

# Stand Your Ground & Self-Defense Immunity



**Tuscaloosa County Bar CLE**  
**Friday, April 28, 2017**

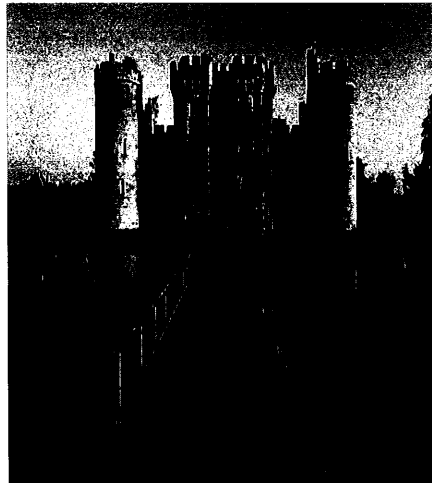
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## The Castle Doctrine



The castle doctrine is a legal doctrine that has been known in Western civilization **since** the age of the **Roman Empire**. This concept was established as **English law** by the **17th century** jurist **Sir Edward Coke**.

The Castle Doctrine holds a person's **abode** as a place in which that person has certain **protections and immunities permitting** him or her, in certain circumstances, to use **force to defend** himself or herself **against an intruder, free from legal responsibility or prosecution** for the consequences of the force used.



## Section 13A-3-23, Alabama Code 1975



- Allows the **use of force**,
- **including deadly force**,
- by a **person** who **reasonably believes** that **another person is about to use unlawful deadly physical force**
- **against that person or another.**

## Stand Your Ground – Other Jurisdictions

- **Florida and Colorado** were the lead states on the issue of Stand Your Ground legislation. About **35 states** have followed their lead in passing similar self-defense laws. **Alabama** first became a Stand Your Ground State **in 2006**. Our act is based upon Florida's statute.

## No Duty to Retreat - Stand Your Ground

- One of the main reasons that legislatures **adopted** “Stand Your Ground” laws, was **to ensure** “that it is **proper for law-abiding people to protect themselves, their families, and others from intruders and attackers, without the fear of prosecution or civil action** for acting in defense of themselves or others.” *State v. Gallo*, 76 So.3d 407, 408 (Fla. Dist. Ct. App. 2011).

## Alabama’s Stand Your Ground Law

- “To sustain a claim of self-defense, it is necessary that **the following conditions** be established: (1) the accused was **in actual or apparent peril**; (2) that the accused was **free from fault** in bringing on the difficulty. *Peraita v. State*, 897 So. 2d 1161. (Ala. Crim App. 2003)
- The accused had a **reasonable belief** that **another** is using or about to **use unlawful physical force**
- The duty to retreat has effectively been abolished. Ala. Code §13A-3-23(b), allowing the accused to “Stand Your Ground”
- Alabama’s Stand Your Ground Statute mirrors the Florida statute.



## IMMUNITY



- It is clear the legislature intended to create “immunity” from criminal prosecution and civil suit. The statute employs the language “**immunity**” and not merely justification.
- Black’s Law Dictionary defines immunity as “freedom or exemption from penalty, burden, or duty.”
- Therefore, a person who uses force, including deadly physical force, as justified and permitted in § 13A-3-23(a) is **immune from criminal prosecution and civil action, unless the force was determined to be unlawful . § 13A-3-23(d)**

## The History of Right to a Pre-Trial Hearing



- In **1987**, the **Colorado Supreme Court** in *People v. Guenther*, 740 P.2d 971 (Colo. 1987) decided that the Colorado **immunity statute authorized** a trial court to **dismiss** a criminal prosecution **at the pretrial stage and did not merely create an affirmative defense** for adjudication at trial. *Id.* At 976.

## The History of Right to a Pre-Trial Hearing



- Following the reasoning of the *Guenther* Court, the District Court of Appeals of **Florida** also found the right of an accused to a pre-trial evidentiary hearing on the grounds of statutory immunity, pursuant to Florida's Stand-your-Ground law.
  - See *Peterson v. State*, 983 So. 2d 27, 29 (Fla. Dist. Ct. App. **2008**) (“[t]he wording selected by our legislature makes clear that it intended to establish a true immunity and not merely an affirmative defense. [l]ikewise, we hold that a defendant may raise the question of statutory immunity pretrial...”)
  - When a criminal defendant claims protection of this statute, the trial court **must** decide the matter by holding an evidentiary hearing in which the court weighs the factual disputes relating to the establishment of the defense. *McDaniel v. State*, 24 So. 3d 654 (Fla. 2nd DCA 2009).

