

**FLIP A COIN: HEADS, STAND YOUR GROUND IS GOOD LAW
...TAILS, STAND YOUR GROUND IS BAD LAW**

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I. INTRODUCTION

Batman¹ and Spiderman² are fictional characters that have been idolized by many people in this country for decades. We dress ourselves and our children as these characters for Halloween. Millions of dollars are made in movies that document and celebrate the “heroic actions” of these characters as vigilantes “fighting crime” with street justice. It is only fitting that state legislatures adopt a law that advocates this type of “heroic action” that is coveted by many, right?

The “Stand Your Ground” law was first adopted in the state of Florida in 2005.³ This law did not gain national attention until the shooting death of unarmed teenager, Trayvon Martin, in Sanford, Florida,⁴ where the shooter, George Zimmerman⁵ used the Stand Your Ground law as his basis for defending himself against Trayvon Martin to the Sanford Police Department.⁶ Although George Zimmerman’s legal defense team did not utilize the law to argue his innocence during his trial, the damage had been done because soon after, other cases in Florida began to sprout up with Stand Your Ground as the driving force.

For example, in Jacksonville, Florida, Jordan Davis, another unarmed teenager was killed by Michael Dunn.⁷ Davis and other teenagers were riding in a SUV with music blasting from the

¹ WIKIPEDIA, <http://en.wikipedia.org/wiki/Batman> (last visited Dec. 25, 2013). Batman is a fictional character, a comic book superhero, appearing in comic books published by DC Comics.

² WIKIPEDIA, <http://en.wikipedia.org/wiki/Spider-Man> (last visited Dec. 25, 2013). Spiderman is a fictional character, a comic book superhero, appearing in comic books published by Marvel Comics.

³ Ed Finkel, *Shifting Ground*, A.B.A.J. 1, 64 (2013).

⁴ *Id.*

⁵ George Zimmerman was charged with second-degree murder. A jury filled with Caucasian women found George Zimmerman not guilty of murder.

⁶ Neal Conan, *Op-Ed: Why I Wrote ‘Stand Your Ground’ Law*, NPR (Mar. 6 2012), <http://www.npr.org/2012/03/26/149404276/op-ed-why-i-wrote-stand-your-ground-law>.

⁷ Leigh Owens, *Michael Dunn, Florida Man, Invokes ‘Stand Your Ground’ Law After Shooting Black Teen*, THE HUFFINGTON POST (last updated Nov. 28, 2012, 1:03 PM), http://www.huffingtonpost.com/2012/11/27/loud-music-leads-to-murder_n_2200708.html.

vehicle, when Dunn pulled up alongside of them and asked them to turn the music down⁸. Words were exchanged between the two parties, and Dunn fired 8 to 9 shots into the SUV where he fatally shot Davis.⁹ Dunn was arrested and charged with first-degree murder.¹⁰ Dunn claimed he fired in self-defense¹¹ and invoked the Stand Your Ground law as his defense.¹²

Then, in St. Petersburg, Florida, Randall White was ordering pizza in Little Caesar's and was complaining about the insufficient service, when another customer, Michael Jock intervened and requested that Randall White "pipe down".¹³ The two men began to fight.¹⁴ Jock, armed with a legally concealed gun, shot White in the stomach.¹⁵ Jock told police "the shooting was justified under Florida's Stand Your Ground law."¹⁶ He was later arrested for aggravated battery.¹⁷

Is the Stand Your Ground law meant to shield these men from criminal convictions? Proponents would say yes. Proponents of Stand Your Ground believe that this law will "curb violent crime and make citizens feel safer."¹⁸ It will "deter would-be criminals because, if a person knows that he may be shot and killed if he attempts to commit a forcible felony, he will

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Greg Botelho, Steve Almasy, & Sunny Hostin, *Dunn convicted of attempted murder; hung jury on murder in 'loud music' trial*, CNN (last updated Feb. 17, 2014, 2:03AM), <http://www.cnn.com/2014/02/16/justice/florida-loud-music-trial/>. Michael Dunn was later convicted of three charges of 2nd degree attempted murder and one count of shooting into the vehicle. Due to Florida's mandatory minimum laws, each conviction carries a minimum sentence of twenty years and a possible fifteen years for shooting into the vehicle. Michael Dunn was not convicted of murdering Jordan Davis, due to a hung jury.

¹³ Ron Dicker, *Randall White Shot After Complaining About Little Ceasers Pizza Service*, THE HUFFINGTON POST (Dec. 18, 2012, 11:46 AM), http://www.huffingtonpost.com/2012/12/18/randall-white-shot-little-caesars_n_2322256.html.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV 827, 855 (2013).

decide that it is not worth the risk.”¹⁹ Opponents would say no. Opponents of the law believe that “Stand Your Ground allows individuals to circumvent those laws.”²⁰ “It allows individual citizens to become judge, jury, and executioner, thereby sanctioning extrajudicial killings.”²¹ Which stance is correct? I believe both are correct. Stand Your Ground is often described as the “Make my Day”²² statute that gives citizens permission to “shoot first, ask questions later”²³ without any consequences. I agree, however, there are instances where the Stand Your Ground law is necessary.

