Stand Your Ground, Or Not.

Tim Laughlin
Chief, Non-Capital Trial Division
Oklahoma Indigent Defense System

I don’t tend to watch a lot of cable news. I don’t particularly care for shows like “Law & Order.” I’m not a big fan of true crime shows like “20/20” or “I Almost Got Away With It!” It is not that these are necessarily bad programs or that they don’t have entertainment value. I think they don’t appeal to me because they often get the law wrong and I find that annoying.

Don’t get me wrong. I am no legal scholar. I have to reread basic law on a regular basis. If I had a motto it would be “Nothing is Prosaic.” Every legal theory is worth looking at from the ground up. And, it’s always nice to have directions to refer to when preparing and trying a case.

Like I said, I have no business getting on my high-horse, but sometimes the media’s insistence on inaccurately applying legal catch phrases to cases whether they apply or not gets on my nerves. This was particularly true when I would hear about the George Zimmerman case out of Florida. The media would relentlessly refer to Mr. Zimmerman’s case as a “Stand Your Ground” case.

As Dan Abrams pointed out in a short but accurate article for ABC news, George Zimmerman’s case was tried as a good old fashioned self defense case, not as a “Stand Your Ground” immunity case. Locally, the same was true for the Jerome Ersland case. Now, there may have been pleading in one case or the other that cited each state’s respective “Stand Your Ground” immunity, but it was clear from the facts of each case that the defense of each man was self defense.

Maybe I was being a little sensitive to the way the “Stand Your Ground” label was being thrown around by the media, internet bloggers and cocktail party legal analysts because, my lawyers and I were struggling with this issue in several cases and with little guidance from the legislature or the Court of Criminal Appeals. Like I said, I’m not that smart.

Two cases that I believe were proper “Stand Your Ground” cases have challenged my attorneys and me for the last six years. One case resulted in a finding that our clients were immune form prosecution for First Degree Murder based upon their right to “stand their ground” when attacked by an aggressor. The other case resulted in a First Degree Murder conviction and a sentence of straight life. You can probably guess which case I tried.

The “Stand Your Ground” defense is really an immunity based upon one’s lawful use of defensive force. Oklahoma has had some type of statutory immunity for the lawful use of defensive force since the “Make My Day” law was passed in 1987. Oklahoma’s current statutory incarnation of the immunity, commonly referred to as the “Stand Your Ground” law, is found at Title 21, O.S., 2011, § 1289.25.
The recent and inexplicably unpublished Court of Criminal Appeals case, State vs. Ramos (S-2013-509 & S-2013-510), has finally articulated the procedure and standards by which we are to urge use of defensive force immunity on behalf of our clients.

History of Stand Your Ground

When we discuss the “Stand Your Ground” doctrine it is important to understand that we are really discussing a scaffolding of three doctrines - each built upon the foundations of a proceeding doctrine. The central idea that runs through each doctrine is the notion that an individual is justified or not legally culpable for his or her use of force including deadly force when confronted by the threatening acts of another.

The Castle Doctrine

The original incarnation of this notion is commonly referred to as the Castle Doctrine. The Castle Doctrine dates back to the days of the Roman Republic and was subsequently incorporated into English Common Law. The Castle Doctrine held that a person is entitled to legal immunities and defenses when the person uses force (including deadly force) is in his own home against an intruder if “the actor reasonably fears imminent peril or death or serious bodily harm to himself or others.” Implied, and at times expressed, within the notion that one may justifiably use force when confronted by an intruder in one’s own home is the notion that a person in that situation has no duty to attempt to retreat from the aggressor before resorting to defensive force.

Almost all states have statutes which recognize defenses or immunities when it is determined a person used defensive force under particular circumstances. Most of these statutes recognize a person who reasonably believes he or she in peril of imminent bodily harm or death has no duty to retreat before resorting to the use of force.

