



Stand Your Ground Not Responsible for Trayvon Martin's Death

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JURIST Guest Columnist **Tim Lynch**, Director of the Project on Criminal Justice at the **Cato Institute**, says that George Zimmerman's actions are not covered by Florida's Stand Your Ground law and that Zimmerman could have been arrested and charged because of his actions the night of Trayvon Martin's death...

The killing of Trayvon Martin has reignited a debate over the wisdom of the "Stand Your Ground" laws that 24 states have enacted in recent years. Martin was the 17-year-old that was shot by a neighborhood watch volunteer, George Zimmerman, in Sanford, Florida.

Although the incident occurred several weeks ago, an outcry grew steadily louder as the police did not seem to be investigating the killing very aggressively. Pundits have also heaped scorn on Florida's Stand Your Ground law for encouraging "vigilante justice." Even the Sanford police have claimed that that law kept them from arresting Zimmerman. A closer examination of the law provides insight into its overall impact and to how it may or may not apply to this controversial case.

In 2008, the US Supreme Court issued a landmark ruling in **District of Columbia v. Heller**, which held that the Constitution protects an individual's right to keep a handgun in the home for purposes of self-defense. Two years later, in **McDonald v. Chicago**, the Court held that state and local governments must also respect that right, not just the federal authorities. It is well established that Americans can purchase and keep guns for self-defense. When guns are fired at people, the legal system must adjudicate whether the use of deadly force was lawful or unlawful.

Stand Your Ground laws are designed to clarify the law in order to protect the honest homeowner who is under attack by a criminal. It is bad enough to have your home

broken into and your life threatened. To then have to hire a lawyer to fend off a misguided prosecutor and a personal injury lawyer representing an injured criminal was considered just too much, at least for lawmakers in many jurisdictions. The recent enactments help the homeowner with two legal presumptions for the home invasion scenario: (1) that the person forcing entry into a house is presumed to be doing so with the intent of committing a violent act; and (2) that if the resident of the home used defensive force, it is presumed to be because of a reasonable fear of bodily harm or even death.

With respect to incidents outside the home, the Stand Your Ground statutes clarify the law for innocent persons by dispensing with any legal obligation to retreat, hence the name, "Stand Your Ground." What has been overlooked is the fact that the statute only applies to a person under "attack." Again, the rationale is that it is bad enough for an innocent person to find himself under attack by a criminal, but to then have to worry about whether the law requires a retreat is simply too much to ask. As Justice Oliver Wendell Holmes **once observed**, "detached reflection cannot be demanded in the presence of an uplifted knife." The Florida law says that if you are under attack, retreat if you like, but be assured that you may also stand your ground and fight back if that seems to be the best option.

Looking at the standards of the **Florida law** and the circumstances surrounding the shooting death of Trayvon Martin shows there is no applicability. First, we know that Martin did not try to force his way into Zimmerman's home. Second, we know from the recorded 911 call that Zimmerman was not under attack when he initially encountered Martin. Third, and this is very important, Martin did not commit any crime in Zimmerman's presence. Despite the hyperbole about a "license to kill," the Stand Your Ground law actually has a narrow application to a few scenarios that require no police training. When a criminal brandishes a weapon and says "Give me your money if you don't want to get hurt," there's no ambiguity as to what is happening and the law is applicable. Outside of these types of scenarios the Stand Your Ground law does not apply.

When Zimmerman made the fateful decision to disregard the police dispatcher's statement to await the arrival of the police and not to follow his "suspect," he was acting outside and beyond the Stand Your Ground law. Other legal principles enter the picture and those principles run against Zimmerman. By following Martin, Zimmerman's actions set up the perilous confrontation. Consequently, he will likely be seen as an aggressor in the eyes of the **law**. Even if Martin threw the first punch, that punch will likely be considered the result of Zimmerman's provocation. Since Martin was unarmed, a gunshot in response to non-deadly force (fisticuffs) will probably be deemed beyond the bounds of normal self-defense. (The Florida legal system will have to consider all of the available evidence and ultimately determine Zimmerman's legal responsibility.)

One question that the Martin family attorney has asked repeatedly is, "Why has Zimmerman not been arrested and charged with a crime?" It is a fair question. The Sanford police claim the Stand Your Ground law stood in their way. The complaint has been made that the law immunizes anyone who kills because they "felt threatened." That is incorrect. Florida police are expected to use standard procedures for investigating any shooting, and especially any killing. Although Zimmerman

claimed self-defense, the police could have placed him under arrest if they could develop "probable cause" that the force he used was unlawful. The Stand Your Ground law says citizens can "meet force with force," but since Zimmerman used a gun against an unarmed Martin, the police had a sufficient legal basis that Zimmerman acted unlawfully and therefore could have arrested him.

To conclude, there is no connection between Florida's Stand Your Ground law and the killing of Trayvon Martin. Martin did not break into Zimmerman's home. Zimmerman was not under attack when he initially encountered Martin. Indeed, it is evident from the 911 tape that Zimmerman was alarmed because Martin was leaving the area. For those reasons, the Stand Your Ground law does not apply to the Martin case and Zimmerman can be charged and arrested.

*Tim Lynch is Director of the Cato Institute's Project on Criminal Justice. He served as the project editor for the recent Cato study, **[Tough Targets: When Criminals Face Armed Resistance From Citizens](#)**.*