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ANOTHER BIZARRE TWIST IN FLORIDA'S STAND YOUR GROUND LAW

*Rachel A. Mattie**

INTRODUCTION

Imagine you are a first-time homeowner, anxious to start a new life. You were recently released from prison for a tax evasion conviction stemming from a fraudulent conspiracy at your old job. Having appropriately served your time, you are deeply remorseful and desperate to start over. You have relocated your family to beautiful West Palm Beach, Florida. Physically and mentally exhausted after a draining day of moving, you realize that it is nearly midnight. The streets are silent, and your young children are tucked away in bed. Your loving spouse retires for the evening. You remain downstairs to unpack the last of your treasured family photos—the final piece to the puzzle of your new life. You symbolically toss out the cardboard boxes, as if you are throwing away the life you have chosen to leave behind. Beaming with pride and love for your family, you perform one last walk-through of your new home.

As you approach your back door, you see a menacing shadow through the sheer curtains and quickly realize that someone is racing up to your home. You dart to lock the door, but before you can reach it, a strange man forces himself through the door. You shout for him to leave but he rushes towards you. He has a gun. In a matter of seconds, you instinctively reach for your firearm and beg the man to exit your house. He is approaching fast, and is now pointing his gun right at you. In reasonable fear of your life and the lives of your children, you pull the trigger. In the life-shattering moments to follow, you find a small shred of peace in knowing that you are protected by the law because you acted in self-defense. Unfortunately, you are dead wrong.

I. FLORIDA'S STAND YOUR GROUND LAW: ELIMINATING THE DUTY TO RETREAT AND EXPANDING THE CASTLE DOCTRINE

The justifiable use of deadly force was once governed by section 776.012 of the Florida Statutes, which permitted the use of deadly force if a person “reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent

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commission of a forcible felony.”¹ Back then, section 776.031 governed the use of force in defense of others and allowed the use of deadly force if a person “reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony.”² In *Weiland v. State*, the Supreme Court of Florida recognized that, despite the statutes, a common law duty to retreat existed, requiring a person to “retreat to the wall” before using such force.³ In other words, before a person could use the force justified under the statutes, he or she would have to first use any means within their power to avoid the attacker, including running away.⁴ The only exception to this rule was the Florida Castle Doctrine, which eliminated the duty to retreat for persons claiming self-defense in their own home.⁵

On April 26, 2005, Governor Jeb Bush signed into law Stand Your Ground, amending sections 776.012 and 776.031 of the Florida Statutes, creating sections 776.013 and 776.032.⁶

Florida’s Stand Your Ground law states that

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.⁷

A person who uses force as permitted . . . 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.⁸

It is the general consensus that this sudden legislative change has left many questions unanswered.⁹ One such question is whether a convicted felon found in

1. FLA. STAT. § 776.012 (2004) (amended June 20, 2014).

2. FLA. STAT. § 776.031 (2004) (amended June 20, 2014).

3. *Weiland v. State*, 732 So. 2d 1044, 1049–50 (Fla. 1999).

4. *Id.*

5. In *Weiland v. State*, the Florida Supreme Court explains the Castle Doctrine in the following manner:

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

Id. at 1049 n.5 (quoting *Falco v. State*, 407 So. 2d 203, 208 (Fla. 1981)).

6. FLA. STAT. §§ 776.013 (2005) (amended June 20, 2014); 776.032 (2005) (amended June 20, 2014).

7. FLA. STAT. § 776.013(3) (2009) (amended June 20, 2014).

8. FLA. STAT. § 776.032(1) (2009) (amended June 20, 2014).

9. Elizabeth Megale, *Deadly Combinations: How Self-Defense Laws Paring Immunity with a Presumption of Fear Allow Criminals to “Get Away with Murder”*, 34 AM. J. TRIAL ADVOC. 105, 128–29 (2010).

illegal possession of a firearm is precluded from using Stand Your Ground as a defense to murder, aggravated battery, and other violent crimes. Unfortunately, this question remains unresolved as the Fourth and Second District Courts of Appeal of Florida are in disagreement.¹⁰ In 2012, the Fourth District Court of Appeal (“Fourth DCA”) held that a convicted felon found in illegal possession of a firearm was precluded from using Stand Your Ground as a defense to aggravated battery with a firearm.¹¹ A year later, the Second District Court of Appeal (“Second DCA”) held that a convicted felon found in illegal possession was not precluded from relying on Stand Your Ground as a defense to his second-degree murder charge.¹² Many speculate that the Supreme Court of the United States will soon be forced to decide the issue.¹³ So where does the law stand now?

II. RECENT CASES AND THE RISE OF THE CIRCUIT SPLIT

A. *State v. Hill*: The Fourth DCA’s Plain Reading of Florida’s Stand Your Ground Law

In *State v. Hill*, Harvey Hill was charged with aggravated battery with a firearm, carrying a concealed firearm, felon in possession of a firearm or ammunition, and retaliation against a witness.¹⁴ Before his trial, the defendant moved to dismiss the aggravated battery charge, claiming that his actions were justified under Florida’s Stand Your Ground law.¹⁵ He testified in court that he was involved in a conflict with two men concerning a woman, with whom he had been sexually involved, when the two men came onto his porch and started asking him questions about her.¹⁶ The defendant testified that one of the men, Andre Solomon, had a firearm and that both men were substantially larger in build than he was.¹⁷ Based upon Hill’s testimony, the two men “rushed him” and he became trapped on the porch.¹⁸ Hill then testified that he pulled a gun from his pocket and shot the second man, Anton Peavy, in the stomach.¹⁹ Despite the fact that Hill had previously been convicted of two felonies, the trial court held that his illegal possession of a firearm did not preclude him from using Stand Your Ground as a defense and grounds for dismissal.²⁰

In 2011, in *Dorsey v. State*, the court held that “possession of a firearm by a convicted felon qualifies as ‘unlawful activity’ within the meaning of Stand Your

10. Compare *State v. Hill*, 95 So. 3d 434 (Fla. Dist. Ct. App. 2012), with *Little v. State*, 111 So. 3d 214 (Fla. Dist. Ct. App. 2013).

11. See *Hill*, 95 So. 3d at 435.

12. See *Little*, 111 So. 3d at 222.

13. See, e.g., *Convicted Felons and Self Defense. What Do You Think?*, THE HIGH ROAD BLOG (Sept. 11, 2007), <http://www.thehighroad.org/archive/index.php/t-301977.html>.

14. *Hill*, 95 So. 3d at 434.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 435.

20. *Hill*, 95 So. 3d at 435.

Ground.”²¹ By that reason, the court in *Dorsey* held that the defendant—who injured his assailant using an illegally possessed firearm—was precluded from using Stand Your Ground as a defense.²² The court explained that when “a defendant [is] engaged in an unlawful activity or [is] in a place where he did not have a right to be at the time he was attacked, the common law duty to retreat still applies.”²³

B. *Little v. State*: The Second DCA’s Look into Legislative Intent

Conversely, in *Little v. State*, a 2013 case, the Second DCA reached the opposite conclusion.²⁴ Defendant Aaron Little was walking to his girlfriend’s house when the incident leading to his arrest took place.²⁵ The court recalls the complex facts of the case:

The incident in question occurred when Little was walking to his girlfriend’s house with his friend, Rashad Matthews. The two men happened upon Matthews’ friend, Terry Lester, who was standing in the driveway of his mother’s home. Lester was leaning into the driver’s door of a vehicle parked in the driveway when Matthews approached and engaged Lester in conversation. Little, who was a stranger to Lester, initially waited for Matthews by the street.

