes dwelling, motor vehicle and workplace)
• North Dakota[62]
• Ohio[63] (Extends to vehicles of self and immediate family; effective September 9, 2008.[64] Section 2901.09)
• Oregon[65]. (ORS 161.209-229. Use of force justifiable in a range of scenarios without a duty to retreat specified. Oregon Supreme Court affirmed in State of Oregon v. Sandoval[66] that the law "sets out a specific set of circumstances that justify a person's use of deadly force (that the person reasonably believes that another person is using or about to use deadly force against him or her) and does not interpose any additional requirement (including a requirement that there be no means of escape)."
• Pennsylvania[67]
• Rhode Island[68]
• South Carolina[69]
• Utah[70]
• West Virginia[71] (Senate bill 145 signed March 12, 2008, WV code §55-7-22)
• Wisconsin[72] (Assembly Bill 69, signed December 7, 2011)
• Wyoming[73]

**States with weak or no specific Castle Law**

These states uphold castle doctrine in general, but may rely on case law instead of specific legislation, may enforce a duty to retreat, and may impose specific restrictions on the use of deadly force.

• Idaho[74] (Homicide is justified if defending a home from "tumultuous" entry; duty to retreat not specifically removed)
• South Dakota[75] "Homicide is justifiable if committed by any person while resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person is." SD Codified Laws 22-16-34 (2005).
• Nebraska - a bill was introduced in January 2012 that allowed deadly force against a person who broke into a house or occupied vehicle or who tried to kidnap someone from a house or vehicle, however the bill was revised to include only an affirmative defense from lawsuits pertaining to justifiable use of force.[76]
• New Mexico
• Vermont
• District of Columbia
• New York

**Worldwide**

**England & Wales**

In English common law a defendant may seek to avoid criminal or civil liability by claiming that they acted in self-defence.[77] This requires the jury to determine whether the defendant believed that force was necessary to defend themselves, their property or to prevent a crime, and that the force used was reasonable.[78] While there is no duty to retreat from an attacker and failure to do so is not conclusive evidence that a person did not act in self-defence, it may still be considered by the jury as a relevant factor when assessing the merits of a self-defence claim.[79]
Israel

Israeli law allows property owners to defend themselves with force.\[80\] This law was introduced in response to the trial of Shai Dromi, a farmer who shot intruders on his farm late at night.\[81\]

Italy

Italy passed a law in 2005 that would allow property owners to defend themselves with force.\[82\]

Notes

[1] "Assembly, No. 159, State of New Jersey, 213th Legislature, The "New Jersey Self Defense Law" (http://www.njleg.state.nj.us/2008/Bills/A0500/159_11.PDF). May 6, 2008. Retrieved 2009-03-19. "The "Castle Doctrine" is a long-standing American legal concept arising from English Common Law that provides that one's abode is a special area in which one enjoys certain protections and immunities, that one is not obligated to retreat before defending oneself against attack, and that one may do so without fear of prosecution."


[9] "Tullly" is a common abbreviation for Marcus Tullius Cicero.

[10] What more sacred, what more strongly guarded by every holy feeling, than a man's own home?


[26] http://www.legis.state.pa.us/WU01/LI/CT/HTM/18/00.005/005.000...HTM


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Stand-your-ground law

A **stand-your-ground** law states that a person may use force in self-defense when there is reasonable belief of a threat, without an obligation to retreat first. In some cases, a person may use deadly force in public areas without a duty to retreat. Under these legal concepts, a person is justified in using deadly force in certain situations and the "stand your ground" law would be a defense or immunity to criminal charges and civil suit. The difference between immunity and a defense is that an immunity bars suit, charges, detention and arrest. A defense, such as an affirmative defense, permits a plaintiff or the state to seek civil damages or a criminal conviction but may offer mitigating circumstances that justifies the accused's conduct.

More than half of the states in the United States have adopted the Castle doctrine, stating that a person has no duty to retreat when their home is attacked. Some states go a step further, removing the duty of retreat from other locations. "Stand Your Ground", "Line In The Sand" or "No Duty To Retreat" laws thus state that a person has no duty or other requirement to abandon a place in which he has a right to be, or to give up ground to an assailant. Under such laws, there is no duty to retreat from anywhere the defender may legally be. Other restrictions may still exist; such as when in public, a person must be carrying firearms in a legal manner, whether concealed or openly.

"Stand your ground" governs U.S. federal case law in which right of self-defense is asserted against a charge of criminal homicide. The Supreme Court of the United States ruled in Beard v. U.S. (158 U.S. 550 (1895)) that a man who was "on his premises" when he came under attack and "...did not provoke the assault, and had at the time reasonable grounds to believe, and in good faith believed, that the deceased intended to take his life, or do him great bodily harm...was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground."[3][4]

Justice Oliver Wendell Holmes, Jr. declared in *Brown v. United States* (256 U.S. 335, 343 (16 May 1921) a case that upheld the "no duty to retreat" maxim that "detached reflection cannot be demanded in the presence of an uplifted knife".[5]

Effect on crime rates

The law's effect on crime rates is disputed between supporters and critics of the law. The third edition of More Guns, Less Crime (University of Chicago Press, 2010) by John Lott provides the only published, refereed academic study on these laws.[6] The research shows that states adopting "Stand Your Ground"/"Castle doctrine" laws reduced murder rates by 9 percent and overall violent crime by 11 percent, and that occurs even after accounting for a range of other factors such as national crime trends, law enforcement variables (arrest, execution, and imprisonment rates), income and poverty measures (poverty and unemployment rates, per capita real income, as well as income maintenance, retirement, and unemployment payments), demographic changes (broken down by race, gender and age), and the national average changes in crime rates from year-to-year and average differences across states (the fixed year and state effects).

Florida state representative Dennis Baxley, an author of the law, notes that crime rates in Florida dropped significantly between 2005, when the law was passed, and 2012.

Critics, however, disagree with Baxley. In a 2007 National District Attorneys Association symposium, numerous concerns were voiced that the law could increase crime. This included criminals using the law as a defense for their crimes, more people carrying guns, and that people would not feel safe if they felt that anyone could use deadly force in a conflict. The report also noticed that the misinterpretation of clues could result in use of deadly force when there was, in fact, no danger. The report specifically notes that racial and ethnic minorities would be at greater risk because of negative stereotypes.[7]
United States

Many states have some form of Castle Doctrine or Stand Your Ground law. Alabama, Alaska, Arizona, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin and Wyoming have adopted Castle Doctrine statutes, and other states (Iowa, Virginia, and Washington) are currently considering "Stand Your Ground" laws of their own.

Some of the states that have passed or are considering "stand your ground" laws already implement "stand your ground" principles in their case law. Indiana and Georgia, among other states, already had "stand your ground" case law and passed "stand your ground" statutes due to possible concerns of the case law being replaced by "duty to retreat" in later court rulings. Other states, including Washington, have "stand your ground" in their case law but have not adopted statutes; West Virginia had a long tradition of "stand your ground" in its case law before codifying it as a statute in 2008. These states did not have civil immunity for self defense in their previous self defense statutes.

Arizona Revised Statutes § 13-418

13-418. Justification; use of force in defense of residential structure or occupied vehicles; definitions

A. Notwithstanding any other provision of this chapter, a person is justified in threatening to use or using physical force or deadly physical force against another person if the person reasonably believes himself or another person to be in imminent peril of death or serious physical injury and the person against whom the physical force or deadly physical force is threatened or used was in the process of unlawfully or forcefully entering, or had unlawfully or forcefully entered, a residential structure or occupied vehicle, or had removed or was attempting to remove another person against the other person's will from the residential structure or occupied vehicle.

B. A person has no duty to retreat before threatening or using physical force or deadly physical force pursuant to this section.

C. For the purposes of this section:

1. "Residential structure" has the same meaning prescribed in section 13-1501.

2. "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport persons or property.

Florida

2011 Florida Statutes CHAPTER 776 JUSTIFIABLE USE OF FORCE

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

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

776.013 Home protection; use of deadly force; presumption of fear of death or great bodily harm.—

1. A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or 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, 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.

(2) The presumption set forth in subsection (1) does not apply if:

(a) The person against whom the defensive force is used 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

(c) The person who uses defensive force is engaged in an unlawful 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 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.

(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.

(5) 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.

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

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting 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 was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable
cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

**776.041 Use of force by aggressor.** —The justification described in the preceding sections of this chapter is not available to a person who:

(1) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

(2) Initially provokes the use of force against himself or herself, unless:

   (a) Such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

   (b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

**Illinois**

*(720 ILCS 5/) Criminal Code of 1961*[^24]

Section 7. Justifiable use of force. Use of deadly force justified if the person reasonably believes they are in danger of death or great physical harm. Use of deadly force justified if the unlawful entry is violent, or the person believes the attacker will commit a felony upon gaining entry.

Section 7-2(b). Prevents the aggressor from filing any claim against the defender unless the use of force involved "willful or wanton misconduct".


*(720 ILCS 5/Art. 7 heading)*

ARTICLE 7. JUSTIFIABLE USE OF FORCE; EXONERATION

*(720 ILCS 5/7-1) (from Ch. 38, par. 7-1)*

Sec. 7-1. Use of force in defense of person.

   (a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

*(720 ILCS 5/7-2) (from Ch. 38, par. 7-2)*

Sec. 7-2. Use of force in defense of dwelling.

   (a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon a dwelling. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if:

      (1) The entry is made or attempted in a violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to, him or another then in the dwelling, or

      (2) He reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.
(720 ILCS 5/7-3) (from Ch. 38, par. 7-3)
Sec. 7-3. Use of force in defense of other property.
(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than a dwelling) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

(720 ILCS 5/7-4) (from Ch. 38, par. 7-4)
Sec. 7-4. Use of force by aggressor. The justification described in the preceding Sections of this Article is not available to a person who:
(a) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or
(b) Initially provokes the use of force against himself, with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or
(c) Otherwise initially provokes the use of force against himself, unless:
   (1) Such force is so great that he reasonably believes that he is in imminent danger of death or great bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or
   (2) In good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

(Source: Laws 1961, p. 1983.)

Kentucky
Kentucky Revised Statute 503.080: Protection of property.
(1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is immediately necessary to prevent:
   (a) The commission of criminal trespass, robbery, burglary, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055, in a dwelling, building or upon real property in his possession or in the possession of another person for whose protection he acts; or
   (b) Theft, criminal mischief, or any trespassory taking of tangible, movable property in his possession or in the possession of another person for whose protection he acts.

(2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that the person against whom such force is used is:
   (a) Attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or
   (b) Committing or attempting to commit a burglary, robbery, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055, of such dwelling; or
   (c) Committing or attempting to commit arson of a dwelling or other building in his possession.

(3) A person does not have a duty to retreat if the person is in a place where he or she has a right to be.
Montana


45-3-103[29] Use of force in defense of occupied structure.

(1) A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the use of force is necessary to prevent or terminate the other person's unlawful entry into or attack upon an occupied structure.

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

(a) the entry is made or attempted and the person reasonably believes that the force is necessary to prevent an assault upon the person or another then in the occupied structure; or

(b) the person reasonably believes that the force is necessary to prevent the commission of a forcible felony in the occupied structure.

North Carolina

On December 1, 2011, North Carolina's new law regarding the use of deadly force against an intruder took effect, extending the use of deadly force to motor vehicles and places of work. The law also eliminates the duty to retreat and provides protection from criminal and civil liability.[30]

§14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm.

(a) The following definitions apply in this section:

(1) Home. – A building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.

(2) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer.

(3) Motor vehicle. – As defined in G.S. 20-4.01(23).

(4) Workplace. – A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) 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 home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) 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.

(c) The presumption set forth in subsection (b) of this section shall be rebuttable and does not apply in any of the following circumstances:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for
protection from domestic violence or a written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the home, motor vehicle, or workplace 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.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer or bail bondsman who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer or bail bondsman 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 or bail bondsman in the lawful performance of his or her official duties.

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

(d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer or bail bondsman who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.

(f) A lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section.

(g) This section is not intended to repeal or limit any other defense that may exist under the common law.

§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.

(a) A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

(2) Under the circumstances permitted pursuant to G.S. 14-51.2.

