

The background of the entire page is a photograph of a bronze statue of Lady Justice. She is blindfolded and holding a pair of scales. The lighting is dramatic, highlighting the contours of her face and the texture of her robes. The background is a clear, bright blue sky.

WHY **STAND** **YOUR GROUND** MATTERS

BY JOHN CAILE



‘SYG’: A CURE-ALL?

BY JOHN CAILE

The attacks on “stand your ground” laws, in Florida and elsewhere, are becoming more numerous. This is dangerous because so many people are woefully ignorant about what such laws do and, more importantly, what they DON’T do.

One critic called Florida’s law a “hunting license” and hysterically proclaimed, on national TV, that “you can shoot someone, and all you have to do is tell police that you were defending yourself, and the cops can’t even detain you!” But not one person on the panel challenged him, leaving the casual viewer wondering if his statement might actually be true.

Absurd? Of course. Anyone familiar with police procedures understands that the police can pretty much detain any person, depending on the circumstances, for any reason and for as much as 72 hours. But most people have little or no knowledge regarding law enforcement practices.

Surprisingly, some on “our side” often exhibit the same ignorance. I was in a Minnesota gun store in 2012, shortly after the Trayvon Martin shooting, and overheard a conversation about the case. One gentleman stated, with absolute conviction, that “in Florida they got that stand your ground law, and you can shoot some dude and it don’t matter, ‘cause they can’t prosecute you. You got immunity!”

Reality is quite different. FindLaw (FindLaw.com) is an excellent resource that I often use for basic legal information. It provides a “quick reference” guide to states with stand your ground laws (as well as those with some form of duty-to-retreat requirement):

It’s important to understand that even states that have stand your ground laws still have certain restrictions when it comes to using force in self-defense. For example, they may require that the threat of perceived harm be objectively reasonable and that the force used be proportional to the threat. Stand your ground laws may also require that the person using self-defense be at the location lawfully (not trespassing, for example) and not be the initial aggressor in the altercation.

States that have passed stand your ground laws include: Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah and West Virginia.

On the other end of the legal spectrum, some states impose a duty to retreat. A duty to retreat generally means that you can’t resort to deadly force in self-defense if



you can safely avoid the risk of harm or death (by walking away, for example). If that's not an option, say if you were cornered or pinned down and facing serious harm or death, then you would be authorized to use deadly force in self-defense.

It's important to note that, even in duty-to-retreat states, there's no duty to retreat from an intruder in your home. These states all adhere to some version of the Castle Doctrine as well.

But statutes are merely the tip of the legal iceberg and tell little about how such laws are implemented in the day-to-day administration of the criminal legal system. From the cop on the street to the prosecutor, the judge and the jury, "the law" is complex and always being interpreted.

True, George Zimmerman never even invoked stand your ground in his defense. But given the notoriety of the Zimmerman/Martin case, and the opposition to stand your ground that has resulted, it's probably a good idea to look at Florida's law as an example. The new law codified in Florida Statutes 776.012(2) states:

A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use 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. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

The opening line above (especially that tiny little word "if") is critical. So I set about finding someone who could give me a good understanding of how stand your ground actually works in real life.

I contacted a friend in Florida, whose guidance led me to Tim Hessinger, a top-notch Florida criminal attorney. Tim has significant courtroom experience in self-defense cases, both as a defense lawyer and as a former state prosecutor for 15 years. Tim is also a past president of the Pinellas County Association of Criminal Defense Lawyers. In other words, he's someone who actually knows what he's talking about.

According to Hessinger: "The Florida Legislature has enacted a law that permits you to stand your ground – anywhere [and] anytime you are attacked. No longer must you take the risk of retreating from an attacker before protecting yourself. The protection given by the law is the highest protection, immunity from prosecution."

I was stunned. Could that seemingly clueless guy in the gun store have been right? But, as I've learned from experience, things are never as simple as they

seem, and it pays to keep reading. Because Hessinger then warns that preemptive action is often necessary “to prevent charges from being filed [...] or dismissed if they have been filed already.”