After a few minutes, Little started walking toward the two men. When Little reached the driver’s side of the car, Demond Brooks jumped out of the back seat. Little knew Brooks, but the two were not friends. Without warning, Brooks pulled two handguns from his waistband, pointed them at Little, and yelled that he was “going to make it rain.” Little believed Brooks was threatening to shoot him, so he ran behind Lester and asked Lester to intervene, or to “get” Brooks. Lester tried to calm Brooks down to no avail.

Lester’s mother, Janet Speed, heard the commotion from inside the house and came to the open front door for a moment. Little used the distraction as an opportunity to obtain shelter and ran into the house. Brooks followed Little but stopped on the second of the three front porch steps. From there, Brooks held his guns down by his sides and yelled through the open door for Little to come outside. Little pressed his back up against the wall, pulled a handgun out of his pants pocket, and held it down by his side. He called to Ms. Speed to “get” Brooks.

21. *Dorsey v. State*, 74 So. 3d 521, 527 (Fla. Dist. Ct. App. 2011).

22. *Id.*

23. *Id.* at 527.

24. *Little v. State*, 111 So. 3d 214 (Fla. Dist. Ct. App. 2013).

25. *Id.* at 216.

Ms. Speed had not seen Little arm himself. Ms. Speed was alerted to the gun by her daughter-in-law, Kimberly, who was also in the room. Little, who was visibly afraid, tried to explain that he was holding the gun because Brooks was threatening to shoot him from outside. Ms. Speed did not want a gun in her house and responded by telling Little to leave. But Brooks was still on the porch step yelling for Little to come outside. Little told Ms. Speed, “I ain’t going out there,” [sic] and said something about both men having their “fire.” Ms. Speed called for her son Lester.

Lester then came into the house and ordered Little out. Little begged for Lester to stop Brooks, but Lester offered no help. In fact, Lester appeared to think the situation was funny because he had been laughing with Brooks as he passed him on his way inside the house.

Seeing no backdoor exit, Little reluctantly exited the house through the front door. Brooks backed up to let Little pass, but Brooks still had his guns down by his sides. Little proceeded cautiously, turning sideways to stay facing Brooks and keeping his gun hidden behind his back. When Little reached the yard, Brooks walked toward him and said something like, “[D]o you know what he did to me?” Little told Brooks to calm down and backed away. Brooks did not take action until Little backed into the car parked in the driveway. Then Brooks raised his guns and pointed them at Little. Little brought his gun around, closed his eyes, and pulled the trigger several times. Brooks dropped to the ground and eventually succumbed to his gunshot wounds. Little fled to his girlfriend’s house.²⁶

Little moved to dismiss his charge of second-degree murder, arguing that he shot Brooks in self-defense and was immune from prosecution under Stand Your Ground.²⁷ The prosecution argued that he was not acting in self-defense because he came back to Brooks after the first threat, “reengaging” himself in the conflict.²⁸ The State also argued that Little should not be afforded the protections of Stand Your Ground because he was “engaged in an unlawful activity as a felon in possession of a firearm.”²⁹ As a result, the circuit court denied Little’s motion to dismiss, ruling that he “removed himself from the zone of uncertainty when he entered the home of Janet Speed. The [d]efendant then chose to arm himself and re-engage the decedent, Demond Brooks.”³⁰ The court refused to discuss whether

26. *Id.* at 216–17.

27. *Id.* at 217.

28. *Id.*

29. *Id.*

30. *Little*, 111 So. 3d at 217.

Little's possession of a firearm precluded him from claiming protection under Stand Your Ground.³¹ Little appealed.³²

The State argued that it was not the intent of the Florida Legislature to provide immunity to those involved in unlawful activity because section 776.012(1)³³—merely providing the circumstances under which a person may use self-defense—conflicts with section 776.013(3)³⁴—providing that a person may use self-defense under certain circumstances when he or she is not engaged in an unlawful activity. The State reasoned that both sections allow the use of deadly force in reasonable self-defense; however, section 776.013(3) “limits the justifiable use of deadly force to persons who are not engaged in illegal activity and who are in a place they have a legal right to be.”³⁵ Therefore, as the State would have it, section 776.012(1) cannot reasonably give a “separate basis of immunity” because it would give immunity to people engaged in unlawful activity, making section 776.013(3) meaningless.³⁶ However, the Second DCA strongly disagreed:

We conclude that the plain language of sections 776.012, 776.013, and 776.032 can be understood as granting immunity to a person who qualifies under *either* section 776.012(1) or 776.013(3). To arrive at this conclusion, we will examine the provisions in sections 776.012 and 776.013 in *pari materia* to determine whether the legislature intended for each section to provide a separate basis for immunity under section 776.032(1).³⁷

The word “either” is an important focal point of the Second DCA's opinion. The court does not agree that there is a conflict between sections 776.012(1) and 776.013(3).³⁸ The Fourth District is of the opinion that

[s]ection 776.013(3) provides for the justifiable use of deadly force by a *law-abiding person* outside of the “castle,” but does not *preclude* persons who are engaged in an unlawful activity from

31. *Id.*

32. *Id.* at 216.

33. Section 776.012(1) provides that a person is justified in using deadly force if “he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.” (current version at FLA. STAT. § 776.012(2) (2014)).

34. Section 776.013(3) (2013) provides that

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.

Id. (amended June 20, 2014).

35. *Little*, 111 So. 3d at 219.

36. *Id.*

37. *Id.* (emphasis added).

38. *Id.* at 221.

using deadly force in self-defense when otherwise permitted. In fact, the Stand Your Ground law expressly amended section 776.012 [in order to] provide that the use of deadly force is justified under the circumstances set forth in *both* sections 776.012(1) and 776.013.³⁹

In summation, the Fourth DCA interprets the law to preclude any and all individuals engaged in unlawful activity from relying on Stand Your Ground while the Second DCA believes that the legislators intended for Stand Your Ground to protect both those lawfully in action and those engaged in unlawful activity to be protected. The Fourth DCA did not address section 776.012 in its *Hill* decision, but instead relied on a previous decision,⁴⁰ and concluded that the defendant was not immune under section 776.013(3) because possession of the firearm was illegal activity.⁴¹ It is the Second DCA's contention that despite section 776.013's exclusion of those engaged in illegal activity, section 776.012 contains no language excluding its application from those who are engaged in illegal activity; and therefore, a person who uses justified deadly force under section 776.012 is immune from criminal prosecution under 776.032 even if that person was engaged in illegal activity.⁴²

C. *State v. Wonder*: The Fourth DCA Addresses the Meaning of the Word "or"

Section 776.012 provides:

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*

39. *Id.* (emphasis added).

40. *Dorsey v. State*, 74 So. 3d 521, 527 (Fla. Dist. Ct. App. 2011).

41. *See State v. Hill*, 95 So. 3d 434 (Fla. Dist. Ct. App. 2012).

42. *See* FLA. STAT. §§ 776.012 (amended June 20, 2014), 776.032 (amended June 20, 2014). *See also* Jacek Stramski, *Do Florida Stand Your Ground Laws Provide Immunity to Defendants Engaged in Unlawful Activity at the Time of Self-Defense?*, THE FLORIDA SUPREME COURT BLOG (Nov. 5, 2013), <http://www.flascblog.com/do-florida-stand-your-ground-laws-provide-immunity-to-defendants-engaged-in-unlawful-activity-at-the-time-of-self-defense/>.