(b) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer or bail bondsman who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.

§ 14-51.4. Justification for defensive force not available.
The justification described in G.S. 14-51.2 and G.S. 14-51.3 is not available to a person who used defensive force and who:

(1) Was attempting to commit, committing, or escaping after the commission of a felony.

(2) Initially provokes the use of force against himself or herself. However, the person who initially provokes the use of force against himself or herself will be justified in using defensive force if either of the following occur:

a. The force used by the person who was provoked is so serious that the person using defensive force reasonably believes that he or she was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force which is likely to cause death or serious bodily harm to the person who was provoked was the only way to escape the danger.

b. The person who used defensive force withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that he or she desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force."

Oklahoma

In Oklahoma, castle doctrine legislation protects from prosecution a person who uses deadly force if that person "reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony." Law enforcement agencies must now have probable cause to believe that the use of deadly force was unlawful before an arrest can be made. The law protects defenders in dwellings or residences as well as in vehicles, explicitly rejects a duty to retreat, and provides protection from civil action as well, allowing judges to award defendants "attorney fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution."[31]

Legislation enacted in 2011 extended castle doctrine protections to owners, managers, and employees of businesses using force against an intruder when there is reasonable fear of imminent peril of death or great bodily harm.[32]

Texas

In 2005 Texas passed House Bill 94[33] which created an exception for unlawful entry of place of residence to a 1973 statute, which required a person to retreat in the face of a criminal attack unless a "reasonable person in the actor's situation would not have retreated".[34]

In 2007 Texas Legislature passed Senate Bill 378[35] which extends a person's right to stand their ground beyond the home to vehicles and workplaces, allowing the reasonable use of deadly force when an intruder is:

- Committing certain violent crimes, such as murder or sexual assault, or is attempting to commit such crimes;
- Unlawfully trying to enter a protected place; or
- Unlawfully trying to remove a person from a protected place.[114]

Senate Bill 378, made effective September 1, 2007, also "abolishes the duty to retreat if the defendant can show he: (1) had a right to be present at the location where deadly force was used; (2) did not provoke the person against whom deadly force was used; and (3) was not engaged in criminal activity at the time deadly force was used."[36]
Utah

Utah has historically adhered to the principles of "stand your ground" without the need to resort to new legislation. The use of deadly force to defend persons on one's own property is specifically permitted by Utah state law. The law specifically states that a person does not have a duty to retreat\textsuperscript{57} from a place where they have lawfully entered or remained. Overall, Utah allows the "stand your ground" law when it comes to self defense.

Washington

The statute in Washington state appears to be very simply and broadly stated.\textsuperscript{58} SB 5418 seeks to expand that law in cases where the slayer has a reasonable fear of imminent peril of death or great bodily harm.\textsuperscript{59}

The law allows use of deadly force in the \textit{lawful} defense of oneself, a family member, or any other person, when there is reasonable ground to prevent action(s) of the person slain to commit a felony or to do injury or harm, and there is imminent danger of such design being accomplished; or in the actual resistance of an attempt to commit a felony upon the slayer, on those in their presence, or upon or in a dwelling, or other place of abode, in which they are.

Washington state doesn’t have a specific Castle Doctrine law, but has \textit{no duty to retreat} as precedent was set when the State Supreme Court found "that there is no duty to retreat when a person is assaulted in a place where he or she has a right to be."\textsuperscript{40}[41]

West Virginia

§55-7-22 of the Code of West Virginia

(a) A lawful occupant within a home or other place of residence is justified in using reasonable and proportionate force, including deadly force, against an intruder or attacker to prevent a forcible entry into the home or residence or to terminate the intruder's or attacker's unlawful entry if the occupant reasonably apprehends that the intruder or attacker may kill or inflict serious bodily harm upon the occupant or others in the home or residence or if the occupant reasonably believes that the intruder or attacker intends to commit a felony in the home or residence and the occupant reasonably believes deadly force is necessary.

(b) A lawful occupant within a home or other place of residence does not have a duty to retreat from an intruder or attacker in the circumstances described in subsection (a) of this section.

(c) A person not engaged in unlawful activity who is attacked in any place he or she has a legal right to be outside of his home or residence may use reasonable and proportionate force against an intruder or attacker: Provided, That such person may use deadly force against an intruder or attacker in a place that is not his residence without a duty to retreat if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

(d) The justified use of reasonable and proportionate force under this section shall constitute a full and complete defense to any civil action brought by an intruder or attacker against a person using such force.

(e) The full and complete civil defense created by the provisions of this section is not available to a person who: (1) Is attempting to commit, committing or escaping from the commission of a felony; (2) Initially provokes the use of force against himself or another with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or (3) Otherwise initially provokes the use of force against himself or another, unless he or she withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

(f) The provisions of this section do not apply to the creation of a hazardous or dangerous condition on or in any real or personal property designed to prevent criminal conduct or cause injury to a person engaging in criminal conduct.\textsuperscript{42}
Controversy
Stand-your-ground laws are frequently criticized and called "shoot first" laws by critics, including the Brady Campaign to Prevent Gun Violence. In Florida, the law has resulted in self-defense claims tripling. The law's critics argue that Florida's law makes it very difficult to prosecute cases against people who shoot others and then claim self-defense. The shooter can argue they felt threatened, and in most cases, the only witness who could have argued otherwise is the victim who was shot and killed. Before passage of the law, Miami police chief John F. Timoney called the law unnecessary and dangerous in that "[w]hether it's trick-or-treaters or kids playing in the yard of someone who doesn't want them there or some drunk guy stumbling into the wrong house, you're encouraging people to possibly use deadly physical force where it shouldn't be used."

In Florida, a task force examining the law has concluded that the law is "confusing." Those testifying to the task force include Buddy Jacobs, a lawyer representing the Florida Prosecuting Attorney's Association. Jacobs recommended the law's repeal, feeling that modifying the law would not fix its problems. Florida governor Rick Scott plans his own investigation into the law.

The Trayvon Martin case brought a large degree of criticism to the law. Legal experts are split as to whether charges will be dropped under Florida's stand-your-ground law before the case even goes to trial, as the extant Florida law allows the alleged shooter, George Zimmerman, to argue that the charges should be dropped before trial even begins. Legal experts are also split as to whether Zimmerman's actions will be viewed as self-defense, should the case go to trial.

References
[1] Florida Statutes Title XLVI Chapter 776
[8] Ala. Code 13A-3-23(b): "A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his ground."
[12] "Iowa Code Section 704.1" (http://search.legis.state.ia.us/NXT/clinlink.htm?c=70s&s=15). .

"Castle Doctrine: Protecting Our Right to Self-Defense" (http://www.nrila.org/images/cd.jpg). National Rifle Association. (map showing states which have enacted a Castle Doctrine law)


"HB 94 Text" (http://www.capitol.state.tx.us/BillLookupText.aspx?LegSession=74R&Bill=HB94). Texas Legislative Online.


Utah Code, title 76, chapter 2, section 402 "Force in defense of person—Forcible felony defined", paragraph 3.


137 Wn.2d 533 State of Washington v. Studd; Decided 1999/04/01.

150 Wn.2d 489 State of Washington v. Reynaldo Redmond; Decided 2003/12/06.


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Velasquez v. State, 9 So.3d 22 (2009)
34 Fla. L. Weekly D266

9 So.3d 22
District Court of Appeal of Florida,
Fourth District.

Ricardo VELASQUEZ, Petitioner,
v.
STATE of Florida, Respondent.

No. 4Do8-4894. | Feb. 2, 2009.

Synopsis

Background: Defendant charged with attempted murder filed a petition for writ of prohibition challenging decision of the Seventeenth Judicial Circuit, Broward County, John J. Murphy, III, J., denying defendant's pretrial motion to dismiss on grounds of immunity under the “Stand Your Ground” law.

[3] Homicide
⇒ Self-Defense in General
Pretrial motion to dismiss on grounds of immunity under the “Stand Your Ground” law must be denied when the facts are in dispute. West's F.S.A. § 776.032(2); West's F.S.A. RCrP Rule 3.190(c)(4).

⇒ Power to Regulate Procedure
It is not the province of the District Court of Appeal to create a criminal process sanctioned neither by statute nor existing rule, efficacy of the procedure notwithstanding.

Petition denied.

Polon, J., concurred specially and filed opinion.

West Headnotes (4)

[1] Homicide
⇒ Self-Defense in General
Defendant's pretrial motion to dismiss attempted murder charges on grounds of immunity under the “Stand Your Ground” law was properly denied, where facts regarding defendant's entitlement to immunity were in dispute. West's F.S.A. § 776.032(2); West's F.S.A. RCrP Rule 3.190(c)(4).

[2] Homicide
⇒ Duty to Retreat or Avoid Danger
Created to eliminate the need to retreat under specified circumstances, the “Stand Your Ground” statute authorizes the immunity
determination to be made by law enforcement officers, prosecutors, judges, and juries; in enacting the statute, however, the legislature did not restrict the time frame for determining immunity, but rather provided a time continuum stretching across the entire criminal process, including the arrest, detention, charging, and prosecution. West's F.S.A. § 776.032.

4 Cases that cite this headnote

[3] Homicide
⇒ Self-Defense in General
Pretrial motion to dismiss on grounds of immunity under the “Stand Your Ground” law must be denied when the facts are in dispute. West's F.S.A. § 776.032(2); West's F.S.A. RCrP Rule 3.190(c)(4).

7 Cases that cite this headnote

⇒ Power to Regulate Procedure
It is not the province of the District Court of Appeal to create a criminal process sanctioned neither by statute nor existing rule, efficacy of the procedure notwithstanding.

2 Cases that cite this headnote

Attorneys and Law Firms

*23 Ralph S. Behr, Fort Lauderdale, for petitioner.

No appearance required for respondent.

Opinion

MAY, J.

The defendant filed a petition for writ of prohibition challenging the trial court's failure to find the defendant immune under section 776.032, Florida Statutes (2008), the “Stand Your Ground” law. The defendant argues he is entitled to immunity under the statute because the trial court failed to make a probable cause finding that the force he used was unlawful. We disagree and deny the petition.
We write to clarify the procedure to be followed in handling Florida Rule of Criminal Procedure 3.190(c)(4) motions to dismiss based on section 776.032. In doing so, we certify conflict with the First District Court of Appeal in Peterson v. State, 983 So.2d 27 (Fla. 1st DCA 2008).

[1] The State charged the defendant with attempted murder. The defendant filed a motion to dismiss, pursuant to section 776.032 and Florida Rule of Criminal Procedure 3.190(c)(4). The defendant's affidavit attested that he was attacked by the victim the night before the incident giving rise to the charge. The next day, one of the victims sent a text message asking the defendant to come to an apartment. When the defendant knocked on the door, one of the victims opened the door and began to attack him. The other victim joined the attack, stabbing and beating the defendant unconscious.

The trial court held a hearing on the motion. The State introduced the testimony of an officer and a detective, who testified that their investigation revealed the defendant's use of force was unjustified. Specifically, the officers testified that the defendant arrived at the victim's apartment armed, vandalized the victim's vehicle with a knife, forced his way into the apartment, and attacked the victim with a knife. Based on this testimony, the trial court found the defendant had not established by a preponderance of the evidence that he was immune from prosecution under section 776.032.

We deny the petition for writ of prohibition because the trial court reached the correct conclusion and acted within its jurisdiction. 1 English v. McCray, 348 So.2d 293, 296 (Fla.1977) ("Prohibition may only be granted when it is shown that a lower court is without jurisdiction or attempting to act in excess of jurisdiction."). We disagree however that the procedure outlined in Peterson is correct.

Rule 3.190(c)(4) of the Florida Rules of Criminal Procedure provides for the filing of a motion to dismiss when "there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant." Subsection (d) allows for the state to traverse or demur the motion and for the court to receive evidence on any issue of fact. It then provides that "[a] motion to dismiss under subdivision (c)(4) of this rule shall *24 be denied if the state files a traverse that, with specificity, denies under oath the material fact or facts alleged in the motion to dismiss." Fla. R. Civ. P. 3.190(d). Here, the State presented evidence disputing the attestations of the defendant and creating issues of fact.

