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Christy S. Etheredge

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CASE COMMENTS

THE CASTLE DOCTRINE: EXTENSION OF THE RULE TO CO-INHABITANTS

Weiland v. State, 732 So. 2d 1044 (Fla. 1999)

*Christy S. Etheredge**

Weiland, the Petitioner, shot and killed her husband in their apartment during a violent argument.¹ Petitioner asserts that at the time of the fatal shooting she feared that she might be killed or seriously injured by her spouse.² Petitioner's defenses at trial included battered spouse syndrome and self-defense.³

A jury convicted Petitioner of second-degree murder.⁴ Petitioner appealed the conviction, asserting that the trial judge erred by refusing to instruct the jury on the "castle doctrine."⁵ Bound by the Florida Supreme Court's prior holding in *Bobbitt*, which stated that the castle doctrine does not apply to co-inhabitants, the Second District found no reversible error and affirmed the trial court's decision.⁶ The Florida Supreme Court reviewed the decision as a question of great public importance and HELD, the castle doctrine, which states that a party in fear of being killed or seriously injured by someone in their own home does not have a duty to retreat, but may instead resort to deadly force if necessary to avoid great bodily harm or death, is applicable when the attacker is a co-inhabitant.⁷

The castle doctrine, which creates an exception to the common law duty

* This Case Comment is dedicated to Johnny, my idol; Tammy, my inspiration; and especially to Chuck, my husband, partner, personal cheerleader, and the one who, with his unconditional love and nonstop support, makes it all both possible and worthwhile.

1. See *Weiland v. State*, 732 So. 2d 1044, 1048 (Fla. 1999).
2. See *id.*
3. See *id.*
4. See *id.* at 1049.
5. See *id.* at 1047. The standard jury instruction on the castle doctrine reads:

If the defendant was attacked in [his][her] own home or on [his][her] own premises, [he][she] had no duty to retreat and has the lawful right to stand [his][her] ground and meet force with force, even to the extent of using force likely to cause death or great bodily harm if it was necessary to prevent . . . death or great bodily harm to [himself][herself]

FLORIDA STANDARD JURY INSTRUCTIONS (CRIMINAL), Justifiable Use of Deadly Force § 3.04(d), at 49 (1985).

6. See *Weiland*, 732 So. 2d at 1047; *State v. Bobbitt*, 415 So. 2d 724, 726 (Fla. 1982).
7. See *Weiland*, 732 So. 2d at 1058.

to retreat before resorting to force for self-defense, was defined in *Pell v. State*.⁸ In *Pell*, the defendant was convicted of murder for shooting and killing the victim.⁹ The shooting occurred in the defendant's garage during a confrontation instigated by the victim.¹⁰ The defendant appealed his conviction, asserting that the jury instructions regarding self-defense and duty to retreat should have included the castle doctrine exception.¹¹ The court held that a person generally has a duty to retreat from attack if at all possible before the use of self-defense is justified.¹² However, the court reasoned that when the victim is being attacked in his own home or on his own premises by a party who is unlawfully there, during an altercation which he did not instigate, he is entitled to stand his ground and may use whatever force a reasonable man would use to prevent his own death or serious bodily injury.¹³ Since the shooting occurred in the defendant's own garage, the court held that the jury instructions should have included an advisory that the defendant had no duty to retreat before resorting to self-defense.¹⁴

While *Pell* only addressed the application of the castle doctrine when the aggressor is a trespasser, in *Hedges* the court expanded the castle doctrine to include situations where the aggressor is an invitee.¹⁵ The defendant in *Hedges* was convicted of manslaughter for killing her paramour while he was at her home.¹⁶ She appealed her conviction, contending that she was defending herself in her own home and, therefore,

8. 122 So. 110, 116 (Fla. 1929). By statute, a person is permitted to use deadly force when it is reasonably necessary to prevent imminent death or serious bodily injury. See FLA. STAT. § 776.012 (1999). While not codified in the statutes, the duty to retreat before resorting to self defense has emerged in the common law and is based on the policy that one should use all reasonable means to avoid taking a human life while securing one's own safety. See *Hedges v. State*, 172 So. 2d 824, 827 (Fla. 1965); *Conner v. State*, 361 So. 2d 774, 776 (Fla. 4th DCA 1978); see also *Danford v. State*, 43 So. 593, 596 (Fla. 1907) (holding that one has a duty to avoid difficulty if its possible to do so without exposing oneself to greater danger).