(2) Under those circumstances permitted pursuant to section 776.013.⁴³

There is no similar provision in section 776.012 limiting immunity if the defendant is involved in “unlawful activity.”⁴⁴

In December 2013, the Fourth DCA addressed the Second DCA’s interpretation of the word “or” in *State v. Wonder*.⁴⁵ This case involved a manslaughter charge stemming from a tragic shooting resulting from a classic case of road rage.⁴⁶ The defendant was on his way to the post office when his driving style angered the victim.⁴⁷ After some obscene gestures were made both ways, the victim parked his car and approached the defendant’s vehicle, yelling at him.⁴⁸ Fearing his safety, the defendant pulled out a gun and fatally shot him.⁴⁹ He was charged with manslaughter and moved to dismiss the charge pursuant to section 776.012 and 776.032—Florida’s Stand Your Ground law.⁵⁰

The trial court held an evidentiary hearing and concluded that the defendant did not reasonably believe that the use of deadly force was necessary to prevent death or great bodily harm to himself or his family, and that immunity actions of the defendant were unreasonable within the meaning of the statute.⁵¹ The defendant filed a writ of prohibition with the Fourth DCA, which was subsequently denied because, according to the court, “substantial evidence support[ed] the trial court’s factual findings and ultimate conclusion that the defendant did not reasonably believe that deadly force was necessary.”⁵² However, for the sake of clarification on the proper statutory interpretation, the State asked the Fourth DCA to review the portion of the order in which the trial court determined that the defendant’s possession of a firearm on post office property did not constitute “unlawful activity” pursuant to section 776.013(3).⁵³ The court’s explanation is interesting:

The defendant has maintained all along that such a determination was unnecessary because the defense motion relied upon section 776.012 and not 776.013. The exception for a defendant’s engagement in “unlawful activity” does not exist under section 776.012. We agree with the defendant. The trial court need not have addressed this issue. . . . As the Second District explained in *Little v. State*, 111 So. 3d 214, 219 (Fla. 2d DCA 2013), sections 776.012, 776.013, and 776.032 provide *alternative forms of*

43. *State v. Wonder*, 128 So. 3d 867 (Fla. Dist. Ct. App. 2013) (citing FLA. STAT. § 776.012 (2009)).

44. *Id.* at 867.

45. *Id.*

46. *Id.* at 868.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Wonder*, 128 So. 3d at 868.

51. *Id.* at 869.

52. *Id.*

53. *Id.*

immunity. . . . We concur with the Second District's analysis. The defendant never sought immunity under section 776.013, and it was unnecessary for the trial court to answer whether the defendant was engaged in unlawful activity under section 776.013(3). For this reason, we deny the State's petition for writ of certiorari and remand the case to the trial court for further proceedings consistent with this opinion.⁵⁴

So does this mean the Fourth DCA now agrees with the Second DCA? Not quite. The court in *Wonder* simply points out that it matters greatly under which section of the statute a defendant is claiming immunity.⁵⁵ The court explains, “[w]e have recently held that possession of a firearm by a convicted felon constitutes ‘unlawful activity’ and precludes immunity . . . [under] section 776.013(3). . . . We certified conflict with *Little v. State* (citation omitted) (holding trial court erred in denying immunity to defendant *under section 776.012*).”⁵⁶ So will the Supreme Court of Florida be deciding this issue in the near future?

III. HEADING TO THE SUPREME COURT?

In *Bragdon v. State*, the defense attorney petitioned for the Supreme Court of Florida to hear an appeal from defendant, Brian Bragdon.⁵⁷ Petitioner invoked the jurisdiction of the Court on the grounds that the Fourth District below has been certified to expressly and directly conflict with a decision of the Second District.⁵⁸ Bragdon was charged with two counts of attempted first-degree murder, one count of shooting into an occupied vehicle, one count of felony possession of a firearm, and discharging a firearm while trying to defend himself against the victim.⁵⁹ On May 13, 2013, Bragdon filed a motion to dismiss, relying on Stand Your Ground and claiming that as a convicted felon, he could still seek immunity under the statute because at the time that he possessed the firearm he was acting lawfully, in self-defense.⁶⁰ Bragdon relied on *Marrero v. State*, where the Third District Court of Appeal (“Third DCA”) held that if a defendant possesses a firearm out of necessity, that would be a circumstance under which a convicted felon’s possession of a firearm would be justified and his conduct would not be declared “criminal.”⁶¹

54. *Id.* at 869–70 (emphasis added).

55. *Id.* at 869–70.

56. *Wonder*, 128 So. 3d at 869, n.2 (emphasis added); *see also* *Bragdon v. State*, 123 So. 3d 654 (Fla. Dist. Ct. App. 2013) (the court certified conflict and denied defendant’s petition for writ of prohibition or certiorari based on *State v. Hill*, (which holds that “the defendant’s crime of possession of a firearm by a convicted felon precludes him from seeking immunity under the Stand Your Ground law”) because it “expressly conflicts” with *Little v. State* on the issue of whether a defendant engaged in “unlawful activity” is precluded from claiming self-defense immunity from prosecution.

57. Petitioner’s Brief on Jurisdiction, *Bragdon v. Florida*, 123 So. 3d 654 (Fla. Dist. Ct. App. 2013) (No. 4D13–3057), 2013 WL 6162829.

58. *Id.* at *4.

59. *Id.* at *2.

60. *Id.*

61. *Id.*; *Marrero v. State*, 516 So. 2d 1052, 1054 (Fla. Dist. Ct. App. 1987).

At the motion hearing, the State rebutted defendant's motion with the recent holdings in *Hill* and *Dorsey*.⁶² Naturally, the petitioner relied on the Second District's holding in *Little*.⁶³

The court granted the State's motion to strike petitioner's motion to dismiss and refused to proceed with the hearing, holding that petitioner was not entitled to seek immunity under Stand Your Ground because he was a convicted felon in possession of a firearm at the time the alleged incident occurred.⁶⁴ Bragdon then filed with the Fourth DCA a petition for writ of prohibition or certiorari and/or certification of conflict or question of great public importance to the Supreme Court of Florida.⁶⁵

Petitioner's argument for jurisdiction relies upon Article V, Section 3(b)(4) of the Florida Constitution, which states that "the instant court may exercise its discretionary jurisdiction to review a decision which a district court of appeal certifies, as the Fourth District Court did [so], to be in direct conflict with a decision of another district court."⁶⁶ Bragdon argued that the Supreme Court of Florida should hear this issue now because the issue is likely to come before courts throughout Florida on a regular basis, given the widespread use of Stand Your Ground since its enactment.⁶⁷ Petitioner's brief stated, "How this statute is interpreted and applied under such circumstances must be uniform across the State, and the instant court should exercise its discretionary jurisdiction, and accept jurisdiction of this case for review."⁶⁸ The Supreme Court of Florida has yet to respond.

IV. OTHER STAND YOUR GROUND ISSUES: SOCIETAL IMPLICATIONS AND RACIAL TENSION

Prior to the enactment of Stand Your Ground, prosecutors and law enforcement officials voiced their opposition to Stand Your Ground, but their voices went unheard.⁶⁹ Barry Krischer, State Attorney for Palm Beach, disliked the law "because it encourages people to stand their ground . . . when they could just as easily walk away. To me, that's not a civilized society."⁷⁰ Krischer also believes that Stand Your Ground is not protecting people from the same prosecution and civil liability that the legislators initially intended, but is instead providing protection for criminals because those are the people who are actually shooting one

62. Petitioner's Brief on Jurisdiction, *supra* note 57, at *2–3; *State v. Hill*, 95 So. 3d 434 (Fla. Dist. Ct. App. 2012); *Dorsey v. State*, 74 So. 3d 521 (Fla. Dist. Ct. App. 2011).

63. Petitioner's Brief on Jurisdiction, *supra* note 57, at *3; *Little v. State*, 111 So. 3d 214 (Fla. Dist. Ct. App. 2013).

