

Hate, Conflict, and Public Space: Stand Your Ground Laws and Potential Immunity for Hate Crimes

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ABSTRACT

Statistics reveal that hate crimes in the United States have increased for the past two years in a row. From 2014 to 2016, the number of reported hate crimes has increased from 5,479 in 2014, to 5,850 in 2015, to 6,121 in 2016. These numbers do not include crimes that were not shared with the FBI by local law enforcement, or crimes that were not reported to the police at all. Early indicators reveal that the number of hate crimes in 2017 is expected to further continue this upward trend. The current social and political climate has raised much concern regarding the reported increase in hate crimes, and the safety of persons who may be the targets of bias-motivated crime. One concern that has not received much attention in the scholarly literature or otherwise is the intersection of hate crimes and Stand Your Ground laws. Stand Your Ground laws remove the “duty to retreat” requirement in claims of self-defense, and permit a person to use any force necessary to protect oneself when in a public place that the person has a right to occupy. Empirical research on Stand Your Ground laws indicates that these laws contributed to an increase in homicide rates in states that offer Stand Your Ground as a legal defense, and that these laws have an implicit racial bias that affects the outcome of Stand Your Ground criminal cases. As written, these laws offer much subjectivity to the person employing the Stand Your Ground defense. This study examines the use of Stand Your Ground laws as a legal defense and suggests that, given the current social and political climate, these laws need to be modified to ensure that violence against others because of bias or prejudice cannot be translated into fear for one’s safety, and therefore, a justifiable defense for hate crimes.

Keywords: hate crime, Stand Your Ground, Castle Doctrine, public space

INTRODUCTION

On August 11th and 12th of 2017, members of various white nationalist groups came together in Charlottesville, Virginia for what leaders called

the “Unite the Right” rally. The groups had assembled to protest the removal of the statue of Confederate general Robert E. Lee from a public park. Counter protesters arrived on the 11th, hours before the rally was supposed to start, and clashes between the white nationalists and counter protesters ensued. Law enforcement in Charlotte found themselves inadequately prepared to control the hate-fueled conflicts that were erupting. Police were forced to begin dispersing crowds, and by the next morning, Virginia Governor Terry McAuliffe declared a state of emergency as conflicts between the two groups escalated. About two hours later, one of the white nationalists drove his car into a group of counter protesters, killing thirty-two-year-old Heather Heyer and injuring nineteen others. The twenty-year-old driver was affiliated with a Neo-Nazi group and had a history of expressing extremist views. While the Department of Justice and the Federal Bureau of Investigation launched a civil rights investigation into the events surrounding the crash, the organizer of the rally, Jason Kessler, blamed the violence on law enforcement and local officials, citing their failure to protect the First Amendment rights and safety of the rally participants (Yan, Sayers, & Almasy, 2017). The absence of an apology or condemnation of the attack by Kessler increased concerns over the outcome of future public clashes in a country engulfed in social and political conflict.

Additional conflicts in public spaces between opposing groups or individuals are inevitable, therefore, the laws that determine the legality of the reactions to bias-motivated or emotionally charged conflicts warrants closer examination. When laws intersect, overlap, and/or appear to be in conflict with one another, resulting legal decisions can render confusion and animosity about real or perceived injustices. The murder of Heather Heyer left little doubt as to the bias-motivation of the driver of the car that killed her, but in most interpersonal conflicts in public spaces, the issue is not so clearly defined. The ambiguity regarding the nature of the conflict can delay arrests or, in some cases, result in no arrest at all. This latter outcome has been enabled by the introduction of laws commonly referred to in the media as “Stand Your Ground” laws. Stand Your Ground (SYG) laws remove the “duty to retreat” requirement in claims of self-defense and replace it with a “shoot first” ideology, permitting a person to use any force necessary to protect him/herself or others while in a public place that the person invoking the SYG defense has a right to occupy. This defense is based primarily upon the subjective interpretation of the situation from the person who used deadly force.

One concern that has not received much attention in the scholarly literature or otherwise is the intersection of hate crimes and SYG laws. Drawing from the Critical Race Theory (CRT) perspective, this paper examines the growing increase in hate crimes and the social and legal implications of

legal doctrines that protect “shoot first” policies in public spaces. SYG laws deserve a critical evaluation of their application when potentially bias-motivated offenders use SYG as a legal defense or justification for deadly force. CRT, which developed from Critical Legal Studies, provides a theoretical framework to examine the legal outcomes and implications when allegations of racial injustice are dismissed based upon existing law. More specifically, CRT examines the relationship between racial power and law, drawing from a body of legal and social science research that challenges notions of color-blindness in American legal doctrine (Crenshaw, Gotanda, Peller, Thomas, & Kendall, 1995). As explained by Russell (1999, p. 187), “Critical race theory operates as a check on mainstream legal analyses. It provides more than an alternative viewpoint on legal doctrine; it seeks to raise questions about the law’s operation and what this reflects.”

