

Relevant Florida Statutes, Jury Instructions

776.012 Use of force in defense of person.—A person is justified in using 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. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

(1) He or she reasonably believes that 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; or

(2) Under those circumstances permitted pursuant to s. 776.013.

776.013 Home protection; use of deadly force; presumption of fear of death or great bodily harm.—

3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

776.041 Use of force by aggressor.—The justification described in the preceding sections of this chapter is not available to a person who:

(2) Initially provokes the use of force against himself or herself, unless:

(a) Such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

See, **Mosansky v. State**, 33 So. 3d 756, 758 (Fla. 1st DCA 2010).

Self-defense is “an affirmative defense that has the effect of legally excusing the defendant from an act that would otherwise be a criminal offense.”

In asserting self-defense, Appellant acknowledged doing the act charged but sought to justify it as necessary

The Florida Supreme Court amended Florida Standard Criminal Jury Instruction 3.6(f) to clarify that the trial court should only include the aggressor instruction when the defendant has been charged with a contemporaneous independent forcible felony other than the one for which the defendant claims self-defense pursuant to *Giles v. State*, 831 So. 2d 1263 (Fla. 4th DCA 2002).

However, the applicability of section 776.041(2) does not follow the same condition as section 776.041(1) insofar as there is no requirement for a contemporaneous independent forcible felony in the giving of the section 776.041(2) instruction. See *Martinez v. State*, 981 So. 2d 449, 452 (Fla. 2008).

Specifically, section 776.041 “[s]ubsection (2) precludes the initial aggressor from asserting self-defense where he or she is the individual who provoked the use of force” contemporaneously to the actions of the victim to which the defendant claims self-defense. *Id.*

As in this case, we note that the initial provocation would necessarily had to have been contemporaneous to the actions of the victim, as described in subsection 2(a), which the defendant claims self-defense.

Zimmerman Charge

COUNT 1: IN THE COUNTY OF SEMINOLE, STATE OF FLORIDA, on February 26, 2012, GEORGE ZIMMERMAN, did unlawfully and by an act imminently dangerous to another, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, kill TRAYVON MARTIN, a human being under the age of eighteen, by shooting the said victim, and during the commission of the aforementioned Second Degree Murder, the said GEORGE ZIMMERMAN did carry, display, use, threaten to use or attempt to use a firearm and did actually possess and discharge a firearm and as a result of the discharge, death or great bodily harm was inflicted upon any person, contrary to the provisions of Sections 782.04(2), 775.087(1) and 775.087(2), Florida Statutes.

Murder Statutes:

782.11 Unnecessary killing to prevent unlawful act.—Whoever shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 13, ch. 1637, 1868; RS 2388; GS 3213; RGS 5043; CGL 7145; s. 719, ch. 71-136.

s. 782.04 Murder

(2) The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any

premeditated design to effect the death of any particular individual, is murder in the second degree and constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(1) Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

(a) In the case of a felony of the first degree, to a life felony.....

(2)(a)1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a weapon is an element of the felony, and the conviction was for:

a. Murder;....

...and during the commission of the offense, such person actually possessed a “firearm” or “destructive device” as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 10 years

The Standard Jury Instruction on Second Degree Murder, Fla. Std. Jury Instr. (Crim.) 7.4,

an act is "imminently dangerous to another and demonstrating a depraved mind" if it is one that:

1. A person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and

2. is done from ill will, hatred, spite, or an evil intent, and

3. is of such a nature that the act itself indicates an indifference to human life. (my emphasis)