

A Comparison of Florida and Louisiana “Stand-Your-Ground” Law

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Over the last several months since the tragic death of Trayvon Martin, an unarmed African-American teenager who was shot by George Zimmerman, a neighborhood watch captain in Sanford, Florida, the country has become divided and outraged over the fact that Zimmerman was not initially arrested and charged with the murder of Martin. As the media reported on the issues, and activists spoke out, Florida’s “stand-your-ground” statute became the center of a national controversy, being cited as the reason Zimmerman, who claimed self-defense for the February 26, 2012, shooting under the statute, had not been arrested. Critics argued that the right to use deadly force under the statute is too liberal, and results in unnecessary deaths in situations that would have possibly been diffused if the right didn’t exist. As a result, many have called for the repeal of stand-your-ground laws.

Much of this, however, stems from a misunderstanding about what Florida’s stand-your-ground statute actually provides, and more specifically, about Florida’s prosecutorial immunity provision that applies when a person reasonably claims self-defense under the statute. The fact is, more than 20 states, including Louisiana,¹ have stand-your-ground laws very similar to Florida’s; but some states like Louisiana, do not include the prosecutorial immunity provision that Florida’s law contains² This results in a significant difference in the effect the law has on the prosecution of such cases. This article explains the applicable stand-your-ground law in the Martin/Zimmerman case and distinguishes it from Louisiana’s stand-your-ground law.

Stand Your Ground As It Relates to Self-Defense

In many respects, Florida’s self-defense statute is not very much unlike most states, including Louisiana. It basically divides the use of force in self-defense cases into two main categories—one in which the victim dies as a result of the force used,³ and the other, when no death results.⁴ As it relates to when a death occurs, the statute allows the use of deadly force in three situations—if the person using the force reasonably believes the force used is necessary to prevent either: 1) imminent death; 2) great bodily harm; or 3) commission of a forcible felony.⁵ These situations justify the use of deadly force whether the person claiming self-defense is protecting themselves or others.⁶

Furthermore, like Louisiana, Florida has specific self-defense provisions that apply to situations in which a person claiming self-defense is inside their home, other dwelling or a vehicle at the time of the incident.⁷ Stand-your-ground laws, however, also give a person certain rights to use deadly force in “other place[s] where he or she has a right to be”⁸—in the park, walking down the street⁸ or as in the Martin/Zimmerman case, in the common area of a neighborhood subdivision. Specifically, Florida's law provides:

A person who is not engaged in 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.⁹

This protection only exists however, if the person using deadly force to protect himself is not engaged in “unlawful activity,” such as drug transactions, gang fights or other illegal activity. So basically, this provision has three main requirements to allow a person to use deadly force in areas outside of the home. That person must: 1) be where he has a right to be; 2) not be engaged in unlawful activity; and 3) reasonably believe it is necessary to prevent death, great bodily harm or a forcible felony.¹⁰ When all the requirements are met, a person is “justified” in using deadly force to prevent such actions.

It is only at this point that the stand-your-ground law comes into play. At this point the law provides that the person using such force does not have a “duty to retreat”¹¹ prior to using such force and may “stand his or her ground and meet force with force.”¹² In other words, a person who is where he has a right to be and is not

doing anything illegal would not have to attempt to run away, hide or otherwise attempt to escape from the would-be attacker, prior to using deadly force to protect himself from death, great bodily harm or a forcible felony against himself or another. Under these circumstances that person has a right to “stand his or her ground” and meet force with force. Supporters argue that the statute is necessary to save the lives of innocent people who would be in even greater danger from a potential attacker if required to attempt to escape or retreat prior to defending themselves.¹³

Although the statute may have good intentions, many question its application in the Martin/Zimmerman case. The facts of this case raises questions as to whether a reasonable person would have believed that it was necessary to kill Martin to prevent his own death, great bodily harm or a forcible felony as Martin was unarmed and at least initially pursued by Zimmerman.

But assuming *arguendo* that Martin did attack Zimmerman as he claimed, this raises an additional issue. Florida’s law, like Louisiana, does not allow the aggressor in an altercation to claim self-defense¹⁴ just because he’s losing a fight he started. However, two exceptions to this rule *will* allow an aggressor to claim self-defense: 1) when the aggressor has in good faith withdrawn from the altercation in such a way that the other person knows he wishes to withdraw and terminate the encounter¹⁵ or 2) if the person used excessive force to defend himself during the altercation.¹⁶

The facts in this case show that Zimmerman initially pursued Martin.¹⁷ Martin would then be justified in using reasonable force to protect himself from Zimmerman. Provided the force Martin used was in fact reasonable, Zimmerman can’t then claim he had to protect himself from Martin. As a result, Zimmerman can claim self-defense only if he’s able to show that either: 1) prior to the shooting, he had in good faith withdrawn from the altercation in such a way that Martin knew he wished to withdraw, and Martin then approached him becoming the aggressor;¹⁸ or 2) if during the altercation, Martin used excessive force (in this case deadly force), thereby giving Zimmerman the right to meet force with force.¹⁹ Zimmerman claims both of these circumstances existed prior to shooting Martin,²⁰ although police question whether this was in fact the case.²¹

In these respects, there’s no considerable distinction between Florida and Louisiana’s stand- your-ground laws.²² The difference in the laws, however, is in the effect that a reasonable claim of self-defense has on the case as it moves through arrest and subsequent prosecution and trial.

