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KNOW THE GROUND YOU'RE STANDING ON: ANALYZING STAND YOUR GROUND AND SELF-DEFENSE IN FLORIDA'S LEGAL SYSTEM

*Jessica Travis and Jeffrey James**

I. INTRODUCTION

A century-old legal term has recently taken on new meaning in the past years. It has made the top of media headlines, causing the term to become part of the public's vocabulary.¹ Recently, it has been debated across the nation by gifted scholars, suave media personalities, and great legal minds.² Not only has the phrase triggered dispute, discussion, and scrutiny throughout the social airwaves, but it has sparked an abundance of controversy in the justice system that governs the nation.³

The term causing all this uproar is "Stand Your Ground." "Stand Your Ground" refers to the law that deals with an individual's rights to self-defense and to protect themselves with deadly force.⁴ Although this quick and very partial synopsis of the law may on the surface sound simple to understand, the actual laws dealing with this topic are surprisingly complex.⁵ While many people will be quick

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1. See Sean Sullivan, *Everything You Need to Know About "Stand Your Ground" Laws*, THE WASHINGTON POST (July 15, 2013), available at <http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/15/everything-you-need-to-know-about-stand-your-ground-laws>.

2. See Scott Johnson, *Panelists Debate "Stand Your Ground" Law at Town Hall Forum*, NEWS 4 JAX (May 21, 2014), <http://www.news4jax.com/news/town-hall-meeting-to-discuss-standyourground/26097378>.

3. Are "Stand Your Ground" Laws a Good Idea?, U.S. NEWS, <http://www.usnews.com/debate-club/are-stand-your-ground-laws-a-good-idea> (last visited Oct. 8, 2014).

4. *Florida Legislation—The Controversy over Florida's New "Stand Your Ground" Law—Fla. Stat. § 776.013 (2005)*, 33 FLA. ST. U. L. REV. 351, 355 (2005).

5. See generally Mary Anne Franks, *Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women's Syndrome, and Violence as Male Privilege*, 68 U. MIAMI L. REV. 1099, 1107–08 (2014).

to voice their opinion on the term when the topic arises, the “Stand Your Ground” laws are often ill-perceived or misconstrued by not only the general public, but also the actors that make up the legal system in which the laws are applied.⁶

In order to fully understand not only the term “Stand Your Ground” but also the laws that it encompasses, a thorough analysis of these laws must be performed with strict scrutiny to both historical and modern implications. Based on the location of the recent high-profile cases entailing “Stand Your Ground” law, such as *Zimmerman v. State*⁷ and *State v. Dunn*,⁸ it makes sense to start the legal analysis in the Sunshine State of Florida.

II. QUICK OVERVIEW

The “Stand Your Ground” law as it pertains to Florida is codified in section 776.013 of the Florida Statutes.⁹ Under this statute, the use of deadly force in the act of self-defense and an individual’s right to use self-defense when the presumption of fear of death or great bodily harm presents itself are all discussed.¹⁰ The section outlines that an individual who is not breaking the law is not required to retreat or leave from where they are located when they are attacked by an individual who is invading their area.¹¹ Furthermore, the statute summarizes that the individual being attacked also has the right to defend themselves by meeting force with force, including deadly force, if the individual believes that death or great bodily harm can come to them.¹²

Although this is merely a brief synopsis of the law, many people have relied on this small amount of information to form their opinion about the statute.¹³ This is closely evidenced in the *Zimmerman* case. The “Stand Your Ground” law came to public attention when thirty-year-old George Zimmerman was charged with the fatal shooting of seventeen-year-old Trayvon Martin.¹⁴

In the late hours of the night on February 26, 2012, in Sanford, Florida, Zimmerman fatally shot Martin after they got into a physical altercation in a gated neighborhood.¹⁵ When police arrived upon the scene moments after the gunshot was fired, Zimmerman claimed he was acting in self-defense when he shot

6. *Are “Stand Your Ground” Laws a Good Idea?*, *supra* note 3.

7. Greg Botelho & Holly Yan, *George Zimmerman Found Not Guilty of Murder in Trayvon Martin’s Death*, CNN (July 14, 2013), <http://www.cnn.com/2013/07/13/justice/zimmerman-trial/> [hereinafter *Zimmerman Found Not Guilty*].

8. Greg Botelho et al., *Dunn Convicted of Attempted Murder; Hung Jury on Murder in “Loud Music” Trial*, CNN (Feb. 17, 2014), <http://www.cnn.com/2014/02/16/justice/florida-loud-music-trial/> [hereinafter *Dunn Convicted*].

9. FLA. STAT. § 776.013 (2013) (amended 2014).

10. *Id.*

11. *Id.*

12. *Id.*

13. *See generally* Andrew Branca, *Breaking—E.J. Dionne Unable to Grasp Stand Your Ground Laws*, LEGAL INSURRECTION (Feb. 21, 2014), <http://legalinsurrection.com/2014/02/breaking-e-j-dionne-unable-to-grasp-stand-your-ground-laws/>.

14. Sullivan, *supra* note 1.

15. *Zimmerman Found Not Guilty*, *supra* note 7.