According to the Southern Poverty Law Center’s report, “2017: A Year in Hate and Extremism,” the number of hate groups in the United States has increased along with the number of hate crimes (Southern Poverty Law Center, 2018). The number of hate groups rose from 917 to 954, with white supremacist groups experiencing the most growth: rising from 99 to 121. Although some of these increases are due to members of existing hate groups fracturing and forming their own groups, these numbers reflect a growing commitment to promoting hate and hateful ideology. While no claims of SYG evolved from the “Unite the Right” rally, at a time when hate crimes are increasing, membership in hate and extremist groups is on the rise, and public protests and counter protests between hate and extremist groups and social activists remain prevalent, the “Unite the Right” rally served as a reminder of what can happen when conflicts in public spaces escalate. As such, it is important to explore the implications of laws that offer immunity from prosecution for the use of violence—including lethal violence—based solely on an individual’s subjective judgment or claim regarding a perceived threat. The purpose of this study is to examine the potential misuse of SYG laws as a defense for committing hate crimes, and to offer recommendations to ensure that such laws do not protect individuals who attempt to escape prosecution for hate crimes behind the SYG immunity.

HATE CRIME STATISTICS

Statistics reveal that hate crimes in the United States have increased for the three most recent years for which data is available. From 2014 to 2016, the number of reported hate crimes published in the Federal Bureau of Investigation’s (FBI) Hate Crime Statistics section of the annual Uniform Crime Report (UCR) increased from 5,479 in 2014, to 5,850 in 2015, to

6,121 in 2016 (Federal Bureau of Investigation, 2015, 2016, and 2017). These numbers do not include crimes that were not shared with the FBI by local law enforcement, or crimes that were not reported to the police at all, but early indicators reveal that the number of reported hate crimes in 2017 is expected to further continue this upward trend. The Hate Crime Statistics Act requires the Attorney General of the United States to collect hate crime statistics from state and local law enforcement agencies. This data is submitted to the FBI as part of its annual UCR report but, like traditional UCR data, the submission of hate crime information is inconsistent: in 2014, 15,494 law enforcement agencies submitted data to the Hate Crime Statistics Program; in 2015, 14,997 agencies submitted data, and in 2016, 15,254 law enforcement agencies participated in the program (Federal Bureau of Investigation, 2015, 2016, 2017).

The Hate Crime Statistics Act of 1990, which was amended effective 2010 by the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, requires the collection of bias-motivated crimes based upon “race, religion, ethnicity, nationality, gender, sexual orientation, gender identity, and disability” (Sec. 1(a)(1)). The Civil Rights Act of 1968 is considered the first federal hate crime law. In addition to federal law, forty-five states and the District of Columbia have added hate crime laws to their state code; at the time of this writing, only Arkansas, Georgia, Indiana, South Carolina, and Wyoming remain without state hate crime legislation. Wyoming stands out for its lack of a hate crime law due to being the location of the Matthew Shepard murder, which prompted the expansion of federal hate crime protections for victims based upon gender, sexual orientation, and gender identity.

Of those states that do have hate crime legislation, inconsistency exists regarding the inclusion of protected populations: some states have added additional categories not included in the federal hate crime definition for crimes based upon the victim’s age or political affiliation, while some states do not include gender, disability, sexual orientation, or gender identity as protected categories. These inconsistencies between the inclusion of protected categories between states—and between states and the federal government—in addition to the inconsistencies with reporting official hate crime data to the FBI, make it impossible to draw definitive conclusions about the extent of hate crime in the United States. All available indicators, however, lead to the deduction that hate crime is, in fact, an increasing threat in this country. A report by the Anti-Defamation League (ADL) reveals that in 2017, anti-Semitic incidents increased 57% from 2016; this represents the single largest increase in one year ever recorded by the ADL since it began collecting this type of data in 1979 (Anti-Defamation League, 2018).

THE GEOGRAPHY OF HATE

Among the data that is collected by the FBI as part of the Hate Crime Statistics Program is the location of hate crime incidents. For offenses that are classified as crimes against persons, there are currently 46 different location designations for data collection and reporting purposes; this represents a change from 2014, when only 45 location designations were available (Federal Bureau of Investigation, 2017). An examination of the location of hate crimes against persons for the last three years for which data is currently available reveals that while hate crimes near one's home or residence is the most frequently occurring location identified out of the location designations available, hate crime victims are most likely to be targeted when in a public space such as a public road or sidewalk, a school, a parking lot or garage, a place of worship, or another public space. To summarize the data regarding the location of bias motivated crimes, hate crime victimization out of or away from one's home or residence accounted for 68.4% of reported hate crime in 2014, 68.5% in 2015, and 72.7% in 2016 (Federal Bureau of Investigation, 2017). This data reveals a gradual increase in the number of reported hate crimes being committed in public spaces.