This article will provide an in-depth look into the views of proponents and opponents of the Stand Your Ground law first adopted in Florida.²⁴ First, the article will discuss the birth of the Stand Your Ground law, and how derivatives of this law found homes in the legislature of other states. Then, the article, through the views of the proponents, will demonstrate how this law is beneficial in order for law-abiding citizens to have the permission to protect themselves in life and death situations. Following that, the views of the opposition will dispute the benefits of the Stand Your Ground law.

II. BACKGROUND

A. *The Genesis of Stand Your Ground*

In Florida and other states, in order for self-defense to be a complete defense to homicide, the defendant must ordinarily make all efforts to retreat before resorting to the use of deadly

¹⁹ *Id.*

²⁰ *Id.* at 854.

²¹ *Id.* at 855.

²² Jay M. Zitter, Annotation, *Construction and Application of “Make My Day” and “Stand Your Ground” Statutes*, 76 A.L.R. 6th 1, 1 (2012).

²³ Victor Rios, *Gunfire as Conflict Resolution*, N.Y. TIMES (Mar. 21, 2012),

www.nytimes.com/roomfordebate/2012/03/21/do-stand-your-ground-laws-encourage-vigilantes/the-need-to-repeal-stand-your-ground-laws .

²⁴ Finkel, *supra* note 3, at 64.

force.²⁵ However, a person that is not the aggressor and is violently assaulted in his or her home has no obligation to retreat, and such person may use such force as reasonably appears necessary to protect himself or herself.²⁶ When former Governor Jeb Bush signed into law SB 436 on April 26, 2005,²⁷ this monumentally changed the common-law doctrine of self-defense.

This law would be coined Stand Your Ground.²⁸ Under Stand Your Ground, 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 (1) imminent death or great bodily harm to himself or herself or another or (2) the imminent commission of a forcible felony.²⁹ A person using force as permitted is immune from criminal prosecution and civil action for the use of such force.³⁰

The difference between the previous law and the current law is that a defendant does not have to be inside their dwelling or vehicle to not have the duty to retreat.³¹ They can be anywhere they are legally permitted to be.³² Additionally, self-defense is an affirmative defense where once invoked during criminal proceedings, the defense must prove the elements of self-defense where a jury decides,³³ but now there is no trial and no jury. Evidence is presented before a judge at a pretrial hearing, and he or she determines by a preponderance of evidence if the elements of the Stand Your Ground law has been met³⁴. If the elements have been met, then the defendant does not have to go through a criminal trial nor can the defendant be sued.³⁵

²⁵ Judy E. Zelin, *Duty to Retreat; "castle" doctrine*, 12 M.L.E. Homicide §38 (2013).

²⁶ 16 FLA. JUR. 2D *Criminal Law* § 393 (2013).

²⁷ Andy Kroll, *The Money Trail Behind Florida's Notorious Gun Law*, MOTHER JONES (Mar. 29, 2012, 2:00 AM), <http://www.motherjones.com/politics/2012/03/NRA-stand-your-ground-trayvon-martin>.

²⁸ *Id.*

²⁹ *Mederos v. State*, 102 So. 3d 7, 10 (Fla. Dist. Ct. App. 2012); FLA. STAT. § 776.012(1) (2005).

³⁰ *Mederos*, 102 So. 3d at 10; FLA. STAT. § 776.032 (2005).

³¹ *See* FLA. STAT. § 776.012 (2005).

³² *See* FLA. STAT. § 776.031 (2005).

³³ *See Mosansky v. State*, 33 So. 3d 756, 758 (Fla. Dist. Ct. App. 2010).

³⁴ *Peterson v. State*, 983 So. 2d 27, 29 (Fla. Dist. Ct. App. 2008).

³⁵ *See* FLA. STAT. § 776.032 (2005).

The push behind the passage of this bill has been attributed to the political power of the National Rifle Association (“NRA”).³⁶ It has been reported that the NRA contributed thousands to political campaigns of Republican lawmakers in Florida, to encourage them to back the passage of the bill.³⁷ Senator Durell Peaden, sponsor of the bill,³⁸ was one of the senators who benefited from NRA contributions. Rudy Garcia, Ken Pruitt, Bill Posey, and other Florida lawmakers received contributions from the NRA, resulting in more than one third of the 114 Florida lawmakers, who co-sponsored the passage of the Stand Your Ground law, recipients of NRA money.³⁹ But, monetary contributions to campaigns were not the NRA’s only vehicle for the passage of the bill.⁴⁰ The NRA put out news blasts about the Stand Your Ground law.⁴¹ The messages urged its members “to contact their state legislators and pressure them to support the bill.”⁴² The alert said “the citizens of Florida have a right to expect absolute safety within their own homes or vehicles and to be able to use all manner of force against an unlawful intruder/attacker.”⁴³ Caving to the power of the NRA,⁴⁴ the Florida legislature passed the bill in the state Senate 39-0, and in the state House 94-20.⁴⁵

³⁶ Kroll, *supra* note 27.

³⁷ *Id.*

³⁸ Conan, *supra* note 6.