As set forth in the rule, under such circumstances the motion to dismiss "shall be denied."

The "Stand Your Ground" statute provides:

A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting 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 was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

§ 776.032(11), Fla. Stat. (2007). The statute then provides for law enforcement to make an initial determination of whether there was probable cause that the force used was unlawful. § 776.032(2), Fla. Stat. This allows law enforcement officers to determine a suspect's immunity prior to making an arrest.

[2] By defining "criminal prosecution" to include the arrest, detention, charging, or prosecution of the defendant, the statute allows for an immunity determination at any stage of the proceeding. Created to eliminate the need to retreat under specified circumstances, the statute authorized the immunity determination to be made by law enforcement officers, prosecutors, judges, and juries. In enacting the statute, however, the legislature did not restrict the time frame for determining immunity, but rather provided a time continuum stretching across the entire criminal process.

[3] When rule 3.190(c)(4) is used as the vehicle to raise the issue of immunity under section 776.032(2), that rule provides the procedural framework by which the court makes its determination. That rule mandates the denial of a motion to dismiss when as here, the facts are in dispute. Thus, the trial court properly denied the motion.

In Peterson, the First District held that the procedure established by rule 3.190(c) does not control the immunity determination. 983 So.2d at 28-29. Instead, the Peterson court found guidance in People v. Gunther, 740 P.2d 971
I agree with the result reached by the majority and most of the majority's analysis. *25 I disagree, however, as to the rejection of the procedure approved by the First District Court of Appeal in Peterson v. State, 983 So.2d 27 (Fla. 1st DCA 2008). While I question whether a trial court could properly determine factual disputes solely on the strength of one eyewitness deposition and argument of counsel, as the court did in Peterson, there was a full evidentiary hearing in this case. Nonetheless, I think the first district was correct in holding that the trial judge must make the initial decision whether the defendant has met her or his burden of establishing the right to immunity, and hence dismissal, under section 776.032, Florida Statutes. This would be so whether or not the state has filed a “traverse” as provided in Florida Rule of Criminal Procedure 3.190(d). In my view, a traverse would not automatically send the case to the jury. And if a trial court were to find entitlement to section 776.032 immunity and dismiss the charges, such a ruling would then be subject to immediate appellate review. I would not certify conflict with Peterson.

Parallel Citations

34 Fla. L. Weekly D266

Footnotes

1 The trial court correctly relied on the procedure dictated by Peterson v. State, 983 So.2d 27 (Fla. 1st DCA 2008), because this court had not yet addressed the issue. McGahey v. Goldstein, 653 So.2d 1108, 1109 (Fla. 4th DCA 1995) (citations omitted).
605 F.3d 843
United States Court of Appeals,
Eleventh Circuit.

Ralph J. PENLEY, Donna Penley, as Co-Personal Representatives of the Estate of Christopher David Penley, Deceased; and as natural parents of Christopher David Penley, Plaintiffs–Appellants,
v.
Donald F. ESLINGER, as Sheriff of Seminole County, Michael W. Weippert, individually, Defendants–Appellees.


Synopsis

Background: Parents of 15-year-old student who was fatally shot during stand-off with police, while armed with what later turned out to be toy firearm, brought cause of action against officer who fired fatal shot and sheriff, seeking to recover under § 1983 based on alleged violation of student’s Fourth Amendment rights. Parents also asserted state law claim under Florida’s Wrongful Death Act. The United States District Court for the Middle District of Florida, No. 08-00310-CV-ORL-31-KRS, Gregory A. Presnell, J., 2009 WL 2231690, granted defendants’ motions for summary judgment, and parents appealed.

Holdings: The Court of Appeals, Martin, Circuit Judge, held that:
[1] police officer who fatally shot 15-year-old student during stand-off precipitated by student's bringing what appeared to be real semi-automatic firearm to school and initially taking another student hostage acted in objectively reasonable manner in using deadly force;
[2] absent any violation of student’s Fourth Amendment rights in connection with use of deadly force against him after he ignored officers’ requests to put down his weapon and took turns pointing what appeared to be real semi-automatic firearm at both himself and police, sheriff could not be liable in his official capacity under § 1983; and
[3] under Florida law, officer had no duty to retreat prior to using deadly force and was privileged to use such force under circumstances of case.

Affirmed.

West Headnotes (16)

⇒ Trial de novo
Court of Appeals reviews de novo a district court’s grant of summary judgment and applies same legal standards that governed district court’s analysis.

8 Cases that cite this headnote

⇒ Civil rights cases in general
In deciding whether officer was entitled to summary judgment, on qualified immunity grounds, on excessive force claims against him, court, after determining relevant facts and drawing all inferences in favor of nonmoving party to extent supportable by record, had to determine reasonableness of officer's actions as pure question of law.

13 Cases that cite this headnote

[3] Civil Rights
⇒ Good faith and reasonableness; knowledge and clarity of law; motive and intent. in general
In § 1983 actions, doctrine of qualified immunity offers complete protection for government officials sued in their individual capacities, if their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. 42 U.S.C.A. § 1983.

4 Cases that cite this headnote

[4] Civil Rights
⇒ Defenses; immunity and good faith
In order to receive qualified immunity in § 1983 action, public official must first prove that he was acting within scope of discretionary authority when allegedly wrongful acts occurred; once defendant establishes that he was acting within his discretionary authority, burden shifts
to plaintiff to show that qualified immunity is not appropriate. 42 U.S.C.A. § 1983.

2 Cases that cite this headnote

[5] Civil Rights
\[ \Rightarrow \text{Government Agencies and Officers} \]
Threshold inquiry for court, in deciding whether public official is entitled to qualified immunity on § 1983 claims, is whether plaintiff's allegations, if true, establish a constitutional violation. 42 U.S.C.A. § 1983.

2 Cases that cite this headnote

\[ \Rightarrow \text{Mode of stop} \]
Arrest
\[ \Rightarrow \text{Use of force} \]
Right to make arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it; however, level of force applied must not exceed that which reasonable officer would believe is necessary in situation at hand. U.S.C.A. Const. Amend. 4.

2 Cases that cite this headnote

[7] Arrest
\[ \Rightarrow \text{Use of force} \]
Fourth Amendment's "objective reasonableness" standard supplies the test to determine whether force used to effect arrest was excessive, and in applying this standard, court must carefully balance nature and quality of intrusion on individual's Fourth Amendment interests against countervailing governmental interests at stake. U.S.C.A. Const. Amend. 4.

3 Cases that cite this headnote

[8] Arrest
\[ \Rightarrow \text{Use of force} \]
In deciding whether force used to effect arrest was excessive, in violation of suspect's civil rights, court must pay careful attention to facts and circumstances of each particular case, including severity of crime at issue, whether suspect posed immediate threat to safety of officers or others, and whether suspect actively resisted arrest or attempted to evade arrest by flight. U.S.C.A. Const. Amend. 4.

4 Cases that cite this headnote

[9] Arrest
\[ \Rightarrow \text{Use of force} \]
In deciding whether force used to effect arrest was excessive, court should not apply factors bearing on this determination in mechanical fashion, but must instead be careful to evaluate reasonableness of officer's conduct on case-by-case basis from perspective of reasonable officer on scene, rather than with 20/20 vision of hindsight. U.S.C.A. Const. Amend. 4.

2 Cases that cite this headnote

[10] Arrest
\[ \Rightarrow \text{Use of force} \]
Calculus of reasonableness of force used by officer to effect arrest must embody allowance for fact that police officers are often forced to make split-second judgments, in circumstances which are tense, uncertain, and rapidly evolving, about amount of force that is necessary in particular situation. U.S.C.A. Const. Amend. 4.

3 Cases that cite this headnote

\[ \Rightarrow \text{Use of force} \]
Use of deadly force to effect arrest is more likely reasonable, and not violative of arrestee's Fourth Amendment rights, if arrestee posed immediate threat of serious physical harm to officers or others, arrestee committed a crime involving infliction or threatened infliction of serious harm, such that his being at large represented an inherent risk to general public, and officers either issued warning or could not feasibly have done so before using deadly force; however, none of these conditions are prerequisites to lawful application of deadly force by officer seizing a suspect. U.S.C.A. Const. Amend. 4.
4 Cases that cite this headnote

[12] Arrest
   => Use of force
   Police officer who fatally shot 15-year-old student during stand-off precipitated by student's bringing what appeared to be real semi-automatic firearm to school and initially taking another student hostage acted in objectively reasonable manner in using deadly force, though hostage had escaped, student was by himself in bathroom, and other students had been evacuated from adjoining classroom, where officer was not aware that students had been evacuated from adjoining classroom, other students were visible in at least some of surrounding buildings, and student had ignored repeated requests to put down his weapon and, prior to shooting, had taken turns pointing firearm at both himself and officers; court could not use benefit of 20/20 hindsight to second guess field decision of 20-year veteran of police force. U.S.C.A. Const.Amd. 4.

[15] Civil Rights
   => Criminal law enforcement; prisons
   Absent any violation of student's Fourth Amendment rights in connection with use of deadly force against him after he ignored officers' requests to put down his weapon and took turns pointing what appeared to be real semi-automatic firearm at both himself and police, sheriff could not be liable in his official capacity under § 1983 for allegedly formulating use-of-force policy that allowed deadly force to be used without prior warning. U.S.C.A. Const.Amd. 4; 42 U.S.C.A. § 1983.

2 Cases that cite this headnote

[13] Arrest
   => Use of force
   When officer has probable cause to believe that suspect poses threat of serious physical harm, either to officer or to others, use of deadly force does not violate the Constitution. U.S.C.A. Const.Amd. 4.

2 Cases that cite this headnote

[14] Arrest
   => Use of force
   Merely fact that another officer present at scene of stand-off between police and student, who was armed with apparently real firearm which he took turns pointing at himself and police, indicated that he did not feel threatened by student's actions was not particularly relevant to whether officer who fired fatal shot at student, and who, unlike first officer, was one of officers at whom student had pointed his weapon, violated student's Fourth Amendment rights by utilizing deadly force; relevant question was whether reasonable officer in shoes of officer who fired fatal shot would have believed that student was gravely dangerous, and court had to make evaluation from perspective of reasonable officer possessing same particularized information as subject officer. U.S.C.A. Const.Amd. 4.

[16] Municipal Corporations
   => Police and fire
   Police officer was not liable for using deadly force to stop student who was present on school grounds with what appeared to be real semi-automatic firearm, who ignored repeated requests by officers to put down firearm, and who took turns pointing firearm at himself and officers from bathroom where he had taken refuge; under Florida law, officer had no duty to retreat prior to using deadly force and was privileged to use such force if he reasonably believed that such force was necessary to prevent imminent death or great bodily harm to himself or another. West's F.S.A. §§ 768.16-768.26, 776.012.

Attorneys and Law Firms


Appeal from the United States District Court for the Middle District of Florida.

Before DUBINA, Chief Judge, and MARTIN and COX, Circuit Judges.

Opinion

MARTIN, Circuit Judge:

Christopher David Penley, a fifteen-year-old boy, modified a plastic air pistol to look like a real weapon and brought it to school. School officials called the police and, during the ensuing standoff, Lieutenant Michael W. Weippeart fired a single shot, striking Mr. Penley in the head. The *846 wound proved fatal. Ralph J. Penley and Donna Penley, acting as personal representatives of their son's estate, filed suit, seeking relief under both federal and state law. They alleged that under the circumstances lethal force was unnecessary and excessive, and, therefore, that Lieutenant Weippeart had deprived their son of his Fourth Amendment rights. The district court disagreed, finding Lieutenant Weippeart's decision reasonable and granting Lieutenant Weippeart and his co-defendant, Sheriff Donald F. Eslinger, summary judgment.

The loss of such a young life is an undeniable tragedy. However, with their suit, the Penleys ask us to conduct precisely the sort of 20/20 hindsight inquiry against which the Supreme Court and this Court have repeatedly cautioned. We therefore affirm the district court's grant of summary judgment.

I.

On January 13, 2006, Mr. Penley, a fifteen-year-old student at Milwaukee Middle School, brought a pistol to campus. Eventually his teacher learned that he was armed, and, as students fled from the classroom, Mr. Penley briefly held hostage at least one classmate. By the time police officers arrived, that student had escaped and Mr. Penley had left the classroom, making his way through campus.