9. See *Pell*, 122 So. at 112.

10. See *id.* at 114. The victim in *Pell* was a police officer who was rooting around in the defendant's garage with an illegal search warrant. See *id.* at 114-15. When the defendant asked the officer for the search warrant, the officer hit the defendant and then raised his gun to shoot him. See *id.* at 114. In making its decision, the court emphasized that the defendant did not initiate the altercation and that the victim did not have a legal reason for being on the defendant's property. See *id.* at 116.

11. See *id.*

12. See *id.*; see also *supra* note 8.

13. See *Pell*, 122 So. at 114. The court qualified this rule, however, by stating that the castle rule exception to the duty to retreat does not apply when the defendant lies in wait for the adversary, initiates the altercation, or is mutually responsible for the altercation which leads to the use of deadly force. See *id.*

14. See *id.* at 114.

15. See *id.* at 116; see also *Hedges*, 172 So. 2d at 826-27.

16. See *Hedges*, 172 So. 2d at 825.

was entitled to a jury instruction on the castle doctrine.¹⁷ The State asserted that this exception only applies when the attacker is a trespasser.¹⁸ However, the court held that a party under assault in one's own home does not have a duty to retreat, whether the attacker is a trespasser or an invitee, because when a person is in his or her own home, he or she is already in the sanctuary to which a party under attack would normally retreat.¹⁹

Although the Florida Supreme Court was willing to extend the castle rule exception to the duty to retreat to include invitees, it refused to allow this exception to apply when the assailant was a co-occupant of the home.²⁰ In *Bobbitt*, the defendant shot and killed her husband in their home after he attacked her.²¹ The jury convicted her of manslaughter.²² The defendant moved for a new trial, asserting that she had no duty to retreat since the attack leading to the shooting occurred in her home.²³ The trial court granted a new trial and the State appealed.²⁴ Although the First District Court was willing to concede to the defendant's position, the Florida Supreme Court held that the castle rule exception was not appropriate in this case because the attacker and the defendant were both lawful residents of the home.²⁵ The court distinguished this situation from *Pell* and *Hedges* by noting that in *Pell*, the attacker was a trespasser with no legal right to be on the premises, and in *Hedges*, by becoming an aggressor the invitee lost the legal right to be in the home.²⁶ On the other hand, in *Bobbitt*, the court reasoned that the attacker, as a resident of the home, retained a legal

17. *See id.* at 826-27. In this case, the court refers to the castle doctrine as the "home rule exception." *Id.* at 826.

18. *See id.*

19. *See id.* at 827.

20. *See State v. Bobbitt*, 415 So.2d 724, 726 (Fla. 1982).

21. *See id.* at 725.

22. *See id.*

23. *See id.*

24. *See id.*

25. *See id.* at 725-26. The First District relied on *Hedges* in reaching its decision to apply the castle doctrine to a co-inhabitant, reasoning that in both *Hedges* and the case before them, the attackers were not intruders in the home, and thus the same rule should apply. *See id.* at 725. Other appellate courts wrestled with this issue before the Supreme Court decided *Bobbitt*. *See, e.g., Rippie v. State*, 404 So. 2d 160, 161-62 (Fla. 2d DCA 1981) (holding that a co-occupant has a limited duty to retreat within the residence but does not have to retreat from the dwelling altogether); *Conner v. State*, 361 So. 2d 774, 775-76 (Fla. 4th DCA 1978) (receding from its earlier extension of the castle doctrine to co-occupants and holding that "human life is sacred and that due regard for it far outweighs any indignity or cowardice involved in having to retreat from one's own family"); *Stevenson v. State*, 285 So. 2d 61, 61 (Fla. 4th DCA 1973) (reasoning that the castle doctrine applies to co-occupants as both have equal authority and control of the premises); *Watkins v. State*, 197 So. 2d 312, 313 (Fla. 4th DCA 1967) (asserting that home is the ultimate sanctuary so when both parties have an equal right to be there, a person attacked by a co-occupant has no duty to retreat).