Martin.¹⁶ Zimmerman stated that he was in fact “standing his ground” against his attacker, Martin.¹⁷ At that time, Zimmerman was not arrested because the Sanford police chief concluded that Zimmerman had the legal right to use deadly force while acting in self-defense according to the “Stand Your Ground” statute, section 776.013.¹⁸ However, after further investigation by the State Attorney’s office, Zimmerman was later charged with murder for the death of Martin.¹⁹

Zimmerman’s trial began on June 10, 2013, in Sanford.²⁰ The prosecution was seeking second-degree murder and manslaughter charges.²¹ Thirty-three days later, a jury acquitted Zimmerman of all charges.²² Because the *Zimmerman* trial made national headlines and was heavily spotlighted throughout the media, the public at large became aware of the high profile case and the judicial proceedings involved with it, most notably, the “Stand Your Ground” defense initially used by Zimmerman’s defense team.²³ During the trial, the judge provided the members of the jury with a standard instruction covering the “Stand Your Ground” defense.²⁴ The judge instructed that under the law, if the members of the jury found that the “Stand Your Ground” law applied, Zimmerman had no duty to retreat and had a right to stand his ground and use deadly force if he reasonably believed doing so was necessary to defend himself.²⁵ These jury instructions, which were viewed with heavy scrutiny by the public at large, acted in part as the spark that made Florida’s “Stand Your Ground” law a point of great controversy and discussion amongst the public and legal community.²⁶

Although *Zimmerman* may have introduced the controversy of the “Stand Your Ground” law to the masses, there were many other cases that perpetuated the debate and intrigue surrounding the law.²⁷ In *Dunn*, forty-seven-year-old Michael Dunn was convicted of attempted second-degree murder for the shooting of seventeen-year-old Jordan Davis.²⁸ Dunn was charged after he fired several rounds into a parked SUV occupied by Davis and three other friends outside of a

16. *Id.*

17. *Id.*

18. FLA. STAT. § 776.013(1) (2013) (amended 2014).

19. *Zimmerman Found Not Guilty*, *supra* note 7.

20. See Doug Stanglin, *George Zimmerman Trial Date Set for June 10*, USA TODAY (Oct. 17, 2012), <http://www.usatoday.com/story/ondeadline/2012/10/17/george-zimmerman-trial-trayvo-martin/1638589/>.

21. *Zimmerman Found Not Guilty*, *supra* note 7.

22. See Lizette Alvarez, *Zimmerman Is Acquitted in Trayvon Martin Killing*, NY TIMES (July 13, 2013), available at http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html?pagewanted=all&_r=1&.

23. Mark Kogan, *George Zimmerman Trial Begins: Everything You Need to Know*, POLICY MIC (Apr. 12, 2012), <http://mic.com/articles/6887/george-zimmerman-trial-begins-everything-you-need-to-know>.

24. Ellen Wulffhorst, *Obama Calls for Calm After Zimmerman Acquittal; Protests Held*, REUTERS (July 14, 2013), <http://www.reuters.com/article/2013/07/14/us-usa-florida-shooting-idUSBRE96C07420130714>; Jury Instructions, *State v. Zimmerman*, at 3, No. 2012-CF-1083-A (Fla. Cir. Ct. 2013), available at http://www.flcourts18.org/PDF/Press_Releases/Zimmerman_Final_Jury_Instructions.pdf [hereinafter *Jury Instructions*].

25. See *Jury Instructions*, *supra* note 24, at 3.

26. Wulffhorst, *supra* note 24.

27. See generally Darla Cameron & William M. Higgins, *Those Who Stood, Those Who Fell: Fatal Cases*, TAMPA BAY TIMES (Oct. 10, 2014), <http://www.tampabay.com/stand-your-ground-law/fatal-cases>.

28. *Dunn Convicted*, *supra* note 8.

Jacksonville convenience store.²⁹ Dunn was arrested and charged with second-degree murder.³⁰ Dunn's trial began in the Duval County Courthouse in February 2014.³¹ Similar to the defense used in *Zimmerman*, Dunn claimed that he fired upon the vehicle in an act of self-defense after he alleged that he saw a shotgun protruding from the victim's SUV.³² After more than thirty hours of deliberation, a Jacksonville, Florida jury found Dunn guilty on three counts of attempted second-degree murder.³³ Although the jury could not reach a verdict for the original first-degree murder charge, the State has mentioned the possibility of retrying Dunn with first-degree murder.³⁴ Ultimately, "Stand Your Ground" was not used in Dunn's defense.³⁵ However, the media once again decided to spotlight the law by comparing the *Dunn* case to *Zimmerman*.³⁶

In order to understand why the law has garnered so much attention in recent years, it is important to closely assess from where the controversy surrounding the law stems. The law's critics argue that Florida's law makes it very difficult to prosecute cases against people who kill others and then claim self-defense.³⁷ The defendant can argue that he felt threatened, and in most cases, the only witness who could have argued otherwise is the deceased.³⁸ Because of these circumstances, courts have recognized that the prosecution may be left basing its argument against a "Stand Your Ground" defense on circumstantial, rather than direct evidence.³⁹ This dilemma, though, is inherent to all self-defense arguments, not just "Stand Your Ground" laws.⁴⁰

III. ORIGINS

Although "Stand Your Ground" has only recently been scrutinized, the law can be traced all the way back to the beginning of the twentieth century.⁴¹ In the 1920 Supreme Court case, *Brown v. United States*, the trial judge initially gave jury instructions stating, "it is necessary to remember, in considering the question of self-defense, that the party assaulted is always under the obligation to retreat, so

29. *Id.*

30. *Id.*; *Mistrial on First Degree Murder, Guilty on 4 Counts*, FCN (Feb. 16, 2014), <http://www.firstcoastnews.com/story/news/local/michael-dunn-trial/2014/02/15/michael-dunn-jury-jordan-davis-guilty-not/5286193/> [hereinafter *Mistrial on First Degree Murder*].