The most prevalent types of hate crime committed remained consistent from 2014 through 2016, with intimidation reflecting the most common hate crime against persons reported for all three years. Simple assault, followed by aggravated assault, comprised the second and third most prevalent hate crimes reported for the last three years for which hate crime data is available. For 2014, intimidation accounted for 43% of all crimes against persons, in 2015 it was 41%, and in 2016, 45% of hate crimes against persons fell under the category of intimidation (Federal Bureau of Investigation, 2015; Federal Bureau of Investigation, 2016; Federal Bureau of Investigation, 2017). Simple assault accounted for 37%, 38%, and 36%, respectively, and aggravated assault 19%, 20%, 18%. For all three years, individuals comprised the main target of all hate crime incidents: 82.4% in 2014, 83.2% in 2015, and 81.3% in 2016 (Federal Bureau of Investigation, 2015; Federal Bureau of Investigation, 2016; Federal Bureau of Investigation, 2017). Examined together, the available data tells us that hate crime is most likely to be committed against a person versus property, in a public space away from the victim's home or residence, and to entail intimidation, simple assault, or aggravated assault.

STAND YOUR GROUND

Stand Your Ground laws, hereafter SYG, extend the legal provisions

from the Castle Doctrine, which justified the use of deadly force to protect oneself in his/her home with no duty to retreat, and applied this doctrine to public spaces. The Castle Doctrine received its name from the common law notion that “A man’s home is his castle,” with the implication that a person should have the right to use any means necessary to protect himself/herself and others from threats in one’s own home. The Castle Doctrine removed any expectation that a homeowner attempt to retreat from a confrontation with someone who had unlawfully entered his/her residence, and provided immunity from prosecution for the use of deadly force. SYG laws extend the Castle Doctrine to any public space in which a person has a legal right to be present: on the street, at the park, in a restaurant, etc. According to the Giffords Law Center to Prevent Gun Violence (2017):

“Shoot first” or “stand your ground” laws allow a person to use deadly force in self-defense in public—even if such force can be safely avoided by retreating. With no federal shoot first law, self-defense standards are dictated by state law. Ignoring centuries of legal precedent, more than half the states have now adopted this controversial policy, threatening the safety and lives of their citizens and allowing killers to more easily get away with murder. (paragraph 1)

Florida was the first state to pass a SYG law in 2005. The following year, an additional thirteen states passed SYG laws (Mayors Against Illegal Guns, 2013). To date, twenty-seven states have passed a version of the “shoot first” statute, and an additional seven states “permit the use of deadly force in self-defense in public with no duty to retreat through a combination of statutes, judicial decisions, and/or jury instructions” (Giffords Law Center for the Prevention of Gun Violence, 2017, paragraph 23). The Florida SYG law had been in existence since 2005, but it was not until the shooting of seventeen-year-old Trayvon Martin, an unarmed African-American teenager who was shot following a confrontation with an armed neighborhood watchman in 2012, that the SYG laws reached widespread public awareness. Concerns about Florida’s SYG law have only increased since Martin’s murder, and more people are claiming the SYG immunity to justify using lethal force in public confrontations. The year after its adoption, Wallace (2006) shared concerns regarding Florida’s SYG law from the perspective of forensic psychologists, especially as it pertained to reasonable fear. Wallace explained:

There are several basic questions for forensic psychologists to consider. One question forensic psychologists will ask is, “How will Florida law enforcement agents authenticate distinctions between excusable and justifiable actions?” That is, the law enforcer as decision-maker will need to evaluate whether a citizen’s conduct is a gross deviation from the stan-

dard of action that a reasonable person would expect to observe in the situation (Wallace, 2006, pp. 40-41).

Wallace's concerns came to fruition in the highly publicized Trayvon Martin case, which will be discussed more thoroughly later in this paper.

Stand Your Ground and an Increase in Violence

SYG laws have been criticized for promoting a "shoot first" approach in which public conflicts are justifiably resolved through the use of lethal force with no attempt to retreat or deescalate the situation. There are many challenges to conducting empirical studies of the effects of SYG laws, particularly the existence of situational variables that cannot be accounted for. Despite these limitations, studies of the effects of SYG laws are beginning to be published, with consistent results. Cheng & Hoekstra (2013) studied UCR data and the Castle Doctrine, with results indicating that these laws did not deter aggravated assault, robbery, or burglary, but did result in an increase in the number of murders and nonnegligent manslaughters. Mack and Roberts-Lewis (2016) conducted a preliminary analysis from the FBI's Uniform Crime Report and found that SYG laws increase homicide rates and undermine public safety. SYG states were also found to experience a "striking increase" in the number of justifiable homicides by private citizens in the years following a state's enactment of a SYG law (Mayors Against Illegal Guns, 2013). The American Bar Association summarized the results of existing empirical studies on SYG laws, stating that ". . . empirical evidence shows that states with statutory Stand Your Ground laws have increased homicide rates" (2015; para. 2).