26. *See Bobbitt*, 415 So. 2d at 725-26.

right to be there even as an aggressor.²⁷ Therefore, “both Bobbitt and her husband had equal rights to be in the ‘castle’ and neither had the legal right to eject the other.”²⁸ Thus, the court made it very clear that the castle doctrine applied when the attacker was a trespasser or invitee, but not when he or she was a co-inhabitant of the residence.²⁹

In the instant case, however, the court reversed its holding in *Bobbitt* and receded in part from *Hedges*.³⁰ The court held that the castle rule exception to the duty to retreat applies when the attacker against whom a party defends themselves is a co-inhabitant.³¹ The court further held, however, that there is a limited duty to retreat to the extent possible within the residence.³²

In reaching this decision, the instant court first discussed the common law origins of the duty to retreat before resorting to deadly force.³³ The court explained that the duty to retreat stems from the policy that one should do everything possible to avoid danger before resorting to self-defense.³⁴ The castle doctrine exception to this duty is also strongly rooted in the common law.³⁵ The court cited the policy reasons behind this exception, emphasizing the importance that has traditionally been placed on the idea that no man should be a fugitive from his own home because the home is man’s ultimate sanctuary; thus, one forced to flee from his own home would have no safer place to go.³⁶ In addition, since a man’s home is viewed as his castle, he should be entitled to protect it from invasion rather than be forced to flee from it.³⁷

After discussing the general origins of the duty to retreat and the castle doctrine, the court next traced the evolution of the castle doctrine as it has been applied in Florida, including its extension to invitees and its previous limitation regarding co-inhabitants.³⁸ Reflecting on its decision in *Bobbitt*, the court noted that its earlier holding showed less concern for human life

27. See *id.* at 726.

28. *Id.*

29. See *id.* at 725-26.

30. See *Weiland*, 732 So. 2d at 1058. The court only receded from the part of the *Hedges* decision relating to the castle doctrine. See *Hedges*, 172 So. 2d at 826-27. The remainder of the *Hedges* decision addresses whether jury instructions in homicide cases should include explanations of justifiable and excusable homicide. See *id.* at 825.

31. See *Weiland*, 732 So. 2d at 1058.

32. See *id.*

33. See *id.* at 1049-50.

34. See *id.* at 1049; see also *supra* text accompanying note 8.

35. See *Weiland*, 732 So. 2d at 1049-50.

36. See *id.*

37. See *id.* at 1050.

38. See *id.* at 1050-51. The court also considered the application of the castle doctrine in other states and noted that the majority did not impose a duty to retreat from the home when attacked by someone who has a legal right to be there, either as an invitee or guest. See *id.* at 1051.

than for property and possessory rights.³⁹ Specifically, the court noted that when it decided *Bobbitt*, the main concern was that both parties had a legal right to be in the home.⁴⁰ The instant court recognized, however, that the holding in *Bobbitt*, when considered with *Hedges*, created an inconsistency such that a party killing a significant other who had been a frequent invitee in the home had more legal protection than one spouse who kills the other in their joint home.⁴¹

