

# Stand Your Ground Law: An Attorney's Perspective

Zahra Umansky

The Umansky Law Firm

*"WHERE EVERYONE DESERVES A  
SECOND CHANCE!"*

*1945 EAST MICHIGAN STREET  
ORLANDO, FL 32806  
(407)228-3838*



# Stand Your Ground Law: An Attorney's Perspective



The following text found in this guide has been mostly transcribed from Zahra Umansky's participation on the OCBA Under the Microscope: Florida's Stand Your Ground Gun Law panel. This event occurred Wednesday August 29<sup>th</sup>, 2012 from 11:30 AM to 1:30 PM. The moderator of the panel was Paul Owens with the Orlando Sentinel, and the other participants were David Simmons, Esq. of the Florida Senate and the Honorable Bob LeBlanc.



# Stand Your Ground Law: An Attorney's Perspective



## Introduction:

Giving us a criminal defense attorney's perspective, we have a former assistant public defender, and former assistant prosecutor of the city of Orlando. She was also a legal advisor to the Orlando police department and city prosecutor for the city of Orlando. She was appointed special assistant to the State attorney's office. She now serves as a private criminal defense attorney, and previously served as council for George Zimmerman, Ms. Zahra Umansky.

## Zahra Umansky:

I believe in the Stand Your Ground law. I think that every law can be used by bad people to do bad things, or it can be used by the right people who intend to do law justly. I don't know how many of you remember a law that we used to have, which was similar to the Stand Your Ground law, and which was repealed by legislature. I believe this occurred at least 10 years ago. The reason why that was repealed was because it was used to kill. A person would murder their spouse while intoxicated and say "Hey I was too drunk to know what I was doing!" This infers that any law can be used for a bad purpose. Unfortunately, you can't use that defense now, which could actually still be used sometimes to defend a person immensely under the influence of drugs or alcohol. There's a possibility they really didn't know what they were doing, but now they don't have that defense available.

So, I believe the Stand Your Ground law is a good law, and I've used it for my clients before. Going back to what Senator Simmons was saying, since its creation, and the fact that it is a statute, it doesn't apply retroactively. So, if there's anyone who is accused of murder that happened pre-2005, or a capital murder, and they failed to appear, they have to fall back to what the common law was. Common

*...remember it's not really an affirmative defense; it is a form immunity.*

law in Florida was self-defense, which if it happened in a public place, you have to retreat. So, you can't argue Stand Your Ground or any cases that come up pre-2005.



# Stand Your Ground Law: An Attorney's Perspective



As far as “How do you argue or put into action Stand Your Ground law,” remember it’s not really an affirmative defense; it is a of form immunity. So, you can bring that forward through motion to dismiss pretrial, file a motion, and have the judge hold an evidentiary hearing where the defendant has to prove beyond the preponderance of evidence that he or she is entitled to the immunity. And for those of you who are not familiar with what that really means, think of the scales of justice: whatever tips the scales has proven their case beyond the evidence.

It’s obviously not beyond reasonable doubt, but they have to be convincing. And the judge said, “You know what, you’re immune from prosecution, and we don’t need to let this go to trial.”

*There has been some argument in the media in George Zimmerman’s case that they may actually even forgo the Stand Your Ground and just argue self defense at trial.*

So the initial verdict is with the defense. There has been some argument in the media in George Zimmerman’s case that they may actually even forgo the Stand Your Ground and just argue self defense at trial. We’ve seen some speculation of that, and whether or not that is going to happen. That’s going to be interesting. Because what happens if you’re not successful at Stand Your Ground and the motion to dismiss before the court? What are your options then? You can’t argue it to a jury at the trial, now that

the verdict is a little bit different. Next it’s self defense, and now you must do a prima facie case. There were some cases beforehand in which the law was filed correctly. They were not giving defendants evidentiary hearings. The court was just denying motions, saying, “hey the motion doesn’t sound like you should have done it, and we still deny it.” So, that’s all been corrected now with the Supreme Court. I don’t think we really need to change anything at this point.



# Stand Your Ground Law: An Attorney's Perspective



## **Paul Owens, Moderator:**

I mentioned that some prosecutors were outspoken in opposing the law at the time it was passed. As someone with some experience as a prosecutor yourself, can you see why this law might have been objectionable for prosecutors?

## **Zahra Umansky:**

I think law enforcement prosecutors never want to see any citizen taking a law into his or her own hands as a vigilante. So, that concerns anyone in those fields. And they might have thought, that's a little scary, because you can use deadly force; we will give you immunity, and people rely on it. We actually represented someone from Seminole County that was involved in a road rage incident. The other individual got out of his vehicle, came up to our client, reached into his car to strike him, and our client took his gun out and shot him. He didn't kill him, yet he was taken down to the police department in Seminole County where he was locked up and found to be immune. This was approximately two years ago and it never really made it to the media or anything; but, it's nice to know that you have a right to not have to sit there and take that in your vehicle, and you know, be scared, or not be able to defend yourself. And by the old law, self-defense, he would have to drive away or just sit there.