³⁹ Kroll, *supra* note 27.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

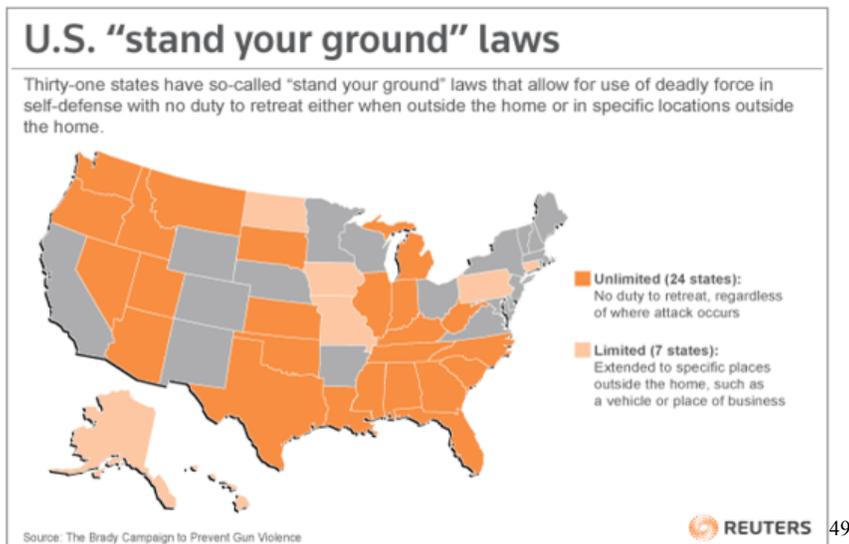
⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Sean Sullivan, *Everything you need to know about ‘stand your ground’ laws*, WASH. POST (July 15, 2013, 9:30 AM), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/15/everything-you-need-to-know-about-stand-your-ground-laws/>.

B. The Ripple Effect

After the passage of the law in Florida, with the endless effort of the NRA,⁴⁶ and a group called the American Legislative Exchange Council (ALEC),⁴⁷ 31 states⁴⁸ have passed some version of the law.



In Texas, Senator Jeff Wentworth⁵⁰ authored Senate Bill 378, which became effective on September 1, 2007.⁵¹ The bill provides that an actor who has a right to be present at the location where the force or deadly force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at that time, is not required to retreat before using force or deadly force.⁵² The bill also provides immunity from civil liability for a personal

⁴⁶ Lave, *supra* note 18, at 839.

⁴⁷ Sullivan, *supra* note 45.

⁴⁸ Meteor Blades, *Civil Rights Commission will probe 'stand your ground' laws for racial bias*, DAILY KOS (Jun. 04, 2013, 8:30 AM), www.dailykos.com/story/2013/06/04/1213626/-Civil-Rights-Commission-will-probe-stand-your-ground-laws-for-racial-bias.

⁴⁹ *Id.*

⁵⁰ Denise M. Drake, *The Castle Doctrine: An Expanding Right to Stand Your Ground*, 39 ST. MARY'S L.J. 573, 585 (2008).

⁵¹ S. 378, 2005 Leg., 80(R) Sess. (Tex. 2005).

⁵² *Id.*

injury or death resulting from the use of force or deadly force to a defendant who was justified under the law using such force or deadly force.⁵³

The effect of Texas passing Senate Bill 378 led to a Harris County grand jury declining to indict Mr. Joe Horn of any criminal charges.⁵⁴ In November 2007, Joe Horn, a 61-year-old retiree in the Houston-area, invoked the claim of self-defense under the Legislature's reformation of the "castle doctrine"⁵⁵ when he shot and killed two men with his shotgun because he suspected they were burglarizing his neighbor's home.⁵⁶ Before shooting the two men, Mr. Horn called 911.⁵⁷ Similar to the Trayvon Martin case, Mr. Horn was advised by the operator to stay in his home and not to go out with his shotgun because the police were on their way.⁵⁸ After the operator advised Mr. Horn to stay put, Mr. Horn responded, "But I have the right to protect myself too, sir...the laws have been changed in this country since September first . . ." Again, the operator warns Mr. Horn to stay put.⁵⁹ Mr. Horn responds, ". . . I'm going to kill them . . . well here goes buddy. You hear the shotgun clicking and I'm going."⁶⁰ The operator heard two rapid explosions and the 911 call ended.⁶¹ Mr. Horn calls 911 again where he states, "I had no choice. They came in the front yard with me, man."⁶² A police report suggests that the two alleged burglars had been shot in the back.⁶³

One year after Florida passed its Stand Your Ground law, former Senator Eric LaFleur authored Louisiana's version of the Stand Your Ground law, which was signed by Governor

⁵³ *Id.*

⁵⁴ Suevon Lee, "Stand Your Ground" Cases You Should Know About, MOTHER JONES (Jun. 11, 2012, 2:00 AM), www.motherjones.com/politics/2012/06/top-five-stand-your-ground-cases-zimmerman.

⁵⁵ Ralph Blumenthal, *Shootings Test Limits of Self-Defense Law*, N.Y. TIMES (Dec. 13, 2007), http://www.nytimes.com/2007/12/13/us/13texas.html?_r=0.

⁵⁶ Lee, *supra* note 54.

⁵⁷ Blumenthal, *supra* note 55.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Blumenthal, *supra* note 55.