31. *Mistrial on First Degree Murder*, *supra* note 30.

32. *Dunn Convicted*, *supra* note 8.

33. *Mistrial on First Degree Murder*, *supra* note 30.

34. *Dunn Convicted*, *supra* note 8.

35. *See, e.g.*, Dan Abrams, *No, Florida's Stand Your Ground Law Did Not Determine Either Zimmerman or Dunn Cases*, ABC NEWS (Feb. 17, 2014), <http://abcnews.go.com/US/floridas-stand-ground-law-determine-zimmerman-dunn-cases/print?id=22543929>.

36. *Id.*

37. *See, e.g.*, Florida "Stand Your Ground" Law Could Complicate Trayvon Martin Case, WITN (Mar. 12, 2012), http://www.witn.com/home/headlines/Florida_Stand_Your_Ground_Law_Could_Complicate_Trayvon_Martin_Case_143607846.html.

38. *Id.*

39. *See* *Strange v. State*, 579 So. 2d 859, 860 (Fla. Dist. Ct. App. 1991).

40. *Id.*

41. *Brown v. United States*, 256 U.S. 335, 343 (1921).

long as retreat is open to him, provided that he can do so without subjecting himself to the danger of death or great bodily harm.”⁴² The jury in this case, under this reasoning, found the defendant guilty.⁴³ After the verdict was appealed by the petitioner, who was convicted of second-degree murder, the Supreme Court reviewed this instruction and came to a different opinion.⁴⁴ Upon review, the Supreme Court concluded that:

Rationally the failure to retreat is a circumstance to be considered with all the others in order to determine whether the defendant went farther than he was justified in doing; not a categorical proof of guilt. The law has grown, and even if historical mistakes have contributed to its growth it has tended in the direction of rules consistent with human nature.⁴⁵

Ultimately, the Court concluded that a person did not have to necessarily retreat against their attacker if they were acting in self-defense and in fact the party being attacked had the right to stand his or her ground against their attacker.⁴⁶ Coming to this decision, the Court stated that “[d]etached reflection cannot be demanded in the presence of an uplifted knife.”⁴⁷ This conclusion, stating that the defendant did not always have a duty to retreat if he was attacked, can be seen as the groundwork that later framed Florida’s “Stand Your Ground” law.⁴⁸

Prior to the enactment of the “Stand Your Ground” law in Florida, self-defense laws were governed by specific self-defense statutes.⁴⁹ To understand how the “Stand Your Ground” law has progressed into the controversial legal topic it has become today, it is important to see how the general law covering self-defense has progressed through the modifications and addition of these Florida self-defense statutes.

Before the Florida Legislature ratified the “Stand Your Ground” law, the use of justifiable force in self-defense laws was governed by sections 776.012 and 776.031 of the Florida Statutes.⁵⁰ Under these statutes, the “Self-Defense” statute, section 776.012, and the “Justifiable Force” statute, section 776.031, the Supreme Court of Florida recognized a common law duty to retreat that required a person to “retreat to the wall” or use “every reasonable means within his or her power to avoid the danger.”⁵¹

42. *Id.* at 342.

43. *Id.* at 341.

44. *Id.* at 341–42.

45. *Id.* at 343.

46. *Id.*

47. *Brown*, 256 U.S. at 343.

48. See, e.g., David Kopel, *Debunking the “Stand Your Ground” Myth*, THE WASHINGTON POST (Apr. 2, 2012), available at <http://www.washingtonpost.com/news/2012/apr/2/debunking-the-stand-your-ground-myth/>.

49. See, e.g., Wyatt Holliday, “*The Answer to Criminal Aggression Is Retaliation: Stand-Your-Ground Laws and the Liberalization of Self-Defense*,” 43 U. TOL. L. REV. 407 (2012).

50. FLA. STAT. §§ 776.012, 776.031 (2013) (amended 2014).

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

The “Self-Defense” statute, section 776.012, states that “[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.”⁵² The “Justifiable Force” statute, section 776.031, outlined that:

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 prevent or terminate the other’s trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect.⁵³

Both are based on the individual’s reasonable belief that threats are being made and that force will be needed for self defense.⁵⁴ What is key here is that both of these laws make it clear that deadly force is not acceptable.