More recent studies on the effects of SYG laws and violence affirm these previous findings. Using state-level monthly data to assess the impact of SYG laws on firearm homicides and injuries, McClellan and Tekin (2017) concluded that SYG laws result in an increase in homicides and firearm-related injuries and hospitalizations. A study by Humphreys, Gasparri, and Wiebe (2017) utilizing an interrupted time series design focused on the impact of Florida's SYG law on the homicide rate and homicide by firearm. Results revealed a "significant increase in homicides and homicides by Firearm" (p. E1). Whether the studies are focused upon the state of Florida, all states with SYG laws, or the Castle Doctrine in general, results consistently suggest that expanding the Castle Doctrine to public spaces has resulted in an increase in crime, and homicide in particular.

Stand Your Ground and the Effect on Racial Minorities

Following the shooting of Trayvon Martin, a highly publicized SYG case, the danger of using SYG laws to target racial minorities became a prominent part of the national discourse on the extension of the Castle Doctrine to public spaces. A report by the American Bar Association's (2015) National Task Force on Stand Your Ground Laws, a project of the Coalition on Racial and Ethnic Justice, concluded that SYG laws result in racial disparities. In *Shoot First: Stand Your Ground Laws and Their Effect on Violent Crime and the Criminal Justice System*, a disparate racial impact as a result of SYG laws was reported:

Controlling for population, the number of homicides of black people that were deemed justifiable in Stand Your Ground states more than doubled between 2005 and 2011 — rising from 0.5 to 1.2 per 100,000 people — while it remained unchanged in the rest of the country (Mayors Against Illegal Guns, 2013, p. 7).

A comprehensive analysis of Federal Bureau of Investigations Supplementary Homicide Report data conducted by Roman (2013) to study the existence of racial disparities in SYG cases that are ruled justifiable homicides found:

Overall, the rate of justifiable homicides is almost six times higher in cases with attributes that match the Martin case. Racial disparities are much larger, as white-on-black homicides have justifiable findings 33 percentage points more often than black-on-white homicides. Stand Your Ground laws appear to exacerbate those differences, as cases overall are significantly more likely to be ruled justified in SYG states than in non-SYG states.

With respect to race, controlling for all other case attributes, the odds a white-on-black homicide is found justified is 281 percent greater than the odds a white-on-white homicide is found justified. By contrast, a black-on-white homicide has barely half the odds of being ruled justifiable relative to white-on-white homicides. Statistically, black-on-black homicides have the same odds of being ruled justifiable as white-on-white homicides (p. 9).

Existing studies on the relationship between race and the outcome of SYG laws indicates an increase in justifiable homicide, particularly against African-Americans, but the racial disparities do not end there. A study by Ackermann, Goodman, Gilbert, Arroyo-Johnson, and Pagano (2015) on Florida's SYG law found race of the victim to be a significant predictor of whether a defendant will be convicted after claiming SYG immunity: a

defendant is two times more likely to be convicted when the case involves a white victim as opposed to a non-white victim, suggesting a racial bias in Florida's application of SYG laws. The authors argue these findings reveal unequal treatment under the law in Florida, and urge other states with SYG laws to conduct similar analyses of the racialized effects of SYG laws in their states.

Stand Your Ground and the Subjective Nature of Fear

Wallace (2008) followed up on her 2006 concerns regarding the subjective nature of SYG laws. As Wallace explains, courts typically differentiated between objective and subjective standards of reasonableness. Utilizing the objective standard, any reasonable fact finder would evaluate the circumstances surrounding a particular case and agree that use of force was necessary for self-defense. With a subjective standard, however, the question shifts to whether the accused believed he/she had to use force, given the circumstances, to protect his/her safety. The subjective standard removes the reasonable and prudent person standard and relies upon the accused's subjective analysis of a situation to decide whether force was justified. This becomes problematic because fact finders, whether law enforcement, prosecutors, grand juries, or jurors, will be asked to evaluate what was on the accused's mind and how the accused interpreted the situation. If it is believed that an individual's subjective assessment warranted the need for force, even deadly force, then under SYG laws, the accused should be immune from criminal responsibility.