Kathleen Blanco.⁶⁴ The new provisions state: “any person ‘who is in a place where he or she has a right,’ including a public space, does not have an obligation ‘to retreat’ if faced with a real or perceived threat and ‘may stand his or her ground and meet force with force.’” “During criminal court proceedings, a judge or jury can’t consider the ‘possibility of retreat’ as a factor in determining whether someone lawfully used force in self-defense.”⁶⁵

Again, because of the passage of “Stand Your Ground” in February 2013, Byron Thomas, a 21 year-old resident of Louisiana will not stand trial in the shooting death of Jamonta Miles, a 15 year-old resident of Louisiana. The “Stand Your Ground” law insulated Thomas from any criminal charges.⁶⁶ Thomas fired shots into a SUV filled with teenagers, one of them being Miles, due to an altercation that ensued when the teens were attempting to purchase marijuana from Thomas.⁶⁷ Sheriff Craig Webre stated, “Thomas’s fear was likely heightened because of the number of people who approached him, the late hour, and the fact that he did not know them . . . As far as Mr. Thomas knows, they’re going to stop in 5 feet and jump out with a gun.”⁶⁸

III. ANALYSIS

A. Heads

Proponents of Stand Your Ground believe that people do not want to be victims, but want to be proactive in defending themselves without having to undergo the pressures of criminal proceedings to prove that they reasonably feared another person was attempting to cause them

⁶⁴ Lauren McGaughy, *Understanding Louisiana’s Stand-Your-Ground and Castle Laws*, The TIMES PICAYUNE (updated July 19, 2013, 12:11 PM),

http://www.nola.com/politics/index.ssf/2013/07/louisiana_stand_your_ground_zi.html.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Lee, *supra* note 54.

⁶⁸ Katie Urbaszewski, *Case closed on teen’s shooting death*, HOUMA TODAY (last modified Feb. 24, 2012, 9:12 AM), <http://www.houmatoday.com/article/20120223/HURBLOG/120229817?p=all&tc=pgall&tc=ar#gsc.tab=0>.

great bodily harm or death.⁶⁹ If you are forced into a situation where you have to defend your life, why should you be treated like a criminal? Why should you have to hire an attorney and rack up legal fees? Why should you and your family go through the stresses and pressures of not knowing whether you will be tried for murder? The Stand Your Ground law protects law-abiding citizens from this type of scrutiny and punishment. It is this belief of unjust treatment⁷⁰ that catapulted the law into fruition in Florida in the first place. When the law was presented on the senate floor, the name James Workman was introduced.⁷¹

Because their home was damaged by Hurricane Ivan, James Workman, a 77 year-old man and his wife, Kathryn Workman, slept in their RV that was parked in their driveway.⁷² On November 2, Kathryn woke up to open a window in the RV, when she spotted a man approaching the front door of her home.⁷³ The man was later identified as Rodney Cox.⁷⁴ She told her husband, he grabbed his gun, and he went outside.⁷⁵ Believing that this man was an intruder, Mr. Workman shot and killed him.⁷⁶ Mr. Workman had to wait long agonizing months until he would find out if the prosecutors would rule the shooting justified.⁷⁷ The “waiting and wondering took a toll” on the Workmans because Mr. Workman’s liberty hung in the balance.⁷⁸ The state attorney did not press charges and ruled, “Mr. Workman was confronted with

⁶⁹ Drake, *supra* note 50, at 587-88.

⁷⁰ Ben Montgomery, *Florida’s ‘stand your ground’ law was born of 2004 case, but story has been distorted*, TAMPA BAY TIMES (Apr. 14, 2012, 10:22 PM), www.tampabay.com/news/publicsafety/floridas-stand-your-ground-law-was-born-of-2004-case-but-story-has-been/1225164.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Montgomery, *supra* note 70.

⁷⁷ *Id.*

⁷⁸ *Id.*

circumstances and conditions beyond his control that resulted in the unfortunate death of Mr. Cox.”⁷⁹

Mr. Workman’s decision cost a man his life but his split second decision may have saved his life and his wife’s life. A State Representative of Florida, Dennis Baxley, gave an interview on NPR where he stated, “The duty to retreat puts the person at great risk, and it’s a Monday morning quarterback situation.”⁸⁰ But in fact, a victim of a violent attack has seconds to decide if they want to live or they want to die or they want to be a victim of violence, such as a rape or beating.”⁸¹

Proponents of the law contend that Stand Your Ground is the best option because the “police cannot be everywhere to defend the populace⁸² . . .” The criminal justice system has cultivated an atmosphere where people have a lack of assurance in depending on law enforcement, thus relying on their own resources.⁸³ One reason is that the courts have become too lenient with criminals.⁸⁴ People are committing crimes and within a few years or perhaps months, these same people are committing the same crimes, again terrorizing law-abiding citizens.⁸⁵ The lack of confidence comes from the police as well.⁸⁶ The police have been known for failing to respond in a timely fashion.⁸⁷ The police have countless proven in the past of their inability to protect its citizens from violent crimes.⁸⁸ Citizens feel that their state law enforcement agencies are failing them, therefore, to pick where they are lacking, citizens have

⁷⁹ *Id.*

⁸⁰ Conan, *supra* note 6.

⁸¹ *Id.*

⁸² William G. Merkel, *Uncoupling the Constitutional Right to Self Defense from the Second Amendment: Insights from the law of war*, 45 CONN. L. REV. 1809, 1836 (2013).

⁸³ Drake, *supra* note 50, at 596.

⁸⁴ LAWRENCE W. SHERMAN, TRUST AND CONFIDENCE IN THE CRIMINAL JUSTICE, 7 (2001).

⁸⁵ Drake, *supra* note 50, at 596.

⁸⁶ SHERMAN, *supra* note 84, at 7.

⁸⁷ Drake, *supra* note 50, at 596.