Florida’s Prosecutorial Immunity Statute

What Louisiana does not have in its self-defense statute that Florida’s statute contains is the provision that immunizes a person from criminal prosecution and civil action when acting under the above statute.²³ In other words, if a person kills someone in Florida and is able to make a reasonable claim of self-defense as outlined above, he *cannot* be prosecuted for the crime, and prosecution is broadly defined to include arresting, detaining in custody and charging. Florida’s prosecutorial immunity statute is F.S.A. § 776.032, which provides in pertinent part as follows:

(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 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.²⁴

This provision explains why Zimmerman was not initially arrested for killing Martin—he was able to make a reasonable claim of self-defense and was therefore immune from prosecution under the statute.

In Louisiana, however, a claim of self-defense does not result in immunity from prosecution, but instead, is an affirmative defense to a charge of murder.²⁵ This means that if there’s probable cause that a person killed someone, the police can arrest him and he’ll be prosecuted for the crime. That person can then present his claim of self-defense at the trial to a jury, who will decide whether the homicide was in fact justifiable.²⁶ This approach

allows a neutral trier of fact to consider conflicting stories, facts and circumstances to determine the truth using the oath, evidentiary rules and sound evidence, rather than basing their conclusions on media speculation or on one person's self-serving version of what happened.²⁷

Under Florida's immunity statute, however, even though the police may have probable cause that a crime has been committed, rather than arresting that person so that the case can ultimately be decided by a jury, a "law enforcement agency"²⁸ must determine whether the force used was justifiable under the circumstances using "standard procedures for investigating"²⁹ rather than at a trial. If the police find that the force used was justifiable, that person is immune from prosecution under the statute. This is what initially occurred in the Martin/Zimmerman case, based perhaps primarily on Zimmerman's statements alone.³⁰ This effect has been one of the major criticisms of the statute because not only does it make prosecuting homicides more difficult, but in some cases serves as a complete bar to prosecution altogether.³¹

However, Florida's prosecutorial immunity provision contains an exception that allows such cases to move forward in certain circumstances. The statute provides that even if a person claims self-defense, that person *can* be prosecuted if during the investigation, the police find that there was probable cause that the force used was *not* justified³² as outlined above.

This exception justifies Zimmerman's subsequent arrest for killing Trayvon Martin. Based on the facts that have been reported, probable cause³³ exists to support the fact that Zimmerman's conduct was unlawful.³⁴ The facts suggest that Zimmerman initially pursued Martin armed with a handgun as an unarmed Martin tried to run away from him. The fact that there is contradicting evidence is the very reason the case *should* go to a jury to make these factual determinations, rather than taking no action against Zimmerman at all.

Procedurally Handling Claims of Prosecutorial Immunity

Although Florida's prosecutorial immunity provision appears to solely vest within the police the determination of whether the deadly force used in a given case was justified; Florida courts have developed a more objective process for handling such cases, as set out in *Peterson v. State*.³⁵ Under *Peterson*, a defendant is "entitled to a pretrial evidentiary hearing on the issue of immunity from prosecution under Stand Your Ground law,"³⁶ giving the trial court the right to "decide the factual question of applicability of the statutory immunity."³⁷ The court must "adjudicate disputed fact issues"³⁸ and "not deny a motion simply because factual disputes exist."³⁹ The defendant has the burden of proof and must show by a preponderance of the evidence that the immunity attaches.⁴⁰ "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."⁴¹ If the motion is denied, "the defendant may still assert it to the jury as an affirmative defense."⁴²

Applying this law, Florida officials acted properly in arresting Zimmerman and charging him with murder as probable cause exists to believe that a murder occurred and probable cause exists, even if not conclusive evidence,⁴³ that it was unlawful. Zimmerman will have the burden of proof by a preponderance of the evidence that his actions were justified when he killed Martin. If the trial court finds that he's entitled to immunity, the case will be dismissed. Otherwise, Zimmerman can still present his claim of self-defense to the jury as an affirmative defense.

Conclusion

In conclusion, stand-your-ground law has been misunderstood as giving individuals the right to use unjustified deadly force. But in actuality these statutes provide only that when a person is justified in using deadly force, he is not required to retreat or otherwise attempt to escape the altercation prior to doing so and may stand his ground and meet force with force. Stand-your-ground statutes come into play only if a person is "justified" in using the deadly force in the first place. This is the law in Florida as well as Louisiana and several other states.

The difference, however, lies in Florida's immunity provision that protects a person from prosecution for his conduct if he can make a reasonable claim of self-defense under the statute, unless of course, probable cause exists that he was not acting in self-defense. This immunity provision is quite different from the law in Louisiana and other states where a claim of self-defense is only an affirmative defense that must be presented to the jury at the trial. This approach allows a neutral trier of fact to make difficult factual determinations.

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¹ See La. R.S. 14:20.