When an officer of the Seminole County Sheriff's Office confronted Mr. Penley, commanding that he drop his weapon, the boy held the gun under his own chin, responded that he was going to die one way or another, and "slithered" into a bathroom. The bathroom had only one entrance, an overhead, roll up style door which remained open throughout the standoff that followed.

As police began to arrive on the scene, Sheriff's Deputy Christopher Maiorano took up a position approximately sixty-five feet from the entrance to the bathroom. He attempted to communicate with Mr. Penley, but was only able to elicit the boy's name. Mr. Penley walked back and forth from one side of the bathroom to the other, pointing his weapon alternately in Deputy Maiorano's direction and at his own chin. In an effort to get Mr. Penley to drop his weapon, Deputy Maiorano holstered his own and showed Mr. Penley his hands. Instead of dropping the weapon, Mr. Penley pointed his gun directly at the officer. In his deposition, Deputy Maiorano testified: "When he did that, I hugged the wall. I didn't want to get shot. [1] [g]rabbed back for my weapon. At that point I never put my weapon back in the holster." In a sworn statement, Deputy Maiorano also acknowledged that "when [Mr. Penley] drew down on me ... I was scared, noticeably scared." Operating under the belief that the weapon was real, Deputy Maiorano announced "to everyone on scene" that Mr. Penley was wielding a large semiautomatic pistol.

Meanwhile, Sergeant Kevin Brubaker, a trained hostage negotiator, took up a position in front of the bathroom door. Sergeant Brubaker was still negotiating with the boy when Lieutenant Weippeart fired the fatal shot. But, because Sergeant Brubaker had slid into a safer position, he was unable to see Mr. Penley at the moment the fatal shot was fired. Over the course of the negotiation, Mr. Penley had only once responded to Sergeant Brubaker's questions—revealing his name and age—and had refused to comply with the sergeant's repeated requests that he put down the gun. Sergeant Brubaker testified that not once during the negotiation did Mr. Penley point his weapon at the sergeant, nor did the sergeant feel threatened by the boy.

*847 Lieutenant Weippeart, a member of the SWAT team since 1989 and firearm use and defensive tactics instructor at Seminole Community College, was called to the scene. Shortly after arriving, he moved to assist Deputy Maiorano. Armed with a scoped semiautomatic rifle, Lieutenant Weippeart observed Mr. Penley as the boy moved across the frame of the open bathroom door three times. Each time, Mr. Penley aimed his gun at Lieutenant Weippeart and Deputy Maiorano.

On Mr. Penley's third pass, Lieutenant Weippeart "began to conclude" that the boy posed a danger to the lieutenant
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himself, "to others and to the children that were exposed to that open area." At approximately 10:20 a.m., Mr. Penley began to make another lateral pass across the threshold of the open door, pointing his gun at Lieutenant Weippert and Deputy Maiorano. Serving as spotter, Deputy Maiorano gave a signal and Lieutenant Weippert fired a single shot, striking Mr. Penley in the head. It was not until after the shot was fired that police entered the bathroom and discovered that the gun was not real. Mr. Penley died two days later.

According to Lieutenant Weippert, during the incident, he was concerned not only with assisting Deputy Maiorano, who was under the lieutenant's protection, but also with assuring the safety of the children whom he believed occupied the surrounding classrooms. For instance, the bathroom was adjacent to a portable classroom. This classroom, though occupied by children for at least a portion of the standoff, was at some point evacuated. However, as Lieutenant Weippert made his way to Deputy Maiorano, he was under the impression that there were children in the room and believed that they had been instructed to stay in that room. Once he was situated beside Deputy Maiorano, his concern turned to children in rooms with exposed windows. The presence of children in at least some of the surrounding buildings is corroborated by the sworn statement of Sergeant Thomas Johnson of the Seminole County Sheriff's Office. Sergeant Johnson, who was positioned above the bathroom during the standoff, saw children moving about behind the windows of several classrooms located to the rear of the officers. He saw these students lifting up the window blinds and peering out. Sergeant Johnson also observed the silhouette of a person behind the glass doors of another classroom.

Following the death of their son, the Penleys filed a Complaint in the Circuit Court of Seminole County, Florida, which Defendants Sheriff Eslinger and Lieutenant Weippert removed to the U.S. District Court for the Middle District of Florida. With their Amended Complaint, the Penleys sought relief pursuant to 42 U.S.C. § 1983 and the Florida Wrongful Death Act, Fla. Stat. §§ 768.16–26. They allege that Lieutenant Weippert used excessive force when he shot Mr. Penley, depriving the boy of his Fourth Amendment rights. Meanwhile, they claim that Sheriff Eslinger, and through him Seminole County, caused Mr. Penley's Fourth Amendment deprivation by promulgating a use of force policy that allowed officers to use deadly force without giving a warning. Furthermore, they argue that Sheriff Eslinger, as Lieutenant Weippert's employer, should be found liable under Florida law for his employee's tortious conduct.

Sheriff Eslinger and Lieutenant Weippert filed separate motions for summary judgment. The district court granted both, holding that Lieutenant Weippert had not violated the Fourth Amendment and was not liable under state law. The Penleys appeal, insisting that genuine issues of material fact preclude resolution of their claims at this stage.

1 We review de novo a district court's grant of summary judgment and apply the same legal standards that governed the district court's analysis. Capano v. Actua Life Ins. Co., 592 F.3d 1189, 1194 (11th Cir.2010).

Summary judgment is appropriate only when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c)(2). In determining the relevant set of facts at the summary judgment stage, we must view all evidence and make any "reasonable inferences that might be drawn therefrom in the light most favorable to the non-moving party." Rine v. Imaginis, Inc., 590 F.3d 1215, 1222 (11th Cir.2009). However, we draw these inferences only "to the extent supportable by the record." Scott v. Harris, 550 U.S. 372, 381 n. 8, 127 S.Ct. 1769, 1776 n. 8, 167 L.Ed.2d 666 (2007) (emphasis omitted). Thus, the requirement to view the facts in the nonmoving party's favor extends to genuine disputes over material facts and not where all that exists is "some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). In other words, once a moving party has carried its burden under Rule 56(c). "the non-moving party must produce substantial evidence in order to defeat a motion for summary judgment." Garcia v. Bradshaw, 573 F.3d 1158, 1165 (11th Cir.2009). A dispute over a fact will only preclude summary judgment if the dispute "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). A court must deny summary judgment "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

2 In the context of qualified immunity analysis, the Supreme Court has cautioned that if a court were "to deny summary judgment any time a material issue of fact remains on the excessive force claim," it might "undermine the goal of qualified immunity to avoid excessive disruption of
government and permit the resolution of many insubstantial claims on summary judgment."

Robinson v. Arruqueta, 415 F.3d 1252, 1257 (11th Cir. 2005). In other words, "[a]t the summary judgment stage, ... once we have determined the relevant set of facts and drawn all inferences in favor of the nonmoving party to the extent supportable *849 by the record, the reasonableness of [the officer's] actions ... is a pure question of law." Scott, 550 U.S. at 381 n. 8, 127 S.Ct. at 1776 n. 8 (citations omitted).

III.

The Penleys argue that Lieutenant Weippert used excessive force when he shot Mr. Penley, depriving the boy of a clearly established constitutional right. Therefore, they contend that they are entitled to relief under 42 U.S.C. § 1983. They also argue that Sheriff Eslinger is liable under § 1983 for implementing and maintaining a use of force policy that did not require Lieutenant Weippert to warn Mr. Penley before firing, as they believe Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), mandates. They then argue that Lieutenant Weippert violated state law and, because he acted in bad faith and for a malicious purpose, any state privilege is negated. Finally, they maintain that under Florida law Sheriff Eslinger is liable as Lieutenant Weippert’s employer.

A.

[3] [4] [5] In civil rights actions brought under § 1983, the doctrine of qualified immunity "offers complete protection for government officials sued in their individual capacities if their conduct ‘does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’" Yarmuth v. Wilson, 311 F.3d 1340, 1346 (11th Cir. 2002) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982)), abrogated in part by Pearson v. Callaham, 555 U.S. 223, 229-91, 129 S.Ct. 808, 818, 172 L.Ed.2d 565 (2009). With this in mind, we have explained:

In order to receive qualified immunity, the public official must first prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred... Once the defendant establishes that he was acting within his discretionary authority, the burden shifts to the plaintiff to show that qualified immunity is not appropriate.

Lee v. Fezzaro, 284 F.3d 1188, 1194 (11th Cir. 2002) (citations and internal quotation marks omitted). In evaluating whether a plaintiff has met his burden, “[t]he threshold inquiry ... is whether [the] plaintiff’s allegations, if true, establish a constitutional violation.” Hope v. Pelzer, 536 U.S. 730, 736, 122 S.Ct. 2508, 2513, 153 L.Ed.2d 666 (2002) (citing Saucier, 533 U.S. at 201, 121 S.Ct. at 2156).

[6] The Penleys claim that, when he shot their son, Lieutenant Weippert used excessive force, in violation of Mr. Penley’s Fourth Amendment right to be free from unreasonable seizure. See Lee, 284 F.3d at 1197. But, “Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871–72, 104 L.Ed.2d 443 (1989). However, the level of force applied must not exceed that which a “‘reasonable officer would believe ... is necessary in the situation at hand.’” Mercedez v. City of Orlando, 407 F.3d 1152, 1157 (11th Cir. 2005) (quoting Lee, 284 F.3d at 1197).

[7] [8] [9] [10] The Fourth Amendment’s "objective reasonableness" standard supplies the test to determine whether the use of *850 force was excessive. Cato v.
Linder, 556 F.3d 1233, 1290 (11th Cir.2009). Accordingly, courts must “carefully balance ... the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” Graham, 490 U.S. at 396, 109 S.Ct. at 1871 (internal quotation marks omitted). This Court has distilled from Supreme Court jurisprudence several factors to aid our effort to “slosh ... through the factbound morass of [this] ‘reasonableness’ analysis.” Scott, 550 U.S. at 383, 127 S.Ct. at 1778. We highlight three factors set out by Graham v. Connor:

The analysis requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect pose[d] an immediate threat to the safety of the officers or others, and whether [the suspect] ... actively resist[ed] arrest or attempt[ed] to evade arrest by flight.

Crenshaw, 556 F.3d at 1290 (citation and internal quotation marks omitted). A mechanical application of these factors, however, is not appropriate. See Scott, 550 U.S. at 383, 127 S.Ct. at 1777. Instead, we must be careful to evaluate the reasonableness of an officer’s conduct “on a case-by-case basis from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Post v. City of Fort Lauderdale, 7 F.3d 1552, 1559 (11th Cir.1993) (quoting Graham, 490 U.S. at 396, 109 S.Ct. at 1872), modified, 14 F.3d 583 (11th Cir.1994).

Further, the Supreme Court has cautioned that “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” Graham, 490 U.S. at 396, 109 S.Ct. at 1872.

[11] Use of deadly force indisputably implicates weighty individual interests. See Garner, 471 U.S. at 9, 105 S.Ct. at 1700. For over twenty years, Tennessee v. Garner has guided courts’ Fourth Amendment reasonableness analysis where officers used lethal force. However, the Supreme Court has explicitly cautioned against an interpretation of Garner as “a magical on/off switch that triggers rigid preconditions whenever an officer’s actions constitute ‘deadly force.’” Scott, 550 U.S. at 382, 127 S.Ct. at 1777. Instead, “Garner was simply an application of the Fourth Amendment’s ‘reasonableness’ test to the use of a particular type of force in a particular situation.” Id. (citation omitted). Accordingly, as set out in Garner, the use of deadly force is more likely reasonable if: the suspect poses an immediate threat of serious physical harm to officers or others; the suspect committed a crime involving the infliction or threatened infliction of serious harm, such that his being at large represents an inherent risk to the general public; and the officers either issued a warning or could not feasibly have done so before using deadly force. See 471 U.S. at 11–12, 105 S.Ct. at 1701.

But, once again, none of these conditions are prerequisites to the lawful application of deadly force by an officer seizing a suspect. Scott, 550 U.S. at 382, 127 S.Ct. at 1777.