⁸⁸ SHERMAN, *supra* note 84, at 7.

become more favorable in taking deterrence and retribution in their own hands.⁸⁹ “Stand Your Ground” permits a person to use “preemptive deadly force” to assure them they will survive an unlawful attack⁹⁰ instead of waiting for police to show up too late.

Additionally, proponents view Stand Your Ground as a law for prevention, much like what the D.A.R.E. program⁹¹ is to school-age children. For instance, think of a child who goes into his family kitchen. The child’s mother is cooking a meal for the family. The mother tells the child stay back, the stove is hot. The child nods. The mother leaves the kitchen for a brief moment. The child reaches up to touch the stove even though the mother warned the child of its danger. The child touches the stove and quickly discovers what “hot” really means. The child never touches the stove again. Knowing that law-abiding citizens have the permission to protect themselves, gives criminals notice that they could be killed, which would prevent these criminals from committing crimes in the future.

1. Domestic Violence and Stand Your Ground

As noted above, eliminating the common law requirement of retreating before lethal force may be applied allows a person, who is not engaged in criminal activity and who is attacked in any place where the person has the right to be, to Stand Your Ground and meet force with force, even if such force is deadly, as long as there is reasonable belief that by not doing so great bodily harm or death will occur.⁹² Stand Your Ground provides a relief for those entangled in domestic violence.

⁸⁹ Drake, *supra* note 50, at 596.

⁹⁰ *Id.* at 598.

⁹¹ D.A.R.E., <http://www.dare.org/> (last visited Jan. 12, 2014).

⁹² Zitter, *supra* note 22, at 2.

In *State v. Harden*, Tanya Harden shot and killed her husband after enduring a “night of domestic terror.”⁹³ Danuel Harden, in a drunken state, brutally beat Tanya Harden. When Tanya Harden was examined by an emergency room physician, he testified that the defendant “had contusions of both orbital areas, the right upper arm, a puncture wound with a foreign body of the right forearm, contusions of her chest, left facial cheek, the upper lip, and a nasal fracture.”⁹⁴ There was testimony that Danuel Harden said to Tanya, “I am going to go get the gun and shoot you.”⁹⁵ The State conceded that Tanya Harden had in fact suffered a “night of domestic terror.”⁹⁶ However, the State claimed that the defendant’s claim of self-defense was “untenable” because the “defendant’s use of deadly force was not reasonable because the defendant could have retreated from any danger posed by the decedent.”⁹⁷ At the time of this case, West Virginia allowed for self-defense without retreating only when a man is attacked in his own home by an intruder.⁹⁸ Harden was convicted of first-degree murder and sentenced to life imprisonment.⁹⁹

A woman that has been battered by her husband retaliated in self-defense is often asked the question, “Why didn’t she just leave?”¹⁰⁰ Prior to the passage of Stand Your Ground laws, the laws in many states, just like the *Harden* case in West Virginia, only relinquished the duty to retreat when an intruder entered your home.¹⁰¹ The problem with this is, it unjustly leaves out many, like battered woman, whom are being domestically abused in their homes without any options to defend themselves, because as long as “the attacker has the right to be in the home

⁹³ *State v. Harden*, 679 S.E.2d 628, 631 (W. Va. 2009).

⁹⁴ *Id.* at 632.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 637.

⁹⁹ *Harden*, 679 S.E.2d at 631.

¹⁰⁰ Maryanne E. Kampmann, *The Legal Victimization of Battered Women*, 15 WOMEN’S RTS. L. REP., 101, 102 (1993).

¹⁰¹ *Id.* at 112.

where the attack occurs,” the abused person must still retreat.¹⁰² Many times if the woman has retreated she is “caught, dragged back inside, and severely beaten again.”¹⁰³ It is almost “absurd” to expect a victim of domestic abuse to “just walk away.”¹⁰⁴ Therefore, the Stand Your Ground law’s abolishment of a duty to retreat is especially important and is vital to battered woman. This law protects the battered woman from the “threat of death” or “serious bodily injury” by the “enemy” that she shares her castle with.¹⁰⁵ Now a woman who has been battered will not have to answer the question, “why didn’t she just leave” because now she has the right to “stand her ground.”

B. Tails

Opponents of Stand Your Ground view this law in a completely different light. Opponents contend that Stand Your Ground “emboldens individuals to escalate confrontation, even deadly confrontation.”¹⁰⁶ They contend that it “breeds and fuels a culture of vigilantism.”¹⁰⁷ This law removes the responsibility of the defender to act reasonably.¹⁰⁸ For example, in Florida, Greyston Garcia¹⁰⁹ was charged with second-degree murder when he chased down, Pedro Roteta and stabbed him 75 times for stealing his radio out of his car.¹¹⁰ Garcia told the police that although he did not see Roteta brandish a weapon, Roteta made a move that

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 113.

¹⁰⁶ Nicole Flatow, *Four Ways Stand Your Ground is Promoting Vigilantism*, THINK PROGRESS (Oct. 29, 2013, 4:06 PM), <http://thinkprogress.org/justice/2013/10/29/2851351/ways-stand-ground-promoting-vigilantism/>.

¹⁰⁷ Rios, *supra* note 23.