SYG laws also face the problem of competing narratives (Megale, 2013). In any SYG conflict there are going to be two points of view: one from the accused, and one from the victim. In cases of homicide, however, the victim is not able to offer an account of what occurred, and if there were no witnesses, fact finding will rely upon the version provided by the person claiming immunity due to SYG. In the case of a homicide, we return again to the subjective nature of the situation and a reliance upon the accused's mindset at the time of the conflict. Moyer, Henderson, Lewis, and Lewis (2015) offer a theoretical framework to explain why subjective psychosocial factors influence the violence that is committed against young black males when they are viewed in what is believed to be a white social space. The authors offer suggestions for culturally competent training for law enforcement, and educational strategies intended to counter the negative perceptions of black males in the United States. More research exists, however, to support the argument that SYG laws should simply be repealed. The American Bar Association (2015) supports the repeal of SYG laws based, in part, on the fact that the laws are unpredictable, uneven, and have

a clear racial bias. Boots, Bihari, and Euel (2009) expressed concern over the ambiguity of SYG laws, particularly in the gray areas that are left to interpretation. SYG laws undermine public safety, and public policy should emphasize de-escalation rather than confrontation when possible (Mack & Roberts-Lewis, 2016). Megale (2013) calls for a return to affirmative defense, recognizing the competing narratives that will always complicate SYG cases.

Stand Your Ground and Public Space

The current study examines four homicide cases that involved allegations of racial bias when a SYG law was used as a defense following an altercation in a public space. These cases, three from Florida and one from Texas, were selected due to their prominence in state and national news media coverage and the availability of information on situational factors and other background information that this prominence provided. The relevant laws applicable to the Florida cases used in this analysis were *Florida Statutes* sections on Justifiable Use of Force, 776.012(1) and 776.012(2):

(1) 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) 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.

The relevant laws applicable to the Texas case used in this study were *Texas Statutes* sections on Justification Excluding Criminal Responsibility 9.31(a), 9.31(e), and 9.31(f):

(a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that

the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(e) A person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.

(f) For purposes of Subsection (a), in determining whether an actor described by Subsection (e) reasonably believed that the use of force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Case Study #1 – Trayvon Martin

The shooting of seventeen-year-old Trayvon Martin by George Zimmerman brought the issues of SYG, racial motivations for crime, and immunity from prosecution into everyday public discourse. On the night of February 26th, 2012, Martin had been visiting family members in Florida when he left on foot to get a snack. Zimmerman, a neighborhood watch captain, allegedly noticed Martin looking into houses and suspected he may be associated with recent crimes committed in the neighborhood. Zimmerman called 911 to report Martin, and the 911 operator told Zimmerman to stay in his car. Zimmerman disregarded this instruction and approached Martin, where a conflict ensued, ending with Zimmerman killing the unarmed African-American teenager. By March 12th, when Zimmerman

still had not been arrested despite nationwide attention to the case, Sanford Police Chief Bill Lee stated that Zimmerman had not been arrested because there was no evidence to disprove his version of events. Four days earlier, investigators had received Zimmerman's medical records, showing that he had suffered an open wound of scalp, and a fracture of the nose (CNN Library, 2018). During this time, the media had attributed Zimmerman's ability to avoid arrest on Florida's SYG law, which offered him immunity from prosecution if he believed he was acting in self-defense.

Zimmerman was ultimately arrested and charged with second-degree murder on April 11, 2012 after nationwide rallies and calls for his arrest. In May, federal prosecutors announced that they were considering hate crime charges against Zimmerman. If convicted of the hate crime charge, Zimmerman would have been eligible for the death penalty. In order to charge Zimmerman with a federal hate crime for Martin's murder, a U.S. attorney in that region would have had to file charges, and federal prosecutors would have had to prove that Zimmerman followed and shot Martin because he was black (Caulfield, 2012).

Zimmerman declined his right to a SYG pretrial immunity hearing, which would have meant no criminal or civil proceedings could move forward against him if a judge had ruled that his actions were protected under the SYG legislation. Instead, jurors in his criminal trial were given the option to consider the provisions of the SYG law. In an interview with Anderson Cooper, one juror explained:

The law became very confusing. It became very confusing," she told Cooper Monday night. "We had stuff thrown at us. We had the second-degree murder charge, the manslaughter charge, then we had self defense, Stand Your Ground." Juror B37 mentioned Stand Your Ground a second time of her own accord, saying the jury ultimately made its not-guilty verdict Saturday night based on the evidence and "because of the heat of the moment and the Stand Your Ground (Caputo, 2013, para. 3).

On July 13, 2013, jurors acquitted Zimmerman of all charges, and on February 24, 2015, the United States Justice Department announced that they would not pursue federal civil rights charges against Zimmerman, eliminating the possibility that Zimmerman would face federal hate crime charges in Martin's death (CNN Library, 2018).

