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Trials&TRIBULATIONS

Stand-your-ground or license to kill?

In the aftermath of the Trayvon Martin case, involving the 17-year-old high school student who was shot and killed by George Zimmerman, a self-proclaimed Neighborhood Watch captain in Sanford, Fla., there have been numerous references to the Stand-Your-Ground statute in Florida.

Although cable news is committed to try this case before it ever reaches the courtroom, less attention has been given to analyzing the Florida statute and how it compares to the self-defense justification in New York and elsewhere. The purpose of this article is to address the Florida statute, the novel interpretation of it, and a brief examination of the history of the stand-your-ground defense in this country.

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The first case that gave federal judicial validity to the stand-your-ground defense occurred in 1895 when the U.S. Supreme Court decided the case of *Babe Beard v. United States*, 158 U.S. 550 (1895). In an unanimous opinion authored by Justice John Harlan, the court reversed the defendant's conviction of manslaughter and remanded the case back to the trial court for a new trial.

The defendant, Babe Beard, was confronted at his home by three brothers who had come to retake possession of a cow that had been left on the defendant's property by one of the brothers. The defendant refused to release the cow and as a result, one of the brothers began walking toward the defendant and threatened to kill him while keeping his left hand in his pocket. Although the defendant warned him to stop, he did not and, as a result, the defendant struck the victim over the head with his gun and the blow ultimately caused his death.

The defendant was charged with manslaughter and he was prosecuted in federal court since the incident occurred in Indian Territory, even though neither the defendant nor the victim were Indians. The lower court charged the jury that even though the defendant was on his premises and outside of his home, he was under a legal duty to get out of the way of his assailant who had threatened to kill him.

However, the Supreme Court held that defendant was not obligated to retreat but, rather, he may:

"… stand his ground, and meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury," *Id.* at 564.

Twenty-five years later, the Supreme Court in the case of *Brown v. United States*, 256 U.S. 335 (1921), again dealt with a stand-your-ground defense, and this time the defendant was not on his own property. The appeal arose out of a murder conviction in federal court in Texas, and the court reversed the conviction on the grounds that the charge to the jury suggested that the jury should determine whether retreat was available to defendant.

Justice Holmes, in his opinion, stated that "[d]etached reflection cannot be demanded in the presence of an uplifted knife," *Id.* at 343. The court concluded that "… if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground and [ ] if he kills him he has not succeeded the violence of lawful self-defense," *Id.*

Self-Defense in New York

In 1940, the New York Court of Appeals decided the case of *People v. Ligouri and Panaro*, 284 N.Y. 309 (1940), and the court reversed the murder convictions of both defendants on the grounds that the trial court improperly refused to charge the jury that the defendants, who were under assault, were not under an obligation to retreat but may stand their ground if necessary.

In essence, the court of Appeals concluded that if a person is under attack, he is not required to retreat but rather, he may stand his ground and defend himself.

Thereafter, numerous states, including New York, added to their Penal Law the defense of justification. At present, New York's self defense provisions are contained in Article 35 of the Penal Law. This article has numerous subsections but, in essence, provides that a person may use deadly physical force if he believes an assailant is using or is about to use deadly physical force against him or another.

At a trial involving a defendant who asserts a self defense justification, a jury is charged with a two part test. That test applies

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as follows:

1. The defendant must have actually believed that the victim was using or was about to use deadly physical force against him or someone else and that the The defendant's own use of deadly physical force was necessary to defend himself from it; and

2. A reasonable person in the defendant's position, knowing what the defendant knew, and being in the same circumstances, would have had those same beliefs. (1)

(In New York, it is not sufficient that the defendant honestly believed in his own mind that he was faced with defending himself but rather, the reasonable man test is also applied. New York Criminal Jury Instructions, Penal Law 35.15 [1980]. See, *People v. Goetz*, 68 N.Y.2d 96 [1986].)

The Florida Statute

The Florida Stand-Your-Ground statute, which has become the subject of recent scrutiny, is contained in Chapter 776, entitled Justifiable Use of Force. This section has less subdivisions than New York's but, in essence, provides that a person may use 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 to another, or to prevent the imminent commission of a forcible felony.

The most controversial section under this Chapter §776.032 Florida Statutes (2006), which was passed in 2005 and signed by Gov. Jeb Bush, provides that a person who uses deadly physical force under the circumstances where he believes it is necessary to prevent imminent death or great bodily harm, is immune from criminal prosecution and any civil action for the use of that force.

Following the passage of this law, in the case of *Dennis v. State of Florida*, 51 So. 3d 456 (2010), the Supreme Court of Florida held that the immunity provision and the determination of whether it applies, is not to be decided by the jury, but rather, it is to be decided by the court before any criminal prosecution can proceed.

Consequences of the Stand-Your-Ground Statute in Florida

According to a New York Times article on March 20, 2012, the National Rifle Association lobbied strongly for the change, which was adopted in 2005 and Florida was the first of 20 states with a similar immunity provision.

In a Washington Times article from March 27, it was reported that the Florida Department of Law Enforcement statistics indicate that before the law was enacted in 2005; there were 13 justified killings each year by citizens from 2000 to 2005. However, between 2006 and 2010, the average has risen to 36 justified killings each year.

Not surprisingly, the law was opposed by law enforcement officers since it appears to be encouraging vigilante justice and emboldening more individuals to carry guns. Acccording to the New York Times, in Florida, there are 900,000 residents who are licensed to carry guns in a state with a population of 19 million and officials report that 58,000 applications and renewals were submitted in the month of February.

Conclusion

Although the defense of justifiable homicide has been sanctioned by the courts for more than 100 years, the Florida statute represents more than a defense since it created an immunity from prosecution that is not to be decided by a jury but rather by the courts. It is a provision that intrudes on law enforcement and invades the province of the jury and as a result, it is likely to increase the number of Trayvon Martin type tragedies rather than reduce them.

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