

Florida's Revised 'Stand Your Ground' Law May Shift Burden to Prosecution

[Jared Bretherick](#)'s trip through the Florida courts began with the Central Florida tourist's father pulling a gun during a traffic dispute. Ultimately, the Florida Supreme Court said persons using the state's "stand your ground" [legal defense](#) have the responsibility of proof to prove they should be shielded legally. The 5-2 decision addressed a primary part of the method the government has borne out the law, which in part, grants protection to individuals who practice justifiable force in self-defense.

Bretherick, a visitor from Indiana, was riding in the backseat in a car driving by his dad when it was nearly side-swiped by a pickup. The truck's driver, [Derek Dunning](#), then suddenly halted in front of Bretherick's vehicle.

Unarmed, Dunning got out of the truck and advanced toward the Brethericks. While Dunning walked back toward the Brethericks, Jared retrieved another of his father's guns from the glove compartment while his Mom, Debbie, called 911.

Bretherick's dad displayed a gun, and Dunning returned to his truck, saying, "I've got a gun also." Jared exited the family car, and a brief standoff between Jared and Dunning followed.

Law enforcement arrived and charged Jared Bretherick with [aggravated assault with a firearm](#) and did not find a weapon in Dunning's vehicle. Bretherick was denied immunity.

Following a hearing, a judge directed that Bretherick was not qualified for immunity by way of the stand your ground law. The justice referred to Dunning's withdrawal after Bretherick's father displayed the gun and ruled that the threat "was no longer expected."

The court decided for the state and supported the defendant's duty to prove self-defense. What are the real-world consequences of the judgment? In a strong objection, Justice Canady lays it out:

"By forcing the burden of proof on the defense at the evidence hearing, the majority reduces the privilege of immunity from trial presented by the legislators under the 'Stand Your Ground' law."

A ruling for the defense may have led to pretrial acquittals and made it easier to receive immunity.

[State Representative Alan Williams](#) called for Florida lawmakers to trash 'stand your ground' and begin anew. "There are provisions in the law which permit aggressors to get away with murder," Williams said.

In response to the court ruling in the Bretherick's incident, along with others, Florida legislators introduced [SB 128](#) which detractors say would make 'stand your ground' cases 'totally topsy-turvy.' Where defendants had the burden to prove 'stand your ground' claims based on a preponderance of the evidence, SB 138 would impose a higher stand on the prosecution.