Case Study #2 – Onesimo Marcelino Lopez-Ramos

On April 18, 2015, eighteen-year-old Onesimo Marcelino Lopez-Ramos was murdered in Florida by three men who had reportedly been "hunting for Guatemalans" (Carrion, 2015). The men, who were between

the ages of eighteen and nineteen, had approached Lopez-Ramos, who was outside of his home with his uncle and a friend. The conversation began as friendly, but when it turned, Lopez-Ramos and his friend began to run. One of three men in the group bashed Lopez-Ramos in the head with a rock, and Lopez-Ramos died at the scene. The three men were arrested for the crime on April 25th and charged with first degree murder and a hate crime, because it was evident from information provided by witnesses that Lopez-Ramos was targeted because he was Hispanic. According to Jupiter Police Chief Frank Kitzerow, “The suspects in this case specifically targeted members of the Hispanic community. They sought them out, and this young man was ultimately killed as this crime unfolded,” (CBS News, 2015, paragraph 5). Chief Kitzerow further described the crime as “senseless.”

On September 28, 2017, the attorney for David Harris, one of the three men charged with first degree murder for Lopez-Ramos’s death and the aggravated battery committed with evidence of prejudice against Lopez-Ramos’s uncle, filed a request for the judge to throw out Harris’s charges under Florida’s “Stand Your Ground” law (Duret, 2017). Palm Beach County Circuit Judge Samantha Schosberg Feuer separated the three men’s trials after Harris’s attorney filed the request. Harris’s attorney claims that it was Lopez-Ramos’s uncle, Elmer Lopez, who armed himself with an axe when the three men approached, and Harris feared for his safety and the safety of his younger brother; Harris’s brother is one of the three men facing charges for the crime. More than two years after the crime and arrest, Harris claimed immunity under Florida’s SYG law—an updated version of the original law which now places the burden on prosecutors to prove that the defendant did not have the right to act in self-defense. Prior to this amendment, the Florida SYG law required defendants to prove that they believed they were in danger. In March 2018, a judge denied Harris’s SYG claim, and two months later Harris was convicted of first degree murder and sentenced to life in prison. Harris “. . .also received an additional 15-year term for a related charge called aggravated battery while committing evidence of prejudice” (Freeman, 2018, paragraph 7).

Case Study #3, Ziad Abu Naim

On June 26, 2015, forty-two-year-old Ziad Abu Naim was shot and killed in Texas in what District Attorney Kelli Johnson dismissed as a road rage incident. Naim and the other driver, Robert Klimek, almost collided in an intersection, but accounts of what happened after that differ depending upon the version given by Naim’s widow, Lisa Aimone, or by Klimek. Aimone claims that after the near-collision, Klimek pulled up to their car and both men rolled down their windows. Aimone asserts that Klimek yel-

led, "Go back to Islam!," after which Naim, born to a Palestinian father and a Jordanian mother, got out of the car. Aimone stated that a few seconds later she heard a gunshot, and her husband was on the ground, bleeding from his mouth. The redacted police report claimed that Naim may have struck Klimek twice in the face, after which Klimek reached into his center compartment and pulled out a semi-automatic pistol, shooting Naim once in the face. Aimone, who was watching her husband's back, said everything happened too quickly for Naim to have been able to strike Klimek before being shot. In addition, the attorney for Naim's estate pointed out that there was no evidence of lacerations or any type of physical altercation against Klimek from his mugshot photograph, which was taken a few hours after the shooting. Naim had a gun in his glovebox that he had purchased due to the dangers of his work, but never removed the gun during the encounter with Klimek (Caldwell, 2016).

Klimek remained on the scene after the shooting and was arrested, first charged with aggravated assault and then, after Naim died in the hospital, with murder. A week after the shooting, Aimone approached the Harris County District Attorney's office about whether her husband's death could be considered a hate crime, but was told that would require her to provide evidence that Klimek "had racist tendencies in the past" (Caldwell, 2016, paragraph 7). Aimone did not pursue the investigative work necessary because she was still in an emotional state following her husband's death, but research into Klimek's past would have revealed "a decade-long trail of anti-immigrant, xenophobic vitriol" (Caldwell, 2016, paragraph 11). That September, the grand jury in Harris County declined to indict Klimek for Naim's murder. The Texas SYG law is very clear that "civilians have no 'duty to retreat' from their vehicles before using deadly force in self-defense" (Caldwell, 2016, paragraph 4). Some people called Naim's death a hate crime, others called it a case of road rage; regardless, all charges against Klimek were dismissed due to provisions of the state's SYG law.

Case Study #4: Jordan Davis

On November 23rd, 2012, seventeen-year-old Jordan Davis was shot and killed in Florida by forty-seven-year-old Michael Dunn after an argument over the loud music that Davis and his friends were playing in their car. Dunn was in town for his son's wedding, and he and his fiancée, Rhonda Rouer, had just pulled into a gas station to purchase wine and potato chips. Davis and three of his friends had stopped to get cigarettes and gum on their way to the mall. Before Rouer got out of the car to make their purchase, she testified that Dunn had told her "I hate that thug music," in reference to the teenagers' loud rap music. While Rouer was in the gas