Until the “Stand Your Ground” defense was enacted in Florida, these laws were what governed acts of self-defense.⁵⁵ Furthermore, these statutes followed the common law belief that the party being attacked must retreat to safety, if possible, before relying upon self-defense.⁵⁶ With the creation of the “Stand Your Ground” law, these statutes were modified to encompass the new theory of law.⁵⁷

In 2005, the Florida Legislature enacted the “Stand Your Ground” law.⁵⁸ The “Stand Your Ground” law was created through statute section 776.013.⁵⁹ This law follows the framework outlined in *Brown* by affirming that an individual does not have a duty to retreat before using deadly force when acting in self-defense.⁶⁰ The law also grants immunity from prosecution for a defendant who acts in lawful self-defense.⁶¹ The enactment of the law modified the previous self-defense statutes in Florida by abolishing the duty to retreat.⁶²

With creating this new law, the legislature modified the previous self-defense statutes, the

“Self-Defense” statute section 776.012 and the “Justifiable Force” statute section 776.031. These two statutes now have sections that refer to the “Stand Your

52. FLA. STAT. § 776.012(1) (2013) (amended 2014).

53. FLA. STAT. § 776.031(1) (2013) (amended 2014).

54. FLA. STAT. §§ 776.012, 776.031 (2013) (amended 2014).

55. *Id.*

56. *Id.*

57. *Id.*

58. FLA. STAT. § 776.013 (2013) (amended 2014).

59. *Id.*

60. *Brown v. United States*, 256 U.S. 335, 341 (1921).

61. § 776.013.

62. *Id.*

Ground” law under section 776.013.⁶³ Along with having this section added to the statutes, section 776.012 abolished the duty to retreat.⁶⁴

“Stand Your Ground” can now be found through the modification to the “Self-Defense” section that added 776.012(2).⁶⁵ Section 776.012(2) now includes this following language:

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.⁶⁶

With the modification of this statute, caused by the enactment of the “Stand Your Ground” law, section 776.012 now abolishes an individual’s duty to retreat before acting in defense, and the section also now states that deadly force can be used.⁶⁷

Along with the modification of the “Self-Defense” statute, “Stand Your Ground” also added a section to the “Justifiable Force” statute, section 776.031.⁶⁸ This statute discusses use of force in defense of others.⁶⁹ With the enactment of “Stand Your Ground,” the legislature added a section to the “Justifiable Force” statute to include that “[a] person does not have a duty to retreat if the person is in a place where he or she has a right to be.”⁷⁰

With the “Self-Defense” statute and the “Justifiable Force” statute being amended due to “Stand Your Ground,” it is important to thoroughly analyze the actual “Stand Your Ground” statute. In the Florida Statutes, section 776.013 is viewed as the “Stand Your Ground” law. Under the “Self-Defense” statute, section 776.012, states:

[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 felony⁷¹

Section 776.013 details the justification of self-defense by stating:

63. FLA. STAT. §§ 776.012, 776.031 (2013) (amended 2014).

64. § 776.012(1).

65. *Id.* at (2).

66. *Id.*

67. FLA. STAT. § 776.012 (amended 2014).

68. FLA. STAT. § 776.031 (2005) (amended 2014).

69. *Id.*

70. *Id.*

71. FLA. STAT. § 776.012(1) (2013) (amended 2014).

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if: (a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.⁷²

Furthermore, section 776.013(3) continues to promote the "Stand Your Ground" application of law by outlining an individual's right to stand his or her ground when unlawfully attacked by a party.⁷³ The section states:

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.⁷⁴

Along with the "Stand Your Ground" statute, section 776.013(3), an individual's right to stand their ground against an attacker in order to prevent harm to themselves, section 776.013(4) allows an individual to stand his or her ground against an intruder as well.⁷⁵ This newly enacted statute took the common law theory of the "Castle Doctrine" and applied it to the "Stand Your Ground" law.⁷⁶ Under the common law "Castle Doctrine" theory, an individual "is not required to retreat from one's residence, or one's 'castle,' before using deadly force in self-defense, so long as the deadly force is necessary to prevent death or great bodily harm."⁷⁷ Before the "Stand Your Ground" law was established in 2005, there was no specific statute that encompassed the "Castle Doctrine" theory.⁷⁸

72. FLA. STAT. § 776.013(1) (2005) (amended 2014).

73. FLA. STAT. § 776.013(3) (2005) (amended 2014).

74. *Id.*

75. FLA. STAT. §§ 776.013(3)–(4) (2005) (amended 2014).

76. Christopher Reinhart, *Castle Doctrine and Self-Defense*, OLR RESEARCH REPORT (Jan. 17, 2007), <http://www.cga.ct.gov/2007/rpt/2007-R-0052.htm>.

77. *State v. James*, 867 So. 2d 414, 416 (Fla. Dist. Ct. App. 2003).

78. *Compare Weiland v. State*, 732 So. 2d 1044, 1049 (Fla. 1999), with *Little v. State*, 111 So. 3d 214, 220 (Fla. Dist. Ct. App. 2013).

