

# Episode 181-- Race, Stand Your Ground Laws, and Gun Violen...

Mon, 5/2 1:13AM 33:40

## SUMMARY KEYWORDS

gun violence, laws, retreat, firearm, ground, black, brady, defendant, case, statute, people, duty, stand, individuals, studies, homicide rates, happening, law, standard, victim

## SPEAKERS

JJ Janflone, Kelly Sampson, Kami Chavis

---



JJ Janflone 00:08

This is the legal disclaimer where I tell you that the views thoughts and opinions shared on this podcast belongs solely to our guests and hosts and not necessarily Brady or Brady's affiliates. Please note, this podcast contains discussions of violence that some people may find disturbing. It's okay, we find it disturbing too.



JJ Janflone 00:22

Hey, everybody, welcome back to another episode of Red, Blue, and Brady. I'm one of your hosts JJ,



Kelly Sampson 00:43

and I'm your other host, Kelly.



JJ Janflone 00:45

And our topic for today has been buried, and other awful news like that of mass shootings and COVID and war, but it is something that we find deeply concerning and worthy of attention. And that's the rise of folks calling on a stand your ground defense.



Kelly Sampson 00:59

Yeah, not to get all lawyerly but at least 34 states have Stand Your Ground laws, or have expanded Castle Doctrine to apply beyond the home. And it may seem logical to use a firearm to protect yourself. But there is a very real danger in spreading these laws. Because studies

suggests that what they really do is legally empower people to use force even when it's not necessary.



**JJ Janflone 01:23**

Moreover, there is a real and present danger with how stand your ground offenses play out with law enforcement and the judicial system. And we need to unpack that



**Kelly Sampson 01:30**

Yeah. And to do just that, we're joined by Kami Chavis, Professor of Law and Director of the criminal justice program at Wake Forest University School of Law.



**Kami Chavis 01:42**

Hi, everyone, thank you. I'm really happy to be here and be a part of this wonderful podcast. My name is Kami Chavis, I am a law professor and director of the criminal justice program at Wake Forest University School of Law. I have had many, many hats in my long legal career, after graduating from law school, I worked as I worked as an associate in firms in Washington, DC, and did a number of different things. I mean, everything from international trade to white collar criminal defense, and all kinds of things. But I landed on an interesting project related to policing, which we can, you know, also I think, is related to this as well. And that that really sparked my interest in criminal law. And so after that, I became a prosecutor at the US Attorney's office in Washington, DC. And that really was an eye opening experience and gave me the opportunity to, unfortunately, interact with many of the victims of gun violence and defendants who perpetrated that and were prosecuted for it. And so I've just spent a lot of the last few years and my academic career sorting through all those issues and trying to ameliorate gun violence.



**Kelly Sampson 03:05**

And one of the things that, you know, we've talked about on different angles on this podcast is the ways in which gun violence and race cannot be disentangled. And that's something that you've talked about in your work. So, you know, from your perspective, in your research, why can't we disentangle race and gun violence?



**Kami Chavis 03:23**

Well, it's, it's, it's really interesting, because when I think about gun violence, I often I go way back to you know, over a century ago, you think about our first domestic terrorists in terms of the Ku Klux Klan, and how the members of that group terrorized, Black individuals, and a lot of that was through gun violence and, and other forms of violence, for sure. And what we see is that we both kind of through through history and fast forward and then when Black individuals began to arm themselves, we started to see much more strict gun laws. And then of course, there's just in within the many communities in the United States have experienced gun

violence, whether it's, you know, we can point to Chicago as being, you know, a city experiencing acute gun violence. And then when we think about school shootings, so none of, none of us in the country can escape the threat of gun violence and the various contexts in which we are but we do seem to see some different treatment when it comes to guns and race. And I think one really interesting example of that was the Kyle Rittenhouse trial.

K

Kami Chavis 04:45

So this was, if we think back over a year ago, really with protests regarding Jacob Blake's treatment, and again, this is how we, again connected to police violence. So Blake shot by police officers and then in the ensuing protests, but So Jacob Blake was Black. We saw a multicultural crowd protesting the treatment that he received. But it was interesting we saw lots of, of white individuals in that Kenosha community patrolling you know, their took it upon themselves, to leave their homes and not not to engage, you know, in in First Amendment, you know, freedom of speech to to protest what was happening to Jacob Blake, but but in their words, and I'm using air quotes, you can't see me because this is a podcast, but to protect their communities. And so and felt the need to do that by being armed and by being armed with guns. And so we see Kyle Rittenhouse. And we know the story there of how he left again, left his home had this Assault Rifle. And when there was an altercation that used that and killed, you know, a member of the crowd. And so rather than saying, oh, you know, thinking about who this is an individual who could have stayed at home, who could have come out to, to watch who could have come out to quote, again, air quotes, protect in some way, but chose to do so with a firearm, and chose to use that. But he was hailed as a hero. Of course, at the at the time of then, you know, President Trump hailed him as a hero, and he was invited to the White House, can you imagine and receive so much so much support from elected members?