Codifications of the Castle Doctrine often include the following conditions:

- An intruder must be making (or must have made) an attempt to unlawfully or forcibly enter an occupied residence, business, or vehicle.
- The intruder must be acting unlawfully (the castle doctrine does not allow a right to use force against officers of the law, acting in the course of their legal duties).
- The occupant(s) of the home must reasonably believe the intruder intends to inflict serious bodily harm or death upon an occupant of the home. Some states apply the Castle Doctrine if the occupant(s) of the home reasonably believe the intruder intends to commit a lesser felony such as arson or burglary.
- The occupant(s) of the home must not have provoked or instigated an intrusion; or, provoked/instigated an intruder's threat or use of deadly force.
Make My Day

Colorado was in the forefront of codifying the Castle Doctrine in a way that provided specific immunity from prosecution for people who use deadly force in their homes. The Colorado statute (Title 18, Article 1, Part 7, §18-1-704.5) broadened the scope of legally protected use of deadly force by residents when confronted by intruders in their abode. The statute reads:

“any occupant of a dwelling is justified in using any degree of physical force, including deadly physical force, against another person when that other person has made an unlawful entry into the dwelling, and when the occupant has a reasonable belief that such other person has committed a crime in the dwelling in addition to the uninvited entry, or is committing or intends to commit a crime against a person or property in addition to the uninvited entry, and when the occupant reasonably believes that such other person might use any physical force, no matter how slight, against any occupant.” (Emphasis added.)

Given the broad language of the statute, defense attorneys attempted to apply the statute’s promise of immunity for criminal prosecution to a wide range of cases. Unlike the traditional Castle Doctrine which authorizes the use of deadly force when an occupant believes he is at risk of being harmed or killed by an intruder, Colorado’s “Make My Day Statute” provides immunity for occupants who have a reasonable belief the intruder (1) intends to commit a crime against a person or property and the intruder might use any even the slightest physical force against the occupant.

Colorado’s statute broadened the range of fact patterns in which a user of defensive force could seek immunity. If the intruder is in the home to commit even a property crime much less a violent crime, and there is evidence of the intruder’s intent to use any force, the occupier may use defensive force (including deadly force) against the intruder.

Many states, including Oklahoma followed Colorado’s lead in codifying the Castle Doctrine. In the almost thirty years since Colorado’s adoption of its “Make My Day” statute, statutes extending use of defensive force immunity from criminal and civil liability have spread across the country. In 1987, Governor Henry Bellman signed into law Oklahoma’s version of the “Make My Day” law. Oklahoma’s version of the “Make My Day” law was virtually identical to Colorado’s.

Stand Your Ground

Oklahoma’s “Make My Day” law went through some modifications over the years but remained essentially the same until, in 2006 Oklahoma’s “Make My Day” law became a “Stand Your Ground” law. While most states have statutes incorporating the “Castle Doctrine” in some fashion, at this time, twenty-three states have “Stand Your Ground” laws similar to Oklahoma’s.

There is primary difference between a “Make My Day” law and a “Stand Your Ground” law. Under “Make My Day” a person is usually required to be the occupant of a home or business to be availed of defensive force immunity. Under “Stand Your Ground” one simply has
to be in a place where he or she has a right to be. “Stand Your Ground” laws broaden of the
Castle Doctrine to include places outside the home. In other words, under the Castle Doctrine, a
man’s home is his castle; under the Stand Your Ground Doctrine, a man’s Castle is where he
stands.