## Pre-Trial Hearing Rights in Alabama



- Early on, **Alabama trial courts were split** on the issue of **whether to conduct a pre-trial hearing**. Many judges did not afford defendants a pre-trial hearing; instead **requiring a jury determination** on the issue of self-defense.
- This was resolved in *Harrison v. State*, 203 So.3d 126 (Ala.Crim.App. 2015).

## *Harrison v. State*



- The CCA relied upon the Alabama Supreme Court's holding in *Ex parte Auburn University*, 6 So.3d 478 (Ala. 2008) concerning the right to a pre-trial determination of **immunity claims in civil cases**.
- “**One of the purposes of immunity**, absolute or qualified, is to **spare a defendant not only unwarranted liability**, but **unwarranted demands** customarily imposed upon those **defending a long drawn out lawsuit**.”
- “**Submitting the question to the jury, as the State suggested, would render a defendant's right to immunity illusory**”.
- A defendant asserting immunity based on self-defense under Ala. Code § 13A-3-23(d) (1975), is entitled to an opportunity to prove that claim by at a **pre-trial hearing** before the court.

## Standard of Proof in Pre-Trial Immunity Hearing



- Similarly, there was very little consensus in Alabama trial courts regarding the standard of proof required in order to entitle a defendant to a pre-trial immunity finding. This was also resolved in *Harrison*.
- The Court of Criminal Appeals instructed that the evidence presented at a pre-trial immunity hearing, would be evaluated based upon a **preponderance of the evidence** standard.

2016 Legislative Session – Act 2016-420 (SB420)



- The 2016 legislature amended §13A-3-23 in an effort to codify *Harrison v. State*. Unfortunately, they didn't address whether a trial court should use a subjective or objective standard.

Standard of Proof – Subjective vs. Objective



- **When an Alabama statute borrows** from the statutes enacted in another state, the **interpretation** of those original statutes **by the courts of the original adopting state** is considered **significant persuasive authority**.
  - ✕ See *Ex parte Holton* 886 So. 2d 83, 86 (Ala. 2003) (“Our Workers' Compensation Laws were adopted from those of Minnesota and the Minnesota construction of their laws is of persuasive value to this court.”)
  - ✕ *Ex parte Williams*, 646 So. 2d 22, 26-27 (Ala. 1994) (“[B]ecause our statute was based on Wisconsin's statute, the Wisconsin interpretation is persuasive authority here.”).

## Standard of Proof – Subjective vs. Objective



- Florida has adopted an Objective standard of proof.
  - *Mobley v. State*, 132 So.3d 1160, 1165 (Fla. Dist. Ct. App. 2014) (when applying the objective standard the court must “determine whether, **based on circumstances as they appeared to the defendant** when he or she acted, **a reasonable and prudent person situated in the same circumstances** and knowing what the defendant knew **would have used the same force as did the defendant.**”).
  - What if the person charged is a **child** under 18 years of age?

## What is UNLAWFUL Physical Force?



- Alabama appellate courts have struggled with what constitutes Unlawful Physical Force and render the defendant ineligible for a pre-trial immunity order.
- Felon in Possession of a Pistol. §13A-11-72.
- Compare: *Diggs v. State*, 168 So. 3d 156 (Ala. Crim. App. 2014); *Wallace v. State*, CR-14-0595 (Dec. 18, 2015); *Fuller v. Alabama*, CR-14-0368 (Dec. 18, 2015); and Judge Murdoch’s dissent in the order quashing *certiorari* in *Ex Parte Fuller*, SC1150487 (March 3, 2017).



## Recent Cases of Note



***State v. Watson***, CR-15-0211 (Sept. 9, 2016)

Great general review of the topic. State appealed trial court's pre-trial grant of immunity. CrimApps affirmed.

***Malone v. State***, CR-14-1326 (June 3, 2016)

Assault 2° case. The circumstances in this case were simple Self-Defense and did not include the Stand Your Ground aspects. The trial court refused a pre-trial immunity hearing because it wasn't a Stand Your Ground situation. CrimApps reversed, holding that **an immunity hearing is required to adjudicate any self-defense claim.**

## Stand Your Ground & Self Defense Immunity



•Questions??