K

Kami Chavis 06:39

And can you imagine that let's all we have to do is make that a young African-American or Latino male who did the very same thing. And I do not believe that we would see the same treatment. So and then of course, we know that he was acquitted for for the killing there. But and again, at the same time we had and it was it's very similar. And actually the trials were happening almost simultaneously with the three individuals and who killed Ahmaud Arbery. And Ahmaud Arbery, again, innocent, innocently jogging through a neighborhood and was accosted by a father and son team in a truck. And they and there's this some of this is on video because right the third defendant videotape this. And he's jogging and the truck is following him pursuing him. Imagine in his mind, what was happening to him. He's being chased by two men, again, with weapons with firearms, so and again, and they used that firearm when when he didn't comply with their with their demands. Really, they're illegal demands. And for what? For the infraction that they alleged, was some type of trespassing, right? So that's not even a felony. That's so we're looking at two situations with white assailants choosing to use firearms. What I think is really interesting here is that at the very beginning of that case, they they were not immediately arrested. And it was what we will be talking about today stand stand your ground laws that delayed, right, their arrest and there's a lot that can happen in between an altercation homicide like that, and you know, the person being arrested. So there was a delay there, that was absolutely caused, in part by the exist, the very existence of a Stand Your Ground laws, which was, again, not applicable, and we can get into that.



JJ Janflone 08:56

Yeah, I mean, even thinking, when we think about like, sort of actions against, you know, sort of groups more broadly, I even think of the NRA coming out against open carry with in California, when the Black Panthers are beginning to engage in open carry practices as sort of a direct example to of this idea of particular groups saying that it's okay for white folks to be armed.



Kami Chavis 09:19

Exactly. And that's, and that's an excellent example and against the of systemically how that's happened. But a lot of us, really, you know, recall the shooting of Philando Castile and a lot of folks say, Well, we have different so when we say that race and guns can't put like can't be disentangled. Again, you have wide swaths of the population in our country that, you know, fight for these very broad rights, but it's really about who has these rights, and they're, I think, very clear through their actions, that not everyone who would be able to even exercise those rights and of course, we think about Philando Castile, who legally was carrying or possessing a firearm and told the officer who stopped him that he had this and he did everything, there was nothing else that the Philando Castile could have done. But for that officer, a Black man with a weapon was somehow different, because, you know, I, we have to believe that that officer had encountered other people before with who were carrying and who he did not shoot. And we also know that officers all across this country, face similar situations, and yet they don't shoot everyone, or until everyone who they know to be carrying a firearm. So there's so there is there is something there when we're thinking about race and guns and who should be allowed to have them and this implicit bias I, I really hesitate using the term implicit bias. I think that it absolutely implicit bias absolutely exists. A lot of most people have, all of us have some type of bias. That's why we talk about implicit bias, but there's enough explicit bias out there for us to talk about, and I don't think we should make ourselves feel better about oh, well, it was implicit bias, bias is bias. And we need to try to edit and in this case, when we're talking about guns and stand your ground and and police officers in the light, that that bias can be deadly.



JJ Janflone 11:27

If if we could talk specifically about how, you know, what even stand your ground law purports to be.



Kami Chavis 11:34

Yes, so the law, I'm a law professor. For everyone with all of the different elements of some of these statutes, but so let's, let's explain stand, stand your ground. So in general, the law of self-defense is an affirmative defense. And that means that the defendant is allowed to argue that whatever use of force they use, was justified to protect herself or others from harm. So we think about with self defense, if someone, and I'll just use the example of deadly force, and since when we're talking about guns, that that is deadly force. So someone is approaching you, about to, you know, seriously could cause serious bodily injury or, or some type of deadly harm, you are allowed to defend yourself, that's the law of self defense. And if you appropriately meet those standards, then even though you may harm or or kill that person, you would not be found guilty of it, we say that it was that's a justification defense. So in the case of a deadly, of