Oklahoma’s “Stand Your Ground” immunity statute is found at Title 21 O.S., 2011, §
1289.25. Paragraphs A & B describe the conditions under which a person in a home or business
will be entitled to “Stand Your Ground” immunity. Paragraph B establishes a presumption that
an individual lawfully used defensive force if certain conditions are met. The language of the
statute reads as follows:

A person or an owner, manager or employee of a business is presumed to have
held a reasonable fear of imminent peril of death or great bodily harm to himself
or herself or another when using defensive force that is intended or likely to cause
death or great bodily harm to another if:

1. The person against whom the defensive force was used was in the process of
unlawfully and forcefully entering, or had unlawfully and forcibly entered, a
dwelling, residence, occupied vehicle, or a place of business, or if that person had
removed or was attempting to remove another against the will of that person from
the dwelling, residence, occupied vehicle, or place of business; and

2. The person who uses defensive force knew or had reason to believe that an
unlawful and forcible entry or unlawful and forcible act was occurring or had
occurred.

Paragraph B broadens the Castle Doctrine’s protections in two ways. This paragraph
expands the categories of places where one might be when legally or justifiably exercising
defensive force to include places of business and automotive vehicles. Further, this paragraph
extends the Castle Doctrine’s protections any person who legally occupies a home, business or
car.

Paragraph C excludes individuals in certain circumstances from being presumed to have
legally used defensive force. For example, a person who claims to have used defensive force in
his or her own home will not be entitled to the presumption that his or her use of force was
legally if he or she was in violation of a protective order or pretrial order of no contact involving
a person in the home. Likewise, a person who uses alleged defensive force will not be entitled to
the presumption of legal use of that force if he or she was attempting to remove children from
their legal guardian. Paragraph B excludes anyone using the home, business or occupied vehicle
for illegal purposes from qualifying for the presumption of legal use of defensive force.

The language of Paragraph B creates some ambiguity when read as a whole. This
paragraph begins by describing one entitled to the presumption of justifiable use of defensive
force as “A people or and owner, manager or employee of a business.” The use of the term “A
person” disjunctive of an owner, manager or employee suggests that patrons or other legal guests
of a business are entitled to the statue’s protections. When excluding certain people from the
statute’s protection, Paragraph C refers to individuals with a legal right be in a home, business or
vehicle such as an owner, lessee or title holder.
Don’t be confused by this. Paragraph C is simply attempting to illustrate that a person with a clear right to be in a location where defensive force was used will not qualify for the presumption his use of force was justified if certain facts exist; e.g., protective orders involving the decedent, use of the property for illegal activity, etc. Under Paragraphs B and C a legal guest in someone’s home or a patron in a business will be entitled to the presumption his or her use of defensive force was legal unless specifically disqualified.

Paragraph D expands the Castle Doctrine even further. Under Paragraph D, one’s Castle is where one stands. The paragraph states:

*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.*

While Paragraph D expands the types of locations where one might be when justifiably using defensive force, it narrows the types of aggressor/intruder behavior that will trigger the justification. Paragraph B protects the defensive force user if the aggressor “unlawfully or forcefully” enters a protected area like a home, business or occupied vehicle. Under Paragraph D, the user of defensive force is justified in his or her use in any lawfully occupied place so long as he or she is **confronting a sufficient threat** or **preventing the commission of a forcible felony**.

Paragraph E creates a presumption that a person who illegally enters a dwelling, place of business or an occupied vehicle of another is presumed to be doing so with the intent to commit an unlawful act involving force or violence. It appears this paragraph is intended to avoid putting innocent occupiers of these locations from having to divine the intentions of a would-be intruder before resorting to the use of defensive force.

An individual who injures or kills another through the use of defensive force may be entitled to immunity form civil or criminal liability under Paragraph F. Once an individual who uses defensive force is presumed “to have held a reasonable fear of imminent peril of death or great bodily harm to himself or another” under Paragraph B or to have resorted to defensive force upon the reasonable belief that it was necessary to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony under Paragraph D, that individual should petition the court for a finding of immunity and dismissal of the charges. Paragraph F states:

*A person who uses force, as permitted pursuant to the provisions of subsections B and D of this section, is justified in using such force and is immune from criminal prosecution and civil action for the use of such force. As used in this subsection, the term "criminal prosecution" includes charging or prosecuting the defendant.*

