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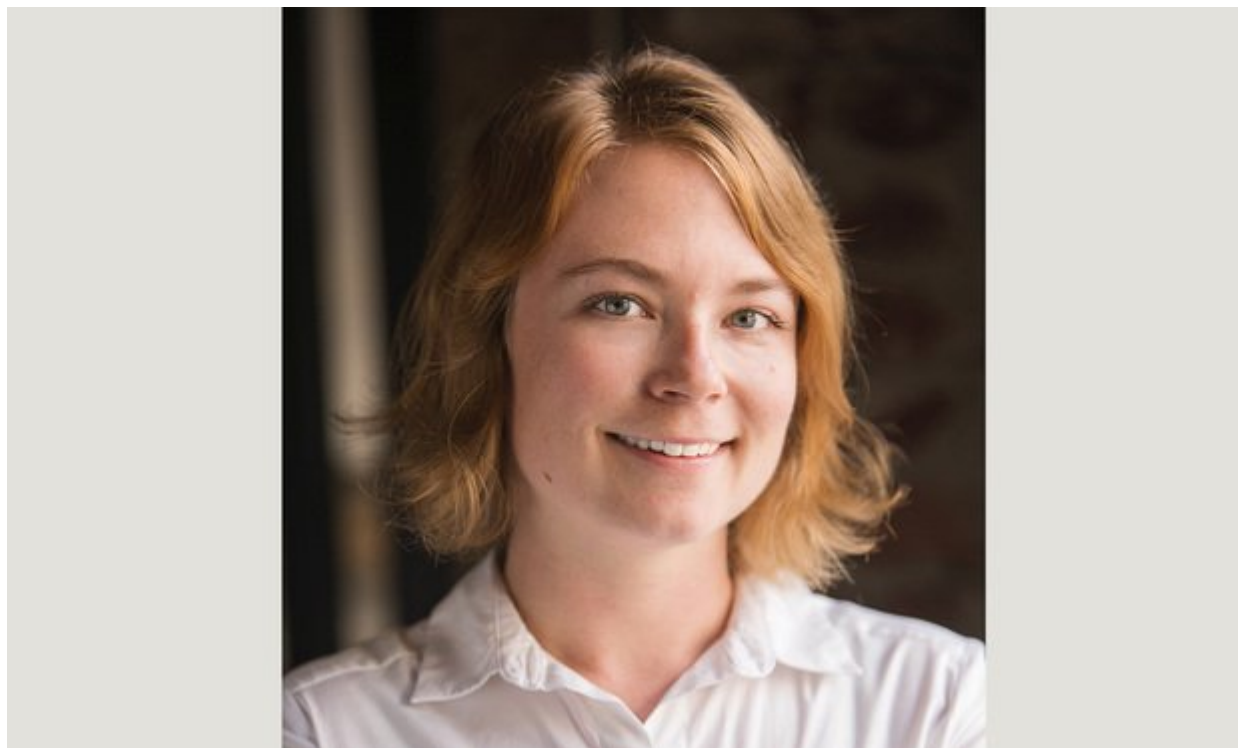
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## Reimagining Criminal Justice: The Disparate Impact of the 'Castle' Doctrine

Does race matter when bringing a stand-your-ground claim?

By **Carmen Wierenga** | December 04, 2020



**Carmen Wierenga, a student at Golden Gate University School of Law (Photo: Courtesy Photo)**

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*The Recorder has collaborated with students enrolled in Reimagining Criminal Justice, a seminar at Golden Gate University School of Law, to publish this series of student writings. This next generation of lawyers explore a broad range of topics touching on criminal and racial justice, and provide their perspectives and voices on myriad proposals for building a better, more just, system.*

On October 12, a mobile phone video (<https://upnupnews.com/black-man-shot-man-who-was-trying-to-attack-him-in-nevada-the-stand-your-ground-state/>) showed a Black man being followed and harassed by a white man in Las Vegas. As the Black man is walking away, a voice on the recording says “why can’t you handle it like a ... man?” The white man then throws a punch, and the Black man turns and shoots the white

man. The white man survived, according to the sparse news coverage I found online. As of October 12, the shooter had not been found. The video spurred discussion, though: would the Black shooter succeed on a stand-your-ground claim? The answer seems to be maybe, but probably not.

The state of Nevada has a “castle doctrine” on its books, which makes it a stand-your-ground state, in popular lingo. Nevada Revised Statute 200.120, which defines “justifiable homicide,” makes it lawful to kill someone in the name of self-defense, under certain circumstances.

NRS 200.120 states that “[k]illing someone in Nevada is justifiable only if it is reasonably necessary to repel an imminent threat of death or substantial bodily harm.” Nevada, like other stand-your-ground states, requires no “duty to retreat” before killing in self-defense as long as the person fighting back: “(1) is not the original aggressor, (2) has a right to be in the place where deadly force is used, and (3) is not engaging in criminal activity.” The “castle doctrine” allows people in their homes or vehicles, or even in public, in Nevada, to fatally wound intruders or aggressors, even if the intruders or aggressors had no violent intent. The “castle,” in Nevada, can therefore be a person.