a use of deadly force, the defendant would need to show that the deadly force was necessary to prevent serious injury of bodily harm or death, and so under the common law, and then saying common law, as opposed to all of the various state statutes that we have, self-defense imposes a duty to retreat before using deadly force. So that means if I see this person coming at me about to harm me, I have a duty to retreat if I can safely do so if I can go inside my house or go into a vault and lock myself in, I should do that. So that I don't have to, to use the force. And the underlying rationale for that is that we, it's the preservation of human life, where we can avoid a conflict you should do so you'd be obligated to do that. And so if you can safely retreat, under the common law, if you can say from retreat, then you cannot avail yourself, the defense self-defense.

K

Kami Chavis 13:54

So generally, however, there's no duty to retreat when you're already in your home. And this is the concept called the Castle Doctrine that we talked about as if everyone lived in the castle all the time. But anyway. So the Castle Doctrine says, if you're in your home, you don't have to retreat. And that again, even though we want to preserve human life, by having this duty to retreat, there are limits to this, we're not going to ask you to further retreat within your home that that is that is your your safe haven. So when we talk about Stand Your Ground laws, what we're really seeing is an expansion of that Castle Doctrine and saying there's no duty to retreat. And again, a lot of states depends on what state you're in, but have expanded that doctrine to include your car, your workplace, and some states have enacted legislation that removes the duty to retreat in all circumstances. So and this is where we what we call the Stand Your Ground statutes. So in like in all circumstances, you would not have to to retreat. And what that really is. And so, so stand your ground statutes essentially codify the absence of the duty to retreat, and they allow individuals to use deadly force, even when there isn't an option to safely retreat from a potentially dangerous situation. And so if we if we really look at what that means that that we're we were talking about the underlying rationale of having a duty to retreat is the preservation of human life. You've got a lot of state statutes that have said, No, we're not going to do that. And you don't have a duty to retreat. And we're going to codify that,

K

Kelly Sampson 15:46

you know, one of the things that you mentioned earlier was how part of what Stand Your Ground does is not only does it remove the duty to retreat, but also in some circumstances, it can cause a delay. And you you know, with all the hats you've worn, are probably uniquely qualified to understand and explain how practically removing this duty to retreat, allowing for this affirmative defense or affirmative claim, can actually not only change the outcome of the case, but also change the timing of the case and the trajectory of a case. Wondering if you could help us understand what that how that works.

K

Kami Chavis 16:24

Yeah, and it's interesting, and it can work differently in different contexts. And it really does depend on because again, every state's standard, we can say broadly, stand your ground but every state statutes are different and have different nuances. But when you when I think about

So, for example, I mentioned earlier, you know, Ahmaud, Arbery, because they in Georgia, does have Stand Your Ground statute. It wasn't applicable here, because that they were pursuing him, right. He just was jogging, and they began to pursue him. But even just being able to say, Oh, I was standing standing, standing my ground. And you have and there were some other problems in the arbery case with some conflicts of interest and prosecutors needing to ultimately eventually recuse themselves. And so I think, in many cases, you might have had a sensible prosecutor would have said, No, that's not acceptable. I'm gonna go ahead and arrest you. We'll we'll sort this out. But just by having the statute allows you to like, for example, in Florida, in the case of Trayvon Martin, the police chief said, when Zimmerman was before Zimmerman was arrested, the chief noted that Zimmerman said, Well, I was I was defending myself. And so I, you know, he had to wait, you have to have probable cause to show that Zimmerman unjustifiably used force. And so again, this, whether it's, you know, and again, these some decisions, can you can, somebody can look at it immediately, or it could take days,



JJ Janflone 18:07

I think one of the things that's coming out is one, how horrifying is it that we have so many anecdotal examples of recent cases? And so I'm wondering if we can sort of talk about that that disparity of when Stand Your Ground laws, when when do they actually get applied to individuals who claim them



Kami Chavis 18:26

Before we talk about disparities, just thinking about like, in general, right? So why why would you as a legislator, legislator or legislature, why would you enact a law that expanded the castle doctrine or did away with it altogether? We know that the Stand Your Ground laws, they do not deter crimes, right. And in fact, in some studies have been shown to increase firearm homicide rates. And so I can point to, for example, the Florida stand your ground statute in 57% of Florida Stand Your Ground cases, there was clear evidence, and this is I'm quoting from quoting from a Everytown for Gun Safety report, but they said that in a clear evidence that the person who claimed that stand your ground could have safely retreated to avoid the confrontation. So this is 57% of those cases, where the person and like we said, we go back to the underlying rationality of even having a duty to retreat, so that you can leave so that so that so we can preserve human life and in 57% of those cases, that did not happen. So what what that is showing us is that these laws allow individuals to forego deescalation and just use deadly force as a as a first step. And so, again, and there's again and other other studies that talk about how some of these laws and some of the areas significantly increase homicide rates, they may have less effect on things like robbery, aggravated assault, burglary, things like that, but have increased the we've seen increased homicide rates.