Until the **Ramos** case, there was no real clarity regarding how to litigate the issue of immunity or the proper standard by which a judge should determine an individual’s immunity. These issues will be discussed below in an examination of the **Ramos** opinion.
In addition to establishing the presumption of lawful behavior and the entitlement to immunity as described above, the statute goes one step further and establishes an affirmative duty on behalf of law enforcement to investigate claims of lawful use of defensive force. Paragraph G state:

*A law enforcement agency may use standard procedures for investigating the use of force, but the law enforcement 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.*

In cases in which your client has been charged with First Degree Murder or some other violent offense and there is credible evidence that your client justifiably used defensive force, it may be appropriate to file a writ of Habeas Corpus demanding your clients release from jail based upon law enforcement’s failure to investigate whether your client’s use of force was lawful. Further, should your client be taken into custody and interrogated prior to law enforcement’s investigation of whether your client’s use of force was unlawful, you may want to file a motion to suppress your client’s statements based upon his or her illegal detention.

**Ramos: A Little Background.**

On May 16, 2009, Isidro Ramos was a few days shy of his twenty-seventh birthday. His brother, Julio Ramos, was a few days shy of his twenty-third birthday. They were Guatemalan immigrants who had traveled to Woodward, Oklahoma in search of a better life. They came from a remote and impoverished village in located in the central highlands of Guatemala. They spoke no English and little Spanish. They had very little education. They only language they spoke in any functional way was a Mayan dialect known as K’iche.

The Ramos brother utilized the services of trafficking agents to get to from Guatemala to Oklahoma. Once they arrived in Woodward, they went to work for a corporate meat processing plant that didn’t worry too much about immigration status when hiring new employees.

The Ramos brothers worked hard at the plant every day and retired to their apartment in the evenings. Unfortunately for the Ramos brothers and many undocumented workers in this country, the network of labor merchants or “coyotes” continues to exploit the workers long after they settle into their homes and jobs. The “coyote” in this case continued to extort the Ramos brothers with threats of violence and deportation.

On May 16, 2009, the “coyote” barged into the Ramos Brother’s home and began threatening them. The threats turned to violence and the Ramos Brothers stood their ground. The “coyote” expected the Ramos Brothers to capitulate like so many powerless immigrants had before. In the fight that followed, the Ramos Brothers got the upper hand and killed the “coyote.”

When the Ramos Brothers realized they had killed their extortionist, they were understandably terrified. In addition to being strangers in a strange land, they knew nothing about the laws of this country. Their limited knowledge of law enforcement in Guatemala provided them no comfort. They took the “coyote’s” car and drove. They made it as far as Enid, Oklahoma before they were arrested.
Following their arrest, the Ramos Brothers were interrogated by a local police officer who spoke limited Spanish. The Ramos Brother spoke less Spanish than the cop. The police officer’s dubious report of the interrogation claimed the Ramos Brothers made admissions. The Ramos Brothers were charged with First Degree Murder and Larceny of and Automobile in Woodward County. The State filed a Bill of Particulars in support of the death penalty, but later dismissed it. Newell Wright, Deputy Division Chief in charge of the Oklahoma Indigent Defense System’s Clinton Satellite Office, and Larry Monard, an OIDS contract attorney, were assigned to represent Julio and Isidro respectively.

Three years into the Woodward County prosecution, the Garfield County District attorney charged the Ramos Brothers with Knowingly Concealing Stolen Property for being in possession of the decedent’s car when they arrested in Enid. It appears this charge was filed as a professional courtesy at the request of the Woodward County District Attorney.

