

Criminal Defense Attorney Patrick Megaro publishes article on recent changes to Florida self-defense laws

Veteran criminal defense lawyer Patrick Michael Megaro comments on Martin v. State, an appellate decision from the Second District Court of Appeal of Florida

ORLANDO, FLORIDA, UNITED STATES, September 13, 2018 / EINPresswire.com/ -- In his first article in his instructional series, veteran [criminal](#) defense attorney [Patrick Michael Megaro](#) comments on Martin v. State, an appellate decision from the Second District [Court](#) of Appeal of Florida, dealing with recent changes to Florida's self defense laws.

Florida legislature's amendment to section 776.032 marks an important shift in self defense laws in the state of

Florida. As the Martin court explained "[t]he Florida Legislature's amendment to section 776.032 added the following provision: (4) In a criminal prosecution, once a prima facie claim of self defense immunity from criminal prosecution has been raised by the defendant at a pretrial

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immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1)." The Martin court went on to explain that "as it now stands, the State bears the burden of disproving, by clear and convincing evidence, a facially sufficient claim of self-defense immunity in a criminal prosecution."

This is obviously a very important change in criminal cases involving self defense claims. Before the amendment, criminal defendants in Florida who wished to assert self defense had the burden of proof. It was the defendant that had to convince the jury that their actions were

justified due to self defense. After the amendment, the defendant only has to present a facially sufficient claim of self defense, a very low bar. The burden of proof now rests on the prosecution to show that there was no justification for self defense, and the burden is by clear and convincing evidence, one step below beyond reasonable doubt, but still a very significant hurdle.

Martin case went on to address whether the amendment applies only to cases going forward or retroactively to all existing criminal cases. "Statutory amendments may take one of three forms: substantive, which are usually applied prospectively, or procedural or remedial, either of which



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may apply retroactively to pending proceedings”, the Martin court explained. The court discussed that “[i]n the context of criminal cases specifically, ‘substantive law is that which declares what acts are crimes and prescribes the punishment therefor, while procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished.’”

Martin court noted that “[i]n Florida, statutory changes to the burden of proof—the change at issue here—are invariably deemed procedural in nature for purposes of retroactive application.” Therefore, “[s]ubsection (4) now ascribes to the State what had, under common law precedent, been the defendant's burden of proof. That is not a substantive change. Neither the substantive rights of a successful claim of immunity nor the necessary elements of proof to establish a claim of immunity were altered by the June 9, 2017, amendment.” Thus, the amended standard of proof in self defense cases applies not only to future cases, but also to existing cases and even those cases under appeal. The case is *Martin v. State*, Case No. 2D16-4468, (Fla. Dist. Ct. App., 2nd District, May 4, 2018), available at https://scholar.google.com/scholar_case?case=5709431534236501779&q=martin+v+state+&hl=en&as_sdt=4,10&as_ylo=2017.

The full article will be published in full on the Blog of Mr. Megaro at <https://patrickmegaroblog.blogspot.com/>

About Patrick Megaro

Patrick Michael Megaro is an attorney at Halscott Megaro PA. His primary areas of practice are criminal defense, criminal appeals, post-conviction relief, civil appeals, and civil rights litigation.

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Video of Attorney Patrick Megaro, Florida



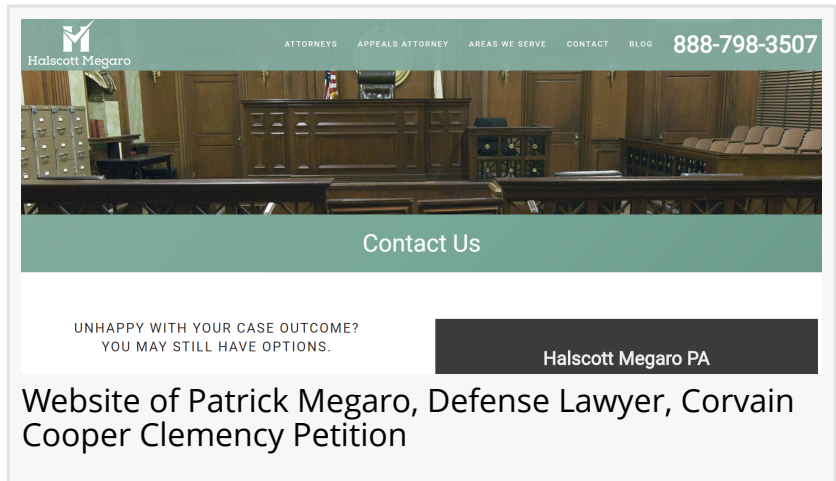
Attorney Patrick Megaro on Fox News

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