Now comes the really important part: “With proper legal representation, you may be entitled to immunity from prosecution for any harm, even death, which you inflict as a result of your efforts to lawfully defend yourself. The procedure for obtaining dismissal of criminal charges is complex and uncertain. The law is in its infancy, and the various courts are struggling with its application.

“With this much uncertainty, your legal team must be thoroughly familiar with the new law, all district court interpretations and the very purposes behind enactment of the new law.”

Note the use of cautionary, highly qualified language, not to mention the lack of any “guarantee” that everything will turn out to your benefit. THIS is the reality of criminal law, especially when it comes to self-defense that involves a lethal outcome.

Finally, Hessinger references how, even in Florida, there is no universal agreement in the courts on how to handle a stand your ground case:

“Around the state of Florida, the appellate courts have been wrestling with the proper procedure for pursuing a claim of immunity.

“The First District Court of Appeal has embraced an evidentiary hearing permitting the trial court to weigh and confront factual disputes to render a ruling.

“However, the Fourth District Court of Appeal has ruled that when the State files a proper traverse, the [defendant’s] motion for dismissal must be denied by the trial court, and the case proceeds to trial. (See *Velasquez v State*, 9 So. 3d 22 (Fla. 4th DCA, 2009))

“The Second District Court of Appeal affirmed the denial of a Motion to Dismiss based on FS 776.032(1) immunity, but does not comment on procedure. (See *State v Heckman*, 993 So. D 1004 (Fla. 2d DCA 2007))

“STAND YOUR GROUND IS NOT A CURE-ALL.”

“The Florida Supreme Court has not yet issued an opinion on the proper procedure for asserting an immunity claim in pre-trial litigation.”

That last line tells the story. Stand your ground is not a “hunting license,” but neither is it a legal “Kevlar vest.” It is simply a claim. Granting it is never “automatic,” certainly not without at least a hearing to investigate the facts of the case. All of the common law rules of self-defense still apply. For example, if you were the aggressor, you’re unlikely to prevail.

Now, most of us avoid conflict, and we’d likely try to escape a dangerous situation before using deadly force anyway. So why do we need stand your ground? Simple. Because, without it, prosecutors routinely, and often egregiously, abuse the concept of retreat, arguing that unless the defendant used every outrageous (and sometimes virtually impossible) option to run, crawl, hide, go through a door or otherwise escape a situation, he or she cannot claim self-defense.

Stand your ground is not a cure-all. But it does provide us with an additional layer of defense. Additionally, in Florida and some other states, immunity from civil suits (for things such as “wrongful death”) is included: “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.”

Without such protections, a lawsuit could easily cost you everything you own, even if you were acquitted or, worse, never even charged! If your state has stand your ground, defend it. If it doesn’t, advocate for it.

Stand your ground must become the law of the land ... everywhere.

Copyright © 2020 by Delta Defense, LLC

All rights reserved. No part of this publication may be reproduced or transmitted by any means: electronic, mechanical, photocopy, recording or otherwise, without first obtaining written permission from Delta Defense, LLC.

DISCLAIMER – The views expressed in this article are exclusively the personal and/or professional views of the author and do not express the views, policy or position of Delta Defense, LLC (“Delta”) or the United States Concealed Carry Association, Inc. (“USCCA”). This article is provided solely for educational and entertainment purposes. This article is not offered for legal or other professional advice. Delta and the USCCA do not make any representations or warranties of any kind and disclaim any implied warranties for fitness of use for a particular purpose or merchantability. Delta and the USCCA do not assume and hereby disclaim any liability to any party for any loss, damage or disruption, including incidental or consequential damages caused, directly or indirectly, by the information in this article or reliance thereon, including any errors or omissions. Delta and the USCCA are neither responsible nor liable for any information contained in this article. Nothing in this article is intended to be legal advice or to substitute for legal advice, as this article is a general guide relating to legal issues and/or is specific to a certain set of facts and certain jurisdictions. Every situation is unique, and the reader should consult an attorney in the reader’s jurisdiction for legal advice on any legal issue.



GAIN CONFIDENCE, PREPAREDNESS & PEACE OF MIND

*WITH YOUR MEMBERSHIP TO THE
U.S. CONCEALED CARRY ASSOCIATION*

www.USCCA.com
1-877-677-1919