In addition to recognizing the inequitable distinction between invitees and inhabitants created by the court's prior holding in *Bobbitt*, the instant court recognized that the *Bobbitt* holding had an adverse impact on domestic violence victims which currently necessitated correction.⁴² For example, the court cited studies indicating that an abused spouse forced to retreat from the home (as the holding in *Bobbitt* would require) is more likely to suffer death or serious bodily injury when attempting to leave than at any other point in time.⁴³ The instant court further noted that, while this information was not available at the time *Bobbitt* was decided, the fact that it is available now makes reconsideration of *Bobbitt* appropriate.⁴⁴ Furthermore, the court expressed a concern that depriving battered spouses of the right to defend themselves by imposing upon them a duty to retreat only reinforced the popular misconception that victims of spousal abuse can walk away from the abusive relationship at any time, but instead choose to stay, and are therefore partly to blame for their situation.⁴⁵

Finally, the instant court justified its reversal of *Bobbitt* by noting the post-*Bobbitt* changes in public policy as seen in the government's responses to the problem of domestic violence.⁴⁶ The court pointed to the executive branch's establishment of a domestic violence task force, the Legislature's enactment of laws to protect domestic violence victims, and the judiciary's establishment of special courts, task forces, and judicial training programs dealing with domestic violence.⁴⁷

Therefore, after reviewing the underlying policy of the castle doctrine, its subsequent evolution, recognizing the illogical distinction made between an invitee and a co-inhabitant, and considering the sweeping changes in public and social policy with regard to domestic violence, the court reasoned that a reversal of *Bobbitt* was appropriate at this time.⁴⁸

39. *See id.* at 1052.

40. *See id.*

41. *See id.*

42. *See id.* at 1052-53.

43. *See id.* at 1053.

44. *See id.* at 1053-54, 1055 n.12.

45. *See id.* at 1054.

46. *See id.* at 1054-56.

47. *See id.*

48. *See id.* at 1049-57.

Thus, a party under attack now has no duty to retreat from the home before using deadly force against a trespasser, invitee, or co-inhabitant when resorting to such force is necessary to avert death or serious bodily harm.⁴⁹ However, the court did include the caveat that while a party does not have to retreat fully from the home, that party is required to retreat within the residence if possible.⁵⁰

The Florida Supreme Court's decision in *Weiland* adjusts what once was an illogical line drawn between legal protections afforded to persons defending themselves against invitees and persons defending themselves against co-inhabitants.⁵¹ Allowing a person to stay and defend against an invitee, but requiring that person to retreat rather than defend against a co-inhabitant, creates an unreasonable distinction between the two because in both situations the aggressor has a legal right to be in the home.⁵² However, in *Weiland*, the court disregarded one of the premises it depended on to draw that line in *Bobbitt*—that once an invitee becomes an attacker, that invitee's status changes to a trespasser and the legal right to be on the premises is revoked.⁵³ Thus, what may be considered an arbitrary line does have a reasonable legal basis.⁵⁴

While there is a reasonable basis for drawing the line between invitees and co-occupants as in *Bobbitt*, *Weiland*'s decision to remove that line provides a more equitable outcome.⁵⁵ Now, rather than allowing concern over possessory rights to in effect provide protection to the attacker, the new rule affords more legal protection to the defendant, who may actually be the real victim.⁵⁶ As a result, by allowing co-inhabitants to invoke the castle doctrine, the new rule leads to a greater focus on the social relationships between the parties, rather than the legal status of the aggressor as an invitee or co-inhabitant within the home.⁵⁷

For example, under the old rule, a paramour in fear for her life could use deadly force to defend against a visiting lover, while that same paramour, still in fear for her life, would be forced to retreat from the home if the attacker was a live-in lover.⁵⁸ Similarly, while a parent resorting to

49. *See id.* at 1058.

50. *See id.*

51. *See id.* at 1052.

52. *See id.*

53. *See generally id.* at 1050-52.

54. *See State v. Bobbitt*, 415 So. 2d 724, 726 (Fla. 1982).

55. *See Weiland*, 732 So. 2d at 1052; *Bobbitt*, 415 So. 2d at 726.