Once the “Stand Your Ground” statute was created by the legislature, the common law “Castle Doctrine” theory was applied in the legal books through this statute.⁷⁹ Under this statute, section 776.013(4), a party who is unlawfully intruding is presumed to be acting illegally with the intention of using force or violence in the commission and therefore the individual has the right to stand his or her ground against the presumed threat.⁸⁰ The statute defines this by stating that “[a] person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.”⁸¹

IV. HOW IT DIFFERS FROM SELF-DEFENSE

Although the “Stand Your Ground” law was drafted into its own statute, the law in a sense culminated from the laws and statutes that previously governed self-defense.⁸² Because self-defense laws helped build the framework for “Stand Your Ground,” both laws are often confused as being synonymous to each other.⁸³ This confusion is not only based in the public’s perception of the laws, but can also be found in the justice system in which the laws apply.⁸⁴ To fully understand both the decades old self-defense laws and the “Stand Your Ground” laws, it is important to analyze the disparities between the two.

Under the “Self-Defense” statute, section 776.012, an individual can act in self-defense if he or she is in reasonable fear of great bodily harm or death.⁸⁵ The “Stand Your Ground” statute modified this “Self-Defense” statute by eliminating the duty to retreat.⁸⁶ Prior to the enactment of “Stand Your Ground” the “Self-Defense” case law stated that if the actor has a reasonable method of retreat, they must retreat to safety, if possible, before using self-defense.⁸⁷ Once “Stand Your Ground” was enacted, the “Self-Defense” statute now includes that an individual does not have a duty to retreat before using such force.⁸⁸ Additionally, the “Self-Defense” statute still permits the justifiable 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 commission of a forcible felony”⁸⁹

79. See *Hair v. State*, 17 So. 3d 804, 806 (Fla. Dist. Ct. App. 2009).

80. FLA. STAT. § 776.013(4) (2005) (amended 2014).

81. *Id.*

82. See Christine Catalfamo, *Stand Your Ground: Florida’s Castle Doctrine for the Twenty-First Century*, 4 RUTGERS J.L. & PUB. POL’Y 504, 524 (2007).

83. *What is the Difference Between Stand Your Ground and Self Defense?*, FLORIDA STAND YOUR GROUND, <http://www.floridastandyourground.org/faq.html#3> (last visited Oct. 7, 2014).

84. Patrik Jonsson, *Trayvon Martin Case Reveals Confusion over How Stand Your Ground Works*, CHRISTIAN SCIENCE MONITOR (Apr. 11, 2012), <http://www.csmonitor.com/USA/Justice/2012/0411/Trayvon-Martin-case-reveals-confusion-over-how-Stand-Your-Ground-works>.

85. FLA. STAT. § 776.012(1) (2005) (amended 2014).

86. FLA. STAT. § 776.013(3) (2005) (amended 2014).

87. *E.g.*, *Little v. State*, 111 So. 3d 214, 220 (Fla. Dist. Ct. App. 2013) (citing *Weiland v. State*, 732 So. 2d 1044, 1050 (Fla. 1999)).

88. FLA. STAT. § 776.012 (2013) (amended 2014).

89. *Id.* at (1).

The "Stand Your Ground" law has also added language permitting the justifiable use of deadly force in several circumstances that are not discussed in section 776.012, such as an individual's right to stand his or her ground and meet force with force, including deadly force outside of the person's home or property.⁹⁰ Also, unlike the self-defense statutes, the "Stand Your Ground" law "does not *preclude* persons who are engaged in an unlawful activity from using deadly force in self-defense when otherwise permitted."⁹¹ "In fact, the Stand Your Ground law expressly amended section 776.012 to provide that the use of deadly force is justified under [these] circumstances"⁹²

V. APPLYING STAND YOUR GROUND

Differentiating the "Stand Your Ground" law with the self-defense laws takes a close analysis of the statutes. However, correctly applying these laws in a court of law takes an even more thorough examination of these laws and how they are defined and used in the justice system.

The "Stand Your Ground" law is used as a defense in criminal proceedings.⁹³ The "appropriate procedural vehicle"⁹⁴ to raise this defense is to claim immunity from prosecution under the "Stand Your Ground" law.⁹⁵ In order to raise this immunity, the defense attempts to show that the defendant's actions complied with the immunity section of the "Stand Your Ground" law, section 776.032.⁹⁶ This section, which outlines "[i]mmunity from criminal prosecution and civil action for justifiable use of force,"⁹⁷ should be raised as a pretrial motion to dismiss the indictment or information based.⁹⁸ When raising the defense, the defendant must show that he or she was permitted in the use of force under the "Self-Defense" statute, section 776.012, or the "Stand Your Ground" statute, section 776.013.⁹⁹

Florida law confers immunity from criminal prosecution and civil liability, without the obligation to retreat, on those who use deadly force "reasonably believ[ing] that [the use of] such force is necessary to [either] prevent imminent death or great bodily harm to [self or others] or to prevent the imminent commission of a forcible felony."¹⁰⁰

Once a defendant asserts immunity from prosecution based on the "Stand Your Ground" law and section 776.032, a trial court must conduct an evidentiary hearing on the basis of this defense.¹⁰¹ The purpose of this evidentiary hearing is to

90. FLA. STAT. § 776.013(3) (2013) (amended 2014).

91. *Little*, 111 So. 3d at 221.

92. *Id.*

93. *Id.* at 221–22.

