

# Florida Statutes -- Self-Defense & Stand Your Ground

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## Florida Statutes -- Self-Defense & Stand Your Ground

### F.S. § 776.012 -- Use or Threatened Use of Force in Defense of Person

#### (1) Non-Deadly Force

*A person is justified in using or threatening to use 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. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.*

#### (2) Deadly Force

*A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use 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. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.*

#### Application to Delcampo Case

- \* Marquis was a **\*\*passenger in an Uber\*\*** -- he had a right to be there
- \* If the Uber driver's erratic driving constituted a forcible felony (kidnapping/false imprisonment) or created imminent risk of great bodily harm -> deadly force justified
- \* **\*\*NO DUTY TO RETREAT\*\*** -- even in a vehicle
- \* Key question: Was Marquis's response **\*\*reasonable\*\*** given the perceived threat?

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### F.S. § 776.013 -- Home Protection; Use or Threatened Use of Deadly Force

#### (1) Presumption of Reasonable Fear

*A person who is in a dwelling or residence in which the person has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use:*

- (a) *Nondeadly force against another when and to the extent that the person reasonably believes it necessary; or*
- (b) *Deadly force if he or she reasonably believes it is necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony.*

#### (3) Presumption -- Person Has Reasonable Fear When:

- (a) *The person against whom defensive force was used or threatened was **\*\*unlawfully and forcibly entering\*\*** a dwelling, residence, or occupied vehicle, OR had unlawfully and forcibly entered and the person who used defensive force knew or had reason to believe that an unlawful and forcible entry occurred; or*
- (b) *The person against whom force was used was **\*\*unlawfully and forcibly removing\*\*** or attempting to remove another person against that person's will from the dwelling, residence, or **\*\*occupied vehicle\*\***.*

#### Application to Case -- CRITICAL

\* **"Occupied vehicle"** is explicitly covered by § 776.013

\* If the Uber driver deviated from the route / refused to stop / took Marquis somewhere he didn't want to go -> this may constitute **unlawful forcible removal from an occupied vehicle** or false imprisonment

\* Under (3)(b): If driver was unlawfully removing Marquis against his will -> **PRESUMPTION OF REASONABLE FEAR** applies

\* With the presumption, the State must **rebut** reasonableness -- burden shifts

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## **F.S. § 776.032 -- Immunity from Criminal Prosecution and Civil Action (Stand Your Ground Immunity)**

### **(1)**

*A person who uses or threatens to use force as permitted in § 776.012, § 776.013, or § 776.031 is justified in such conduct and **is immune from criminal prosecution and civil action** for the use or threatened use of such force...*

### **(2)**

*A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency **MAY NOT ARREST** the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.*

### **(3)**

*The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).*

### **(4) Pretrial Immunity Hearing -- THE MOST IMPORTANT PROVISION**

*In a criminal prosecution, once a prima facie claim of self-defense immunity is raised by the defendant at a pretrial hearing, **the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity.***

## **KEY PROCEDURE**

1. Defense files Motion for Immunity under SYG (§ 776.032)
2. Court holds **evidentiary hearing** -- defense presents prima facie self-defense claim
3. **Burden SHIFTS to the State** to prove **BY CLEAR AND CONVINCING EVIDENCE** that self-defense does NOT apply
4. This is **HIGHER** than preponderance -- the State has a significant burden
5. If the State fails -> case is **DISMISSED** with prejudice and defendant is **IMMUNE**

## **Application to Case**

\* **"WAS A SYG IMMUNITY HEARING REQUESTED?"** If not, this is a potential IAC claim

\* If it was held and denied, the denial is reviewable on appeal (certiorari)

\* Post-conviction: Can still raise SYG immunity if it was never properly litigated

\* Dennis v. State, 51 So. 3d 456 (Fla. 2010) -- establishes the legal framework

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## **F.S. § 776.041 -- Use or Threatened Use of Force by Aggressor**

*The justification described in the preceding sections is **NOT** available to a person who:*

- (1) *Is attempting to commit, committing, or escaping after commission of a forcible felony; or*
- (2) *Initially provokes the use or threatened use of force against himself or herself, **UNLESS:***

(a) Such force or threat of force is so great that the person reasonably believes he or she is in imminent danger of death or great bodily harm and has exhausted every reasonable means to escape; or

(b) In good faith, the person withdraws from physical contact and indicates clearly to the other his or her intent to withdraw and terminate the use of force, but the other person continues or resumes the use of force.

### Application

- \* Was Marquis the initial aggressor? The State may argue this.
  - \* Even if he was, under (2)(a): if the driver escalated to a level creating imminent danger of death/great bodily harm, self-defense is RESTORED
  - \* Key evidence: Who initiated the physical confrontation? What was the sequence of escalation?
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## F.S. § 776.051 -- Use or Threatened Use of Force in Resisting Arrest

A person is not justified in the use or threatened use of force to resist an arrest by a **law enforcement officer**, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

### Relevance

- \* This does NOT apply to resistance against a private citizen (Uber driver)
  - \* If the driver was detaining Marquis -> this constitutes false imprisonment by a private citizen
  - \* Marquis had every right to resist unlawful detention by a non-law-enforcement individual
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## F.S. § 787.02 -- False Imprisonment

(1)(a) The term "false imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person **without lawful authority** and against her or his will.

### Application -- THE UBER DRIVER'S CONDUCT

- \* If the driver locked the doors, refused to stop, deviated from the route -> potential false imprisonment
  - \* False imprisonment is a **forcible felony** under § 776.08
  - \* Use of force to prevent a forcible felony is JUSTIFIED under § 776.012(2)
  - \* This makes Marquis's resistance legally justified self-defense
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## F.S. § 776.08 -- Forcible Felony (Definition)

"Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and **any other felony which involves the use or threat of physical force or violence** against any individual.

### Application

- \* False imprisonment involving physical restraint -> forcible felony
  - \* Battery by the driver (if driver struck first) -> forcible felony
  - \* This triggers the right to use deadly force under § 776.012(2)
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\*Self-defense is the primary theory. Every motion, every argument should be framed through this lens.\*