64. Petitioner's Brief on Jurisdiction, *supra* note 57, at *3.

65. *Id.*

66. *Id.* at *4; *See State v. Vickery*, 961 So. 2d 309, 311–12 (Fla. 2007).

67. Petitioner's Brief on Jurisdiction, *supra* note 57, at *5.

68. *Id.*

69. Zachary L. Weaver, *Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification*, 63 U. MIAMI L. REV. 395, 401–02 (2008).

70. *Id.* at 402.

another.⁷¹ He argues that the law makes people more likely to shoot when faced with a conflict, rather than attempt to retreat, since the law was expanded to public places.⁷² Miami Police Chief John F. Timoney spoke of the law stating that it is “dangerous and ultimately unnecessary” because “whether 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 . . . [the law is] encouraging people to possibly use deadly physical force where it shouldn’t be used.”⁷³

“The law is supposed to solve problems, not create them. Laws should provide as much clarity as possible, not expand the realms of ambiguity and subjectivity.”⁷⁴ Speaking on stand your ground laws in general, E.J. Dionne, an opinion writer for the Washington Post, claims them to be a complete “failure.”⁷⁵ He believes that the statutes magnify the difficulty jurors already have in deciding cases like these; which, are, “aggravating racial lines.”⁷⁶ Dionne recalls two cases in particular to support his theory that stand your ground laws cause racial tension.⁷⁷

In July of 2013, the media went into a frenzy over the death of an African-American teenager named Trayvon Martin.⁷⁸ But what caused the media to take such notice of the case? Many people think it’s because the shooter, George Zimmerman, was a white male, and the victim, Trayvon Martin, was black.⁷⁹ The case began in the small town of Sanford, Florida as a typical homicide case.⁸⁰ However, it quickly turned into a civil rights issue that was scrutinized for racial profiling and its consequences.⁸¹ Zimmerman was a neighborhood watch volunteer who shot an unarmed Martin, purportedly in self-defense, sparking national debate.⁸² After weeks of testimony, a jury of six women rejected the prosecution’s argument that Zimmerman deliberately pursued Martin because he assumed that he was a criminal.⁸³ The jury disagreed with the fact that Zimmerman instigated the fight.⁸⁴ Zimmerman claimed that he shot the victim in self-defense after he was knocked to the ground, punched, and suffered blows to the head.⁸⁵ The jury decided that, based upon the evidence presented at trial, Zimmerman could have been justified in shooting Martin because he feared great bodily harm or death.⁸⁶

71. *Id.*

72. *Id.*

73. *Id.* at 403.

74. E.J. Dionne Jr., *Repeal Stand-Your-Ground Laws*, WASH. POST, Feb. 19, 2014, available at http://www.washingtonpost.com/opinions/ej-dionne-repeal-stand-your-ground-laws/2014/02/19/38fd3d64-999f-11e3-80ac-63a8ba7f7942_story.html.

75. *Id.*

76. *Id.*

77. *Id.*

78. Lizette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, July 14, 2013, at A1, available at http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html?pagewanted=all&_r=0.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. Alvarez, *supra* note 78.

85. *Id.*

86. *Id.*

While the Zimmerman defense was not based on Florida's Stand Your Ground, the verdict definitely gave rise to new arguments for repealing the law, illustrating the societal dangers that expanding self-defense can bring about.⁸⁷

Shortly after the Zimmerman acquittal, another self-defense case made headline news. In November of 2012, Michael Dunn shot a seventeen-year-old Jordan Davis in a gas station parking lot in Jacksonville, Florida.⁸⁸ Dunn approached a vehicle holding Davis and three other teenagers and asked them to turn their music down.⁸⁹ Dunn and Davis began arguing, resulting in Dunn firing his gun ten times into the vehicle.⁹⁰ Davis died immediately, and Dunn was arrested shortly after in Brevard County.⁹¹ Dunn was convicted on three counts of attempted second-degree murder but the jury was hung on the first-degree murder charge.⁹² Many critics of the verdict claim that the confusion over Florida's Stand Your Ground law left the jury baffled on whether to come down with a first-degree murder conviction.⁹³ While the jury saw no justification for firing into the vehicle, the fact that Stand Your Ground was such a debated issue in the media surrounding the Zimmerman trial "sowed confusion" on the murder count.⁹⁴

Supporters of Stand Your Ground claim what everyone knows—that the law was not technically at issue in either case.⁹⁵ However, opponents claim that Stand Your Ground played an obvious role in the Dunn trial.⁹⁶ As a matter of fact, the judge in the Dunn case was required to read the relevant Stand Your Ground provisions to the jury.⁹⁷ Dunn's attorney said to the jury: "His honor will further tell you that if Michael Dunn was in a public place where he had a legal right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force."⁹⁸ The "reasonable belief" standard is what throws people off; challengers of the law argue "it opens a vast loophole for extreme subjectivity when it is applied in conjunction with" stand your ground laws.⁹⁹

V. SIMPLIFYING THE QUESTION: *BROWN V. STATE*

The most recent Stand Your Ground decision was handed down from the First District Court of Appeal ("First DCA") on April 22, 2014. In *Brown v. State*, the defendant was charged with murder after he shot and killed a drug buyer while fleeing from a "botched" drug sale.¹⁰⁰ The circuit court denied the defendant's

87. *See id.*

88. Dionne, *supra* note 74.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Ahmad Abuznaid et al., "Stand Your Ground" Laws: International Human Rights Law Implications, 68 U. MIAMI L. REV., 1129, 1144 (2014).

94. Dionne, *supra* note 74.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *State v. Brown*, No. 162011CF013317, 2013 WL 9348656, at *1 (Fla. Cir. Ct. Mar. 18, 2013).

motion seeking immunity under Florida's Stand Your Ground law.¹⁰¹ The District Court of Appeal held that the defendant was not entitled to immunity based on his claim that force was permitted because the use of force is allowed by 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."¹⁰²

By defendant's own admission in court, he was engaged in an unlawful activity when the shooting took place—the illegal sale of drugs.¹⁰³ What is interesting about this case is how the court interprets the language of the provisions.

As the first line of the statute clearly sets out, there are three avenues by which a defendant's use of force may qualify for the statutory immunity from prosecution: that his or her force was permitted by section 776.012; by section 776.013; or by section 776.031. For all three avenues, the 2005 amendments/enactments abolished the duty to retreat if the other statutory justifications for use of force, including deadly force, were met. *Of the three avenues for immunity, the use of force as permitted in section 776.013 is the only avenue limited to persons "not engaged in an unlawful activity."*¹⁰⁴

This portion of the court's opinion is what distinguishes its statutory interpretation from that of *State v. Hill*.¹⁰⁵ During Brown's pre-trial hearing on his motion to determine immunity, he admitted that the use of force in question occurred as he was running from an illegal drug sale.¹⁰⁶ As a result, the circuit court ruled (and the court of appeals agreed) that under the facts presented at the motion hearing, primarily the defendant's admission that he was engaged in an illegal activity, immunity under 776.032(1)¹⁰⁷ was not available on the basis of his

101. *Id.*

102. *Brown v. State*, 135 So. 3d 1160, 1160–62 (Fla. Dist. Ct. App. 2014).

103. *Id.* at 1160–61

104. *Id.* at 1161, n.2 (emphasis added). Section 776.013(3) (2013) provides that:

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.

Id. (amended June 20, 2014).

105. *Id.* See also *State v. Hill*, 95 So. 3d 434 (Fla. Dist. Ct. App. 2012).

106. *Brown*, 135 So. 3d at 1161.

107. FLA. STAT. § 776.032(1) (2014) (amended June 17, 2014); Section 776.032(1) states:

A person who uses force as permitted . . . 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.