Although Nevada only codified its “castle doctrine” within the past decade, its courts have been applying stand-your-ground principles since 1872 (<https://www.reviewjournal.com/crime/courts/nevadas-stand-your-ground-law-goes-back-140-years/>). As a stand-your-ground state, Nevada is by no means alone. It’s one of 27 states that have stand-your-ground laws on their books. Seven more states, including California, do not have explicit stand-your-ground laws on the books, but the principles have been applied in practice, through jury instructions and case law; another three states have stand-your-ground laws that only apply when a person is in his vehicle; and finally, in 11 states, stand-your-ground laws only apply when a person is in his home or vehicle. There, he has a duty to retreat in public places.

Stand-your-ground laws matter: A 2020 study found here (<https://www.rand.org/research/gun-policy/analysis/stand-your-ground/violent-crime.html>) on RAND.org found that evidence from multiple studies supported the idea that stand-your-ground laws may have increased the number of firearm homicides in the United States. It’s possible that people are just defending their “castles” more thoroughly, and within the law.

What happens, though, when the person “standing his ground,” defending his “castle,” is Black? We don’t know the circumstances leading to the recent Las Vegas shooting, but it’s possible that he met all of the elements of a stand-your-ground shooting. Does race matter, when bringing a stand-your-ground claim?

In Florida, a recent case (<https://www.courthousenews.com/shooter-in-florida-stand-your-ground-case-gets-20-years/>) where the shooter was white and the victim was Black ended in a 20-year sentence for the shooter. In that case, the two men had scuffled over a parking spot, and the victim died of his wounds. Pinellas Pasco Circuit Court Judge Joseph Bulone relied in part on a convenience store video, and testimony of another person with whom the shooter had had an altercation over a parking spot at that same convenience store, to determine that “[t]he evidence in this case shows the defendant created conflict and created confrontation and shot and killed an unarmed man who was backing up and retreating.”

By contrast, in 2012 George Zimmerman shot and killed Trayvon Martin, an unarmed 17-year-old Black boy in Florida. Zimmerman was acquitted of both manslaughter and second degree murder at trial. After Martin’s death, the Tampa Bay Times investigated about 200 stand-your-ground cases and analyzed their outcomes. The newspaper found that courts were seeing more and more stand-your-ground cases, and that “defendants claiming stand your ground ‘are more likely to prevail if the victim is [B]lack.’” The investigation also revealed that Black people who claim stand-your-ground as a defense are “almost 15 percent more likely to face a penalty for doing so than their white peers.”

A 2013 report published by the Urban Institute

(<https://www.urban.org/sites/default/files/publication/23856/412873-Race-Justifiable-Homicide-and-Stand-Your-Ground-Laws.PDF>), which crunched the numbers from an FBI study of killings across the United States between 2005 and 2010, showed that a killing was significantly more likely to be ruled justifiable where the killer was white and the victim was Black. That result applied in both stand-your-ground and non-stand-your-ground states. Even when the Urban Institute removed killings carried out by police officers from the data, and limited the data only to gun killings (rather than other weapons), the result remained similar: white on Black killings were more likely to be held justifiable, and Black on white killings were least likely to be held as such, behind white on Black, white on white, and Black on Black, in that order.

Despite the data suggesting that stand-your-ground laws increase firearm homicides, and the data that shows stand-your-ground claims may not be consistently decided across races, the laws remain in force, and they may even be expanded. Florida Gov. Ron DeSantis recently proposed legislation that would strengthen Florida's stand-your-ground law. According to an article on NBCnews.com

(<https://www.nbcnews.com/news/us-news/stand-your-ground-florida-could-be-expanded-under-desantis-anti-n1247555>), the law would justify physical force, up to and including lethal force, against a person for "looting, criminal mischief, and arson" resulting in "the interruption or impairment of a business operation." Critics worry the changes will open the door to more racist violence in the name of self-defense. We already saw an example of the unnecessary and dangerous display of weapons to intimidate protestors when the McCloskeys, a white couple in St. Louis, pointed weapons (<https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/10/14/923674576/gun-waving-st-louis-couple-plead-not-guilty-to-2-felony-charges>) at peaceful Black Lives Matter protestors marching near their property. The couple faces two felony counts as a result, but they were also invited to speak at the Republican National Convention.

Given the general state of our country, where courts are stacked with conservative judges and cops get away with killing Black people nearly daily, it also isn't a stretch to imagine that the Black man in Las Vegas, who stood his ground when a white man followed and threw a punch at him, could be found guilty of a crime, regardless of Nevada's long, celebrated history of "standing its ground." Until Black "castles" (read: people) are equal to white "castles," the "castle doctrine" will continue to be applied unequally.

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