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LEGAL & POLITICAL ANALYSIS OF TRAYVON MARTIN'S CASE FROM A GEORGIA PERSPECTIVE

INTRODUCTION

Florida's "Stand Your Ground" law has been discussed as an important issue in the death of Trayvon Martin. Historically, it has been the enforcement, or lack thereof, of laws that have been the basis of the disproportionate treatment of African Americans under the law. The laws have either not been enforced as it relates to African Americans or, have been misapplied to further marginalize African Americans. While we are not advocates for the "Stand Your Ground" laws that now exist in over twenty states, (including Georgia), it is important to understand the law and its application. It is our position that the focus of this law as a contributing factor to Trayvon Martin's death is misguided.

In short, George Zimmerman did not kill Trayvon Martin because of Florida's "Stand Your Ground" law. There is no evidence that George Zimmerman was even familiar with the law when he attacked and shot Trayvon Martin. He killed Trayvon Martin because it remains politically and culturally acceptable to kill young African American men in America. We submit that the focus of our community should not be on the law but on why African American male life remains devalued. However, as a community-based law firm, we felt it was our responsibility to briefly address the law that is being discussed.

KEY POINTS:

1. The Florida "Stand Your Ground" law does not prevent the arrest of Martin's killer, George Zimmerman.
2. A person is NOT immune from criminal prosecution under Florida's "Stand Your Ground" law if the person "initially provokes" the use of force against himself or herself.

FLORIDA LEGAL SUMMATION:

Florida's "Stand Your Ground" law states that a person may use deadly force in self-defense when there is reasonable belief of a threat, without an obligation to retreat first. A person using any force permitted by the law is **immune from criminal prosecution...** and cannot be arrested **unless a law enforcement agency determines there is probable cause that the force used was unlawful.** However, a person who **initially provokes the use of force against himself is not immune from prosecution.** The basis for Florida's law is Florida Statutes 776.012, 776.032 and 776.041:

Florida Statute 776.012(1), titled Use of force in defense of person states:

... 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;

Florida Statute 776.032, titled Immunity from criminal prosecution and civil action for justifiable use of force states:

(1) A person who uses force as permitted... is justified in using such force and is immune from criminal prosecution...

(2) A law enforcement agency may use standard procedures for investigating the use of force ... but the agency may not arrest the person for using force unless it determines that there is **probable cause** that the force that was used was unlawful.

Florida Statute 776.041, titled Use of Force By Aggressor states: The justification ... is not available to a person who is:

(1) attempting to commit, committing, or escaping after the commission of, a forcible felony; or

(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;

GEORGIA LEGAL SUMMATION:

Georgia's "Stand Your Ground" Law is very similar to Florida's application. It derives from Georgia Code 16-3-21 and 16-3-

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24.2. Section 16-3-21, titled Self-defense and Defense of a Third Person Against Imminent Use of Unlawful Force, states:

(a) A ... person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.

(b) A person is not justified in using ... if he:

- (1) **Initially provokes the use of force against himself** with the intent to use such force as an excuse to inflict bodily harm upon the assailant;
- (2) Is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or
- (3) Was the aggressor or was engaged in a combat by agreement unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

GA. Code Section 16-3-24.2, Immunity from Criminal Prosecution for Use of Justifiable Force, states:

A person who uses threats or force ... shall be immune from criminal prosecution therefore unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful by such person...

FLORIDA/GEORGIA LAW COMPARISON:

While the Florida and Georgia laws regarding self-defense are similar, there is one difference worthy of noting. The Florida law discusses police investigations and the requirement that probable cause exist prior to arrest. Interestingly, before any arrest is made by police, probable cause is necessary. Therefore, mere restatement of this commonly accepted legal requirement in the statute places emphasis on the pre-arrest investigation that is not present under Georgia law. However, it is important to note, that the law does not prevent someone from being arrested simply because they allege they were acting in self-defense.

POLITICAL ANALYSIS:

As discussed above, it is our position that to primarily focus on the law is misguided and fails to examine the source of the tragedy of Trayvon Martin's murder. It is important to recognize that laws are an extension and by product of politics. Therefore, we encourage the community's focus and outrage be directed toward the political reality that continues to exist in America. The American political reality that continues to exist is that African American lives are devalued and African American males are suspects in America. Whether it is a Harvard professor or an unarmed teenager, African Americans are all suspects. The historic criminalization of African American people in general, but African American men in particular, has been well documented.

In "Criminalizing A Race: Free Blacks During Slavery", Charshee C. L. McIntyre noted the precarious existence of free African Americans because of how easily they were stereotyped as "troublesome and dangerous", which led to arrest and re-enslavement. Douglas Blackmon, author of "Slavery By Another Name: The Re-Enslavement of Black People in America from the Civil War to World War II" discussed the forced labor that African Americans endured after enslavement ended based on alleged violations of the law. Many of the violations of the law were merely an excuse to incarcerate and re-enslave African American men. Most recently; Michelle Alexander has documented the criminalization of African American men in her book titled, "The New Jim Crow." Professor Alexander writes "In each generation, new tactics have been used for achieving the same goals—goals shared by the Founding Fathers. Denying African Americans citizenship was deemed essential to the formation of the original union."

The exploitation of African American males as criminals has been the basis of presidential campaigns (i.e. George Bush/Willie Horton), false allegations (i.e. Susan Smith's murder of her own children) and economic disenfranchisement (i.e. the excuse used to steal African American land, as discussed by Dr. Raymond Winbush). Trayvon Martin being "suspicious" by merely walking in a gated community is consistent with this deep seated and long held belief embedded in the American political psyche.

WHAT CAN WE DO TO STOP TRAYVON MARTIN'S TYPE TRAGEDIES:

Other ethnic groups are less likely to experience Trayvon Martin type tragedies because they have been able to harness their power in America. The power necessary to prevent the ongoing deaths of our children will only come as a result of our ability to be organized around our own interests. We suggest the following next steps for any African American tired of seeing our children killed by whites and blacks:

- 1) Work on strengthening the African American Family (The family is our first line of defense);
- 2) Join and work in an organization working in the interest of African American people;
- 3) Support African American businesses that support your community (Economic power births political power);
- 4) Study African American history and culture (we cannot allow our struggle or culture to be defined by others);
- 5) Understand Power (how it is obtained and maintained). See Amos Wilson and Frantz Fanon;
- 6) Keep up the pressure (Agitate, Agitate, Agitate!). "Power concedes nothing without a demand" - Fredrick Douglass

We must, in the words of Kwame Toure, "Organize, Organize, Organize!"

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