Id.

use of force as allowed in 776.013(3).¹⁰⁸ The court cites to *Hill* for this portion of the opinion.¹⁰⁹

However, the court goes on to say that

while not raised by Petitioner in this Court or the circuit court proceedings, *we note that statutory immunity* under section 776.032(1), Florida Statutes, based on the defensive use of force as permitted in sections 776.012(1) and 776.031, *is potentially available even to a person engaged in an unlawful activity at the time.*¹¹⁰

For this portion of the opinion, the court cites to *Little*.¹¹¹ The court simplifies it for us, stating that in order for a defendant to claim immunity under 776.032(1), he or she needs to identify a particular basis under Stand Your Ground (either 776.012, 776.013, or 776.031, or any combination thereof) upon which to rely in order to justify the force used.¹¹² Therefore, it is absolutely crucial that a defendant who wishes to claim Stand Your Ground have an attorney retained who is proficient in the language and effects of the various provisions of the statute. Claiming immunity under the wrong section could prove detrimental for a defendant based upon his particular circumstances.

The potential for confusion in the absence of such specification is illustrated by the certified conflict and question of great public importance in the Second District's *Little* decision and the conflict with the Fourth District's *Hill* decision certified in *Bragdon v. State*. After alleging the particular statutory basis for a claim of immunity, the defendant must then prove the facts (reasonable belief that such force is necessary, etc.) as required by the statute upon which he or she relies to allow the court to determine whether section 776.032(1) immunity attaches.¹¹³

It seems that in each new case, the courts are getting closer and closer to identifying the apparent need for Supreme Court intervention on Stand Your Ground interpretation. If not in response to the pleas of the lower courts, the Supreme Court of Florida should choose to rule on the law as a result of the massive amount of cases that are unfolding before our eyes.

VI. CURRENT EVENTS IN SELF-DEFENSE AND “STAND YOUR GROUND” LAWS

Florida has a reputation of being the state where crazy happens. From the 2000 presidential election to the acquittal of Casey Anthony, Florida has a knack for blasting the national media with bizarre tales of societal significance—and the Stand Your Ground wake following the Zimmerman trial only amplified this trend.

108. *Brown*, 135 So. 3d at 1161.

109. *Id.* (citing *State v. Hill*, 95 So. 3d 434 (Fla. Dist. Ct. App. 2012)).

110. *Brown*, 135 So. 3d at 1161–62 (emphasis added).

111. *Id.* (citing *Little v. State*, 111 So. 3d 214 (Fla. Dist. Ct. App. 2013)).

112. *Brown*, 135 So. 3d at 1161.

113. *Id.*

So the question becomes this: is Florida facing a repeal of the law? The media says no, in fact the law may be expanding.¹¹⁴

Senate Bill 116 (“SB116”), the primary Florida legislative initiative to repeal Stand Your Ground, officially “died” on May 2, 2013 in the Senate.¹¹⁵ SB116 was never projected to be of any success, and it has been classified as a “sad effort to extend the political circus that had emerged from Trayvon Martin’s unlawful attack upon George Zimmerman,” but what is more shocking than the demise of this bill is that the law may actually be *expanding*.¹¹⁶ Following an extensive campaign to repeal the law, the Florida Legislature actually passed a bill that will expand Stand Your Ground in a significant way.¹¹⁷ With the bill, the law will not only protect individuals who shoot someone, but will also protect those who fire “warning shots.”¹¹⁸

The bill found its inspiration in the story of a Jacksonville, Florida woman named Marissa Alexander.¹¹⁹ She was sentenced to twenty years in prison for firing three warning shots when her husband allegedly threatened to beat her.¹²⁰ Alexander’s husband had a history of physically abusing her, and she claimed she fired the shots merely to scare him away from attacking her again. Alexander tried to claim Stand Your Ground immunity, but the state prosecutor wouldn’t allow it, and she was sentenced to twenty years in prison.¹²¹ Luckily, she was granted an appeal and released on bond as she currently awaits a new trial.¹²² She is set to be retried (by the same prosecutor) in the near future.¹²³ Alexander could face up to sixty years in prison for firing three warning shots in response to her abusive husband.

So the big question is: Why does Stand Your Ground not protect people like Marissa Alexander but protects people who actually shoot someone in her situation? She could not invoke Stand Your Ground because the law does not apply to warning shots; she would have been better protected under the law had she actually shot and killed her husband.¹²⁴ “In Florida, shooting and killing someone was apparently a better legal defense than trying to avert violence by firing a warning shot.”¹²⁵ Critics claim that it is this “twisted logic” that makes the state unable to effectively prosecute defendants such as George Zimmerman and

114. Mark Strassmann, *Fla. Looks to Expand Controversial Stand Your Ground Law*, CBS NEWS (Mar. 10, 2014, 7:37 PM), <http://www.cbsnews.com/news/florida-looks-to-expand-controversial-stand-your-ground-law/>.

115. Andrew Branca, “Stand Your Ground” Repeal Effort Mercifully Dies in Florida Senate, LEGAL INSURRECTION (May 5, 2014, 4:00 PM), <http://legalinsurrection.com/2014/05/laughable-syg-repeal-effort-mercifully-dies-in-florida-senate/>.

116. *Id.*

117. Daniel Rivero, *Florida’s Stand Your Ground Laws Just Got Expanded*, FUSION (Apr. 7, 2014, 6:55 PM), <http://fusion.net/justice/story/floridas-stand-ground-law-expanded-572757>.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. Rivero, *supra* note 117.

124. *Id.*

125. *Id.*

Michael Dunn.¹²⁶ Zimmerman and Dunn, who both shot and killed teenage boys, walk free, while Marissa Alexander, an abused wife who merely fired a few warning shots to scare her husband away from beating her again, faces sixty years in prison.¹²⁷

The new bill serves to solve this inconsistency; however, it is not exactly being welcomed with open arms by some groups.¹²⁸ A First Amendment group is asking Governor Rick Scott to veto the bill because “you might never know who has fired a shot.”¹²⁹ “There will be no record of what happened or how it happened or why it happened, and that’s a great concern,” said Barbara Petersen, president of the First Amendment Foundation.¹³⁰ Senator Chris Smith agrees with Petersen, unsuccessfully arguing in promoting his amendment to the bill that “it’s the wrong thing, it’s the wrong thing to get rid of [the evidence in these warning shot cases], I want to be able to track this. I want to have all the evidence out there.”¹³¹ Peterson and Smith take issue with the part of the bill that allows for all records to be expunged if the person who fired the warning shot is found innocent.¹³² Peterson claims that this could lead to a copious amount of issues, “misdeed, prosecutorial misconduct, law enforcement misconduct, a bad investigation, an unlawful arrest” and more.¹³³ Others disagree, like Senator Charles Dean, a former sheriff.¹³⁴ “Clearly, if you’re innocent, that should automatically expunge your name and you shouldn’t have to defend your name for the rest of your life.”¹³⁵ This only adds to the laundry list of Stand Your Ground conflicts that could end up before the Supreme Court of Florida.

Despite Florida’s tendency to take the lead on shocking news reports, other states are experiencing difficulties with their own stand your ground laws.¹³⁶ An Atlanta woman named Shakeithia Wheeler was convicted in May 2014 on charges of felony murder.¹³⁷ Wheeler shot and killed Charles Roberson in an apartment parking lot because she claims she thought the man was attacking her brother.¹³⁸ She heard an argument outside and ran out with her gun in hand.¹³⁹ Before fatally

126. *Id.*

127. *Id.*

128. Morgan Whitaker, *Activists and Families March Against Stand Your Ground*, MSNBC (Mar. 13, 2014, 3:47 PM), <http://www.msnbc.com/politicsnation/stand-your-ground-opponents-rally-florida>.

