

No Retreat, No Surrender: A Comparative Analysis of Justifiable Homicide in the U.S. & Canada

In April of 2013, plagued with the decision to kill or be killed Aaron Little reasonably believed that Demond Brooks, after pulling out two handguns and aiming both straight at his head, maliciously meant to shoot and kill him.¹ Little fearing for his own safety made a conscious decision, closed his eyes and pulled the trigger of his own handgun fatally shooting his alleged aggressor.² Was Little, a convicted felon illegally in possession of a handgun, entitled to immunity for this heinous act? Little who was not mentally ill nor the initial aggressor was placed in a difficult situation that resulted in the death of another.³ Fortunately, for Little the court held that the homicide of the victim was justified by the threat of danger regardless of any illegality on his part.⁴ Is homicide therefore justified in this instance? Is the U.S. Judicial system more efficient than say laws in Canada with this new Stand Your Ground legislation coming into play?

The enactment of the Stand Your Ground Law had un-humble beginnings in the state of Florida. Former Florida Governor Jeb Bush endorsed this statutory scheme that allows Floridians to abandon their duty-to-retreat from tortious conduct and use *reasonable* force to protect themselves.⁵ Within the state of Florida George Zimmerman is notoriously associated with this statute, after fatally shooting Trayvon Martin in 2009, inducing a state-wide uproar. Florida's castle doctrine was codified and in place a fierce grip was placed on the law of self-defense. By removing the common-law element of retreat and allowing a victim to use up to deadly force to protect themselves gave rise to the birth of a citizens right to stand their ground in Florida on October 1st, 2005.⁶ Speculation has surrounded the passing of this statute as a platform for a nation-wide change in gun laws in the United States.⁷ An American based association better known as The National Rifle Association (NRA) is said to be the victor in the enactment of this statute in multiple-states across the country.⁸ The scope of the stand your ground is essentially stated in Florida Statute § 776.013(3)

A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force, if he or she uses or threatens to use force in accordance with 776.012(1) or (2) 776.031(1) or 'The stand your ground law creates a presumption that the defender, in his or her home, a temporary place of lodging, or in a vehicle, has a reasonable fear of imminent death or great bodily harm when the intruder unlawfully or forcibly enters.'⁹

Prior to the enactment of Florida's Stand Your Ground Law (SYG), a defendant had to find a reasonable means of escape or had the duty to retreat before attempting to use force against another.¹⁰ However, the castle doctrine and the many cases that it encompassed served as a caveat, which allowed a defendant to use force to protect his or herself in the midst of an attack in their own "castle" or home.¹¹ Similarly, in Canada defense of ones property is used in disputes of self-defense and excessive force.¹² Canadian jurisprudence however defines this declaration as preserving ones well being, and the ability to take any preventative measure to stop an assailant(s) from entering their

“castle.”¹³ Canada’s law insinuates that the homeowner take all necessary precautions to avoid deadly force if possible. The elements that satisfy this doctrine are mentioned here

Ontario jurisprudence has recognized that in a claim of self-defence, extraordinary circumstances exist when a person is on his or her own property. In *R. v. Antley*¹⁴ the majority of this court held that an accused person who is assaulted while ‘on his own property’ is not required to retreat from the home. Rather, “far from retreating he would have been entitled . . . to use such force as was necessary to remove the complainant therefrom.”¹⁵

In *Semayne*, Lord Coke’s opinion sheds light on the origins of the castle doctrine mentioning “. . . the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose.”¹⁶ Lord Coke defines one’s home as a fortress that if threatened by another is owed protection by the true owner.¹⁷ It seems what both laws have in common is the justification of homicide on the part of a sometimes unsuspecting defendant. As ludicrous as it may seem to some, even homicide may be deemed necessary in today’s society to shield many from potential aggressors. However, a significant distinction between SYG and Canada’s self defense laws merely seems to be how a ‘victim’ chooses to protect themselves from an imminent threat of death or great bodily harm.

