MERAMEC RIVER KILLING: *STATE v. CROCKER* AND MISSOURI'S FIRST FORAY INTO THE NATIONAL DEBATE ON SELF-DEFENSE

I. ALONG THE BANKS OF THE MERAMEC

Main Street in Steelville, Missouri, is home to the Crawford County Courthouse of Missouri's 42nd Judicial Circuit, a two-story brick structure whose only architectural flair is some white gabling over a small portico emblazoned "In God We Trust," quotation marks included. Apart from the typical courthouse lawn ornamentation of the national and state colors, a five-foot marble veteran's memorial, and a matching slab proclaiming the building's identity, the courthouse would be mistaken for a country chapel. The octagonal gazebo set off from the front lawn seems almost excessive against the modest backdrop of the courthouse.

One block east of the courthouse, past a few bail bondsmen and lawyers' offices is Main Street's lone watering hole, the West End Bar and Grill. The place is dingy, its lighting supplied almost entirely by sunlight bouncing from the street through two front windows, save for some additional blue glow from a neon Busch beer sign and a flat screen television. On a usual day, the bartender and two or three patrons will sit silently at the bar with their necks craned upward at whatever generic crime drama happens to air. Occasionally, they will look down to take a drag of a cigarette peeking from an ashtray or poke through some cold fries left in the basket that used to contain a cheeseburger. Nobody talks. The monotony of the scene is interrupted only by random, garbled walkie-talkie exchanges from somewhere beneath the flat screen. It is a police scanner. The exchanges between deputy and dispatcher are unintelligible under the din of the TV shootout: a minor nuisance. Nobody listens.

These scenes on Main Street are, in a word, typical.[1]

However, on July 20, 2013, around 1:30 p.m., just six miles from Main Street, the scene turned anything but typical.[2] Forty-eight-year-old Paul Dart lay dead on a gravel bar along the Meramec River after a single nine

1. Although these scenes may seem a bit too typical and, as a result, fabricated for dramatic effect, the author has tried to faithfully represent Steelville's Main Street as he witnessed it in October 2013.

2. Felony Complaint and Request for Warrant at 2, State v. Crocker, No. 13CF-CR00772 (Mo. Cir. Ct. July 22, 2013).

At common law, a defender is justified in using force to repel an attack within certain limitations. The defender must reasonably believe that force is immediately necessary to repel a threat, and the force used must be proportional to the threat posed.[20] In addition, a defender is not justified in

found in Missouri Revised Statute section 563.031.[30] That section eliminates any duty to retreat from private property owned by the defender and allows the use of deadly force on private property owned by the defender in situations where only non-deadly force would be permitted otherwise.[31] Although that self-defense statute qualifies as an expanded castle doctrine—broadening the application of the doctrine from the dwelling to any real property owned by the defender[32]—the spirit of the law resembles the Stand Your Ground laws that became the center of debate in the wake of the Trayvon Martin shooting.[33] Further, both Missouri and Florida's self-defense statutes implicate the even more polarizing issue regarding the right to possess and use firearms.[34]

Missouri case law largely followed the common law justification of self-defense throughout the twentieth century.[35] In the 1980 decision of *State v. Ivicsics*, the Eastern District Court of Appeals held that defense of habitation was merely an "accelerated" form of self-defense.[36] The court set forth the following test for the use of deadly force in defense of habitation:

> The defense of habitation grants the lawful occupant of a dwelling the privilege to use deadly force to prevent an attempted unlawful entry into the dwelling, if the occupant had reasonable cause to believe that (1) there is immediate danger the entry will occur, (2) the entry is being attempted for the purpose of killing or inflicting serious bodily harm on the occupant and (3) deadly force is necessary to prevent the unlawful entry.[37]

The privilege to use deadly force was, therefore, accelerated because the deadly force could be used to repel an attacker's unlawful entry to the defender's home prior to the anticipated attack. However, this brand of defense of premises was not much of a departure from established self-defense doctrine, because the defender would still be required to show a reasonable belief that the entry was intended for the purpose of killing or inflicting serious

course, statutes like Missouri Revised Statute section 563.046 (permitting law enforcement use of deadly force to effect the arrest of a felon) have been in the books for some time. *See* John Simon, Tennessee v. Garner*: The Fleeing Felon Rule*, 30 ST. LOUIS U. L. J. 1259, 1266 n.46 (1986).

30. Pohlman, *supra* note 23, at 857.

31. *Id.* at 858.

32. *Id.* at 857–58.

33. Tamara F. Lawson, *A Fresh Cut in an Old Wound—A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutors' Discretion, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL'Y 271, 272 (2012).