94. *Dennis v. State*, 51 So. 3d 456, 462 (Fla. 2010).

95. *Id.*

96. *Id.*

97. FLA. STAT. § 776.032 (2005) (amended 2014).

98. *Dennis*, 51 So. 3d at 460.

99. *E.g.*, *Mederos v. State*, 102 So. 3d 7, 9 (Fla. Dist. Ct. App. 2012).

100. *Id.* at 10.

101. *Id.* at 11.

examine the factual disputes raised between the parties.¹⁰² When a motion to dismiss based on the “Stand Your Ground” law and an immunity hearing is conducted, the burden of proof is on the defendant who files the motion to dismiss.¹⁰³ Once the claim is raised, the defendant must show by the preponderance of evidence that immunity attaches due to the “Stand Your Ground” statute.¹⁰⁴

Based on the facts and evidence presented throughout the immunity hearing, the trial court should decide the factual question of the applicability of section 776.032.¹⁰⁵ “The trial court’s findings of fact must be supported by competent substantial evidence, while conclusions of law are subject to de novo review.”¹⁰⁶ When raising immunity based on section 776.032, the motion to dismiss should comply with Rule 3.190(b) of the Florida Rules of Criminal Procedure.¹⁰⁷

Although the legislature created the “Stand Your Ground” statute with the intent that the defense should be created to raise immunity from prosecution and determined through an immunity proceeding, the statute is not precluded from being used during trial as an affirmative defense.¹⁰⁸ Before viewing how the “Stand Your Ground” defense works as an affirmative defense, it is important to know how an affirmative defense is applied in the court system. An affirmative defense is a “defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability, even if it is proven that the defendant committed the alleged acts. Self-defense, entrapment, insanity, and necessity are some examples of affirmative defenses.”¹⁰⁹

When the “Stand Your Ground” defense fails at an immunity hearing because the court found that there was not enough competent substantial evidence to show the defendant complied with the “Stand Your Ground” statute, the defense attorney can raise “Stand Your Ground” again during trial as an affirmative defense.¹¹⁰ Also, the defense attorney may strategically choose to wait to raise the “Stand Your Ground” statute as an affirmative defense, rather than initially raising it through an immunity hearing.¹¹¹ Saving the defense to use as an affirmative defense will place the decision on the members of the jury, rather than the judge.¹¹² The defense attorney may decide that a jury would be a more viable option to rule on the defense and may give the defense attorney more of an opportunity to present facts and evidence that can support the defense.¹¹³

102. *Id.*

103. *Bretherick v. State*, 135 So. 3d 337, 340 (Fla. Dist. Ct. App. 2013).

104. *Id.*

105. *Id.*

106. *Mederos*, 102 So. 3d at 11.

107. *Id.*

108. *Id.* (quoting *Peterson v. State*, 983 So. 2d 27, 29 (Fla. Dist. Ct. App. 2008)).

109. *Wex, Affirmative Defense*, CORNELL UNIVERSITY LAW SCHOOL LEGAL INFORMATION INSTITUTE, http://www.law.cornell.edu/wex/affirmative_defense (last visited Oct. 5, 2014).

110. *Mederos*, 102 So. 3d at 11.

111. *See* Steven Payne, *Zimmerman Waives Stand Your Ground Hearing in Trayvon Martin Case*, DAILY KOS (Mar. 6, 2013, 9:11 AM), <http://www.dailykos.com/story/2013/03/06/1192033/-Zimmerman-waives-Stand-Your-Ground-hearing-in-Trayvon-Martin-case#>.

112. *See id.*

113. *See id.*

VI. FLORIDA CASES

Although “Stand Your Ground” may be applied through both immunity and affirmative defenses, applying the statute properly in the court of law can often become tricky and confusing.¹¹⁴ In order to use the defense properly, or be ready to rebut the defense asserted, it is important to understand how “Stand Your Ground” has been properly applied in Florida courts in the past.

In the 2013 case, *Little v. State*, the “Stand Your Ground” statute was examined closely by the court.¹¹⁵ In *Little*, the defendant was charged with second-degree murder with a firearm after he shot and killed the victim.¹¹⁶ The shooting occurred after the defendant became involved in a verbal altercation with the victim in the middle of the street.¹¹⁷ The defendant testified that the victim began to brandish a gun towards him and threatened to take his life.¹¹⁸ The defendant then retreated into a friend’s house.¹¹⁹ According to the defendant, the victim then waited outside of the house for the defendant.¹²⁰ After the defendant was kicked out of the home, he asserted that he was confronted at gunpoint by the victim.¹²¹ The defendant, claiming that he believed he was put in harm’s way, drew a gun and proceeded to fatally shoot the victim.¹²² The defense argued that he shot the victim in self-defense and was therefore entitled to immunity under the “Stand Your Ground” statute.¹²³

Little’s case became unique in terms of “Stand Your Ground” because the defendant was in commission of a felony at the time he asserted that he was standing his ground against the victim.¹²⁴ Little was a felon prior to the incident and therefore, being a convicted felon, he was in unlawful possession of the firearm when he used it against the victim.¹²⁵ Because of his status as a felon, the State argued that Little was not entitled to immunity under the “Stand Your Ground” statute because he was engaged in an unlawful activity as a felon in possession of a firearm.¹²⁶

Applying this argument, known in the court system as the “Tipsy Coachman” argument, the State noted that in order for a person to claim the use of deadly force to be permitted under the “Stand Your Ground” statute, section 776.013, the person

114. See Kris Hundley, et al., *Florida “Stand Your Ground” Law Yields Some Shocking Outcomes Depending on How Law Is Applied*, TAMPA BAY TIMES (Jun. 1, 2012), <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>.