In 2010 this statue made headlines when Ontario resident Ian Thomson was arrested for defending himself against intruders attempting to burn him alive.¹⁸ Thomson, a new resident to a rural Ontario suburb, did not know he had the “. . . proverbial neighbor from hell . . .” living next door to him.¹⁹ Thomson became subject to death threats and the victim to theft all at the hands of his new neighbor who also had an extensive criminal record.²⁰ In August 2010, masked intruders surrounded Thomson’s home with ignited Molotov cocktails²¹ and lobbing them through his windows.²² Thomson, an experienced firearms instructor, fired three shots from his .38 caliber revolver with no intention to kill the intruders, but merely to scare them off his property.²³ Following this ordeal Thomson, believed that he faced a short litigation process because he was rightfully defending his property from intruders. However Thomson could not fathom that the mere act of protecting himself would span out in court for two and a half-years.²⁴

In both Thomson and Aaron Little’s cases they were placed in unfavorable situations, which were either to succumb to their aggressor’s threats or retaliate. Both Canada and The United States have laws that govern how a person should act in a situation where they are forced to defend themselves. Many critics have found that the extremity of SYG makes other countries self-defense laws look pale in comparison.²⁵ Perhaps it is too soon to determine whether or not the Canadian judicial system will adopt additional forms of justifiable homicide, such as the SYG law. The negative backlash over the SYG legislation, especially in states such as Florida, might serve as a deterrent for enacting such legislation in other countries. The “presumption of fear and imminent bodily harm”²⁶ by another seems as though it will never fully dissipate from today’s society, and both U.S. and Canadian governments are beginning to outline how someone who is defending themselves truly can get away with the murder of another.

¹ Little v. State, 111 So. 3d 214, 216 (Fla. Dist. Ct. App. 2013) (holding that the defendant was not precluded from relying on “Stand Your Ground Law,” despite being a felon in possession of a firearm at time he killed the decedent).

² Id.

³ Id. at 219-20.

⁴ Id.

⁵ § 776.013(3), Stat. Fla. (2005).

⁶ Fla. S. Judiciary Comm., CS for SB 436 (2005) Staff Analysis 7 (Feb. 25, 2005) (on file with comm.) [hereinafter Judiciary Comm. SB 436 Staff Analysis] (“The bill takes effect on October 1, 2005.”).

⁷ See Manuel Roig-Franzia, Florida Gun Law to Expand Leeway for Self-Defense: NRA to Promote Idea in Other States, Wash. Post, Apr. 26, 2005, at A1 (“[P]rosecutor groups . . . stayed out of the fight and many lawmakers supported the bill because they fear the NRA.”).

⁸ Rachel Graves, Op-Ed., Gun Debate Muzzles the Middle Ground, Christian Sci. Monitor, Sept. 5, 2007, at Opinion 9.

⁹ § 776.013(3), Stat. Fla. (2005).

¹⁰ § 782.02, Stat. Fla. (2003).

¹¹ Judiciary Comm. SB 436 Staff Analysis, *supra* note 173, at 2 (citing Florida v. James, 867 So. 2d 414, 416 (Fla. 3d DCA 2003)).

¹² *Criminal Code*, S.C. 2012, c. 9 C-46, online: Department of Justice Canada <<http://laws.justice.gc.ca>>

¹³ R. v. Antley, [1964] O.R. 545 (Can. On.).

¹⁴ Id.

¹⁵ R. v. Forde, [2011] F.C.R. 592 (Can. On.) (citing R. v. Antley, [1964] O.R. 545 (Can. On.).

¹⁶ Semayne’s Case, [1604] 77 E.R. 194 (Can.) (holding that a homeowner had the right to defend their home against intrusion of an unwanted guest).

¹⁷ Id.

¹⁸ http://www.huffingtonpost.ca/karen-selick/ian-thomson-charged-with-defending-self_b_2410861.html

¹⁹ Id.

²⁰ Id.

²¹ See From Nazi Resistance to Ferguson’s Unrest: The Weird History of the Molotov (August 18th, 2014) <<http://www.newrepublic.com/article/119127/history-molotov-cocktail-nazi-germany-ferguson>>

²² <http://fullcomment.nationalpost.com/2013/01/04/matt-gurney-after-two-years-judge-acquits-man-who-defended-himself-with-a-gun/>

²³ Id.

²⁴ Id.

²⁵ <http://www.tampabay.com/news/courts/criminal/critics-say-adding-duty-to-retreat-would-better-floridas-stand-your-ground/2166410>

²⁶ § 776.013(3), Stat. Fla. (2005).