34. The Speaker Pro Tem made this implication unavoidable when, in his September 12, 2007, address to the Missouri House of Representatives, he exclaimed, "We passed the conceal and carryy

use of deadly force.[46] But, the legislature quietly went a step further in expanding the justifiable use of deadly force by effectively removing the proportionality requirement from the defense of premises.[47] "Now . . . simple unlawful force will justify a response of deadly force if the person using unlawful force is also trespassing."[48]

The legislature did not stop with the 2007 amendment. The 2010 amendment to section 563.031 again extended the justifiable use of deadly force under defense of premises by broadening the definition of premises and explicitly eliminating the duty to retreat from any premises owned by the defender.[49] The statute now includes the following:

states' Stand Your Ground laws.[54] On October 26, 2005, Florida enacted the infamous Stand Your Ground law that "radically expanded Florida's self-defense law, even insulating shooters from criminal prosecution and civil suit."[55] Before that law, a defender was required to show a reasonable belief that the use of force was "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."[56] He or she had a duty to retreat if he could do so in absolute safety.[57] Stand Your Ground removed that duty, allowing defenders to "stand their ground and meet force with force."[58]

Under Florida's Stand Your Ground law, self-defense is no longer an affirmative defense that can only be adjudicated at trial.[59] Stand Your Ground shifts the burden to the state to prove beyond a reasonable doubt that a defender was not acting in self-defense and creates a presumption that a person possessed a reasonable fear of "imminent peril of death or great bodily harm" if "[t]he person against whom . . . force was used was in the process of unlawfully and forcefully entering, [or had already entered], a 'dwelling, residence, or occupied vehicle.'"[60] Defenders also have the right to a pre-trial hearing where, if the preponderance of the evidence shows that they acted lawfully pursuant to Stand Your Ground, they can be immunized from future prosecution or civil suit.[61] The increased privilege to use deadly force to repel an unlawful entry or completed entry of a "dwelling, residence, or occupied vehicle" is obvious in both Florida's and Missouri's statutes.[62]

Although George Zimmerman raised only a traditional self-defense claim in his trial for shooting and killing Trayvon Martin, the case begged the question: "Are Floridians too quick to use deadly force?"[63] Public outcry also implicitly questioned whether that state's Stand Your Ground law was "appropriate and adequate to keep Floridians safe from future tragedies."[64] Zimmerman claimed not to be familiar with the Stand Your Ground law during

54. Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 832–33 (2013).

55. *Id.* at 832.

56. *Id.*

57. *Id.*

58. *Id.* at 832–33.

59. Lave, *supra* note 54, at 834–35.

60. *Id.*

61. *Id.* at 835.

62. *Compare id.* at 834–35 *and* MO. REV. STAT. § 563.031 (2010).

63. Lawson, *supra* note 33, at 299.

64. *Id.* Because Stand Your Ground laws grant individuals expansive privileges to use handguns against others when they perceive a threat, these laws levy "a high cost, as sometimes the gun owner is wrong in his or her assessment of the existence of a threat and/or its seriousness, and a victim's life is lost needlessly." *Id.* at 300.

have been available to Crocker because any unlawful entry to his real property would have been completed.[74] The 2007 amendment to section 563.031, further eliminating the proportionality requirement in situations of unlawful entry of premises owned by the defender,[75] also would allow Crocker to argue that his use of *deadly* force was justified based on his reasonable belief that the intruding floaters intended to use any amount of force against him.[76]

According to Crocker's statements to investigators, "four male subjects . . . began advancing toward him, [and] one of the males had two rocks in his hands."[77] In interviews provided by Dart's wife, there is some suggestion that Dart grabbed for Crocker's gun: "He went to the guy's arm to try to stop him."[78] Crocker could argue that all of these factors substantiate his fear of an attack and that such an attack justifies his use of deadly force under section 563.031. On the other hand, Crocker could invoke the general justification of self-defense, but there would be no reason not to pursue a defense under section 563.031 given its elimination of the common law proportionality requirement.[79]

Although reports in the *St. Louis Post-Dispatch* and *Riverfront Times* never delved into editorialism, the tenor of the coverage is that the Dart killing was a senseless act by a crazed property-owner taking some backward(as)3(3(i)5(.50047004C5008012( )-135

the real monster in the Dart killing could be made not of the shooter, but the law that emboldened him.

Of course, the Dart killing also lacks the racially charged storyline that

beyond his property line. This creates a new dilemma: Would this particular report afford Crocker the protection of the castle doctrine if the shooting victim had been black? Or even more troubling: Can the justice system (through prosecutorial discretion or juror bias) choose when to apply the castle doctrine based upon the victim's identity? A guilty verdict in Crocker's trial, juxtaposed with the outcomes of the Zimmerman and Dunn cases,[97] may suggest that Crocker's jurors, as proxy for the white majority of Americans, can accept the occasional loss of life resulting from the expanded castle doctrine, as long as that life is not of the same color as them.