Newell and Larry first attacked the Ramos Brother’s murder cases as a Violation of the Vienna Convention on Consular Relations (VCCR.) Judge Ray Dean Linder found that the State, in fact failed to follow the VCCR and the State appealed. The Court of Criminal Appeals overruled Judge Linder’s decision and remanded the case. Newell and Larry next attacked the cases on Miranda/ Jackson v. Denno grounds arguing the Ramos Brothers did not make knowing, intelligent or voluntary waivers of their rights to remain silent or their rights to counsel given the language barrier between the police officer and the Ramos Brothers. Newell and Larry also filed a motion to have the court find the Ramos Brothers immune from prosecution under the “Stand Your Ground” statute (Title 21 O.S. § 1289.25.) Judge Linder suppressed the Ramos Brother’s statements and held the “Stand Your Ground” immunity issue in abeyance. The State appealed again.

Rather than addressing the issue of whether the Ramos Brothers knowingly, intelligently and voluntarily waived their rights to remain silent and their right to counsel when under custodial interrogation, the Court of Criminal Appeals remanded the matter to District Court for an evidentiary hearing on the “Stand Your Ground” immunity issue. The hearing was held and Judge Linder found that the Ramos Brothers were immune from prosecution for murder because there was sufficient evidence to find they were entitled to use defensive force in when confronted by the decedent. The State appealed again.

James Lockard was assigned the Ramos’ cases on appeal. James did a masterful job of discussing the propriety of the State’s appeal under Title 22 O.S., 2011, § 1053. Of the six possible grounds upon which the State may appeal under § 1053, the Court found the one proper grounds to place this issue before the Court was as a “question reserved by the state or a municipality” or a reserved question of law. This was an important finding because, unlike lower court rulings in which evidence is suppressed for State violations of the Fourth, Fifth and Sixth Amendments, the State has no right to appeal a lower court’s finding that a defendant is immune from prosecution based upon his or her lawful use of defensive force.

While the Ramos Brothers’ murder case was bouncing between the Court of Criminal Appeals and the District Court, Newell Wright and Larry Monard made the strategic decision to advise their clients to plead guilty to the Woodward County charge of Unauthorized Use of an Automobile and the Garfield County charge of Knowingly Concealing Stolen Property. Their goal was to keep the Court’s focus on the murder charges and their clients’ claims of immunity.
Finally, on June 9, 2015, more than six years after being arrested, the Court of Criminal Appeals issued an inexplicably unpublished Opinion resolving the Ramos Brothers’ claim of “Stand Your Ground” immunity. In the Ramos Opinion, nine years after the Oklahoma Legislature adopted Title 22 O.S. § 1289.25, the Court adopted the procedure by which a defendant may pursue his claim of “Stand Your Ground” immunity.

**THE RAMOS PROCESS**

The Ramos opinion, although unpublished, finally provided us with a road map for pursuing our clients’ claims of lawful use of force immunity pursuant to Title 22 O.S., 2011, § 1289.25. The procedural steps outlined in *Ramos* will be discussed below. Additionally, I will discuss a few additional steps you may want to consider when asserting your client’s immunity claim. It is important to note that a claim of lawful use of defensive force in no way diminishes your client’s affirmative defense of self defense or defense of others. Before we discuss the procedural steps of litigating your client’s immunity, let’s begin where we begin in any case; let’s examine the statute and consider whether the facts support a finding that your client qualifies for “Stand Your Ground” immunity.

**GOAL: IMMUNITY!**

Where do we want to be? Immunity. When you have a client who has certainly hurt or killed another person, there is no better outcome for your client than to have your client found immune from civil or criminal liability based upon the circumstances surrounding his or her actions. Sure, an affirmative defense of self defense or defense of others is great, but you have to roll the dice with a jury trial to get there. You want a judge to find your client immune from prosecution. If that fails, you can always re-urge the immunity claim in conjunction with the self defense claim at jury trial. I will discuss these options below.