56. *See Weiland*, 732 So. 2d at 1052, 1054.

57. *See id.* at 1052. However, the Court made it clear that the castle doctrine is not limited to use by co-occupants who are victims of domestic violence. *See id.* at 1057. Instead, the rule applies to all co-occupants who resort to deadly force to defend against an attack by another co-occupant. *See id.*

58. *See id.*

deadly force to defend against a visiting child would be granted the protection of the castle doctrine, the same parent would be forced to retreat from the home if the child putting her in fear for her life also resided in the home.⁵⁹ As a result, defendants with valid reasons to fear for their lives who killed an attacker in self-defense would suffer different legal consequences if they happened to live with the person who attacked them than if that same person was an invited guest in their home.⁶⁰

The new rule as formulated in *Weiland* shifts the emphasis from property rights and legal status to an emphasis on the value of human life.⁶¹ Before *Weiland* extended the castle doctrine to co-occupants, the rule reflected the significance of possessory and property rights when dealing with issues related to the home.⁶² While these policy considerations were critical to the formation of the castle doctrine and its extension to situations where the attacker is an invitee, they were inadequate in terms of ultimately protecting human life.⁶³ By focusing solely on property concerns, the increasingly recognized plight of domestic violence victims was ignored.⁶⁴ Therefore, under *Weiland*, the court's former concern with who had a legal right to be in the home was replaced with a greater concern for who had a right to defend themselves against an aggressor.⁶⁵

59. See, e.g., *Conner v. State*, 361 So. 2d 774, 775-76 (Fla. 4th DCA 1978) (upholding the defendant's conviction where the defendant shot her mentally ill son who resided with her after he attacked her in the home). The *Conner* court reasoned that the sanctity of human life—referring to the attacker's life—is more important than the dignity of the attackee/defendant who is forced to retreat from the home. See *id.*

60. See *Weiland*, 732 So. 2d at 1052.

61. See *id.* at 1051-54.

62. See *id.* Common law property and possessory rights regarding the home are twofold. See *id.* at 1049-50. First, there is the policy that one should be able to defend one's home from invasion rather than be forced out of it. See *id.* at 1050. Second, since home is one's sanctuary, one who has a legal right to be in the home should be able to stand his ground. See *id.* at 1049-50; *Bobbitt*, 415 So. 2d at 725. In the past, courts have emphasized that where co-occupants have equal rights to stand their ground, the castle doctrine should not apply. See *Bobbitt*, 415 So. 2d at 726; see also *Conner*, 361 So. 2d at 776; *Stevenson v. State*, 285 So. 2d 61, 61 (Fla. 4th DCA 1973). While this seemingly allows both parties to assert their possessory rights, it is a fallacy because it actually allows the attacker to assert his/her possessory right. In effect, prohibiting a party under attack from using the castle doctrine forces that party to retreat, thus giving up their possessory rights to the home. Meanwhile, the aggressor is allowed to assert his possessory rights. If neither party has "the legal right to eject the other," it does not seem reasonable to give an aggressor legal protection when he effectually, if not literally, ejects the victim of his attack. *Bobbitt*, 415 So. 2d at 726.

63. See *Weiland*, 732 So. 2d at 1049-54; see also *Hedges v. State*, 172 So. 2d 824, 827 (Fla. 1965). The instant court cited several studies that show that victims of domestic violence are more often killed or severely injured when they attempt to follow their legal duty to retreat because spouse abusers are only further enraged when their victims try to leave. See *Weiland*, 732 So. 2d at 1053-54.