[12] To satisfy the objective reasonableness standard imposed by the Fourth Amendment, Lieutenant Weippert must establish that the countervailing government interest was great. See Crenshaw, 556 F.3d at 1290. As noted above, analysis of this balancing test is governed by (1) the severity of the crime at issue; (2) whether Mr. Penley posed an immediate threat to the officers or others; and (3) whether he actively resisted arrest. See id. In this case, the reasonableness analysis turns on the second of these factors: presence of an imminent threat.

Both the first and third factors weigh in Lieutenant Weippert’s favor. Bringing a firearm to school, threatening the lives of others, and refusing to comply with officers’ commands to drop the weapon are undoubtedly serious crimes. As the Penleys themselves concede, they “have never taken the position that because the gun turned out to be a toy, the situation was any less serious.” The third factor favors a finding of reasonableness as well. While the Penleys argue that Mr. Penley did not attempt to run from the bathroom, they do not contest that their son refused to comply with repeated commands to drop his weapon. Non-compliance of this sort supports the conclusion that use of deadly force was reasonable. See Garcezynski, 573 F.3d at 1168–69 (concluding that refusal to comply with repeated commands to show one’s hands, to drop a cell phone, and then to drop the weapon pointed at the suspect’s own head together justified officers’ “escalation into deadly force”).

[13] Though a closer call, the second factor also supports Lieutenant Weippert’s argument that he acted reasonably. The government has a weighty interest in protecting members of the public and police officers from the threat of force. See id. at 1166. Thus, “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others,” use of deadly force does not violate the Constitution. Garner, 471 U.S. at 11, 105
S.Ct. at 1701 (noting that this is the case even where an officer uses deadly force merely to prevent the suspect's escape); see also Carr v. Totangulo, 338 F.3d 1259, 1268 (11th Cir.2003). As this Court has clarified, the second factor can be reduced to a single question: "whether, given the circumstances, [the suspect] would have appeared to reasonable police officers to have been gravely dangerous." Pace v. Capobianco, 283 F.3d 1275, 1281 (11th Cir.2002).

Mr. Penley demonstrated his dangerous proclivities by bringing to school what reasonable officers would believe was a real gun. He refused to drop the weapon when repeatedly commanded to do so. Most importantly, he pointed his weapon several times at Lieutenant Weipert and Deputy Maiorano. We have held that a suspect posed a grave danger under less perilous circumstances than those confronted by Lieutenant Weipert. See, e.g., Long v. Slaton, 508 F.3d 576, 581 (11th Cir.2007); Pace, 283 F.3d at 1281.2

*852 [14] The Penleys' reliance on Sergeant Brubaker's statement that he did not feel threatened is misplaced. The relevant question is whether a reasonable officer in Lieutenant Weipert's shoes would have believed that Mr. Penley was gravely dangerous. As the Penleys themselves emphasize, Graham v. Connor requires an evaluation of "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." 490 U.S. at 397, 109 S.Ct. at 1872. Whether Lieutenant Weipert's conduct was objectively reasonable must be evaluated from the perspective of "a reasonable officer possessing the same particularized information as the subject officer." Carr, 338 F.3d at 1269 n. 19 (quoting McLane v. Karwas, 27 F.3d 1002, 1007 (4th Cir.1994)) (alteration omitted); see also Garczynski, 573 F.3d at 1166-67 (conducting Fourth Amendment analysis based on information known to the subject officers without imputing knowledge known to colleagues positioned elsewhere). Sergeant Brubaker's perspective was far from identical to that of Lieutenant Weipert. Uncontroverted evidence demonstrates that Mr. Penley never pointed his weapon at Sergeant Brubaker. At various times during his negotiations with Mr. Penley, Sergeant Brubaker lost sight of the weapon and could not see at whom or what Mr. Penley aimed. In fact, at the moment that Lieutenant Weipert shot Mr. Penley, the sergeant could not see Mr. Penley at all. Accordingly, Sergeant Brubaker's subjective lack of fear sheds little light on whether Lieutenant Weipert's conduct was objectively reasonable.3

The bulk of the Penleys' appeal amounts to a challenge to the district court's conclusion that no issues of fact preclude summary judgment. However, we find no error in the district court's decision that summary judgment was warranted. The Penleys argue that Lieutenant Weipert knew that the buildings around him had been evacuated. But, the deposition of Sergeant Vincent Kauffman, the portion of the record to which the Penleys cite, does not support this contention. Instead it indicates no more than that one of the nearby classrooms was evacuated. Sergeant Kauffman's testimony suggests neither that all surrounding classrooms were evacuated nor that Lieutenant Weipert was aware of any evacuation. Furthermore, in a portion of Sergeant Kauffman's deposition not cited by the Penleys, he testified that "we had a whole campus full *853 of students. Albeit they're in lockdown, some of them were just behind glass." This testimony does not contradict Lieutenant Weipert's own statement that when he moved to join Deputy Maiorano, there were children—or at least he believed that there were children—in the portable classroom immediately adjacent to the bathroom. Lieutenant Weipert also testified about his concern for the students located in the classrooms behind the deputies, whose presence was corroborated by the sworn statement of Sergeant Johnson. Though factual inferences are made in the Penleys' favor, this rule applies only "to the extent supportable by the record." Scott, 550 U.S. at 381 n. 8. 127 S.Ct. at 1776 n. 8, and here the record supports the district court's finding that children occupied at least one other classroom behind Lieutenant Weipert's position.

Furthermore, even absent the presence of students, Lieutenant Weipert would have been justified in using deadly force because he had "probable cause to believe that his own life [was] in peril." See Robinson, 415 F.3d at 1256. Mr. Penley was not responding to the negotiator's questions; he did not comply with commands to drop his weapon; and he pointed his weapon at Lieutenant Weipert and Deputy Maiorano. Though the Penleys question Lieutenant Weipert's credibility, they offer no evidence to contradict these material facts. 4 In fact, Deputy Maiorano confirmed that Mr. Penley pointed his gun at the officers. In light of these conditions and his experience as an officer, Lieutenant Weipert reasonably concluded that Mr. Penley posed an imminent threat, that Lieutenant Weipert's "life and certainly those lives around [him] were in danger," and that he could not "let [Mr. Penley] shoot ... first."5

*854 As set forth above, when examining whether an officer's use of deadly force is reasonable, we recognize that "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and
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rapidly evolving—about the amount of force that is necessary in a particular situation.” Graham, 490 U.S. at 397, 109 S.Ct. at 1872. So, “[w]e are loath to second-guess the decisions made by police officers in the field.” Vaughan v. Cox, 343 F.3d 1323, 1331 (11th Cir.2003). At bottom, the Penleys have asked us to question with 20/20 hindsight vision the field decision of a twenty-year veteran of the police force. The relevant inquiry remains whether Lieutenant Weippert “had probable cause to believe that [Mr. Penley] posed a threat of serious physical harm.” See Robinson, 415 F.3d at 1256. In other words, would Mr. Penley “have appeared to reasonable police officers to have been gravely dangerous”? See Pace. 283 F.3d at 1281. Under the tragic circumstances of this case and in light of this Court’s binding precedent, we must answer this question in the affirmative. We therefore hold that Lieutenant Weippert did not violate Mr. Penley’s constitutional rights, thereby ending our qualified immunity analysis. See Saneier, 533 U.S. at 201, 121 S.Ct. at 2156.

B.

[15] The Penleys have sued Sheriff Eslinger in his official capacity as Sheriff of Seminole County. “Official-capacity suits ... generally represent only another way of pleading an action against an entity of which an officer is an agent.” Kentucky v. Graham, 473 U.S. 159, 165, 105 S.Ct. 3099, 3105, 87 L.Ed.2d 114 (1985) (citation and internal quotation marks omitted). Absent *855 a deprivation of federal rights, Sheriff Eslinger cannot be liable in his official capacity under § 1983. See Garczynski, 573 F.3d at 1170; Rooney v. Watson, 101 F.3d 1378, 1381 (11th Cir.1996). Because we hold that Lieutenant Weippert did not deprive Mr. Penley of a constitutional right, it is unnecessary for us to evaluate the constitutionality of Sheriff Eslinger’s use of force policy.

C.

[16] The Penleys brought state law claims against both Lieutenant Weippert and Sheriff Eslinger, pursuant to Florida’s Wrongful Death Act, Fla. Stat. §§ 768.16–.26. In its Amended Order, the district court deemed Lieutenant Weippert’s conduct justifiable in light of the imminent threat posed by Mr. Penley and noted that the Penleys failed to present any evidence that would negate the lieutenant’s privilege. It therefore granted summary judgment to Lieutenant Weippert and Sheriff Eslinger as to the Penleys’ state law claims. Under Florida law, “[a] person who uses force as permitted in § 776.012 ... is justified in using such force and is immune from criminal prosecution and civil action for the use of such force.” Fla. Stat. § 776.032(1). Section 776.012 of the Florida Statutes in turn establishes that individuals have no duty to retreat before using deadly force. Id. § 776.012. However, the statute limits the justifiable use of deadly force to specific circumstances, such as when the actor “reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.” Id. § 776.012(1).

As discussed at length above, Lieutenant Weippert’s conduct was objectively reasonable and he had probable cause to believe that Mr. Penley posed a threat of great bodily harm to the lieutenant and others. Even when viewed in the light most favorable to the Penleys, the evidence reveals no genuine issues of material fact as to whether Lieutenant Weippert’s use of force was reasonably necessary. Under Florida law, Lieutenant Weippert had no duty to retreat and his use of force was justifiable. See State v. Rivera, 719 So.2d 335, 337–38 (Fla. 5th DCA 1998) (holding that after being chased by a car-full of angry men, it would have been reasonable for Mr. Rivera, a private citizen, to believe that deadly force was necessary, even if only a single, unarmed pursuer had approached his now-stopped car, “because [the pursuer] and his friends had already threatened Rivera’s life and the lives of other innocent people by engaging in a high-speed chase and throwing deadly missiles,” namely a bottle of soda and a can of tuna); see also Davis v. Williams, 451 F.3d 759, 768 (11th Cir.2006) (relying on “facts and reasoning set forth” in Fourth Amendment analysis to evaluate whether, under Florida law, an officer’s use of force was excessive). Because the use of force was justifiable, the district court did not err in granting *856 summary judgment on the state law claims.

IV.

Even with all facts viewed in a light favorable to the Penleys, Lieutenant Weippert’s use of force was objectively reasonable and the Penleys’ claims fail. In so holding, we do not mean to minimize the tragic nature of this case. However, no reasonable juror could find that the evidence on record calls into question: whether Mr. Penley pointed his weapon at Lieutenant Weippert and Deputy Maiorano; whether Lieutenant Weippert reasonably believed that children remained in the vicinity of the standoff;
or whether Mr. Penley refused to comply with repeated commands to drop his weapon. Accordingly, Lieutenant Weippert did not violate either the Constitution or Florida law when he shot Mr. Penley and the district court properly granted summary judgment.

For these reasons, the judgment of the district court is AFFIRMED. 9

Parallel Citations

22 Fla. L. Weekly Fed. C 748

Footnotes

1 We recognize that we are no longer required to analyze whether Lieutenant Weippert deprived Mr. Penley of his constitutionally protected rights before asking if those rights were clearly established. See Pearson, 129 S.Ct. at 818. However, in this case we will follow the traditional approach.

2 In Payne v. Capobianco, 283 F.3d 1275 (11th Cir.2002), we found no violation of the Fourth Amendment when a high speed chase that followed a traffic violation ended with four police vehicles cornering the suspect's car in a cul-de-sac. Id. at 1277. The suspect had stopped his car, which faced the curb, and was still in the vehicle. Id. The officers shouted to get out of the car, then, "[w]ithin a moment of [the suspect's] car stopping (at most, a very few seconds), [one deputy]—from a position in front of [the suspect's] car—fired two shots ... through the front windshield." Id. at 1278. This Court found that because the suspect drove recklessly, never left his automobile, and never turned off its engine, reasonable police officers would have "probable cause to believe that [the car] had become a deadly weapon with which [the suspect] was armed." Id. at 1281. So, despite the fact that the suspect "did not try to run over the deputies and that [the suspect], in the cul-de-sac, did not aim the car at the deputies," id. at 1282, we concluded that the suspect "would have appeared to reasonable police officers to have been gravely dangerous," id. at 1281. This Court decided that use of deadly force was, therefore, constitutionally permissible.