*...it's nice to know  
that you have a  
right...to defend  
yourself.*

As far George Zimmerman pursuing Trayvon moments before the incident, because it wasn't just George getting out of the car, strolling up to the individual, saying, "Hey what are you doing here?" It's what happened when the two of them met, got together, and how that altercation happened - that's what is going to determine the issue. Because this didn't happen at the vehicle; this happened after. I don't think that is going to affect the judge's decision to file a motion. Now, they affect the jury - juries don't like things like that, so the jury may say, "Wow, why did you get out of the car?" So, maybe that will affect their thinking, but I don't believe it will affect the actual motion.



# Stand Your Ground Law: An Attorney's Perspective



**Woman from Audience:**

I have 2 questions. One, has the denial of immunity ever been appealed? And two, has there ever been any type of follow up with regards to exclusion of many testimonies, immunity hearings, or the evidentiary hearings, where the defendant has gone to trial.

**Zahra Umansky:**

My review case law shows that the court is not going to overcharge the actual findings as long as they're confident they have evidence to support the trial court's decision, and the case is where maybe the motion which was denied without a hearing, or adhering to the other issues. So, I think that you're not going to touch the trial for its decision to believe or disbelieve the defendant's credibility issues. That's not happening.

**Paul Owens:**

For immunity. And why would you say that I could have said anything because I might be prosecuted?

**Zahra Umansky:**

It depends on the facts of the case too. If there were 10 witnesses at the incident, they can testify for you and the defendant may not take a stand at the immunity hearing. And they can just rely on their witnesses to testify themselves. However, in this case he will have to testify. So, he would have to go to the stand and whatever he says could be used against him at the trial, and something to consider, there is no immunity from the testimony basically.

**Woman From Audience:**

You're saying he is still subject to cross examination during the immunity hearing?

**Zahra Umansky:**

Absolutely.



# Stand Your Ground Law: An Attorney's Perspective



## **Paul Owens:**

If he chooses to testify.

## **Zahra Umansky:**

So, let's go from example, the George Zimmerman case, if he felt he was going to die, or felt like, "I'm losing consciousness," and that's all reported in medical evidence. You know, it's the way it's worded. They can argue at the hearing that he believed he was going to have great bodily harm. This is what he believed. Now, that is the decision for what was reasonable. Under this circumstance, regardless of the medical evidence has shown something different, which I don't know what they're ultimately going to show.

...you can't rely on self-defense if the initial aggressor stopped and relayed that information to you.

Mr. Zimmerman's defense says, "Look, Treyvon Martin initiated this," the law says, "well, OK, let's say he did initiate it," but if he clearly indicated to you, "I'm stopping, I don't want to do it anymore," then you have the duty to stop, too. It says you can't keep going at it and say too bad. So, that's going to be an interesting issue because the statute does address that situation as well, saying, you can't rely on self-defense if the initial aggressor stopped and relayed that information to you.

## **Paul Owens:**

And yet, there is quite a furor over this piece of legislation since the Treyvon Martin case. Attorney Umansky, do you think this furor has more to do with the law or to more to do with the circumstances in the case?

## **Zahra Umansky:**

I think it has more to do with circumstances in the case, judging that these are real fact-intensive type of cases, and I think the way this shooting occurred, what



# Stand Your Ground Law: An Attorney's Perspective



happened afterward is more upsetting to people than the law itself. The law has been around since 2005. Everybody was OK with that, and then this happened. So, I think, just like I said before, we should not repeal the law based on maybe what we perceived as the in-between, used maybe in the wrong way, in the way that we prefer not to be used in one case. A law is more than just one case. And I don't think it is right to repeal it based on one case. It has worked in many other cases and had the right effect.

If I can just comment on this statute, as it's written that you're immune from arrest and prosecution, why is that important? I feel that it should stay that way; we shouldn't change it. If we took out that language, what does it mean for someone who supposes to be immune? That means we can still arrest you, creating an arrest record. Let's say you're someone who has never been in trouble before; you post a bond, get out of jail, and then find out they're immune. You have maybe destroyed this person's career, his or her livelihood, and everything else that goes along with it simply from the act of being arrested. And now they have to hire an attorney to try and expunge that arrest record.

*So, to really give the law its full effect of what's intended...you must be immune from arrest and prosecution, not just prosecution.*

So, to really give the law its full effect of what's intended, we have to heed the way it's written: you must be immune from arrest and prosecution, not just prosecution. It's similar to a statute of limitations defense. The way the law used to be interpreted as far as statute of limitations were, if you want to file a motion saying the statute of limitations, you first had to get arrested, and file that motion with the courts saying "no you have to get arrested." You can argue that "Hey, my case is too old; there's an outstanding warrant from my arrest. I shouldn't even have to do that". And the court says, that's correct, and that's the way it should stay in Stand Your Ground.