¹⁰⁸ Gregory O’Meara, *An Unnecessary Law*, N.Y. TIMES (update Mar. 21, 2012, 9:56 PM), www.nytimes.com/roomfordebate/2012/03/21/do-stand-your-ground-laws-encourage-vigilantes/stand-your-ground-laws-are-unnecessary.

¹⁰⁹ Ta-Nehisi Coates, *Stand Your Ground and Vigilante Justice*, THE ATLANTIC (Mar. 22, 2012, 8:38 AM), <http://www.theatlantic.com/national/archive/2012/03/stand-your-ground-and-vigilante-justice/254900/>.

¹¹⁰ *Id.*

Garcia conceived to be a motion to stab him, so Garcia stabbed him first.¹¹¹ The case was tossed out by a Miami-Dade circuit judge, Judge Beth Bloom.¹¹² Did Garcia act reasonably? Did Garcia have to the right to stab Roteta 75 times? What happened to the rule that you cannot use deadly force to defend your property? Because of Stand Your Ground laws, these questions do not have to be answered because as long as Garcia “reasonably feared bodily harm,”¹¹³ he had a right to stab Roteta however many times he chose, and in this case 75 was the lucky number.

In 2007, Jose Luis Gonzalez was acquitted of murdering 13 year-old Francisco Anguiano.¹¹⁴ Gonzalez caught Anguiano and three of his friends breaking into his trailer looking for snacks.¹¹⁵ The survivors claim that Gonzalez “ordered all of them to their knees” and “hit them with the butt of the gun.”¹¹⁶ Gonzalez claimed he shot and killed Anguiano because he “lunged at him.”¹¹⁷ Did Gonzalez act reasonably? Why didn’t Gonzalez call the cops to apprehend the boys once he caught them stealing from him? This law gave Gonzalez and Garcia permission to be judge, jury, and executioner, and neither one of these men had to answer for their actions.

In addition, opponents contend that this law gives “individuals and groups with the proclivity to engage in violent behavior” will have “legal permission to kill” in the “name of self-defense”.¹¹⁸ The types of individuals or groups referred to are drug dealers and gang members. The law “facilitates gang violence” because gang members are usually at great risk of great

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Flatow, *supra* note 106.

¹¹⁴ Grayson Thagard, *6 Men Stood Their Ground Before Zimmerman*, HLN (updated Jun. 23, 2013, 10:46 PM), <http://www.hlntv.com/article/2013/06/03/similar-trayvon-martin-zimmerman-cases-stand-your-ground>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Rios, *supra* note 23.

bodily harm or death from each other or rival gangs.¹¹⁹ The passage of Stand Your Ground, once again, afforded two gang members in Florida, Jeffery Brown and Andrea Tyler, immunity from prosecution after they shot and killed rival gang member, 15-year-old Michael Jackson.¹²⁰ A representative from the District Attorney's Office said, "the court made a decision about whether the defendants had a right to defend themselves regardless of whether they were gang members."¹²¹ The judge that decided the fate of these two gang members said in his order, "The law would appear to allow a person to seek out an individual, provoke him into a confrontation, then shoot and kill him if he goes for his gun. It is very much like the Wild West."¹²²

1. Racial Discrimination and Stand Your Ground

This country has had a long history of the killings of blacks; especially black men.¹²³ Whether it has been black-on-black crime or white-on-black crime, the numbers are astronomical.¹²⁴ This country has acquiesced to the killing of black men in the past for "being uppity" or "whistling at a white woman" or "trying to vote" or "requesting fair wages."¹²⁵ Now there's a new one to be added to the list: "walking from the store wearing a hooded sweatshirt in the wrong neighborhood."¹²⁶ Stand Your Ground justifies the actions of those who continue to racially profile black men as "the stereotypical 'Black-as-criminal' persona."¹²⁷

As previously mentioned, under Florida's Stand Your Ground law, when defendants claim self-defense under this law, they are given a pre-trial hearing where evidence is presented

¹¹⁹ Jelani Cobb, *Perceived Threats*, THE NEW YORKER (July 29, 2013), http://www.newyorker.com/talk/comment/2013/07/29/130729taco_talk_cobb.

¹²⁰ Julie Montanaro & Heather Bianca, *Suspects Claim Self Defense in Deadly Shootout*, WCTV (updated May 24, 2010, 8:58 PM), <http://www.wctv.tv/home/headlines/92183289.html>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Tamara F. Lawson, *A Fresh Cut in an Old Wound-A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutors, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL'Y 271, 274 (2012).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 279.

to a judge, and the judge determines by a preponderance of evidence if the law applies.¹²⁸ If the judge rules that the law applies, the defendant is immune from criminal prosecution.¹²⁹ If the judge rules that the law does not apply, the power shifts into the hands of the prosecutor to decide whether to bring charges or not.¹³⁰

A prosecutor's authority to charge a defendant or not could raise "racial eyebrows" depending on the motives of the prosecutor. Race plays into the perceptions that a "victim, who is legally innocent can be viewed as bad or unworthy, or that he deserved it, or in some way contributed to his own harm."¹³¹ These perceptions could sway a prosecutor's decision to prosecute because of a belief that a conviction will cease to happen if a jury, based on the color of the victim's skin, will "identify more with the defendant's actions" and direct fault to the victim for his own death.¹³² Thus, further perpetuating the notion that a jury will find it hard to convict a white man for killing a black man.