Title 22 O.S., 2011, § 1289.25, Paragraph F states as follows:

*A person who uses force, as permitted pursuant to the provisions of subsections B and D of this section, is justified in using such force and is immune from criminal prosecution and civil action for the use of such force. As used in this subsection, the term "criminal prosecution" includes charging or prosecuting the defendant.*

Well, all right. We’ve found the immunity provision of Oklahoma’s “Stand Your Ground” statute. We know where want to be. Now, how to do we get there from here. Paragraph F tells us there are two types of justifiable use of defensive force immunity and they are found in paragraphs B and D of the statute. These provisions describe three basic conditions the court must consider for a person to qualify for justified use of defensive force immunity. For our purposes I will describe these conditions as follows: (1) Location, (2) Threat and (3) Disqualifications. In other words, if one is in the right place and faces a sufficient threat and is not disqualified due to one of the enumerated disqualifying factors, one is entitled to “Stand Your Ground” immunity.
**STEP 1:**

**REVIEW THE FACTS OF YOUR CASE**

Examine the initial discovery and interview your client to determine whether your client is entitled to allege immunity based upon his or her lawful use of defensive force. An examination of the specific facts of your client’s case will help you identify which type of justified use of defensive force (Paragraph B or Paragraph D) immunity you will pursue.

1. **Location**

Paragraph B Immunity:

Paragraph B immunity focuses on the individual’s location and the individual’s relationship to his or her location as an initial qualification for his or her claim of justifiable use of force immunity. The language of this paragraph reads as follows:

*A person or an owner, manager or employee of a business is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:*

1. The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, occupied vehicle, or a place of business, or if that person had removed or was attempting to remove another against the will of that person from the dwelling, residence, occupied vehicle, or place of business; and

2. The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

**Presumption:** If your client satisfies the location requirements of Paragraph B, he or she is entitled to the presumption that he or she had a reasonable fear of imminent peril of death or great bodily harm.

An examination of the facts should reveal your client’s location and his or her relation to the location. You should look to determine if your client was an invitee, a patron, an employee, a manager or an owner of a business. Determine whether your client was a lawful occupant of a dwelling, a residence, an occupied vehicle or a place of business?

Paragraph D Immunity:

The key question regarding location under Paragraph D is this: Was your client in a place where he or she had a lawful right to be when he or she resorted to defensive use of force? Was your client engaged in unlawful activity when he or she resorted to defensive use of force?
2. Threat

Next you will want to examine the nature of the threat your client faced. The following are just a few basic questions you will want to answer:

• Did the person against whom defensive force was used attempt or actually forcibly enter the protected location?
• Did the person against whom defensive force was used attempt to willfully remove another person from one of these locations?
• Did your client know the forcible entry or attempted forcible entry was occurring or had occurred?
• Was the decedent/injured person armed?
• Was the decedent/injured person intoxicated?
• Did the decedent/injured person make threats toward your client or others before the use of defensive force?
• Had the decedent threatened or injured anyone in the moments leading up to your client’s use of defensive force?

The Bottom Line:

When your client used defensive force, did your client have a reasonable fear of imminent peril of death or great bodily harm to himself or others?

3. Exemptions

If your client was in a location where he or she had a right to be, check your facts to see if your client is excluded from the protection of “Stand Your Ground” immunity for some other reason.

Paragraph B Immunity:

Your client will not be entitled to the presumption that his or her use of defensive force was lawful if certain circumstances described in Paragraph C apply.

If the person against whom defensive force was used was entitled to be at the location and not legally barred from contact with the user of defensive force, your client may not be entitled to “Stand Your Ground” immunity. You should ask the following questions:

• Did the person against whom defensive force was used have the right to be in that location?
• Was this person a lessee, owner or title holder or the property?

If you determine that the person against whom defensive force was used had a right to be in the location in question, your client may still be entitled to defensive force immunity. If that person was under a court order limiting his or her contact with the individuals who were present at the time. You should determine whether the person against whom defensive force was used was:

• subject to a domestic violence protective order, or,
• subject to an order of no contact with the person who used defensive force.
Also, your client may be entitled to “Stand Your Ground” immunity if, although the injured/killed person had a right to be on the premises, he or she was behaving illegally. You will need to determine whether the person against whom defensive force was used was

- engaged in unlawful activity, or,
- using the location to further unlawful activity.