129. Mat Galka, *Group Asks Fla. Governor to Veto “Warning Shot” Bill*, NEWS4JAX.COM (Apr. 15, 2014, 4:21 PM), <http://www.news4jax.com/news/group-asks-fla-governor-to-veto-warning-shot-bill/25498078>.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. Galka, *supra* note 129.

136. Jim Galloway, *Georgia Mayors Say Gun Bill Would “Dangerously Expand” Stand-Your-Ground Law*, ATLANTA JOURNAL-CONSTITUTION (Mar. 4, 2014, 10:41 AM), <http://politics.blog.ajc.com/2014/03/04/georgia-mayors-say-gun-bill-would-dangerously-expand-stand-your-ground-law/>.

137. Angel K. Brooks, *Atlanta Woman Using “Stand Your Ground” Defense Guilty of Murder*, ATLANTA JOURNAL-CONSTITUTION (May 6, 2014, 9:22 PM), <http://www.ajc.com/news/news/local/atlanta-woman-using-stand-your-ground-defense-foun/nfqfJ/>.

138. *Id.*

139. *Id.*

shooting the victim, she grazed a woman nearby by shooting wildly at Roberson.¹⁴⁰ The argument escalated and she shot Roberson in the head, killing him instantly.¹⁴¹ She believes she was justified under Georgia's own Stand Your Ground law, which also establishes no duty to retreat when one is in reasonable fear.¹⁴² However, witnesses testified that she was the aggressor, and that no one but Wheeler was even armed.¹⁴³ She was subsequently convicted.¹⁴⁴

In Montana, an unarmed teenager was recently shot and killed in a man's garage, causing a "firestorm over Montana's self-defense laws, specifically the state's so-called 'castle doctrine.'"¹⁴⁵ The victim was Dired Dede, a seventeen-year-old German exchange student who was shot and killed by Markus Kaarma when Dede entered Kaarma's garage early one morning.¹⁴⁶ Several exchange students around the area were suspected of "garage-hopping" to burglarize homes of nearby families.¹⁴⁷ Kaarma and his wife, who had been burglarized several times in the previous three weeks, finally had enough.¹⁴⁸ The prosecution alleged that Kaarma and his wife "baited" potential burglars so they could shoot them when they arrived, leaving a purse just inside the garage while they hid with guns.¹⁴⁹ According to the affidavit, the couple also set up a motion sensor and a baby monitor in an attempt to catch the burglars.¹⁵⁰ Just after midnight, the couple was alerted by the monitor that someone was entering their open garage.¹⁵¹ Kaarma took his gun outside and fired four shots into the dark—two of the shots hitting Dede.¹⁵² With a victim dead, there's no one left to tell the tale of what really happened, except for the shooter. This is a common area of attack for Stand Your Ground opponents in every state.

140. *Id.*

141. *Id.*

142. *See id.*

143. Brooks, *supra* note 137.

144. *Id.*

145. Kathryn Haake, *Missoula Rep. Hill Looks to Repeal Part of "Castle Doctrine"*, MISSOULIAN (May 1, 2014, 6:15 AM), http://missoulian.com/news/local/missoula-rep-hill-looks-to-repeal-part-of-castle-doctrine/article_68641320-d0cc-11e3-a1be-001a4bcf887a.html.

146. *Id.*

147. *Id.*

148. *Id.*

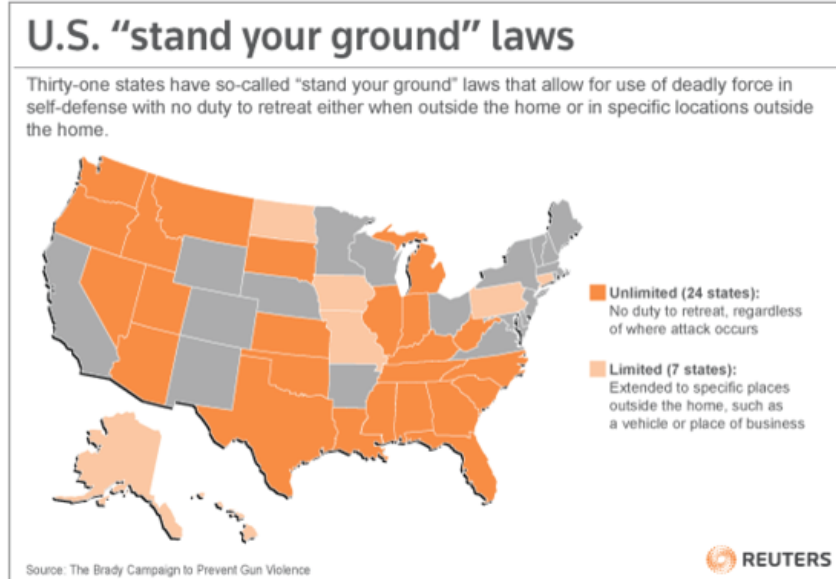
149. *Id.*

150. *Id.*

151. Haake, *supra* note 145.

152. *Id.*

VII. STAND YOUR GROUND LAWS AND GUN-RELATED DEATHS: THE REAL NUMBERS



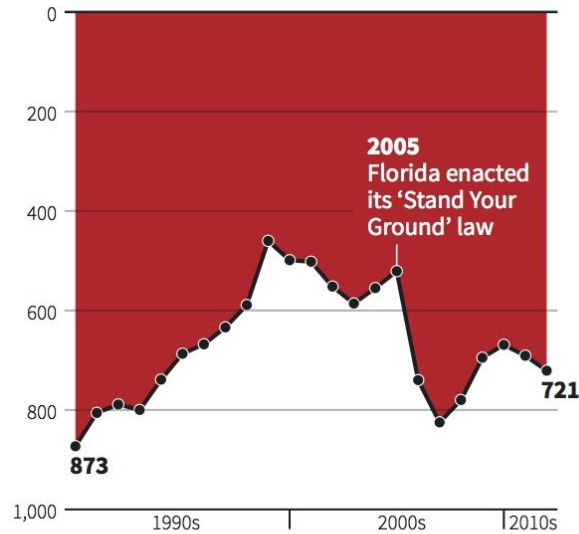
Over thirty states have stand your ground laws; so why does Florida get so much attention? In response to the Michael Dunn trial, Reuters recently published a chart showing an alarming spike in gun deaths in Florida alone following the enactment of Stand Your Ground.¹⁵³ The information was harvested from the Florida Department of Law Enforcement, and the initial appearance of the graph is wildly misleading.¹⁵⁴

153. Pamela Engel, *This Chart Shows an Alarming Ride in Florida Gun Deaths After 'Stand Your Ground' Was Enacted*, BUSINESS INSIDER (Feb. 18, 2014, 12:56 PM), <http://www.businessinsider.com/gun-deaths-in-florida-increased-with-stand-your-ground-2014-2>.

154. Lisa Wade, *How to Mislead with Charts: Stand Your Ground Laws and Gun Deaths in Florida*, PACIFIC STANDARD (Apr. 21, 2014, 4:00 PM), <http://www.psmag.com/navigation/politics-and-law/mislead-charts-stand-ground-laws-gun-deaths-79726/>.

