

Florida Supreme Court resolves conflict, extends 'stand your ground' immunity to LEOs

Officers facing civil actions for the excessive use of force may have an additional opportunity to obtain dismissal prior to trial

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By J. David Marsey, P1 Contributor

The debate about Florida's statutory immunity from criminal and civil liability – commonly referred to as the “stand your ground” law – reaches far and wide. Proponents and opponents alike have opined that the law needs revision and courts have disagreed over the application of its terms.

One area of frequent disagreement involves the application of the immunity to law enforcement officers acting within the course and scope of their employment. The [Florida Supreme Court](#) has finally spoken, and in doing so, resolved the conflict between Florida District Courts of Appeal.



The Supreme Court's decision reaffirms that officers are entitled to the full use of the "stand your ground" immunity defense. (Photo/Florida Supreme Court)

After consideration of two conflicting lower court decisions and interpreting the law itself, the Court held that the clear and unambiguous statutory language affords law enforcement officers the same immunity provisions available to the public at large.

"I am glad to see that the Supreme Court brought some clarity to this issue. This decision affirms that 'officers are people too' and have the same rights and protections as the general public," said Ponce Inlet Police Department Chief Frank G. Fabrizio.

At the core of this dispute are two similar, but substantively different, statutes.

Section 776.05, Florida Statutes, provides that a law enforcement officer need not retreat or desist from efforts to make a lawful arrest because of actual or threatened resistance from the person to be arrested. It also authorizes an officer to use any reasonably necessary force to defend himself or herself, or another person from harm while making an arrest, retaking an escaped felon, and when arresting a felon fleeing from justice.

Section 776.032, Florida Statutes – Florida's Stand Your Ground law – provides that a "person" who uses or threatens to use lawful force is immune from criminal prosecution and civil action for the use or threatened use of force if enumerated circumstances exist.

DISTRICT COURTS PRESENT CONFLICTING DECISIONS

In 2012, an officer was criminally charged with attempted battery and unsuccessfully asserted "stand your ground" immunity pursuant to Section 776.032.

In denying the officer's entitlement to immunity from prosecution, the Second District Court of Appeal in [State v. Caamano](#) reasoned that the more specific statutory language applicable to law enforcement officers contained in Section 776.05 controlled over the more general provisions contained in Section 776.032 that applied to the public at large. Therefore, the court reasoned, the "stand your ground" immunity provision was unavailable to an on-duty police officer for force used in the making of an arrest.

In 2017, the issue was revisited by the Fourth District Court of Appeal in [State v. Peraza](#), where an officer successfully moved to dismiss an indictment against him for manslaughter with a firearm after the officer shot a suspect who pointed an air rifle at him. In that case, the court reasoned that an officer using force while making an arrest was not limited by the specific statute applying to officers, but was also entitled to seek immunity under Section 776.032.

The *Peraza* court held that despite the specific statute applying to law enforcement, officers are also "persons" under the law, and that nothing under Florida's "stand your ground" law excludes an officer making an arrest from the immunity provisions available to the general public. The *Peraza* court certified the conflict with *Caamano* as one of great public importance, thus paving the way for review by the Florida Supreme Court.

THE FLORIDA SUPREME COURT'S RULING

In its review of *Peraza*, the Florida Supreme Court recognized the *Caamano* court's efforts to harmonize different statutory provisions that applied to law enforcement and the more general "stand your ground" immunity statute. The Supreme Court agreed with the lower court's rationale and found that the two statutory provisions provided overlapping protections for law enforcement officers making an arrest. A noteworthy distinction recognized by the Supreme Court, but not considered by either of the lower courts, was the distinction between a defense and an immunity.

While the more specific law enforcement statute provides a defense for the use of force during an arrest, it does not include any immunity provisions. Conversely, the "stand your ground" statute provides an "immunity from prosecution" that is afforded to "any person" who uses lawful force under enumerated circumstances. Since there is no language excluding a law enforcement officer from the clear and unambiguous application to a "person," a law enforcement officer is entitled to assert the "stand your ground" immunity defense.

WHAT THE DECISION MEANS FOR LAW ENFORCEMENT

"The *Peraza* case is a clear victory for Florida's police officers. The assertion that our law enforcement officers should not have the same standing that our citizens enjoy is perplexing," said Coconut Creek Police Department Chief Albert A. Arenal.

The Supreme Court's decision reaffirms that "officers are people too" and are entitled to the full use of the "stand your ground" immunity defense that is applicable to the public at large. The importance of this decision cannot be overstated, because it provides officers a viable legal defense to prevent lengthy and costly criminal proceedings if they are able to show an entitlement to immunity at a pre-trial hearing.

Although the Supreme Court in *Peraza* addressed only the criminal charges before it, Florida's "stand your ground" immunity provision provides immunity for both criminal and civil liability. Therefore, depending on the specific facts of the case, officers facing civil actions for the excessive use of force may have an additional opportunity to obtain dismissal prior to trial and the denial of immunity may provide the potential for pre-trial appellate review. Law enforcement executives and their counsel should familiarize themselves with these new standards and continue to monitor this developing area of law.

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