64. See *id.* at 1052-55.

65. See *id.* at 1053; see also *Bobbitt*, 415 So. 2d at 726.

Furthermore, the earlier decisions upon which the court relied in *Bobbitt* that did consider the value of human life actually favored the life of the attacker.⁶⁶ Therefore, while victims of domestic abuse previously had to give up their rights to the shelter of their homes to avoid depriving their abusers of that right, the law now recognizes that it is unreasonable, and often more dangerous, to force domestic violence victims into this position.⁶⁷

Although the rule as it was pronounced in *Weiland* is a step forward in affording more protection to victims of domestic violence, it leaves room for misuse.⁶⁸ The court has previously recognized that the castle doctrine should not be used to protect a party who lies in wait for his adversary and deliberately uses force for reasons other than self-defense under the guise of the castle doctrine.⁶⁹ However, the court dismisses this concern in *Weiland*, and its holding leaves open the opportunity for abuse of the rule in situations where a domestic violence victim takes a preemptive strike and later claims self-defense and the protection of the castle doctrine.⁷⁰ This appears to be possible because, although *Weiland* makes it clear that there is a limited duty to retreat within the residence if at all possible before resorting to deadly force, there is nothing enunciated in the rule regarding the application of the castle doctrine to co-inhabitants that requires that the feared death or great bodily harm must be imminent.⁷¹ The rule formulated by the court reads, “[T]here is no duty to retreat from the residence before resorting to deadly force against a co-occupant or invitee if necessary to prevent death or great bodily harm, although there is a limited duty to retreat within the residence to the extent reasonably possible.”⁷² The word “imminent” is conspicuously left out of the clause

66. See *Weiland*, 732 So. 2d at 1056-57; see also *Conner*, 361 So. 2d at 776 (expressing a concern for human life such that the taking of the aggressor’s life should not be considered as an option until the option of retreat has been exhausted); *Hedges*, 172 So. 2d at 827 (allowing the castle doctrine to apply to co-inhabitants, but pointing out that the duty to retreat arises from the policy interest in having the victim of an attack avoid taking a human life).

67. Compare *Weiland*, 732 So. 2d at 1052-54, with *Bobbitt*, 415 So. 2d at 726.

68. See *Weiland*, 732 So. 2d at 1056-57.

69. See *Pell*, 122 So. at 116 (warning that while one has no duty to retreat from his premises to avoid death or great bodily harm, one cannot lie in wait for his foe or claim the protection of the castle doctrine for an altercation that he provoked); *Wilson v. State*, 11 So. 556, 560-61 (Fla. 1892).

70. See *Weiland*, 732 So. 2d at 1056. The court, which relied heavily on psychological and sociological studies regarding domestic violence in making its decision to reverse *Bobbitt*, further asserted that the lack of empirical data showing a correlation between allowing domestic violence victims to assert the castle doctrine and an increase in domestic violence was reason enough to believe the rule would not be abused. See *id.* The court further suggested that the rule precluded abuse because it included a limited duty to retreat within the residence. See *id.*

71. See *id.* at 1058.

72. *Id.*

“if necessary to prevent death or great bodily harm.”⁷³ Thus the court has left a loophole by failing to clearly assert that the rule cannot be invoked at a time of peace in the home as a preemptive strike to possible future abuse.⁷⁴

The Florida Supreme Court ruling in *Weiland* demonstrates a greater understanding of the implications of the battered spouse syndrome.⁷⁵ It provides for greater legal protection to victims of domestic violence than was previously available under *Bobbitt*.⁷⁶ However, it also creates the risk that more victims of domestic violence will effect their own justice and subsequently depend on the legal system to endorse this action. Until the rule clearly states that the abused spouse must be in imminent danger or until the court establishes a test that shows that the deadly force used was not retaliatory or preemptive, this rule has the potential to be abused.

73. *Id.*

74. *See id.* Perhaps the Court assumes that since the duty to retreat or the privilege of non-retreat are common law corollaries to the statutory justifications for the use of deadly force in self defense, which are only available when danger of death or great bodily harm is imminent, it is not necessary to specify this in regards to the privilege of non-retreat. *See* FLA. STAT. § 776.012 (1999).

75. *See Weiland*, 732 So. 2d at 1052-57.

76. *Compare id.*, with *Bobbitt*, 415 So. 2d at 726.