A study conducted by John Roman, a senior fellow for the Urban Institute's Justice Policy Center, used FBI data to analyze a pool of 43,500 homicides by race in states with Stand Your Ground laws.¹³³ He found that whites that killed blacks are far more likely to be found justified in their killings.¹³⁴ In states without Stand Your Ground laws, the percentage of whites found to be justified in their killing of blacks was 250%.¹³⁵ However, in states with Stand Your

¹²⁸ *Id.* at 288.

¹²⁹ *Id.*

¹³⁰ Sarah Childress, *Is There Racial Bias in "Stand Your Ground" Laws*, FRONTLINE (July 31, 2012, 12:40 PM), <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/is-there-racial-bias-in-stand-your-ground-laws/>.

¹³¹ Lawson, *supra* note 123, at 292.

¹³² *Id.*

¹³³ Childress, *supra* note 130.

¹³⁴ *Id.*

¹³⁵ *Id.*

Ground laws, the percentage of White-justified-homicides of Blacks jumped to a staggering 354%.¹³⁶

There are those that assert that Stand Your Ground laws do not discriminate against blacks, and that the passage of these laws has reduced crime exponentially. In 2012, on Capitol Hill, Sybrina Fulton, the mother of Trayvon Martin, attended a hearing regarding Stand Your Ground.¹³⁷ There, Senator Ted Cruz spoke to apprise Fulton of the fact that Stand Your Ground benefits people of color as much as whites, if not more.¹³⁸ He rejected the notion “that no one could reasonably believe that Stand Your Ground laws protect those in African-American communities who are victims of violent crimes.”¹³⁹ Senator Cruz found the notion hard to conceive because “a great many African-Americans find themselves victims of violent crimes and have asserted this defense to defend themselves, defend their families, defend their children.”¹⁴⁰ He went on to cite that “in 2004 a state senator in Illinois by the name Barack Obama co-sponsored an expansion of Illinois’ law providing civil immunity for those who use justifiable force to defend themselves as evidence that similar laws could not be racially biased.”¹⁴¹

Despite the statements of Senator Cruz asserting the protection of people of color, particularly blacks, by Stand Your Ground laws, it seems that, to opponents of the law, those statements are far from accurate when considering cases such as *Alexander v. State*.¹⁴² In *Alexander*, Marissa Alexander, an African-American woman, was convicted for aggravated

¹³⁶ *Id.*

¹³⁷ Matt Wilstein, *Ted Cruz tells Trayvon Martin’s Mother Why Stand Your Ground Laws Can’t Possibly Be Racist*, MEDIAITE, (Oct. 29, 2013, 4:19 PM), <http://www.mediaite.com/tv/ted-cruz-tells-trayvons-mother-why-stand-your-ground-laws-cant-possibly-be-racist/>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Cobb, *supra* note 119.

assault with a deadly weapon and sentenced to twenty years¹⁴³ for firing a warning shot intended to deter her husband from physically abusing her.¹⁴⁴

Alexander testified that her husband accused her of infidelity and questioned the paternity of her one-week-old baby.¹⁴⁵ To avoid physical abuse, Alexander locked herself into the bathroom, but her husband knocked the door down, grabbed her neck, and demanded to know when was the last time she had sexual relations with Alexander's previous husband.¹⁴⁶ Somehow, Alexander got away from her husband and ran to the garage to escape, but the garage door would not open, so Alexander retrieved her licensed gun.¹⁴⁷ When returning inside the home, Alexander's husband saw her with the gun held by her side and charged at her saying, "Bitch, I'll kill you!"¹⁴⁸ Alexander fired her gun in the air as a warning because she did not want to kill her husband, but just stop him.¹⁴⁹ Alexander attempted to raise the self-defense doctrine of Stand Your Ground, but the trial court denied her pre-trial motion seeking immunity from prosecution.¹⁵⁰

This case raises serious questions. Why was Marissa Alexander not permitted to obtain immunity from criminal prosecution? According to the law, "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 or another or to

¹⁴³ Amanda Marcotte, *Prosecutor Now Seeking a 60-Year Sentence for Marissa Alexander's Alleged Warning Shot*, SLATE (Mar. 4, 2014, 12:37 PM), http://www.slate.com/blogs/xx_factor/2014/03/04/marissa_alexander_now_faces_up_to_60_years_in_prison_for_her_alleged_warning.html (Judge James H. Daniel overturned the conviction ordering a retrial because Alexander had been held to too high a standard to prove self-defense. Prosecutor Angela Corey will seek the maximum sentence of twenty years for three counts of aggravated assault with a deadly weapon to be served consecutively. Alexander could face sixty years in prison, if convicted again).

¹⁴⁴ *Alexander v. State*, 121 So. 3d 1185, 1186 (Fla. Dist. Ct. App. 2013).

¹⁴⁵ *Id.* at 1187.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Alexander*, 121 So. 3d, at 1186.

prevent the imminent commission of a forcible felony.”¹⁵¹ Her husband physically abused her and had abused her in the past,¹⁵² thus, she had a reason to expect or “reasonably believe” bodily harm was imminent. From the facts of the case, her husband charged at her after she armed herself,¹⁵³ thus, she was not the aggressor. Stand Your Ground eliminated the duty to retreat, so even if she could have retreated, she was not required to retreat. Of the Florida Stand Your Ground cases that have been noted in this article, the only difference between the defendant in the *Alexander* case and the defendants in the other cases is that Marissa Alexander is African-American. So is Stand Your Ground laws racially biased or is the *Alexander* case an anomaly?

