DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JUAN JAVIER OQUENDO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-2408

February 10, 2023

Appeal from the Circuit Court for Pinellas County; Susan St. John, Judge.

Howard L. Dimmig, II, Public Defender, and Siobhan Helene Shea, Special Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Jonathan P. Hurley, Assistant Attorney General, Tampa, for Appellee.

ATKINSON, Judge.

Juan Javier Oquendo appeals from the judgment and sentence for the lesser-included offense of manslaughter with the use of a firearm. We affirm the judgment and sentence in all respects but write only to explain why the trial court was correct to reject Oquendo's request to present expert testimony on his post-traumatic stress disorder in support of his theory of self defense.

Oquendo shot and killed James Cason on April 12, 2015, outside of a bar in Pinellas County. Oquendo testified that as he left the bar, he approached the victim's vehicle in the front of the bar because he believed that it was his friend picking him up. The victim cursed at him, then said, "I got something for you."

Oquendo testified that he saw the victim reach over and produce a gun. He tried to knock the gun from the victim's hand with his pool stick. Oquendo grabbed the victim's arm. He took the gun from the victim, then the gun went off inside the vehicle once or twice. He did not know that the victim had been shot; the victim's vehicle began moving forward, and Oquendo thought that he was going to be shot or run over. So, Oquendo said that he fired the weapon several times toward the vehicle.

Other witnesses recounted the events differently. One witness who claimed to be nearby heard someone say, "I got mine." Another heard the victim say: "Don't worry about it. I got something for you. I'll be right back." One witness testified that he saw Oquendo punch into the car and hit the driver. Then Oquendo pulled out a gun and started shooting. Another witness testified that he saw Oquendo poke his pool stick into the vehicle; no gun was in his hand when that occurred. However, the witness said that he was sure that Oquendo did not pull a gun from the victim's hand and that there was no struggle over a gun at any point; the gun came from Oquendo's person. The witness saw Oquendo pull the trigger and fire a shot at the victim. Another witness testified that after the first shot was fired, the victim's vehicle moved forward and hit a parked car.

The medical examiner testified that the victim died after sustaining a single gunshot wound to the head, above his left ear. The gun was

fired from one and a half to two feet away from the victim. Crime scene technicians located multiple bullet holes in the victim's vehicle as well as twelve shell casings.

After the shooting, Oquendo fled. He went to the home of Horace Lee, who dated Oquendo's mother when Oquendo was young. Lee testified that Oquendo told him "[t]hat he shot someone." Oquendo also told Lee, "His gun didn't go off, mine did."

Oquendo advanced a theory of self defense. Prior to trial, Oquendo attempted to admit expert testimony that he suffered from post-traumatic stress disorder (PTSD) and proffered the expert's testimony at a pretrial hearing. The expert indicated that he believed that Oquendo had been suffering from PTSD for a number of years and that a person with PTSD would be naturally inclined to believe that a situation was threatening. Oquendo contends that the expert testimony about the fact that he suffered from PTSD was admissible as relevant to the issue of self defense—particularly his elevated perception of danger.

One of the bases on which the trial court excluded the expert PTSD testimony is well-taken: the evidence is not relevant to the issue of self defense in light of the objective standard for establishment of that justification. "[B]ased on . . . the jury instruction about the reasonable person objective standard" for self defense, the trial court concluded that the testimony would not be helpful to the jury's understanding of the case. Because the evidence is not relevant to the issue of self defense, we conclude that the trial court did not abuse its discretion by excluding the expert witness testimony. *See Filomeno v. State*, 930 So. 2d 821, 822 (Fla. 5th DCA 2006) ("The admissibility of evidence is within the sound discretion of the trial court, and the trial court's ruling will not be reversed unless there has been a clear abuse of that discretion.").