station, Dunn told the boys to turn down their music. One of the teenagers complied, but Davis began a verbal exchange with Dunn, and told Dunn that he was tired of people telling him what to do. From the back seat of the car, Davis then ordered his friend to turn the music back up (Zook, 2015). At this point the driver of the teenagers' car had returned, and just after the front passenger told him what was going on, Dunn said, "Are you talking to me?" before he reached into the glove box of his car, retrieved and cocked his gun, and aimed it out of his window, firing at Davis. Dunn continued to fire into the teenagers' car as they put it in reverse and sped away (Dahl, 2014a). The teens were unarmed, despite Dunn's claims that Davis had a gun or pipe, and Dunn's fiancée testified that Dunn never mentioned a weapon to her (Wallace, 2014). Dunn drove home and was arrested the next day after an eyewitness reported his license plate number to police.

Dunn's attorney claimed the SYG defense based upon Dunn's allegations that the teens had a weapon, and that Davis was attempting to get out of the car. Dunn told police, "I've never been so scared in my life" (Newcomb, 2011, para. 5). No weapon belonging to the teenagers was ever found, and Davis's friends testified that what Dunn stated was not possible, because Davis was in the back seat and the child locks were on the car—one of Davis's friends would have had to unlock the child lock before Davis could have gotten out. On October 17, 2014, Dunn was found guilty of first-degree murder for Davis's death, in addition to three counts of attempted second degree murder for continuing to shoot at the car with the other teens in it as they drove away. The jury had deadlocked on the first-degree murder charge in Dunn's first trial (Dahl, 2014b). Although the Davis case never involved a hate crime charge against Dunn, Dunn's condemnation of the loud "thug music" as the reason for his anger prompted many to argue that this was, in fact, a racially motivated shooting between a white male and four African-American youth. "As one commentator noted, it's hard to imagine what the response might have been to a 47-year-old black man shooting into a car full of white teenagers because he thought their country music was too loud" (Zook, 2015, para. 27).

ANALYSIS

Each of the cases included in this analysis involved an attempt—whether successful or unsuccessful—to use the SYG law as immunity from prosecution or as a defense at trial for committing homicide. In the first case, the shooter was able to convince a jury that he applied the state's SYG law fairly after killing an unarmed African-American teenager following an altercation in the shooter's neighborhood; he was acquitted of second degree murder following a highly publicized case for which there were no

other direct witnesses of the actual shooting. In the second case, three white males approached and then started an altercation with three Hispanic males, resulting in the death of one victim when the three Hispanic males turned to run. The victim was not found to have a weapon of any kind on his person. Despite an attempt to use the SYG defense, the first defendant was found guilty of first degree murder and received a sentence enhancement of fifteen additional years for the bias motivation behind his actions. In this case, there were several witnesses to support his bias motivation. Case #3 involved the shooting of an Arab male by a white male following a traffic dispute/interaction. The victim's wife, a direct witness to the shooting, claimed that the shooting was unprovoked and followed a derogatory comment about Muslims. The victim did own a weapon and it was in the glovebox of his car, but he did not have it on his possession when he was shot. The other driver was arrested but ultimately charges against him were dropped, despite claims from the victim's wife that his version of events was not accurate. The final case involved a white male who shot into a car full of African-American teenagers in the parking lot of a convenience store, killing one of them, following a dispute about the volume of the teenagers' music. A search of the teenagers' car did not produce any weapons, and the defendant was found guilty of first degree murder at his second trial after jury deadlocked in his first one.

These cases illustrate differential situations and outcomes in the application of the SYG defense in homicide cases. In the two cases in which there were multiple witnesses to challenge or contradict the justification for invoking SYG, the offenders were both prosecuted and convicted. In the murder of Trayvon Martin, in which there were no witnesses to the shooting, Zimmerman was charged primarily because of public pressure and the high media interest in the case; it took forty-six days for any charges to be filed against Zimmerman. In the case in which the sole witness was the surviving spouse, a Grand Jury failed to indict and all charges were dropped. These outcomes reveal the complexity of SYG cases when attempting to base a legal defense upon one individual's interpretation of a situation. This review also reveals a need to further examine the outcome of SYG cases when there are no witnesses to challenge a person's justification for using SYG; the absence of witnesses should not result in an automatic default to the survivor's version of what happened. Additional analyses must examine whether those claiming SYG incited the incidents that resulted in loss of life; in three of the four cases reviewed in this study, the victims were approached and were not the original instigators in the situation. In the remaining case, which stems from what some have called a road rage incident, this series of events is more difficult to discern.