B. The Problematic Construction of Section 563.031

Sheriff Martin's comment about the unclear demarcation of Crocker's property line raises another issue with, specifically, the 2010 amendment to section 563.031: Does the applicability of the statute now depend on something as esoteric to the layperson as riparian rights based upon the navigability of a watercourse? If so, does the statute attempt to provide uniformity in a place better suited for case-by-case determinations?

Conceptually, the 2010 amendment makes little sense. If Crocker is not entitled to the protection of the castle doctrine on the gravel bar where he shot Dart, t9o

subsection 2) and a now absurdly expanded castle doctrine (found in su

amendments, if a defender anticipates any use of unlawful force, a response of deadly force is justified if the attacker is also trespassing.[111] If section 563.031 was put to the jury in the *Crocker* case, Crocker's defense would have depended on evidence that the floaters were approaching him with *rocks*. Did the legislature seriously contemplate that a bullet would be an appropriate

and this rural sense of individualism is all too apparent in expansions of self-defense law. Rural individuals are more likely to live in areas isolated from law enforcement, and self-help may present the only option available for preservation of life or property. Fittingly, the expanded castle doctrine was born of this rural milieu; Senate Bill 62 was sponsored by a state senator from Mount Vernon, Missouri.[119]

In a sense, Missouri is the perfect powder keg for urban-rural conflict because it possesses two major urban centers (Kansas City and Saint Louis) that bracket over one hundred largely rural counties (perhaps with the exception of Boone County, which possesses the University of Missouri-Columbia). The ideological divide is clearly depicted in the 2012 general election results—presidential candidate Barack Obama emerged victorious in only four counties but won a whopping 82.7% of the vote in Saint Louis City.[120] In 2014, the state has a Democratic governor but a House of Representatives controlled by Republicans.[121] The demographic dichotomy existing in Missouri further complicates the second principal question posed above—Is Missouri's expanded castle doctrine appropriate and adequate to keep Missourians safe from future tragedies?—because it could lead to the unsatisfying answer of *some Missourians, but not others*. In response to this equivocation, we could allow the legislative process to keep churning out artificial codifications of whatever behaviors are ostensibly deemed acceptable by the majority of the population.[122] The other option is to grapple with our identity crisis so that we can definitively answer whether expanded self-defense statutes really help fashion the world we want for ourselves.[123]

119. *Missouri Governor Traveling the State and Signing Important Pro-Gun Legislation!*, NAT'L RIFLE ASS'N-INST. FOR LEGIS. ACTION (July 2, 2007), https://www.nraila.org/articles/20070702/missouri-governor-traveling-the-state-a.

120. *2012 Missouri Presidential Results*, POLITICO.COM (Nov. 19, 2012), http://www.politico.com/2012-election/results/president/missouri/.

121. *State of Missouri—General Election—November 6, 2012 Official Results*, MO. SECRETARY ST.—ELECTIONS & VOTING (Dec. 5, 2012), http://enr.sos.mo.gov/enrnet/default.aspx?eid=750002497.

122. *But see* Sanford Levinson,

After both sides rest, Seay focuses his closing argument on keeping the castle doctrine out of the jury's mindset. "This didn't take place in his castle. . . . It was not about his right to protect property. He wasn't protecting

identity.[146] The characterization of rural individualism as a relic of our nation's past would also explain the state of perpetual fear that proponents of expanded self-defense seem to foster.[147] When these individualists are given the sense that they are part of an old order nearing extinction, it makes them defensive about any newness or otherness that they might encounter. This aversion to otherness is probably why the racially charged self-defense stories of 2013 and 2014 had such a visceral impact on Americans.

VII. CONCLUSION

After reviewing the general history of the justification of self-defense, it is apparent that Missouri's current law on the "use of force in defense of persons"[148] fits within both the national debate currently raging on Stand Your Ground laws and a broader historical narrative of the American erosion of the duty to retreat.[149] The discrimination fostered by reformulations of established self-defense doctrines, the shoddy statutory construction of those reformulations,[150] and unresolved historical conflicts embedded in the justification of self-defense itself[151] are all reasons to critically reexamine the 2007 and 2010 amendments to 563.031 and 563.011.

As of now, the terrifying events of July 20, 2013, are fortunately not typical. However, the fear remains that we may allow antiquated conceptualizations of justifiable homicide to define us as a nation of petty, isolated vigilante pretenders living in a state of perpetual mistrust. If that happens, Meramec River killings will become all too typical.

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