Kami Chavis 20:21

So when we get to talking about Black and Brown individuals and minoritized groups, it's, again, there is absolutely evidence that these laws exacerbate racial inequities for both the victims and the defendants. And which I think is, again, really interesting, because if you look at where if you look at some of the state's homicides, in which you have a white shooter that kills a Black victim, a white shooter that kills a black victim, this is deemed justifiable almost five

times more than when the situation is reversed. So to your point, JJ, the fact that you have Black, if you're a Black victim, your your homicide, may be deemed justified. But whereas if a Black shooter and a white victim if it's reversed than that it wouldn't be. And so that inequity is is disturbing. And again, I think that there aren't, you know, Florida kind of gives us because that that law has been in effect for a while and it's been used quite a bit, is a really fruitful area for study. But we know that the point is that we know that these laws are not colorblind, and it's all in the application of of how you use them. So when both the shooter and the victim have been white, like 11% of cases have been deemed justifiable, but when both parties are Black, there's a lower percentage of Black defendants that are able to successfully use the defense. And so when we have in our law, or in our legal system, when we have laws, we they should be equally applied, but we're seeing that they're not if you're going to have, you know, no matter how, you know, anyone feels about the ability to have this defense, if you're going to have it, then Black folks ought to be able to use it in the same way that that white folks and avoid, you know, criminal time. And I could also say, and Black victims, right, should also be able, the flip side of that is that when this is used, like the victims ought to be able, you know, to have their to not have their homicides, you know, deemed justifiable when others aren't. So it's clear that there's some racial implications of of these laws.

K

Kelly Sampson 23:02

And, you know, as we think about the racial implications, as you said, both for people trying to claim this defense and also people who have been killed by someone claiming that offense, we're also in this weird time where some states are trying to actually add Stand Your Ground laws, or, you know, add something like a Stand Your Ground to their their criminal, legal standard standards. And so I'm wondering, as Stand Your Ground laws are expanding, and there's obviously a risk there for Black and Brown people? Where do you see standard ground going in the future? And do you think that we'll continue to see an expansion of these laws in other states where they'll be pushed back?

K

Kami Chavis 23:45

Yeah, so it's really interesting. And I'm just thinking about back to 2021, where Arkansas, and Ohio both passed legislation to expand the Castle doctrine. And what was really interesting about Arkansas is that the governor, that at the time, Asa Hutchinson had not been necessarily supportive of of this law, he had said, he had said, he thought, well, there's no compelling reason to have such a law. But what actually persuaded him the second time around, was that the bill was not opposed by law enforcement. And so again, very interesting that you have one so I told you, we eventually get back to policing in some sense, but where you have law enforcement that say, no, let's let's let's let private private vigilantes duke it out. That's that that is, in my view, essentially, what's happening. And so when law enforcement said oh, let's let them duke it out, then, you know, the governor says, "Okay, well, yeah, let's if they're not going to oppose it, then why would I?"

K

Kami Chavis 24:53

So I do think that we are going to see an expansion in these law states that don't have them or states that that have them and are incrementally try to expand them. The only way that that might stop. And I, my position is that I think it needs to stop. I think, for the reasons that I've

mentioned earlier, they, they, when you have these laws, again, it's shoot, first ask questions later, if when you have these laws, there's no need to deescalate and preserve human human life. And so, and then again, have the studies that show that they don't deter crimes, and that they, and some studies that do show that they increase homicide rates. So when I when I take a look at that whole picture, I think wait a minute, let's, let's stop this, let's have some study, let's really dig in deep to where these laws have been enacted. Let's see how they're applied. Let's unpack those the racial inequities in in terms of the application, and if we can do that, and educate again, this all comes back to civic participation, and voting and, and transparency and education. Because if you don't have the information, you have to have information, we have to study information, we have to disseminate it in a way that our people understand. And when we show that you have educated voters, they shouldn't be electing people who would be supportive of this.