Under Florida law, "[a] person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is 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." § 776.012(2), Fla. Stat. (2015). "The conduct of a person acting in self defense is measured by an objective standard, but the standard must be applied to the facts and circumstances as they appeared at the time of the altercation to the one acting in self defense." *Shreiteh v. State*, 987 So. 2d 761, 763 (Fla. 4th DCA 2008) (quoting *Price v. Gray's Guard Serv., Inc.*, 298 So. 2d 461, 464 (Fla. 1st DCA 1974)); *see also Chaffin v. State*, 121 So. 3d 608, 612 (Fla. 4th DCA 2013) ("The law does not ascribe a subjective standard as to a defendant's state of mind[] but concerns a reasonably prudent person's state of mind." (quoting *Reimel v. State,* 532 So. 2d 16, 18 (Fla. 5th DCA 1988))). This objective standard is formalized in the standard self-defense jury instruction:

> In deciding whether (defendant) was justified in the [use] [or] [threatened use] of deadly force, you must consider the circumstances by which [he] [she] was surrounded at the time the [force] [or] [threat of force] was used. The danger need not have been actual; however, to justify the [use] [or] [threatened use] of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that [force] [or] [threat of force]. Based upon appearances, (defendant) must have actually believed that the danger was real.

Fla. Std. Jury Instr. (Crim.) 3.6(f) (brackets in original).

A theory of defense that the firearm discharged accidentally is not necessarily inconsistent with a theory of self defense (and therefore does not categorically preclude a self-defense instruction). *See Williams v.*

State, 588 So. 2d 44, 45 (Fla. 1st DCA 1991) ("[W]here there is evidence indicating that the accidental infliction of an injury and the defense of self defense or defense of another are so intertwined that the jury could reasonably find that the accident resulted from the justifiable use of force, an instruction on self defense or defense of another is not logically precluded."). However, it does not follow that testimony regarding PTSD is relevant to a theory of self defense premised on the allegation that a struggle with the victim led to the accidental discharge of the firearm. Any theory of self defense must necessarily be tested against an objective standard of the reasonableness of the defendant's belief in a threat of imminent death, great bodily harm, or the commission of a forcible felony. *See* § 776.012(2). Use of evidence of a disorder affecting a defendant's perceptions would necessarily be—as it was here—in support of a theory that the defendant's belief was more reasonable to him than it might have been to one not suffering from such a disorder. Such use, premised as it is on the defendant's subjective comprehension of the situation, is incompatible with the objective standard of reasonableness required to support the justification of self defense. *Cf. State v. Nazario*, 726 So. 2d 349, 350 (Fla. 3d DCA 1999) (concluding that evidence tending to prove the defendant committed the homicide because of "an involuntary survival instinct" was inadmissible).

In other words, the peculiarity of a defendant's mental state is not germane to the question of whether "a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that [force]." Fla. Std. Jury Instr. (Crim.) 3.6(f) (brackets in original). Because the jury was required to apply an objective-person standard when determining

whether Oquendo was justified in using force against the victim, the expert testimony regarding Oquendo's PTSD was irrelevant.

Oquendo relies on *State v. Mizell*, 773 So. 2d 618, 621 (Fla. 1st DCA 2000), in which the First District held "that PTSD evidence is relevant on the question of self-defense." The First District based its holding on the premise "that a defendant's perceptions are relevant when assessing applicability of self-defense." *Id.* The First District's conclusion does not follow from its premise, in part because its rationale was based on an incomplete analysis of the self-defense jury instruction. *See id.* (relying on the jury instruction's admonition that "[b]ased upon appearances, (defendant) must have actually believed that the danger was real." (quoting Fla. Std. Jury Instr. (Crim.) 45, 48)). Of course, it is true that a defendant's *perceptions* are relevant—*what* he ascertained with his senses constitutes the circumstances under which he was required to assess whether the threat justified the use of force he exerted. However, that does not make the self-defense test a subjective one, and it does not follow that a defendant's *misperceptions*—his misunderstanding of reality as altered by a disorder such as PTSD—are relevant. The self-defense jury instruction not only requires that the defendant have "actually believed that the danger was real" but also that his belief was objectively reasonable: "The danger need not have been actual; however, . . . the appearance of danger must have been so real that *a reasonably cautious and prudent person under the same circumstances* would have believed that the danger could be avoided only through the use of that [force] [or] [threat of force]." Fla. Std. Jury Instr. (Crim.) 3.6(f) (brackets in original) (emphasis added). Evidence that a defendant's perceptions might have been altered by a condition such as PTSD—or that his tendency to perceive danger was uniquely heightened

compared to others who do not suffer from such a condition—is not probative of what a reasonably cautious and prudent person under the same circumstances would have believed to be the extent of the danger or lack thereof. *Cf.* § 90.401, Fla. Stat. (2015) ("Relevant evidence is evidence tending to prove or disprove a *material* fact." (emphasis added)).