**Paragraph D Immunity:**

Under Paragraph D, once your client establishes that he or she was justified in using defensive force based upon the location and the nature of the threat, only your client’s illegal activity will exclude him or her from being immune from prosecution under Paragraph D.

In *Dawkins V. State*, 252 P.3d 214 (2011) and in the recent *Ramos* opinion the Oklahoma Court of Criminal Appeals addressed the issue of what type of illegal activity excludes an individual from qualifying for defensive use of force or “Stand Your Ground” immunity.

In the *Dawkins* case, the Court found that the defendant’s unlawful possession of a sawed-off shotgun, which he used to kill the decedent, precluded him from the protection of “Stand Your Ground” immunity. The Court specifically rejected a “nexus requirement” which would require a link between the unlawful conduct of the defendant and the use of defensive force. The Court found that,

> [T]he Legislature intended the "stand your ground" provisions to protect regular, law-abiding citizens from intruders bent on criminal activity. We therefore conclude that the Legislature's intent was to exclude from the benefit of this statute persons who are actively committing a crime, not persons who have or may have committed a crime in the past. Examples of current crimes include, but are not limited to, use of an illegal weapon in commission of the homicide, possession of illegal drugs on the premises, or an ongoing assault by the defendant against another person in the residence. We further find that the Legislature did not intend to prohibit use of the right of defense to persons who may have committed minor infractions of the law. Examples of such infractions include, but are not limited to, persons who are illegally parked or have outdated vehicle registration, have outstanding warrants for minor offenses, or are in arrears with child support payments.

*Dawkins*, at page 215.

In *Ramos*, the Court again rejected a “nexus requirement” but found the Ramos Brothers’ status as undocumented immigrants did not preclude their claim of “Stand Your Ground” immunity.
STEP TWO:
PREPARE TO ARGUE YOUR CLIENT IS ILLEGALLY DETAINED.

At preliminary examination (preliminary hearing), you may want to argue your client is being illegally detained and file a Writ of Habeas Corpus. Depending on the facts you receive in discovery and the testimony at preliminary examination, you may have a claim that law enforcement failed to sufficiently investigate your client’s claim that he or she was justified in using defensive force. You will want to cite Title 21 O.S., 2011, § 1289.25 (G) which states:

>A law enforcement agency may use standard procedures for investigating the use of force, but the law enforcement 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. (Emphasis added.)

Title 12 O.S., 2011, § 1331 states that “[e]very person retrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to enquire into the cause of his restraint, and shall be delivered therefrom when illegal.”

STEP THREE:
FORMAL ARRAIGNMENT:
FILE A MOTION ASKING THE COURT TO FIND YOUR CLIENT IS IMMUNE FROM PROSECUTION AND ASK FOR AN EVIDENTIARY HEARING.

The motion may be titled something like “Motion to Dismiss Charges Upon the Court’s Finding Defendant is Immune from Prosecution and Request for Evidentiary Hearing.” You will want to have ordered the preliminary examination transcript. The burden will be on the defendant to convince the Judge that he or she qualifies for immunity under the statute.

Under Ramos, the accused must assert immunity prior to trial or the immunity is waived. At the hearing, the defendant must show, by a preponderance of the evidence, that the use of force warrants immunity.
STEP FOUR:
CONDUCT THE EVIDENTIARY HEARING.

Because the burden will be on the defendant to prove by a preponderance of the evidence the facts necessary to establish his or her immunity, you will need to have witnesses to establish the requisite location, threat, and qualifications (and lack of disqualification) as required by the statute.

If the District Court finds your client immune from prosecution under the “Stand Your Ground” statute, the case is over. The State has no right to appeal under 22 O.S., 2011, 1053.