Kami Chavis 26:37

So, but I fear that we don't have a lot of that going on. And what we do have, in some areas are real increases in some places related to violent crime, unfortunately, and whether or not they're real, we sometimes have a perception of increases in crime. And so when people are afraid for their personal safety, and when people do not trust law enforcement to keep them safe, that I think we would see an expansion of these laws. And again, this is where I come back to law enforcement, we are absolutely at a crossroads, we've passed the crossroads, I don't know where we are, in terms of thinking about reforming policing in the United States, but it is clear, and many studies show that particularly minoritized populations do not trust the police do not trust police to to, to keep them safe. So and don't just, you know, interactions between them because they they sometimes end up with deadly consequences. And so we've got to fix that. And we have to let professionals because I also, while I believe that we need to reform our police agencies, I am not one that would ever say we need to abolish our police agencies. I don't believe that I think that we need a professionalized group of folks to monitor safety, but again, professionalized, acting, acting as you would in a democratic nation, right? With a has a constitution following following rules. So until we live up to that ideal, we very well may have vigilantes on all sides, who are taking things into their hands and, and who are shooting indiscriminately and inappropriately and in situations where lives could be saved,



JJ Janflone 28:49

For folks who, you know, after listening to you, or hopefully before listening to you, but now even more so are are concerned about this particularly, I mean, for me, it's the spread of Stand Your Ground statutes that we've seen during COVID. In particular, it seemed like there was a almost explosion of these throughout. What do you have any suggestions for folks for actions that they could take, not just to educate themselves, but to help prevent these in their communities? And then nationwide?



Kami Chavis 29:17

Yeah, so and I do go back to I think education is really important. I think that you need to know what these laws you are, if you are an individual, you live in a certain state, you need to go to the statute, go to the test, what does it say? And think about how has it been used? And is Has



anybody studied? Or what so there's, I'm an academic, so, you know, there are things that I would suggest that academics can do, they can they can have studies and then think about these things. And but then we have that information. You've got to get it to the voters and people have to care. And this is where we go back to the whole you know, Black Lives Matter Movement is I think we have really I'm under explored, how stand your ground and Black Lives Matter are connected, because what some of these studies are clearly saying is that yeah, they don't really. Black lives don't really matter when we're talking about stand your ground. It's the it's if you have a white victim, and we've seen and that is that isn't an analogy that runs throughout the federal criminal legal system. So I do think that that giving the evidence and that we have we have been for several years, we were in a situation where we were the facts and evidence, were not important. But they are facts and evidence are important. And we need to get back to evidence based solutions.



Kami Chavis 30:48

And I think if we get the evidence, we will we cannot justify continuing to enact these laws. So one thing is that we can and also to and so to repeal, I am for repealing that we should never enact them in the first place. So we should not enact them in the first place. So we should try to contain where we are. And then we should try to repeal this should think about repealing there was some momentum at one point in Florida for repealing these laws. But if we can't do that, and those are the those are going to be the two most effective ways. The American Bar Association has actually recommended some safeguards right, and basically saying that they have to and this is a quote again from an ABA report that they should prevent racially disparate impacts and inconsistent outcomes that advantage whites while disadvantaging Blacks. So, so we can't stop them from being an active if we can't repeal them. But can we at least try to minimize the racial disparities that we are seeing?



JJ Janflone 32:05

Well, thank you so much. Kami, this has been so helpful.



JJ Janflone 32:11

So Kelly, I after talking to you and Kami and all of our other guests, you know, folks are gonna make me go to law school. It's gonna be bad.



Kelly Sampson 32:19

No, you will be an excellent lawyer. But luckily, as Kami articulated, you don't have to be a lawyer to fight gun violence, but you do need to be present in your community and get politically engaged, especially at the local level.



JJ Janflone 32:34

Hey! Want to share the podcast? Listeners can now get in touch with us here at Red Blue and  
Producing phone or text message. Simply call or text us at 480-744-2454 with your thoughts

Brady via phone or text message. Simply call or text us at 480-744-3434 with your thoughts, questions, concerns, ideas, whatever! Kelly and I are standing by.



Kelly Sampson 32:49

Thanks for listening. As always, Brady's life saving work in Congress, the courts and communities across the country is made possible thanks to you. For more information on Brady or how to get involved in the fight against gun violence. Please like and subscribe to the podcast. Get in touch with us at [Bradyunited.org](https://bradyunited.org) or on social @Brady buzz. Be brave and remember, take action, not sides