Mr. Penley's case is factually analogous to Garceznick v. Brickham, 523 F.3d 1158 (11th Cir.2009), in which we found no violation of the Fourth Amendment where officers employed lethal force to seize a suicidal suspect who repeatedly refused to drop his gun and swung the weapon from his own head in the direction of the officers. Id. at 1168. We held that "[t]he officers reasonably reacted to what they perceived as an immediate threat of serious harm to themselves. This [was] exactly the type of 'tense, uncertain and rapidly evolving' crisis envisioned by the Supreme Court." Id. (quoting Graham, 490 U.S. at 397. 109 S.Ct. at 1872). In fact, we concluded that the use of lethal force would have been reasonable even if the suicidal man had not pointed his weapon in the officers' direction. Id. at 1169. We noted that "the fact that Garceznick did not comply with the officers' repeated commands to drop his gun justified the use of deadly force under these particular circumstances." Id. Similarly, here, Mr. Penley refused to comply with commands to drop his weapon, was unresponsive to negotiation efforts, and repeatedly pointed his weapon at police officers.

It is worth noting that Deputy Maiorano, the officer in closest proximity to Lieutenant Weippert, reported in a sworn statement, "from where I was standing, that was a big gun, ... when he ... drew down on me—I've been in a lot of situations—I was scared, noticeably scared." In fact, he testified that he would have made the same decision as Lieutenant Weippert: "Based on [Mr. Penley's] previous mannerisms and behavior towards me and the fear that I felt that day, I would have shot him myself."

The Penleys claim that a jury could find that "the physical evidence is not consistent with Lt. Weippert's version of the event." They imply, for instance, that Mr. Penley was not pointing his weapon at Lieutenant Weippert when he was killed, but, instead, was walking away from the door with his back to the officer.

However, the record does not support the position that Mr. Penley was walking away from Lieutenant Weippert when he was shot. The deposition and report of the Medical Examiner, to which the Penleys cite, describe Mr. Penley's wound, but do not shed light on how the boy's head and arms were positioned at the time he was shot. In fact, the wound is not inconsistent with Lieutenant Weippert's testimony about the last moments of this tragic standoff. Meanwhile, Lieutenant Weippert and Sheriff Eslinger presented an expert report that explained that the wounds sustained were actually consistent with Mr. Penley's independent movements. Furthermore, Deputy Maiorano's testimony corroborates Lieutenant Weippert's version of the story. Consequently, the evidence to which the Penleys cite does not create a fact issue sufficient to alter our evaluation of Mr. Penley's posture towards Lieutenant Weippert and Deputy Maiorano and, therefore, does not preclude summary judgment.

The Penleys also contend that because the officers had adequate cover and Mr. Penley was contained in the bathroom, any threat posed by Mr. Penley was "eliminated or significantly reduced," and, therefore, the use of deadly force was unreasonable and excessive. However, the fact that Mr. Penley was surrounded would not have prevented him from firing a weapon at Lieutenant Weippert, Deputy Maiorano, other officers, or students behind windows in neighboring buildings. Even with all possible inferences construed in the Penleys' favor, the district court correctly concluded that the Penleys failed to demonstrate a genuine issue of material fact based on the issue of containment and cover. As we have noted in the past, where officers fear that delaying action would "risk
a 'running gun battle' with an armed man who was potentially suicidal," *Garczynski*, 573 F.3d at 1163; the Constitution does not require "[t]he officers ... to wait and see if [the suspect] remained stationary, or rely on ... surrounding police officers to deter him should he suddenly become mobile," *id.* at 1167. "We think the police need not have taken that chance and hoped for the best." *Seagrt*, 550 U.S. at 385, 127 S.Ct. at 1778.

6 The Penleys dedicate a significant portion of their briefs to the argument that *Garner* mandated Lieutenant Weippeart to issue a warning before shooting Mr. Penley. Their argument fails for several reasons. First, as this Court has noted, "*Garner* says something about deadly force but not everything." *Long*, 508 F.3d at 580. The Supreme Court has also observed that "[w]hatever *Garner* said about the factors that might have justified shooting the suspect in that case, such 'preconditions' have scant applicability to [a] case[] which has vastly different facts." *Seagrt*, 550 U.S. at 383, 127 S.Ct. at 1777. The facts of this case are readily distinguishable from those of *Garner*. As summarized by the Supreme Court,

*Garner* held that it was unreasonable to kill a "young, slight, and unarmed" burglary suspect, by shooting him "in the back of the head" while he was running away on foot, and when the officer "could not reasonably have believed that [the suspect] ... posed any threat," and "never attempted to justify his actions on any basis other than the need to prevent an escape." *id.* at 382-83, 127 S.Ct. at 1777 (citations omitted). Unlike in *Garner*, Lieutenant Weippeart had probable cause to believe the suspect posed a real threat to the lives of officers and others. Mr. Penley was armed and not fleeing; he repeatedly refused to drop his weapon; and, at the moment Mr. Penley was shot, evidence demonstrates that he was pointing his weapon at Lieutenant Weippeart. We have "‘declined[d] ... to fashion an inflexible rule that, in order to avoid civil liability, an officer must always warn his suspect before firing—particularly where ... such a warning might easily have cost the officer his life.’" *Gar*., 338 F.3d at 1269 n. 19 (quoting *Hernandez*, 27 F.3d at 1007) (emphasis omitted). In this case, Mr. Penley had his weapon trained on Lieutenant Weippeart, who believed that the boy was going to fire. Particularly in light of various officers' repeated commands that Mr. Penley drop his weapon and the fact that the officers had their own guns pointed at Mr. Penley, Lieutenant Weippeart's failure to explicitly warn Mr. Penley does not alter our conclusion that the use of lethal force was objectively reasonable. See *id.*

7 Though they originally brought suit against Sheriff Eslinger both as an individual and in his official capacity, the Penleys abandoned their claims against the sheriff as an individual and amended their Complaint accordingly.

8 Florida law also provides sovereign immunity to law enforcement personnel carrying out their duties, unless their actions were committed "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Fl. Stat. § 768.28(9)(a). Ordinarily, "a presumption of good faith attaches to an officer's use of force in making a lawful arrest and an officer is liable for damages only where the force used is clearly excessive." *City of Miami v. Sanders*, 672 So.2d 46, 47 (Fla. 3d DCA 1996). The Penleys have presented no evidence that Lieutenant Weippeart's actions were committed in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights.

9 Defendants have filed a motion to supplement the record on appeal. Their motion is DENIED as moot.
Horn v. State, 17 So.3d 836 (2009)
34 Fla. L. Weekly D1734

17 So.3d 836
District Court of Appeal of Florida,
Second District.

Max Wesley HORN, Jr., Petitioner,
v.
STATE of Florida, Respondent.


Synopsis

Background: Defendant charged with second-degree murder filed petition for writ of certiorari after the Circuit Court, Pasco County, Michael E. Andrews, J., denied his claim for immunity from prosecution under the “Stand Your Ground” law.

Holdings: The District Court of Appeal, Casamino, C.J., held that:

[1] petition or motion filed under the law should not be treated as a motion to dismiss, but rather must comply with the general requirements for all pretrial motions, and

[2] procedure employed by trial court was appropriate.

Petition denied.

West Headnotes (5)

[1] Criminal Law
⇒ Special pleas in bar in general

Homicide
⇒ Duty to retreat or avoid danger

By defining “criminal prosecution” to include the arrest, detention, charging, or prosecution of the defendant, the Stand Your Ground statute allows for an immunity determination at any stage of the proceeding. West's F.S.A. § 776.032(1).

1 Cases that cite this headnote

[2] Courts
⇒ Power to regulate procedure

A district court has no authority to create a rule of criminal procedure.

[3] Criminal Law
⇒ Motions

Criminal Law
⇒ Dismissal or nonsuit

A homicide defendant's motion or petition filed under the “Stand Your Ground” law should not be treated as a motion to dismiss, but rather must comply with the general requirements for all pretrial motions; a motion to dismiss would be a second step, appropriate if the state continued prosecution of a defendant after he earned immunity under the statute. West's F.S.A. § 776.032; West's F.S.A. RCrP Rule 3.190(a), (c).

[4] Criminal Law
⇒ Special pleas in bar in general

Homicide
⇒ Duty to retreat or avoid danger

Procedure employed by trial court when considering homicide defendant's petition claiming immunity from prosecution under the “Stand Your Ground” law was appropriate; trial court held an evidentiary hearing in which the parties presented live testimony from eyewitnesses, including the defendant, and the court weighed the credibility of the witnesses, made numerous findings of fact with a substantial, competent basis for its factual findings, and applied the preponderance of the evidence standard in denying the petition. West's F.S.A. § 776.032(1); West's F.S.A. RCrP Rule 3.190(a).

3 Cases that cite this headnote

[5] Homicide
⇒ Duty to retreat or avoid danger

Homicide
⇒ Duty to retreat or avoid danger

The legislature intended, through the “Stand Your Ground” law, to create immunity from prosecution rather than an affirmative defense and, therefore, the preponderance of the evidence
standard applies to immunity determinations under the statute. West's F.S.A. § 776.032.

2 Cases that cite this headnote

Attorneys and Law Firms

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Bill McCullum, Attorney General, Tallahassee, and Diana K. Bock, Assistant Attorney General, Tampa, for Respondent.

Opinion

CASANUEVA, Chief Judge.

Max Wesley Horn, Jr., filed a petition for writ of certiorari asking this court to quash the trial court's order denying him immunity from prosecution. We deny the petition. However, we write to discuss and approve of the trial court's procedures in determining that Mr. Horn was not entitled to immunity under section 776.032, Florida Statutes (2007).

Facts

On March 29, 2008, Mr. Horn shot and killed Joseph Martel, resulting in a charge of second-degree murder. Mr. Horn claimed statutory immunity based upon section 776.032, (commonly known as the "Stand Your Ground" Law), in hopes of avoiding prosecution. The trial court conducted an evidentiary hearing to learn the facts surrounding Mr. Martel's death and determined, by a preponderance of the evidence, that Mr. Horn was not entitled to immunity from prosecution.

The transcript of the evidentiary hearing is not in this court's record, but the trial court's extensive written order contains a section detailing the evidence presented. *838 and discovery depositions fill in some background information. Mr. Horn and Mr. Martel had had several verbal confrontations over the course of a day, during New Port Richey's annual "Chasco Fiesta" celebration. Mr. Horn testified that Mr. Martel threatened his sister during the penultimate confrontation. Mr. Horn had a heart condition and could not fight for fear of a heart attack, * so he lifted his shirt to display a firearm and told Mr. Martel, "I'll shoot you." Mr. Martel walked away but walked back shortly thereafter. Mr. Horn testified that Mr. Martel then threatened to kill Mr. Horn and his associates and told him that "you better pull that gun." Some witnesses testified that Mr. Martel then punched Mr. Horn in the face or forehead, but the witnesses nearest the incident (aside from Mr. Horn) said no punches were thrown. * However, it was undisputed that Mr. Horn then fired six shots into Mr. Martel, at which point the gun jammed. Mr. Horn maintained that Mr. Martel was still walking towards him trying to get the gun after four shots, but at least one other witness stated that Mr. Horn fired the last two shots down at Mr. Martel while he lay on the ground. One witness testified that Mr. Horn said he shot Mr. Martel because Mr. Martel was "stalking his sister."

Analysis

[1] Section 776.032(1) authorizes a person to use force in defense in certain situations. The justifiable use of that force is declared "immune from criminal prosecution." Id. In turn, the legislature broadly defined the term "criminal prosecution" to include "arresting, detaining in custody, and charging or prosecuting the defendant." 3 Id. Because Mr. Horn has already been arrested and charged with a criminal homicide, our focus is upon his pending prosecution. Section 776.012, titled "Use of force in defense of person," provides the limits of justifiable force in this case. Pursuant to this section, a person is justified in using deadly force and is under no duty to retreat when he "reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself."

