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## Stand Your Ground had nothing to do with the Dunn verdict in Florida

By David Kopel  
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Stand Your Ground played zero role in the Michael Dunn “loud music” case.

Because the jury convicted Dunn of three counts of attempted murder, it is certain that the jury determined that Dunn was not acting in lawful self-defense. Stand Your Ground is a rule about one detail of when self-defense is lawful.

Accordingly, the assertion that Stand Your Ground may have been a reason why the jury hung on the first degree murder charge is totally implausible. The three convictions for second-degree murder show that the jury had determined there was no self-defense; ergo, jury confusion about self-defense was not the reason why the jury deadlocked on first-degree murder.

Moreover, Stand Your Ground played no part in the legal theory of the case, as presented by the prosecution or the defense.

Stand Your Ground laws are very simple. They state that the victim of a violent criminal attack does not have to retreat before using force in self-defense. Here are the Florida self-defense statutes, with the Stand Your Ground rule in italics:

776.012 Use of force in defense of person.—A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force. However, a person is justified in the use of deadly force and *does not have a duty to retreat if*:

- (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or
- (2) Under those circumstances permitted pursuant to s. 776.013.

776.013 Home protection; use of deadly force; presumption of fear of death or great bodily harm.—

- (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.
- (2) The presumption set forth in subsection (1) does not apply if:
- (a) [The person against whom the force was used was a lawful resident of the home, or owner of the vehicle]; or
  - (b) [Child custody disputes]; or
  - (c) [The person using defensive force was engaged in an unlawful activity]; or
  - (d) [The person against whom the defensive force is used is a law enforcement officer who was performing his duties and properly identified himself.]
- (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.*

Michael Dunn claimed self-defense, and so the judge instructed the jury on Florida self-defense law by reading the relevant statutes. These statutes include the Stand Your Ground language. Like the language about child-custody disputes, at many trials where self-defense is at issue, the Stand Your Ground language will be irrelevant, even if it is read aloud by the judge.

The jury apparently concluded that Dunn was lying when he testified that he repeatedly fired his gun because he was reasonably in fear of being imminently murdered. Therefore, the Stand Your Ground detail about permissible self-defense was irrelevant.

In the oft-discussed George Zimmerman case, Zimmerman claimed that Trayvon Martin was on top of Zimmerman and pounding Zimmerman's head into the concrete. If so, Zimmerman had no ability to retreat. Under the prosecution's theory, Zimmerman attacked Martin, and thus was not acting in self-defense. Thus, the Stand Your Ground rule was also legally irrelevant to the Zimmerman case.

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