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## You Can Get Charged With Murder For Defensive Gun Use -- Even In A 'Stand Your Ground' State

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Since American citizens have the right to keep and bear arms (not just law enforcement officials, as gun control advocates maintain), it would seem to follow that they're entitled to use their weapons when they are threatened.

More than a century ago, the U.S. Supreme Court recognized that in *Beard v. United States*, where the first Justice Harlan wrote that the defendant, who had been convicted of manslaughter for killing a man in a violent dispute,

*was not obliged to retreat, not to consider whether he could safely retreat, but was entitled to stand his ground, and meet any attack upon him with a deadly weapon, in such a 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.*

To codify that right and prevent people from being put on trial for reasonable, defensive gun use when a prosecutor thinks they might instead have retreated or fled, 24 states have enacted "stand your ground" statutes. Among them is North Carolina, but a recent case there shows that when prosecutors and judges want to convict a man for using his gun, the "stand your ground" law can be trampled upon.

Gyrell Lee had been celebrating New Year's Eve with his cousin Jamiel Walker in the latter's home. Throughout the evening, a known troublemaker, Quinton Epps, came by and argued with Walker. When Epps returned with friends and became increasingly belligerent, Lee decided that he should get his gun from his car just in case matters got worse. Lee had completed his concealed carry class and was familiar with the law on gun use.

Epps returned once more and a shouting match between himself and Walker ensued in the street. Walker lost his temper and punched Epps, at which point Epps drew a pistol and shot Walker in the stomach. Walker fell and Epps then turned his gun on Lee, who had his gun out. Lee fired and killed Epps.

Lee was subsequently arrested and charged with second-degree murder. He was a bystander who had acted in self-defense, but nevertheless local officials wanted to make an example of him.

At trial, Lee's attorney argued that he had acted in self-defense. But in charging the jury, the judge failed to make any mention of the state's "stand your ground" law or the defendant's right to use force in the defense of his cousin (who had died of his wounds). The jury returned a verdict of guilty.

On appeal, the North Carolina Court of Appeals upheld the conviction, holding that the trial judge had not committed “plain error” in charging the jury without bringing up the state’s “stand your ground” statute. In pertinent part, that law reads “A person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be 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.” The Court of Appeals wasn’t convinced that the judge had made an error because it wasn’t sure that the statute applied in Lee’s case due to its uncertainty that a public street outside his home counted as “a place he had the lawful right to be.”

Good grief – if the General Assembly had meant to except public areas such as streets from the statute’s reach, it certainly would have said so.

The Court of Appeals also questioned whether the law applied since it didn’t see that Lee was truly in “imminent” danger. Apparently the judges thought Lee somehow knew that he could have just run away from the scene in safety.

Lee’s case has been appealed to the Supreme Court of North Carolina and Cato Institute has filed an amicus brief. In it, Camden Webb and Ilya Shapiro contend, “The outcome of this case is important not just because of the injustice done to Mr. Lee, but because allowing the Court of Appeals decision to stand would threaten effective invocation of no-retreat laws throughout the nation, and weaken a Second Amendment right to bear arms that the U.S. Supreme Court has only recently begun to reassert.” They’re right.

Prosecutors and judges often have a bias against those who own and use firearms. They are happy to find excuses for whittling away at the right of self-defense any time it involves a gun. Juries are frequently sympathetic to such defendants, but they need to be properly instructed on the law.

If this decision stands, it will undermine North Carolina’s “stand your ground” law and embolden prosecutors in other states with similar statutes to try their hands at evading their laws and imprisoning innocent people.