Gun deaths in Florida

Number of murders committed using firearms



Source: Florida Department of Law Enforcement

C. Chan 16/02/2014

REUTERS

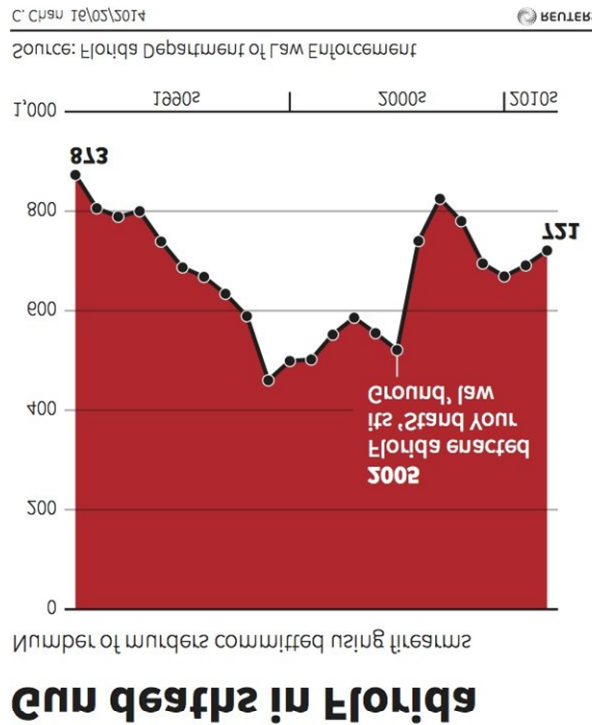
This is the original figure published by Reuters. At first glance, it could be interpreted that gun-related deaths plummeted following the enactment of Stand Your Ground in 2005. However, by taking a closer look at the y-axis, one can easily see that the conclusion is just the opposite.¹⁵⁵ Associate Professor, Lisa Wade, explains:

Most people see a huge fall-off in the number of gun deaths after Stand Your Ground was passed. But that's not what the graph shows. A quick look at the vertical axis reveals that the gun deaths are counted from top (0) to bottom (800). The highest peaks are the fewest gun deaths and the lowest ones are the most. A rise in the line, in other words, reveals a reduction in gun deaths. . . . The proper conclusion, then, is that gun deaths *skyrocketed* after Stand Your Ground was enacted.¹⁵⁶

Now, here is the graph, completely unedited, and merely flipped:

155. *See id.*

156. *Id.*



This is how people are trained to read graphs, with the y-axis starting at zero and counting upwards—because everyone is taught that a climb upward in a graph translates into an increase, and a fall translates into a decline.¹⁵⁷ So was the publication of this graph an attempt to fool the masses, or merely a company giving readers too much credit in thinking they would properly interpret the image? Assistant Editor for Live Science explains:

There’s no evidence that the graph was intentionally designed to mislead people into believing that gun deaths dropped after Florida’s stand-your-ground law went into effect. It does, however, highlight the risks of exercising creative license when presenting information graphically. The designer of the chart, Christine Chan, explained her decision on her Twitter feed, saying, “I prefer to show deaths in negative terms (inverted). It’s a preference really, can be shown either way.” Chan also noted that her inspiration for the chart came from a visually compelling graphic, seen on the website Visualizing Data, which displays the death toll from the invasion of Iraq in a disturbing manner, using red “dribble” lines

157. Marc Lallanilla, *Misleading Gun-Death Chart Draws Fire*, LIVE SCIENCE (Apr. 23, 2014, 4:30 PM), <http://www.livescience.com/45083-misleading-gun-death-chart.html>.

that evoke blood running down a wall. That graph also uses an inverted y-axis.¹⁵⁸

However, some are still skeptical. Critics claim that this tactic is used by the media frequently. In 2010, the media took off with a claim that one-third of all suicides among teens happens among gay and lesbian teenagers.¹⁵⁹ The figure was found to be inaccurate.¹⁶⁰

According to the Florida Department of Law Enforcement, there were 499 gun murders in Florida in 2000.¹⁶¹ This number has since increased by nearly 40%, with 691 gun murders committed in 2011.¹⁶² Stand Your Ground was enacted in 2005, when gun murders were roughly 550 that year. That number hit the roof in the next few years, reaching over 800 before 2010.¹⁶³ But is this really a result of Stand Your Ground, or simply a coincidence? The jury is still out on that one.

There's no solid answer for why the gun murders have increased in Florida. Some speculate that Stand Your Ground encourages people to act recklessly, thinking they can shoot whomever they want and just claim self-defense when prosecuted. Others argue that it is just too easy to get a gun in Florida—with 95.5% of all applicants being approved for ownership.¹⁶⁴ Gun advocates claim that an increase in gun sales does not necessarily result in an increase in gun-related crimes.¹⁶⁵ “It’s unlikely that law-abiding citizens have contributed to this increase,” says Dave Wood, President of the West Palm Beach-based Second Amendment Coalition.¹⁶⁶

While Wood may be right, the trend is still something that courts should consider when deciding difficult felony possession/Stand Your Ground cases such as *State v. Hill*. Regardless of the increase in legitimate gun sales to “law-abiding citizens,” there will always be a rise in illegal gun sales in the streets, and it’s these gun-owners that the legislature should worry about.

Stetson Law School’s Professor Charlie Rose, along with his students, hypothesize that Florida’s Stand Your Ground law allows killers that are career criminals to benefit from the law and its “vague language.”¹⁶⁷ “Right now it makes [the law] available to everyone regardless of what you did to put yourself in the situation,” says Rose.¹⁶⁸ He is concerned that the law does not limit the protection

158. *Id.*

159. *Id.*

160. *Id.*

161. Eric Barton, *Firearm Deaths on the Rise in Florida*, THELEDGER.COM (Apr. 21, 2013, 12:04 AM), <http://www.theledger.com/article/20130421/NEWS/130429908>.

162. *Id.*

163. Lallanilla, *supra* note 157.

164. Barton, *supra* 161.

165. *Id.*

166. *Id.*

167. Kameel Stanley & Connie Humburg, *Many Killers Who Go Free with Florida's "Stand Your Ground" Law Have History of Violence*, TAMPA BAY TIMES (July 21, 2012, 4:30 AM), <http://www.tampabay.com/news/courts/criminal/may-killers-who-go-free-with-florida-stand-your-ground-law-have-history/1241378>.

168. *Id.*

to those without a long history of violence. Arrest records show that out of 100 fatal cases where Stand Your Ground was claimed, 60% of the people who claimed self-defense were previously arrested at least once.¹⁶⁹ Over thirty of those defendants (approximately one in three) had been arrested for a violent crime, including assault, battery, or robbery.¹⁷⁰ “Dozens” have a history of drug-related offenses.¹⁷¹ Forty percent had three arrests or more in the past, and more than one-third had been in trouble in the past for threatening someone with a gun or another illegally carried weapon.¹⁷² In several cases, both the victim and his attacker had criminal records, “sometimes related to long-running feuds or criminal enterprises.”¹⁷³ Of the identifiable victims, 64% had at least one arrest on their record and many of them had twenty or more arrests.¹⁷⁴ This shows that the majority of instances where Stand Your Ground is invoked, the violence is a result of criminal-on-criminal conflict.

CONCLUSION

Despite the many uncertainties following Florida’s Stand Your Ground law, one thing is clear—the law is poorly written and as it stands, the law’s availability depends entirely upon the facts of the particular case at hand. The law is so poorly constructed that confusion will continue until so many writs of prohibition are made that the Supreme Court of Florida will be forced to accept jurisdiction and decide these conflicts—one of the more pressing conflicts being whether a convicted felon found in illegal possession of a firearm is precluded from using Stand Your Ground as a defense to murder, aggravated battery, and other violent crimes.

Part I of this article discussed Florida’s Stand Your Ground law in general—the language, the provisions, and the impact it had on the Castle Doctrine. Stand Your Ground eliminated the common law duty to retreat, allowing individuals to “stand their ground” against attackers and meet force with force when faced with a reasonable fear of danger.