Despite section 776.032's broad temporal application, running from before arrest through trial, there is no legislative guidance as to the statute's implementation. Thus far, two other district courts have examined the issues presented by the statute and have reached differing results regarding the proper procedures to follow.

In Peterson v. State, 983 So.2d 27, 28 (Fla. 1st DCA 2008), the First District held that "a criminal defendant claiming protection under the statute must demonstrate by a preponderance of the evidence that he or she is immunized from prosecution." In reaching this result, the court rejected the State's argument that the trial court should treat a motion filed to determine immunity pursuant to Florida Rule of Criminal Procedure 3.190(c)(4). In Velasquez v. State, 9 So.3d 22 (Fla. 4th DCA 2009), the Fourth District disagreed with *839 the First District, holding instead that a petition seeking immunity under section 776.032 should be treated as a motion to dismiss pursuant to rule 3.190(c)(4) and denied when "the facts are in dispute." The court also stated, "We recognize the efficacy of the procedure outlined in Peterson,
but disagree that it is within our province to create a process sanctioned neither by statute nor existing rule.” Velasquez, 9 So.3d at 24.

[2] [3] We agree with the Fourth District that a district court has no authority to create a rule of criminal procedure. However, unlike the Fourth, we do not think rule 3.190(c)(4), setting forth the procedure for a motion to dismiss, is appropriately applied to a motion or petition to determine immunity under section 776.032. Instead, we hold that such a motion falls under the general authority granted to trial courts to hear and rule upon motions necessary to resolve criminal cases. Consequently, a motion or petition filed under section 776.032 must comply with the general requirements of rule 3.190(a) for all pretrial motions. A motion to dismiss under rule 3.190(c)(4) would be a second step, appropriate if the State continued prosecution of a defendant after he earned immunity under section 776.032.

[4] [5] In the case at bar, the trial court held an evidentiary hearing in which the parties presented live testimony from eyewitnesses, including the defendant. The court weighed the credibility of the witnesses, made numerous findings of fact with a substantial, competent basis for its factual findings, and applied the preponderance of the evidence standard in denying Mr. Horn’s petition seeking immunity. We conclude that the trial court’s procedures in this case would be appropriate for most, if not all, cases in which the defendant seeks immunity under section 776.032(1). We agree with the First District that our legislature intended to create immunity from prosecution rather than an affirmative defense and, therefore, the preponderance of the evidence standard applies to immunity determinations. See Peterson, 983 So.2d at 29.

To the extent that our conclusions conflict with the Fourth District’s opinion in Velasquez, we certify conflict.

Petition denied.

ALLENBERND and KHOUMZAM, JJ., Concur.

Parallel Citations
34 Fla. L. Weekly D1734

Footnotes
1 Mr. Horn’s doctor testified that Mr. Horn had a “weak” heart muscle and that he had recommended that Mr. Horn exercise and lose weight to improve his health. He also testified he had told Mr. Horn that physical stress or a strike to the chest could cause him to have a fainting spell or heart attack. The doctor acknowledged that a strike to the chest could cause anyone the same cardiac problems regardless of their health.
2 It should be noted that nobody appears to have testified that Mr. Martel attempted to hit Mr. Horn in the chest.
3 “By defining ‘criminal prosecution’ to include the arrest, detention, charging, or prosecution of the defendant, the statute allows for an immunity determination at any stage of the proceeding.” Velasquez v. State, 9 So.3d 22, 24 (Fla. 4th DCA 2009).
4 In State v. Ford, 626 So.2d 1338, 1345 (Fla.1993), the Florida Supreme Court held, “‘All courts in Florida possess the inherent powers to do all things that are reasonable and necessary for the administration of justice within the scope of their jurisdiction, subject to valid existing laws and constitutional provisions.’” (quoting Roger A. Silver, The Inherent Power of the Florida Courts, 39 U. Miami L. Rev. 257, 263 (1985)). In that case, the court stated that the trial court would have been within its authority to use an unauthorized procedure to protect a child witness, had it not conflicted with the defendant’s constitutional rights. id.

Dennis v. State, 51 So.3d 456 (2010)
35 Fla. L. Weekly S731, 36 Fla. L. Weekly S18

51 So.3d 456
Supreme Court of Florida.

Clarence DENNIS, Petitioner,
v.
STATE of Florida, Respondent.


Synopsis

Background: After denial of defendant's motion to dismiss, under the “Stand Your Ground” statute relating to justified use of force, the charge of attempted first-degree murder, and after the State reduced the charge to aggravated battery, defendant was convicted, at a jury trial in the Circuit Court, 19th Judicial Circuit, Okeechobee County, Sherwood Bauer, Jr., J., of the lesser included offense of felony battery. Defendant appealed. The District Court of Appeal, 17 So.3d 305, affirmed, and later denied rehearing and certified a conflict, 17 So.3d 310.

Holdings: The Supreme Court, Canady, C.J., held that:
[1] Where a criminal defendant files a motion to dismiss on the basis of the “Stand Your Ground” statute, which relates to justified use of force, the trial court should conduct a pretrial evidentiary hearing and decide the factual question of the applicability of the statutory immunity, and
[2] error was harmless, in the case at bar, as to trial court's failure to hold a pretrial evidentiary hearing on defendant's motion to dismiss.

Reasoning of District Court of Appeal disapproved.

West Headnotes (7)

[1] Statutes
\(\Rightarrow\) Intention of Legislature
The cardinal rule of statutory construction is that a statute should be construed so as to ascertain and give effect to the intention of the Legislature as expressed in the statute.

[2] Statutes
\(\Rightarrow\) Policy and purpose of act

Statutory enactments are to be interpreted so as to accomplish rather than defeat their purpose.

Criminal Law
\(\Rightarrow\) Dismissal or nonsuit

Where a criminal defendant files a motion to dismiss on the basis of the “Stand Your Ground” statute, which relates to justified use of force, the trial court should conduct a pretrial evidentiary hearing and decide the factual question of the applicability of the statutory immunity. WesC.S. F.S.A. § 776.032; WesC.S. F.S.A. RCrP Rule 3.190(b).

8 Cases that cite this headnote

Statutes
\(\Rightarrow\) Giving effect to entire statute

Statutes
\(\Rightarrow\) Other matters

It is a basic rule of statutory construction that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.

Criminal Law
\(\Rightarrow\) Preliminary Proceedings

The erroneous denial of a motion to dismiss may be harmless error.

Criminal Law
\(\Rightarrow\) Prejudice to Defendant in General

An error is “harmless error” if the error complained of did not contribute to the verdict or, alternatively stated, there is no reasonable possibility that the error contributed to the conviction.

Criminal Law
\(\Rightarrow\) Preliminary Proceedings

Error was harmless as to trial court's summary denial, without holding a pretrial evidentiary hearing, as to defendant's motion to dismiss on the
basis of the “Stand Your Ground” statute, which related to justified use of force; defendant 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, and defendant presented self-defense evidence at trial. West’s F.S.A. § 776.032.

5 Cases that cite this headnote

Attorneys and Law Firms

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Opinion

CANADY, C.J.

In this case we consider whether a 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, Florida Statutes (2006), commonly known as the “Stand Your Ground” statute. We have for review the decision of the Fourth District Court of Appeal in Dennis v. State, 17 So.3d 305 (Fla. 4th DCA 2009), which held that the existence of disputed issues of material fact required the denial of Dennis’s motions to dismiss. The Fourth District certified that its decision is in direct conflict with the decision of the First District Court of Appeal in Peterson v. State, 983 So.2d 27 (Fla. 1st DCA 2008), 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. We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

We conclude that where a criminal defendant files a motion to dismiss on the basis of section 776.032, the trial court should decide the factual question of the applicability of the statutory immunity. Accordingly, we disapprove the Fourth District’s reasoning in Dennis and approve the reasoning of Peterson on that issue. However, because we conclude that the trial court’s error in denying Dennis a pretrial evidentiary hearing on immunity was harmless, we do not quash the Fourth District’s decision affirming Dennis’s conviction and sentence.

I. BACKGROUND

Clarence Dennis was charged by information with the attempted first-degree murder of Gloria McBride. The charge arose from an incident of domestic violence in August 2006. Dennis filed two motions to dismiss the information pursuant to section 776.032(1), Florida Statutes (2006), asserting that he was immune from criminal prosecution because his actions were a justified use of force. One motion was designated as being filed pursuant to Florida Rule of Criminal Procedure 3.190(c)(4) and alleged that there were “no material facts in dispute and the undisputed facts do not establish a prima facie case of guilt against the Defendant.” The other motion was designated as being filed pursuant to Florida Rule of Criminal Procedure 3.190(c)(3) and asserted that the preponderance of the evidence established that Dennis was entitled to immunity because his use of force was justified. The State filed a traverse and demurrer, asserting that material facts were in dispute.

The trial court denied the rule 3.190(c)(4) motion on the basis that the State asserted with specificity the existence of disputed material facts. After expressing uncertainty about whether it had authority to conduct an evidentiary hearing, the trial court rejected Dennis’s request for an evidentiary hearing and summarily denied the rule 3.190(c)(3) motion. The trial court concluded that in enacting section 776.032, the Legislature did not intend to take the question of immunity away from the jury.

Before proceeding to trial, the State amended the information, reducing the charge against Dennis to aggravated battery. During the trial, after the State rested its case, Dennis moved for a judgment of acquittal. The trial court denied Dennis’s motion, finding that the State had “proved the charge of aggravated battery and [had] established a prima facie case of guilt against the defendant.” After the defense presented its evidence and rested, Dennis renewed his motion for a judgment *459 of acquittal. The trial court denied the renewed motion and submitted the case to the jury. When charging the jury, the trial court expressly instructed that an “issue in this case [was] whether the defendant acted in self defense” and gave detailed instructions on when deadly or nondeadly force is legally justified. Ultimately, the jury convicted Dennis of the lesser included offense of felony battery, and the trial court sentenced Dennis to sixty months of imprisonment.
Dennis v. State, 51 So.3d 456 (2010)
35 Fla. L. Weekly S731, 36 Fla. L. Weekly S18

Dennis appealed his conviction and sentence, raising two issues. The Fourth District discussed only one issue in its opinion:

Only one of the issues warrants discussion; that is, whether the trial court erred in denying Dennis’s motion to dismiss on his claim of statutory immunity brought under section 776.032, Florida Statutes, because there were disputed issues of material fact. We find no error in the trial court’s decision to deny the motion to dismiss. As we recognized in Peloquez v. State, 9 So.3d 22 (Fla. 4th DCA 2009), a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of material fact. Accordingly, we affirm.

Dennis v. State, 17 So.3d 365, 366 (Fla. 4th DCA 2009). The Fourth District denied Dennis’s motion for rehearing or clarification but did not certify conflict with Peterson.

In Peterson, the State charged the defendant with attempted first-degree murder, and the defendant moved to dismiss the information on the ground that he was immune from criminal prosecution pursuant to section 776.032, Florida Statutes (2006). After conducting an evidentiary hearing, the trial court denied the motion to dismiss on the basis that the defendant had not established immunity “as a matter of fact or law.” Peterson, 983 So.2d at 28. The trial court recognized that no procedure had yet been enacted for deciding claims of immunity under section 776.032(1).

Peterson then filed a petition for a writ of prohibition, challenging the denial of his motion to dismiss. In response, the State argued that the motion should have been considered under rule 3.190(c)(4) and was properly denied because “any factual dispute should defeat a claim of statutory immunity” under that rule. Peterson, 983 So.2d at 28. The First District rejected the State’s argument that a motion to dismiss based on section 776.032 immunity must be denied whenever there are disputed material facts. Based upon its conclusion that the Legislature “intended to establish a true immunity and not merely an affirmative defense,” the First District outlined a procedure for use in ruling on motions to dismiss pursuant to section 776.032, id. at 29. The First District explained:

We now hold that when immunity under this law is properly raised by a defendant, the trial court must decide the matter by confronting and weighing only factual disputes. The court may not deny a motion simply because factual disputes exist. Here, the trial court did what was required. Petitioner is not precluded from submitting the matter to the jury as an affirmative defense in his criminal trial.