² See P. Luevonda Ross, *The Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes: From the Doctrine of Retreat to the Right to Stand Your Ground*, 35 S.U. L. REV. 1, 2-3 (2007) (discussing which states have altered laws on self-defense since 2005 and distinguishing which states have the more liberal provisions, and which states, like Louisiana "have adopted some, but not all the proposed changes.").

³ See Fla. Stat. § 776.013; see also La. R.S. 14:19.

⁴ See Fla. Stat. § 776.012; see also La. R.S. 14:18.

⁵ See Fla. Stat. § 776.08 for the definition of a forcible felony.

⁶ See Fla. Stat. § 776.031 (authorizing the use of force for the protection of others); see also La. R.S.14:22.

⁷ Fla. Stat. § 776.013 (1) and (2); see also La. R.S. 14:20 (A)(3), (4) and (B).

⁸ Fla. Stat. § 776.013 (3); see also La. R.S. § 14:20 (C).

⁹ Fla. Stat. § 776.013 (3).

¹⁰ *Id.*; see also *McWhorter v. State*, 971 So. 2d 154, 157 (Fla. Dist. Ct. App. 2007).

¹¹ Fla. Stat. § 776.032.

¹² *Id.*

¹³ *Cf.* Zachary Weaver, *Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification*, 63 U.MIAMI L.REV. 395, 401-403 (2008) (discussing opposition to the stand-your-ground law by prosecutors and law enforcement).

¹⁴ See Fla. Stat. § 777.041(2012) for Florida's aggressor doctrine; see also La. R.S.14:21 for Louisiana's aggressor doctrine.

¹⁵ See Fla. Stat. § 776.041(b). see also La. R.S. 14:21.

¹⁶ See Fla. Stat. § 776.041 (a); see also La. R.S. 14:21.

¹⁷ Based on police reports and highly publicized 911 tape recordings, Zimmerman told the operator that Martin was running away and then began pursuing Martin as the 911 operator told him, "We don't need you to do that."

¹⁸ See *supra* note 15.

¹⁹ See *supra* note 16.

²⁰ Zimmerman stated in his handwritten statement given to Sanford Police Department on Feb. 26, 2012, "As I headed back to my vehicle, the suspect emerged from the darkness...." He goes on to explain that he was then threatened by Martin and physically assaulted by him prior to the shooting.

²¹ In the Sanford Police Department Capias Request dated March 13, 2012, the officer states, "Investigative finding show that the physical injuries displayed by George Michael Zimmerman are marginally consistent with a life-threatening violent episode as described by him, during which neither a deadly weapon nor deadly force was deployed by Trayvon Martin."

²² La. R.S. 14:20–22.

²³ See La. R.S. 9:2800.19, where Louisiana provides for immunity from civil action for the reasonable and apparently necessary or deadly force or violence used in accordance with La. R.S. 14:19 or 14:20.

²⁴ Fla. Stat. § 776.032.

²⁵ See La. R.S. 14:18.

²⁶ However, in a homicide prosecution when a defendant claims self-defense, the burden is on the State to prove beyond a reasonable doubt that the defendant did not act in self-defense. See *State v. King*, 11-0767 (La.App. 5 Cir. 2/28/12), ___ So. 3d ____.

²⁷ Weaver, *supra* note 13, at 419–20 (addressing many of the difficulties with applying stand-your-ground law).

²⁸ Fla. Stat. § 776.032.

²⁹ Fla. Stat. § 776.032 (2).

³⁰ See Weaver, *supra* note 13, at 419–20, (addressing that in many cases "involving the use of deadly force, the only basis for determining whether the force used was reasonable will be the user of force's version of facts....").

³¹ See *id.* at 406–07 (discussing the "actual effects" of "Stand your Ground Law").

³² Fla. Stat. § 776.032 (2).

³³ See *State v. Gould*, 395 So.2d 647, 649 (La. 1980) (explaining that probable cause must be judged by “probabilities and practical considerations of everyday life”).

³⁴ See generally, Sanford Police Department Investigative Reports, Agency Report #: 201250001167; Offense date: February 26, 2012; regarding suspect George Michael Zimmerman, victim Trayvon Benjamin Martin; generally dated February 26, 2012- March 13, 2012.

³⁵ *Peterson v. State*, 983 So.2d 27 (Fl. App. 2 Dist. 2008).

³⁶ *Wonder v. State*, 69 So.3d 371 (Fla. App. 4 Dist. 2011).

³⁷ *Dennis v. State*, 51 So.3d 456, 456 (2010).

³⁸ *Peterson*, 983 So.2d at 29.

³⁹ *Id.*; see also *McDaniel v. State*, 24 So.3d 654, 656 (Fla. App. 2 Dist. 2009).

⁴⁰ *Id.*

⁴¹ *Horn v. State*, 17 So.3d 836, 839 (Fla. App. 2 Dist. 2009).

⁴² *McDaniel*, 24 So.3d at 656.

⁴³ *Seago v. State*, 768 So. 2d 498, 500 (Fla. Dist. Ct. App. 2000) (stating that “[f]acts constituting probable cause need not meet the standard of conclusiveness and probability required to support a conviction.”).