IV. CONCLUSION

So what is the verdict of the coin toss? For now, it appears the supporters of Stand Your Ground are winning. Since 31 states already passed the law,¹⁵⁴ it is only a matter of time before all 50 states have enacted some version of Stand Your Ground. The NRA’s Executive Vice President Wayne LaPierre once announced, “We will start with red states and move to blue states.”¹⁵⁵ But, organizations like the Brady Campaign to Prevent Gun Violence or the National District Attorney’s Association will continue the fight to repeal or eliminate Stand Your Ground laws.¹⁵⁶

Recently, the movie *Crash*¹⁵⁷ aired on television. A scene in the movie starts with the characters portrayed by Chris “Ludacris” Bridges and Lorenzo Tate, where the two are walking at night and they come across Sandra Bullock’s character walking on the same sidewalk with her

¹⁵¹ FLA. STAT. § 776.012(1) (2005) (amended 2014).

¹⁵² *Alexander*, 121 So. 3d at 1187.

¹⁵³ *Id.*

¹⁵⁴ Blades, *supra* note 48.

¹⁵⁵ Lave, *supra* note 18, at 839.

¹⁵⁶ Adam Cohen, *The Growing Movement to Repeal ‘Stand Your Ground’ Laws*, TIME (Apr. 16, 2012), <http://ideas.time.com/2012/04/16/the-growing-movement-to-repeal-stand-your-ground-laws/>.

¹⁵⁷ CRASH (Lionsgate 2004).

husband.¹⁵⁸ When she notices them looking at her, she clutches her purse tight and clings closer to her husband.¹⁵⁹ Bridges and Tate’s characters observe her actions and comment with each about her motives behind those actions.¹⁶⁰ But, then you see her suspicions were correct because the characters indeed robbed her and her husband at gunpoint.¹⁶¹

I could not help but to think, what if Sandra Bullock’s character had a gun during that scene of the movie? What if they did not garnish any weapons or say anything, but she pulls out her gun and fatally shoots them because of her suspicions? What if she claimed that they “lunged” at her in a threatening manner which made her “reasonably believe” that she would be harmed which provoked her to “stand her ground?” Would this grant her character immunity from prosecution? According to the cases and laws I have read, the answer is yes. But the real question is can you blame her? Recently, there was some backlash after Mark Cuban made some racially controversial statements that included him saying, “He would cross the street if he saw a black kid in a hoodie at night.”¹⁶² The truth is, I would be suspicious and believe I was going to be robbed if I saw a seedy looking character approaching me, whether they were white, black, yellow, or purple.

The movie showing Sandra Bullock’s character completely racially profiling the other two characters was meant to stimulate dialogue, but the sad truth is, she was not incorrect in her belief of their motives. I think that is what Stand Your Ground was meant to represent minus the racial profiling. It is a belief that if you are going to seriously harmed or killed, now you do not have to use those split seconds to figure out where to “retreat,” but rather know that you can

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Kellan Howell, *Steven A. Smith strikes back at ‘Uncle Tom’ charges after defending Mark Cuban*, THE WASHINGTON TIMES, (May 24, 2014), <http://www.washingtontimes.com/news/2014/may/24/espns-stephen-smith-strikes-back-uncle-tom-charges/?page=all>.

defend your life or another's life without the fear of prosecution. The problem with Stand Your Ground is that it "provides a rock-solid defense to paranoid trigger happy bigot cowboys armed with deadly force."¹⁶³ This results in cases such as the shooting death of Renisha McBride, who was shot in the head after seeking help in a white neighborhood by knocking on doors following a car crash she was involved in.¹⁶⁴ Without the passage of Stand Your Ground in that state, Theodore Wafer perhaps would not have thought he had the right to shoot Renisha, but instead refrain from answering his door or just call the police.¹⁶⁵

I am the mother of two African-American boys living in Miami, Florida, the birthplace of Stand Your Ground.¹⁶⁶ There is a part of me that is terrified that someone has the privilege of causing serious harm or even killing one of them because they believe them to be something they are not or because they are playing their music too loud at a traffic light.¹⁶⁷ This person could be granted immunity from criminal and civil proceedings, or face no charges, simply because a jury might identify with the defender instead of the victim.¹⁶⁸ But the alternative that somewhat eases my mind is that, if someone is attempting to cause serious harm to my sons, my sons may defend their lives without fear of prosecution, maybe.

¹⁶³ O'Meara, *supra* note 108.

¹⁶⁴ Natasha Lennard, *Standing your ground? Black women shot in head seeking help in white neighborhood*, SALON (Nov. 6, 2013, 3:53 PM), http://www.salon.com/2013/11/06/standing_your_ground_black_woman_shot_in_head_seeking_help_in_a_white_neighborhood/.

¹⁶⁵ Kate Abbey-Lambertz, *Theodore Wafer Will Stand Trial For Death of Renisha McBride*, THE HUFFINGTON POST (updated Dec. 19, 2013, 11:42 AM), http://www.huffingtonpost.com/2013/12/19/theodore-wafer-trial_n_4472885.html.

¹⁶⁶ Finkel, *supra* note 3, at 64.

¹⁶⁷ Owens, *supra* note 7.

¹⁶⁸ Lawson, *supra* note 123, at 288, 292.