115. See *Little v. State*, 111 So. 3d 214, 217 (Fla. Dist. Ct. App. 2013).

116. *Id.* at 216.

117. *Id.* at 217.

118. *Id.*

119. *Id.*

120. *Id.*

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

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* at 219.

126. *Id.*

must not be engaged in an unlawful activity.¹²⁷ Because Little was a felon in illegal possession of a firearm at the time the incident occurred, the State submitted that he was engaged in an unlawful activity and could not obtain immunity under any of these statutory provisions.¹²⁸

The “Stand Your Ground” statute, under section 776.013(3), 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.¹²⁹ Taking a strict statutory interpretation of this language, the State maintains that the defendant was precluded to raise immunity under the “Stand Your Ground” statute because he was acting unlawfully.¹³⁰

The court’s dissection of the “Stand Your Ground” issue in the *Little* case offers an insight as to how the law is to be applied in the court system. Ultimately, in *Little*, the court found that “because [the defendant] was a felon in illegal possession of a firearm, his use of force did not fall within the protections of section 776.013, [the Stand Your Ground statute], and therefore, he could not obtain immunity under that statute.”¹³¹

Although the court concluded that the defendant could not be granted immunity under the “Stand Your Ground” statute, the court found that the defense could seek immunity based on the use of force permitted under the “Self-Defense” statute, section 776.012(1).¹³² Under the “Self-Defense” statute, “a person is justified in the use of deadly force and does not have a duty to retreat if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself. . . .”¹³³ Therefore, based on the language of this statute, which does not discuss the preclusion of a defendant raising the immunity if they were involved in an illegal act at the time of the incident, the court found that the defendant’s status as a felon in illegal possession of a firearm did not prevent him from claiming immunity from prosecution.¹³⁴

Using the claim of immunity based on the “Self-Defense” statute, the defendant established by the preponderance of evidence that “his use of force was justified to prevent his imminent death or great bodily harm as provided for in [the “Self-Defense” statute,] section 776.012(1).”¹³⁵ In this case, Little, although committing an unlawful act, being a felon possessing a firearm, was granted immunity under section 776.012(1), because he was able to prove the elements of that statute.¹³⁶

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

128. *Id.*

129. FLA. STAT. § 776.013(3) (2013) (amended 2014).

130. *Little*, 111 So. 3d at 216.

131. *Id.* at 222.

132. *Id.* at 219.

133. FLA. STAT. § 776.012(1) (2013) (amended 2014).

134. *Little*, 111 So. 3d at 222.

135. *Id.*

136. *Id.*

Viewing the analysis the court applied in the *Little* case, it is important to see how the “Stand Your Ground” statute, in conjunction with the “Self-Defense” statute, can have many nuances that must be closely analyzed in order to properly apply these statutes in the legal system.

Little shows a good example of how “Stand Your Ground” and “Self-Defense” can be applied by the defense during an immunity proceeding. However, because “Stand Your Ground” and “Self-Defense” can also be raised as affirmative defenses during trial, it is important to find a proper analysis of law that delves into these statutes being used as affirmative defenses. The 2014 District Court of Appeals of Florida case *Sims v. State* analyzes this issue and outlines how both statutes can be raised as affirmative defenses in the court of law.¹³⁷

In *Sims*, the defendant was charged with aggravated battery after he got into an altercation with the victim at the victim’s home, where he accused the victim of sleeping with his wife.¹³⁸ After continuously asking the defendant to leave, the victim called the police.¹³⁹ The defendant then allegedly attacked the victim, punching him and then continuing to kick him while he was on the ground.¹⁴⁰

At trial, the defendant claimed that the victim was the initial aggressor and that he was just attempting to defend himself from harm caused by the victim.¹⁴¹ Based on this theory, the defense raised an affirmative defense and requested a jury instruction on the issue of justifiable use of non-deadly force.¹⁴²

When raising the affirmative defense, *Sims* originally wanted to assert the “Stand Your Ground” defense.¹⁴³ However, he could not assert this defense because it was undisputed that he was unlawfully trespassing at the victim’s home.¹⁴⁴ As in the *Little* case, the court once again recognized that the “Stand Your Ground” statute “only applies when a person ‘is not engaged in an unlawful activity’ and ‘is attacked in any place where he or she has a right to be.’”¹⁴⁵ In this case, it was undisputed that the altercation occurred after the defendant refused to leave the victim’s property.¹⁴⁶ Therefore, at the time the defendant used force to allegedly defend himself against the victim’s attack, the defendant was trespassing and in turn taking part in an illegal act.¹⁴⁷ On this issue the court concluded that *Sims* did not comply with the “Stand Your Ground” statute because he was acting unlawfully by trespassing upon the victim’s property when the instance occurred.¹⁴⁸ Referring back to the statute, the court stated that the only way *Sims* could use the “Stand Your Ground” law was if:

137. *Sims v. State*, 140 So. 3d 1000, 1005 (Fla. Dist. Ct. App. 2014).