Part II discussed recent cases where the courts have attempted to interpret the confusing language in the various provisions, primarily in sections 776.012 and 776.013, as they apply to convicted felons found in illegal possession of firearms. As seen in *Hill*, *Dorsey*, and *Little*, the answer to that question is not as simple as knowing the difference between “and” and “or.”¹⁷⁵ In 2011, the Fourth District held that when “a defendant [is] engaged in an unlawful activity or [is] in a place where he did not have a right to be at the time he was attacked, the common law duty to

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. Stanley, *supra* note 167.

174. *Id.*

175. See *supra* discussion on p. 9; State v. Hill, 95 So. 3d 434 (Fla. Dist. Ct. App. 2012); Little v. State, 111 So. 3d 214 (Fla. Dist. Ct. App. 2013).

retreat still applies.”¹⁷⁶ However, in 2013 the Second District concluded that the law “can be understood as granting immunity to a person who qualifies under *either* section 776.012(1) or 776.013(3).”¹⁷⁷ Therefore, if a person was engaged in an unlawful activity and does not qualify under one section, they can merely pick the other for immunity—a type of provision-shopping, if you will.

Part III analyzed the likelihood that these issues would come before the Supreme Court of Florida. The lower courts have already urged the Supreme Court to hear these issues, arguing that the law should be uniform across the state and in order for that to happen, the Supreme Court needs to settle the differences among the districts once and for all. Part IV discussed implications of the enactment of Stand Your Ground, including racial tension and encouragement of recklessness and immorality.

Part V brought to light a new case, *Brown*, in which the court simplified the issue, holding that “of the three avenues for immunity, the use of force as permitted in section 776.013 is the only avenue limited to persons ‘not engaged in an unlawful activity.’”¹⁷⁸ If the courts’ holdings discussed in the rest of this article were not persuasive enough, Part VI illustrates current events where society is practically screaming for legislative clarity, including backlash following the recent murder trials of George Zimmerman and Michael Dunn. The impact of these events is only amplified by Part VII where the real gun-related death and arrest numbers are seen that shadowed the enactment of Stand Your Ground in 2005.

Thomas Jefferson once said, “when the people fear the government there is tyranny, when the government fears the people there is liberty.” But what about when the people fear people as a result of ineffective legislation?¹⁷⁹ Is it not the government’s duty to act reasonably in providing unambiguous laws? It’s time for the Supreme Court of Florida to step up to the plate and define this convoluted piece of legislation.

ADDENDUM

RESOLVING THE CONFLICT: “CLARIFYING SOME OVERLY-BROAD LANGUAGE”

Since the conception of this article, the conflict between the Second District and the Fourth District has been acknowledged and resolved. On July 16, 2014, the Fourth District issued an opinion in an effort to “clarify some overly-broad language” from its 2012 *State v. Hill* decision.¹⁸⁰ Retreating from its prior opinion, the court wrote,

176. *Dorsey v. State*, 74 So. 3d 521, 527 (Fla. Dist. Ct. App. 2011).

177. *Little*, 111 So. 3d at 219.

178. *Brown v. State*, 135 So. 3d 1160, 1161 (Fla. Dist. Ct. App. 2014) (quoting FLA. STAT. § 776.013(3) (2013) (amended June 20, 2014)).

179. *Thomas Jefferson*, DECLARATION OF DEPENDENCE, available at <http://declarationofdependence.org/thomas-jefferson/> (last visited Oct. 10, 2014).

180. *Hill v. State*, 143 So. 3d 981 (Fla. Dist. Ct. App. 2014). See also *State v. Hill*, 95 So. 3d 434 (Fla. Dist. Ct. App. 2012).

[a]s this decision will explain, a defendant engaged in an unlawful activity is not necessarily disqualified from seeking self-defense immunity under certain provisions of the “Stand Your Ground” law. . . . We recede from any language in *State v. Hill*, suggesting the contrary.¹⁸¹

Hill’s original motion to dismiss relied on section 776.013(3), which, as this article explained above, provides that a person engaged in unlawful activity may not claim immunity under 776.013.¹⁸² On remand, Hill moved to dismiss again, only this time he cited section 776.012(1) as the basis for his immunity from prosecution.¹⁸³ However, the trial court denied his second motion as well, citing the Fourth District’s 2012 *State v. Hill* opinion. On appeal in the case for the second time, the court explains why this denial was error:

Unlike section 776.013, section 776.012(1) does not mention that the protections of the statute are unavailable to a person engaged in an unlawful activity. . . . Because we now clarify that the holding in *State v. Hill* was indeed applicable *only* to the section of the Stand Your Ground law which was at issue in that case—section 776.013(3)—we grant the [Defendant’s petition for writ of prohibition].¹⁸⁴

The court includes a marvelous explanation of what it calls “the interplay of section 776.012 and section 776.013(3),” acknowledging that nowhere in Chapter 776 does the law indicate that only those not engaged in unlawful activity are meant to hold the right to seek immunity from prosecution under section 776.012.¹⁸⁵ The court reasons that “[h]ad this been the actual intent, then the legislature could have easily accomplished this by including a simple statement to this effect in section 776.032 or in section 776.012.”¹⁸⁶ Agreeing with Judge Northcutt, who wrote the concurring opinion in *Little*, the Fourth District holds that “any ambiguity created by contradictory language” in the two sections requires that they be “strictly construed most favorable to the accused.”¹⁸⁷ Conflict resolved—a person engaged in an unlawful activity may claim immunity under 776.012 but not 776.013.

181. *Hill v. State*, 143 So. 3d at 982.

182. *Id.*

183. *Id.* at 983.

184. *Id.* (emphasis added)

185. *Id.* at 986.

186. *Id.*

187. *Hill v. State*, 143 So. 3d 981, 986 (Fla. Dist. Ct. App. 2014) (citing *Little v. State*, 111 So. 3d 214, 223 (Fla. Dist. Ct. App. 2013) (Northcutt, J., concurring)).

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The Florida Legislature also got wind of the conflict and, almost simultaneous to the Fourth's opinion, amended Stand Your Ground adding new language to section 776.012(2).¹⁸⁸ The new language now expressly limits immunity under 776.012 to those “*not* engaged in a criminal activity and in a place where he or she has a right to be,” the same limit that section 776.013 has always imposed.¹⁸⁹

However, this amendment does not render the Fourth District's resolution, or this article for that matter, obsolete. An understanding of the previously present difference between the two provisions is still highly relevant and will continue to be useful in years to come.

Absent clear legislative intent to the contrary, a change in substantive law does not apply retroactively.¹⁹⁰ The effective date of the amendment is June 20, 2014. Therefore, incidents arising before June 20, 2014 will not be prosecuted according to the new language.

This differentiation is exceptionally important for criminal defense attorneys, whose murder trials can take place years after the incident occurs. For incidents and shootings that arose before June 20, 2014, immunity will still depend upon what provision of Stand Your Ground the defendant uses in his motion to dismiss. However, for incidents that occur after June 20, 2014, the new language of section 776.012 will apply, and engaging in unlawful activity will be a bar to immunity under Florida's Stand Your Ground law regardless of which provision is asserted.¹⁹¹

188. Hill v. State, 143 So. 3d 981, 986 (Fla. Dist. Ct. App. 2014).

189. Ch. 2014-195, § 3, 2014 Fla. Sess. Law Serv. (West) (to be codified as Fla. Stat. § 776.012).

190. See Smiley v. State, 966 So. 2d 330, 336 (Fla. 2007).

191. Hill v. State, 143 So. 3d 981, 986 (Fla. Dist. Ct. App. 2014).