DISCUSSION: HATE, CONFLICT, AND PUBLIC SPACE

The cases selected for inclusion in this analysis were chosen based upon the competing narratives of the accused as a person lawfully acting in self-defense, versus the accused as a person who abused the broad immunity from prosecution that SYG legislation offers. These cases also illustrate the potential for miscarriages of justice when violent outcomes following public conflicts can be easily justified by one's subjective reaction to a situation. With the increase in hate crimes and the number of hate/extremist groups in the United States, and the majority of states maintaining a commitment to broad self-defense laws which offer immunity for deadly force used in public spaces, the social and legal implications of interpersonal conflicts in public spaces should raise concern among policy makers and the public alike. The potential for the misuse of SYG laws to shield bias-motivated offenders from prosecution for violent crimes should not be ignored, and neither should the implications that these laws have upon the use and misuse of public space. These laws should raise the concern over the safety of traditionally marginalized groups in these spaces. Future crimes committed by bias-motivated offenders may go unprosecuted under the protection of SYG laws when no witnesses exist to contradict the version of events presented to police. The legal loophole that SYG laws offer to bias-motivated offenders may result in the failure of police to make arrests, prosecutors to file charges, grand juries to indict, and juries to convict when offenders invoke the legal immunity that SYG laws offer. While previous research has suggested the need to examine the factors that influence prosecutorial decision-making in bias crimes (Byers, Warren-Gordon, & Jones, 2012), the existence of SYG laws complicate this endeavor.

Existing research discussed earlier in this paper suggests that SYG laws result in increased homicide rates, increased firearm violence, and an increase in justifiable homicides of African-Americans. Further research needs to explore the reasons for the disparate impact of SYG laws on racial minorities. Light (2015) argues that "In the georacial politics of our contemporary version of the Castle Doctrine, the white castle might potentially be anywhere, including a public street" (Light, 2015, p. 296). SYG laws give full subjective power to the person claiming SYG immunity to justify his/her use of force, and just as with traditional hate crimes, evidence must be produced to prove that the accused acted with intentional hate or bias against the victim. The importance of the implications of SYG laws on the intersection of hate, conflict, and public space cannot be understated. Brahinsky, Sasses, and Minkoff-Zerne (2014) offer:

Racial ideologies are deeply tangled in the ways we think about nature,

biology, the environment, and space. Race as a system of social hierarchy is encoded through projects and policies governing access to and exemption from pristine or polluted spaces. Spatial and environmental policies and arrangements are a primary way that race gets “made” in the contemporary moment. Further, race is sedimented through environmental projects, ideas about cities and who belongs where; race grounds environmental racism and injustice, and defines access to environments thought of as pristine. (Brahinsky, Sasses, & Minkoff-Zerne, 2014, p. 1147).

RECOMMENDATIONS

To date, the effect of SYG laws on racial minorities constitutes the prevalent focus in the scholarly literature. Future research should continue this work and expand it in order to evaluate: 1) the disparate impact upon other groups affected by the intersection of hate and SYG laws; 2) the importance of location in these conflicts, the role of the person invoking SYG in inciting or instigating violence; 3) the absence or presence of weapons for all parties involved; and 4) any alleged history of bias-motivated speech or actions.

Based upon the current analysis in addition to the review of previous research on SYG laws and bias-motivated crime, the following recommendations are offered:

Recommendation #1

The burden should be on the individual to prove that SYG conditions existed in order to justify lethal action in a public space. A person should have to demonstrate that an attempt to retreat would have likely resulted in their death or injury. A person should report the encounter to law enforcement immediately, and the SYG immunity should be filed within a specified time frame.

Recommendation #2

Fear alone—which can draw from prejudices and implicit bias—should not be allowed as a justification to use SYG as a legal defense. A person should have to demonstrate a clear physical, not verbal, threat from which he/she could not retreat. The escalation of a verbal encounter alone is not sufficient to justify SYG immunity. Evidence of a person’s involvement in previous hate crime, hate/extremist groups, or hate ideology should be evaluated and balanced against a person’s claim that he/she was fearful for his/her life.

Recommendation #3

States should be mandated to report law enforcement- and court-level data on variables relevant to SYG cases such as decisions to arrest or prosecute, the presence or absence of weapons, case outcomes, victimization rates, and other relevant demographic data. Data should be collected at the state level, but shared with federal authorities and made available to the public.

Recommendation #4

Analysis of the data collected from Recommendation #3 should be conducted on an annual basis to identify the potential disparate effects and impacts of SYG laws.

In sum, SYG legislation should not provide bias-motivated offenders with a legal loophole to get away with murder. The four cases included in this study demonstrate the complexity of allowing a legal defense to homicide to be based solely upon the subjective interpretation of a single person. If state lawmakers refuse to repeal these laws, as has been suggested by legal scholars and analysts, then a narrower definition of SYG needs to be drafted. In addition, SYG states should commit to complete transparency of the frequency of the use of this defense by collecting and disseminating data relevant to the use of SYG. A confrontation in a public space resulting in bodily harm or death should not be quickly dismissed. In a social and political climate rife with conflict, lawmakers must take steps to ensure that hate crime offenders cannot systematically hide behind SYG immunity.

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