LAWYER

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STAND YOUR GROUND IMMUNITY: GOODBYE TWO BIRDS, ONE STONE

Appellate Practice Section

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Stand Your Ground litigants should beware: criminal immunity does not inevitably confer civil immunity.

Thanks to Florida's Stand Your Ground law,[1] your client has managed to escape criminal liability for injuries he caused when some well-intentioned, college-football-related bar banter suddenly erupted into wild fisticuffs. Congratulations. But now what? Should your client just relax and enjoy his criminal immunity as yet another serendipitous benefit of Florida living? Or should he start prepping a war chest for civil litigation? The Florida Supreme Court's decision in *Kumar v. Patel* has the answer.[2]

Kumar held a Stand Your Ground determination, that renders a criminal defendant immune from prosecution, does not automatically confer civil immunity.[3] That is, *Kumar* ruled one stone (Stand Your Ground determination in a criminal case) cannot kill two birds (criminal and civil liability). Importantly, it also encouraged the Legislature to fix the law, albeit indirectly. Understanding why requires some context.

Florida's Stand Your Ground law essentially jettisons the common-law duty to retreat before using violent force in self-defense. Specifically, it allows a person to threaten or use force if he "reasonably believes that such conduct is necessary to defend" against another's "imminent use of unlawful force."[4] Sometimes, it even permits *deadly* force when "necessary to prevent imminent death or great bodily harm."[5]

The Stand Your Ground law effectuates these rights by providing both criminal and civil immunity to those who lawfully defend themselves.[6] But as *Kumar* observes, the Legislature never established "procedural mechanisms for invoking and determining Stand Your Ground immunity."[7] Hence, the judiciary has had to develop those procedures, which now include an evidentiary hearing in both criminal and civil actions.

This lack of statutory guidance led the Second DCA in *Kumar* to conclude that since the Stand Your Ground law unequivocally grants both criminal and civil immunity, "the Legislature must have intended a procedure with one immunity determination and, therefore, unambiguously modified the" common-law collateral estoppel doctrine to effect that single determination.[8] The Florida Supreme Court disagreed, explaining that the collateral estoppel doctrine, which requires mutuality of parties, does not allow a criminal immunity determination to "bind a potential civil plaintiff who is not a party to the criminal proceeding."[9] Accordingly, it reasoned that the Legislature's decision not to expressly modify the collateral estoppel doctrine signaled intent to require separate immunity determinations.

Additionally, *Kumar* criticized the Legislature for enacting a statute that "purports to grant a substantive immunity that cannot, in practice, be accomplished by *any* procedure."[10] Considering the Legislature has neither abrogated *Kumar* nor established new implementation procedures, this critique appears to have fallen on deaf ears. Thus, Stand Your Ground litigants (and college football fans) should beware: criminal immunity does not inevitably confer civil immunity.

[1] *See* § 776.012, Fla. Stat. (2017).

[2] *Kumar v. Patel*, 227 So. 3d 557 (Fla. 2017). The author of this article works for Thomas A. Burns, the board-certified appellate attorney who developed the petitioner's appellate strategy in *Kumar.*

[3] *Id.* at 561.

[4] § 776.012(1), Fla. Stat.

[5] § 776.012(2), Fla. Stat.

[6] § 776.032(1), (3), Fla. Stat. (2017).

[7] *Kumar*, 227 So. 3d at 559.

[8] *Id.* at 560.

[9] *Id.*

[10] *Id.* (emphasis in original).

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