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Florida defense attorneys fear backlash in self-defense cases

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Legal observers fear that judges and juries, beset by publicity in the Trayvon Martin case, may rule against defendants who are claiming self-defense.

With the worldwide press, citizens and celebrities scrutinizing Florida's "Stand Your Ground" law after the shooting death of Trayvon Martin, criminal defense lawyers statewide fear that the widespread publicity will hamper their efforts in front of judges and juries in upcoming self-defense cases.

Sanford police cited the law in not initially arresting neighborhood watch captain George Zimmerman, 28, who fatally shot the 17-year-old Trayvon during a scuffle on Feb. 26 in Sanford.

Lawyers in unrelated cases will undoubtedly have to grill potential jurors about the "Trayvon Martin Effect" or the "Trayvon Factor," said Nellie King, president of the Florida Association of Criminal Defense Lawyers.

"The climate could not be worse for those folks who have been arrested, yet have viable self-defense claims. Florida defense lawyers can only hope that jurists, as well as jurors, tasked with reviewing future Stand Your Ground claims will weigh the case-specific facts before them in an impartial manner against Florida's law, irrespective of the larger issues being debated in this country," she said.

Florida's 2005 law eliminated a citizen's duty to retreat when confronted with an attacker, while allowing judges — well before a jury trial — to decide whether a defendant is immune from prosecution because he or she acted in self-defense.

Critics, including many police officers, say the law spurs vigilantes to shoot first and ask question later, while some prosecutors think that juries, not judges, should be the ones to decide on the self-defense issue.

Zimmerman shot and killed Trayvon during a sidewalk scuffle inside a gated housing community just north of Orlando. Amid the outcry and rallies, Gov. Rick Scott appointed a special prosecutor to review whether there is enough evidence to charge Zimmerman with manslaughter or murder.

The U.S. Dept. of Justice is also examining the case and the police investigation for potential civil rights violations. The governor is also reviewing the law, as is a panel of elected officials empanelled this week by Florida Sen. Chris Smith , D-Fort Lauderdale.

Fueled by social media and cable news networks, Trayvon's death has sparked unprecedented publicity.

Rallies and marches have dominated the headlines. President Obama chimed in, saying if he had a son, he would look like Trayvon.

Countless columnists, commentators and bloggers from across the globe have spotlighted Florida's self-defense law, one more than 20 similar laws in state across the nation t. More than 50 online petitions asking for the law's repeal, signed by more than 2 million people, have also been created on Change.org.

In popular culture, Trayvon's image — and criticism of the law — has exploded into the public conscious. The Miami Heat posed for photos wearing hooded sweatshirts similar to one Trayvon wore the night he was killed.

Even the rock group Red Hot Chili Peppers, playing Monday in Sunrise, referenced the law, donning black hoodies with the phrase "Ode to Trayvon Stand What Ground" printed on the back.

It's against the backdrop of public backlash that Miami defense attorney David Macey is hoping to get a judge to grant immunity to his client, Cristobal Palacios , on a 2008 murder charge.

Miami-Dade Police and prosecutors say Palacios, in cold-blood and in a jealous rage, gunned down his ex-wife's new husband outside Palacios Kendall home. Palacios' ex-wife and husband, Paul Winter , had gone to the home to drop off Palacios' young twins for a court-ordered week of custody.

Palacios, however, claims he acted in self-defense outside his own home when he saw Winter reaching for something he thought was a weapon. Winter was unarmed.

Trial is set for July and Macey said that in selecting jurors, it will be "important to weed out the people who want to get revenge for Trayvon Martin ."

But, before that, a Miami-Dade judge will decide whether to dismiss the case based on the Stand Your Ground law.

"I'm fearful that there will be backlash and people who deserve the protection of the law will be denied because of the public pressure," Macey said.

One of the most controversial aspects of the law, as interpreted by the Florida Supreme Court, is that judges can hold an evidentiary hearing to determine if someone acted in self-defense. These immunity hearings are governed by a looser standard than "beyond a reasonable doubt" one used in jury trials.

But judges are also elected and legal and political observers say jurists could be hesitant to throw out criminal charges, especially in murder cases, lest they draw criticism.

Earlier this month, Miami-Dade Circuit Judge Beth Bloom tossed out a murder charge against Miami's Greyston Garcia, who chased down a man who broke into his car and stabbed him to death during a confrontation in which the victim swung a heavy bag of car radios at him.

While Garcia's attorneys hailed the decision as brave, the decision infuriated police and drew worldwide press attention at the same time that the Sanford was exploding into the public consciousness.

"Considering it is an election year for some judges, rulings on immunity are a hot topic and will be greatly scrutinized by the public. What judge wants to be in the spotlight on an immunity case? Judges could find themselves making very unpopular decisions when applying this law," said Miami defense attorney John Priovolos, who himself is waiting for the publicity to die down before filing an immunity motion on a non-murder self-defense case he is handling.

"And what happens when a judge does not grant immunity, and a jury is left to decide the fate of the defendant? Does it water down a self-defense claim for all defendants? Will a jury disbelieve a defendant if he takes the stand? It's a legitimate concern."

As for the effect of publicity with juries, it's an issue that universally bedevils defense attorneys on cases of all stripes.

Nevertheless, legal observers believe defense lawyers can overcome the "Trayvon Effect" during voir dire, the questioning of potential jurors before the trial begins. Some defense lawyers hope to even use the case to draw a sharp distinction between their clients and the widely reported conduct of Zimmerman.

Former Miami-Dade Circuit Judge **Mary Barzee** Flores said that both prosecutors and defense attorneys will have "to seriously consider how the public perceives the Martin shooting" in deciding whether to take a case to trial in the coming months.

It is judges, she said, who must carefully help in screening jurors who can't leave their feelings at the door.

"The jury room is the place for careful, deliberative analysis of oftentimes very difficult and disturbing facts," she said. "It's not the place for vengeful, emotional reaction to facts and circumstances that have nothing to do with the case at hand."

---- INDEX REFERENCES ---

COMPANY: CHANGE ORG

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