138. *Id.* at 1001–02.

139. *Id.* at 1001.

140. *Id.* at 1002.

141. *Id.*

142. *Id.*

143. *Sims*, 140 So. 3d at 1005.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

*[The defendant] was not engaged in an unlawful activity and was attacked in any place where he had a 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, if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or to prevent the commission of a forcible felony.*¹⁴⁹

With the “Stand Your Ground” statute being denied by the court as an affirmative defense, Sims sought to raise the “Self-Defense” statute.¹⁵⁰ By raising this defense as an affirmative one, the judge gave jury instructions that complied with the “Self-Defense” statute, section 776.012.¹⁵¹ Using this statute, the judge instructed the jury that in order to find that the defendant acted in self-defense, the defendant must have proven by the preponderance of the evidence that he reasonably believed that his use of force was necessary to defend himself against the victim’s use of unlawful force against the defendant and that the victim’s use of force appeared to the defendant to be imminent.¹⁵²

Based on the physical evidence and testimony of witnesses that were presented throughout the trial, the jury found that Sims did not act in self-defense when using physical force against the victim.¹⁵³ The jury concluded that Sims did not comply with the elements of the “Self-Defense” statute that were detailed in the jury instructions.¹⁵⁴ The jury convicted him of aggravated battery and he was sentenced to five years imprisonment.¹⁵⁵ After Sims appealed the ruling by the court, the District Court of Florida reviewed the case.¹⁵⁶ Upon review of the case, the court came to the same conclusion as the members of the jury and upheld Sims’s conviction.¹⁵⁷

VII. CONCLUSION

Although the roots of the “Stand Your Ground” law can be traced back to the early twentieth century, as seen through *Brown*, Florida’s legal community has only recently begun to closely analyze the controversy surrounding the law.¹⁵⁸ With the 2005 enactment of the “Stand Your Ground” statute, courts have begun to

149. *Sims*, 140 So. 3d at 1003.

150. *Id.* at 1006.

151. *Id.* at 1005.

152. *Id.* at 1002–03.

153. *Id.*

154. *Id.* at 1003.

155. *Sims*, 140 So. 3d. at 1003.

156. *Id.*

157. *Id.* at 1007.

158. Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 831 (“On . . . April 26, 2005, Florida Governor Jeb Bush signed into law SB 436, known then as the ‘Castle Doctrine’ or ‘Stand Your Ground.’”).

examine how the law should be properly applied in the judicial system.¹⁵⁹ Through the strict review of the statutes and case law, the courts can attempt to diminish the controversial stigma that has attached itself to the “Stand Your Ground” law.¹⁶⁰

Although the media may have sparked a biased view towards the “Stand Your Ground” law by incorrectly grasping the term and how it is applied in the courts,¹⁶¹ they cannot be solely to blame for the controversy that has surrounded the law. In fact, the Florida legal system has also debated over how the recent statute should be properly applied in the court of law.¹⁶² By closely examining the statute and properly interpreting the legislature’s intent, the “Stand Your Ground” law can be accurately and appropriately applied throughout the legal system.

The perception of the “Stand Your Ground” law may immensely vary throughout Florida.¹⁶³ However, whether the term is flashing throughout the screens of media outlets, sparking deep conversations and debates among the public, or being argued by fervent defense attorneys and zealous prosecutors, section 776.013 will continue to be analyzed, interpreted, and discussed. Therefore, by better understanding how this statute works in the legal system, the “Stand Your Ground” law can remain a viable law that can be used by defendants, properly argued against by prosecutors, and handled fairly by judges and jury members across the nation.

159. See *Sims*, 140 So. 3d. at 1005; see also *Little v. State*, 111 So. 3d. 214, 222 (Fla. Dist. Ct. App. 2013).

160. Kris Hundley et al., *supra* note 114.

161. Aya Gruber, *Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground*, 68 U. MIAMI L. REV. 961, 978 (2014) (“Consequently, there is some irony in the fact that the sensational arguments intended to convince the public to condemn stand your ground may have constructed a cultural meaning of stand your ground that makes the law more likely to produce the very dystopia its opponents hope to prevent.”).

162. See News Service of Florida, *State High Court to Rule: Does “Stand Your Ground” Protect Felons Who Shoot?*, TAMPA BAY TIMES (July 4, 2014), <http://www.tampabay.com/news/courts/state-high-court-to-rule-does-stand-your-ground-protect-felons-who-shoot/2187242>.

163. Marc Caputo, *Gov. Scott on Safe Ground with Stand Your Ground, Polls Show*, MIAMI HERALD (July 28, 2013), <http://www.miamiherald.com/news/local/community/miami-dade/article1953631.html> (“[T]he exact role of Stand Your Ground in the verdict is unclear, and a new poll released last week showed 50 percent of Floridians support keeping the law intact, 31 percent want it changed and only 13 percent want a full repeal.”).