In the absence of a procedure for handling these matters, we find guidance from the Colorado Supreme Court’s decision in People v. Gummeth, 740 P.2d 971 (Colo.1987). In that case, the court decided that Colorado’s similar immunity statute authorized a trial court to dismiss a criminal prosecution at the pretrial stage and did not merely create an affirmative defense for adjudication at trial, id. at 976. The court further determined that a defendant raising the immunity would have the burden of establishing the factual prerequisites to the immunity claim by a preponderance of the evidence, id. at 980. The court imposed the same burden of proof as it would in motions for postconviction relief or motions to suppress, id.

Likewise, we hold that a defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches. As noted by the trial court, courts have imposed a similar burden for motions challenging the voluntariness of a confession. See, e.g., McDole v. State, 283 So.2d 553, 554 (Fla.1973). We reject any suggestion that the procedure established by rule 3.190(c) should control so as to require denial of a motion whenever a material issue of fact appears.

Peterson, 983 So.2d at 29-30. The First District ultimately denied Peterson’s petition for a writ of prohibition, concluding that the trial court did not err in finding that Peterson had failed to establish immunity.

We accepted jurisdiction based on the certified conflict on the question of whether the trial court should conduct a pretrial evidentiary hearing and resolve disputed issues of material fact to rule on a motion to dismiss asserting immunity from criminal prosecution pursuant to section 776.032. On this issue, Dennis contends that this Court should adopt the position taken by the First District in Peterson. He asserts that the trial court erred in summarily denying his motions to dismiss and that the trial court should have conducted an evidentiary hearing on his claim of immunity. The State contends that the trial court correctly found that a claim of immunity pursuant to section 776.032 is properly raised and resolved under rule 3.190(c)(4), which requires that the
motion to dismiss be denied where there are disputed material facts. The State further asserts that to proceed to trial, section 776.032 requires only a showing that there is probable cause to believe that the defendant's use of force was unlawful.

II. ANALYSIS

In the analysis that follows, we first explain why we approve the Peterson procedure for ruling on motions to dismiss filed pursuant to section 776.032. We then explain why Dennis is not entitled to relief despite the trial court's denial of an evidentiary hearing on his motions to dismiss.

Dennis and Peterson both filed motions to dismiss the charges against them on the basis of section 776.032, Florida Statutes (2006). Section 776.032, which became effective October 1, 2005, provides:

(a) In General. Every pretrial motion and pleading in response to a motion shall be in writing and signed by the party making the motion or the attorney for the party....

(b) Motion to Dismiss; Grounds. All defenses available to a defendant by plea, other than not guilty, shall be made only by motion to dismiss the indictment or information, whether the same shall relate to matters of form, substance, former acquittal, former jeopardy, or any other defense.

(c) Time for Moving to Dismiss. Unless the court grants further time, the defendant shall move to dismiss the indictment or information either before or at arraignment. The court in its discretion may permit the defendant to plead and thereafter to file a motion to dismiss at a time to be set by the court. Except for objections based on fundamental grounds, every ground for a motion to dismiss that is not presented by a motion to dismiss within the time hereinabove provided shall be considered waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds:

(1) The defendant is charged with an offense for which the defendant has been pardoned.

(2) The defendant is charged with an offense for which the defendant previously has been placed in jeopardy.

(3) The defendant is charged with an offense for which the defendant previously has been granted immunity.

(4) There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant. The facts on which the motion is based should be alleged specifically and the motion sworn to.

(d) Traverse or Demurrer. The state may traverse or demur to a motion to dismiss that alleges factual matters. Factual matters alleged in a motion to dismiss under subdivision (c)(4) of this rule shall be considered admitted unless specifically denied by the state in the traverse. The court may receive evidence on any issue of fact necessary to the decision on the motion. A motion to dismiss under subdivision (c)(4) of this rule shall be denied if the state files a traverse that, with specificity, denies under oath the material fact or facts alleged in the motion to dismiss. The demurrer or traverse shall be filed a reasonable time before the hearing on the motion to dismiss.

[1] [2] The “cardinal rule” of statutory construction is “that a statute should be construed so as to ascertain and give effect
to the intention of the Legislature as expressed in the statute.”

Reeves v. State, 957 So.2d 625, 629 (Fla.2007) (quoting
City of Tampa v. Thothacker Glass Corp., 445 So.2d 578, 579
(Fla.1984)). “[S]tatuotory enactments are to be interpreted so
as to accomplish rather than defeat their purpose.” Reeves,
957 So.2d at 629 (quoting *462 Lewis v. Mosley, 204
So.2d 197, 201 (Fla.1967)). In resolving the conflict issue,
we conclude that the plain language of section 776.032
grants defendants a substantive right to assert immunity from
prosecution and to avoid being subjected to a trial. We further
conclude that the procedure set out by the First District in
Peterson best effectuates the intent of the Legislature.

Section 776.032(1) provides, in part, that a “person who uses
force as permitted in s. 776.012, s. 776.013, or s. 776.031
is justified in using such force and is immune from criminal
prosecution and civil action for the use of such force, unless
the person against whom force was used is a law enforcement
officer ... who was acting in the performance of his or her
official duties.” Section 776.032(1) defines “criminal
prosecution” as including “arresting, detaining in custody,
and charging or prosecuting the defendant.” Similarly, the
preamble of the law creating section 776.032 states that “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.” Ch.2005–27, at
200, Laws of Fla. (emphasis added).

While Florida law has long recognized that a defendant
may argue as an affirmative defense at trial that his or her
use of force was legally justified, section 776.032 contemplates
that a defendant who establishes entitlement to the statutory
immunity will not be subjected to trial. Section 776.032(1)
expressly grants defendants a substantive right to not be
arrested, detained, charged, or prosecuted as a result of the use
of legally justified force. The statute does not merely provide
that a defendant cannot be convicted as a result of legally
justified force.

This plain reading of section 776.032 compels us to reject the
State’s contention that a defendant must raise a pretrial claim
of immunity only in a rule 3.190(c)(4) motion to dismiss. To
be entitled to dismissal under rule 3.190(c)(4), “the defendant
must ‘demonstrate that the undisputed facts fail to establish
a prima facie case.’ ” Doroff v. State, 747 So.2d 368, 373
(Fla.1999) (quoting State v. Pollock, 600 So.2d 1313, 1314
(Fla. 3d DCA 1992)). If the State specifically alleges that
the material facts are in dispute or that the facts refute the
defendant’s claim, the motion to dismiss must be denied.

State v. Kalogeropoulos, 758 So.2d 110, 112 (Fla.2000). Section
776.032 does not limit its grant of immunity to cases where
the material facts are undisputed. Thus, treating motions to
dismiss pursuant to section 776.032 in the same manner as
rule 3.190(c)(4) motions would not provide criminal
defendants the opportunity to establish immunity and avoid
trial that was contemplated by the Legislature.

Florida Rule of Criminal Procedure 3.190(b)—rather than
rule 3.190(c)(4)—provides the appropriate procedural vehicle
for the consideration of a claim of section 776.032 immunity.
Rule 3.190(b) provides generally that “[a]ll defenses available
to a defendant by plea, other than not guilty, shall be made
only by motion to dismiss the indictment or information.”

Dennis’s failure to identify the pertinent subdivision of rule
3.190 in his motions to dismiss did not foreclose Dennis’s argument that section 776.032 required the trial court to
make a pretrial evidentiary determination concerning the
applicability of the statutory immunity. See, e.g., Steinbock
v. State, 636 So.2d 498, 500 (Fla.1994) (concluding that
trial court should have treated criminal defendant’s motion,
improperly designated as being filed pursuant to Florida Rule
of Civil Procedure 1.540, as being properly filed *463 pursuant
to Florida Rule of Criminal Procedure 3.850); cf. Barrett v. State, 965 So.2d 1260, 1261 (Fla. 2d DCA 2007)
(“Article V, section 2(a) of the Florida Constitution requires
that no cause be dismissed because an improper remedy
has been sought. Accordingly, the trial court should have
considered whether Barrett had alleged sufficient facts to
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The Florida appellate courts have interpreted rule 3.190—
in a variety of contexts—as granting trial courts authority
to receive evidence to assist in ruling on motions to dismiss.
For example, the appellate courts have approved the trial
courts’ use of evidentiary hearings to rule on motions to
dismiss on the basis of transactional or use immunity,
prosecutorial misconduct, and selective prosecution. See, e.g.,
State ex rel. Hough v. Pepper, 287 So.2d 282, 285 (Fla.1973)
(issue writ to compel trial court to hold an evidentiary
hearing to determine if the transactional immunity or use
immunity provisions of section 914.04, Florida Statutes, were
applicable); Owen v. State, 443 So.2d 173, 175 (Fla. 1st
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 dismiss and to “hold a hearing to determine the issues created by said motion”.

[4] We also reject the State’s contention that the pretrial hearing on immunity in a criminal case should test merely whether the State has probable cause to believe the defendant’s use of force was not legally justified. Prior to the enactment of chapter 2005–27, Laws of Florida (2005), Florida law defined certain types of justified force, see §§ 776.12, 776.031, Fla. Stat., (2004), and the Florida Rules of Criminal Procedure mandated that a trial judge make a pretrial nonadversarial probable cause determination either before or shortly after a defendant was taken into custody, see Fla. R.Crim. P. 3.133 (2004), “It is a basic rule of statutory construction that ‘the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.’” Martinez v. State, 981 So.2d 449, 452 (Fla.2008) (quoting State v. Bodden, 877 So.2d 680, 686 (Fla.2004)). Accordingly, the grant of immunity from “criminal prosecution” in section 776.032 must be interpreted in a manner that provides the defendant with more protection from prosecution for a justified use of force than the probable cause determination previously provided to the defendant by rule.

In summary, we conclude that the procedure set out by the First District in Peterson best effectuates the intent of the Legislature and that the trial court erred in denying Dennis an evidentiary hearing on his claim of statutory immunity.

[5] [6] We do not, however, quash the Fourth District’s decision affirming Dennis’s conviction and sentence. The erroneous denial of a motion to dismiss may be harmless error. See, e.g., John W. Campbell Farms, Inc. v. Zeka, 50 So.2d 750, 754 (Fla.1951) (applying harmless error statute to trial court’s error in denying a motion to dismiss due to misjoinder of plaintiffs). An error is harmless if “the error complained of did not contribute to the verdict or, alternatively stated, ... that there is no reasonable possibility that the error contributed to the conviction.” State v. DiGilio, 491 So.2d 1129, 1135 (Fla.1986). The record in Dennis’s case demonstrates that the trial court’s summary denial of his motions to dismiss was harmless.

*464 [7] Dennis does not contend that his trial itself 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. Dennis also does not assert that at a pretrial evidentiary hearing he would have presented evidence different from or additional to the evidence he presented at trial. At trial, Dennis testified on his own behalf and called witness George Daniels, who testified that victim McBride instigated the physical altercation by hitting Dennis with a beer bottle. The State introduced testimony contradicting Dennis’s claim of self-defense. The trial court denied Dennis’s motion for judgment of acquittal, and the jury determined that the evidence established beyond a reasonable doubt that Dennis committed the lesser included offense of felony battery. Based on the record before us, there is no reasonable possibility that the trial court’s failure to make a pretrial evidentiary determination regarding Dennis’s immunity claim contributed to Dennis’s conviction. See Parrish v. AmSouth Bank, N.A., 657 So.2d 1189, 1190 (Fla. 4th DCA 1995) (concluding that trial court’s erroneous denial of motion to dismiss challenging plaintiff’s jurisdictional allegations was harmless where the evidence presented at trial established jurisdiction over the defendant). Because the trial court’s error in this case was harmless beyond a reasonable doubt, Dennis is not entitled to relief.

III. CONCLUSION

We conclude that where a criminal defendant files a motion to dismiss pursuant to section 776.032, the trial court should decide the factual question of the applicability of the statutory immunity. A motion to dismiss on the basis of section 776.032 immunity is not subject to the requirements of rule 3.190(c) (4) but instead should be treated as a motion filed pursuant to rule 3.190(b). While the error in Dennis was harmless, we disapprove the Fourth District’s reasoning and approve the reasoning of Peterson on the conflict issue.

It is so ordered.

PARRINE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

Parallel Citations

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It is so ordered.

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