STEP FIVE:
IF THE DISTRICT COURT FINDS DEFENDANT HAS NOT MET HIS BURDEN AND DECLINES TO RECOGNIZE IMMUNITY, FILE A WRIT OF PROHIBITION.

The Ramos opinion establishes a rare defensive interlocutory appeal in criminal law. A Writ of Prohibition requires the petitioner to demonstrate the District Court judge failed to make the proper finding of “Stand Your Ground” immunity and is, therefore, acting outside his or her jurisdiction in allowing the criminal case to proceed.

Step Six:
If the Writ of Prohibition is Denied, Prepare for Jury Trial.

If the Court of Criminal Appeals affirms the District Court’s finding that immunity was not proven by a preponderance of the evidence, prepare for jury trial. The issue of your client’s “Stand Your Ground” immunity may still be argued to the jury. You will also want to offer evidence of the traditional defense of self defense and/or defense of others.

Oklahoma Uniform Jury Instruction 8-15 is the “Stand Your Ground” instruction for Paragraph B type situations.

Oklahoma Uniform Jury Instruction 8-15A is the “Stand Your Ground” instruction for Paragraph D type situations.
I recently tried a First Degree Murder trial in which my client’s defense was that he was entitled to “stand his ground” combined with a traditional self defense claim. My client, Buck Rodgers, was at home with his girlfriend and her small child. They lived in a trailer park in which the trailer were packed in close to one another. Buck’s neighbors began partying outside their trailer in the early evening hours. The neighbor’s trailer was located just across a narrow street from Buck’s trailer.

Buck and his girlfriend were not drinking or partying; they were simply enjoying a quiet evening at home. The neighbors continued to drink and revel until after midnight. The neighbors’ loud talk and revelry woke the little girl several times. Buck approached his neighbors, and asked them to keep it down. The moment Buck returned home, the noise started up again. At one point, Buck’s girlfriend, approached the revelers and demanded they wrap the party up. This only encouraged the revelers to get louder, particularly, the primary reveler, Robert.

Buck had broken his back a few years earlier and had surgery to fuse several of his spinal bones together. At one point, Buck could sense the tension from Robert and his fellow revelers from across the street. Buck sat on his porch smoking a cigarette when he asked his girlfriend to retrieve his pistol.

Again, Robert and a friend began to get loud and talk rudely about Buck and his girlfriend. Robert began stepping on and off Buck’s property and each time Buck would tell him to stay off his property. Finally, Robert started walking up to the steps where Buck was sitting. Buck again told him to get off his property. Buck claimed Robert began to rush him when he pulled his pistol and told Robert to stop. Within a few seconds, Buck fired a shot that entered Robert’s upper chest, passed through his chest cavity and lodged in a lower rib. Travis dies on the spot.

Larry Roberson and I tried this case as a “Stand Your Ground”/self-defense case. I reread my closing argument in that case recently and, given the Ramos opinion, and reflection, I wish I had argued it a little differently.

If I had it to do over again, I would have structured my closing like this:

I. Stand Your Ground: Jury, if you find by a preponderance of the evidence that Buck used justified defensive force, find immunity.

II. The State’s burden to prove every element of the offense, particularly malice aforethought.

III. Reasonable Doubt.

IV. Stand Your Ground again.

The jury received many instruction regarding self defense and lesser degrees of homicide. The jury needed to be reminded that “Stand Your Ground” immunity is just that: an immunity. The jury needed to be reminded that once they found by a preponderance of the evidence that Buck qualified for “Stand Your Ground” immunity, their deliberation was over. There was no need to consider self defense or lesser degrees of homicide.
I want to thank Newell Wright, Larry Monard, Gail Gunning and James Lockard for all the many hard hours they spent defending Julio and Isidro Ramos. The real lesson here is that good lawyers fight for their clients, they don’t wait on detailed instructions; they identify a principle that their clients’ are entitled to and work hard to ensure their clients’ receive the benefit of that principle.