Evidence of Oquendo's PTSD would only go to show that his reaction was objectively *unreasonable* by virtue of a potential *misperception* of the dangerousness of the situation—i.e., that something others would not deem to be dangerous appeared to him to be so. *Cf.* § 776.012(2) (providing a justification for a defendant's use of force "if he or she *reasonably* believes" his or her use of force was necessary (emphasis added)). Indeed, counsel made it clear that was why he sought to introduce the evidence, explaining that it could show "how somebody who suffers from post-traumatic stress can react differently to a high-stress situation as opposed to somebody that does not." Not only is such evidence irrelevant to a self-defense theory, its exclusion could also be justified on the basis that it is inadmissible diminished-capacity evidence. *See, e.g.*, *Chestnut v. State*, 538 So. 2d 820, 820 (Fla. 1989) (finding "evidence of an abnormal mental condition not constituting legal insanity" inadmissible to prove "that the accused could not or did not entertain the specific intent or state of mind essential to proof of the offense"); *Nazario*, 726 So. 2d at 350 (noting "Florida's longstanding refusal to admit a defense based upon an irresistible impulse or a diminished mental capacity theory, where the defendant's sanity is not at issue" and explaining that "expert testimony that a defendant suffered from a mental infirmity, disease, or defect without concluding that, as a result, the defendant was insane as defined by the 'M'Naghten Rule,' is irrelevant"). Allowing admission of evidence of the defendant's unique

mental state when it is not relevant to a permissible defense or justification could invite confusion and potentially mislead the jury to excuse acts for which a defendant is culpable under the law. *See Chestnut*, 538 So. 2d at 821 ("[T]o allow expert testimony as to mental state in the absence of an insanity plea would confuse and create immaterial issues. . . . [T]he theory of diminished capacity inevitably opens the door to variable or sliding scales of criminal responsibility." (first quoting *Tremain v. State*, 336 So. 2d 705, 707–08 (Fla. 4th DCA 1976); and then quoting *Bethea v. United States*, 365 A.2d 64, 88 (D.C. Cir. 1976))).

As does Oquendo, the First District in *Mizell* mistakenly relies on the admissibility of battered-spouse syndrome evidence to support its conclusion that PTSD evidence is also relevant to self defense. *See Mizell*, 773 So. 2d at 621; *cf. State v. Hickson*, 630 So. 2d 172, 175 (Fla. 1993) (approving admission of battered-spouse syndrome as relevant to the justification of self defense). Battered-spouse syndrome "has been described as a condition wherein a woman who has had a long-standing personal relationship with a man in which she is frequently subjected to physical abuse, remains with the man but eventually acts against him because of her fear that his continued abuse will mortally injure her." *Wagner v. State*, 240 So. 3d 795, 797 (Fla. 1st DCA 2017) (quoting *Terry v. State*, 467 So. 2d 761, 763 (Fla. 4th DCA 1985)).[1] The *Mizell* opinion's

[1] While alternatively referred to as battered-*wife* syndrome and often discussed hypothetically in a way that indicates the sufferer is female and the batterer is male, the syndrome would be equally applicable regardless of the respective sexes of the battering individual and the battered individual. *See Weiand v. State*, 732 So. 2d 1044, 1048, 1057 n.16 (Fla. 1999) ("Most studies refer to victims of domestic violence as women because the overwhelming majority of the victims are women. However, because men can also be victims of domestic violence,

analogy of battered-spouse syndrome evidence to PTSD evidence elides pertinent distinctions between the two conditions and the manner in which they are utilized in support of the justification of self defense, and it betrays a misunderstanding of the objective nature of the test for the justification of self defense. *Compare Mizell*, 773 So. 2d at 621 (characterizing battered-spouse syndrome evidence as helpful for the jury to "understand why the victim would *subjectively* fear increased aggression against her" (emphasis added)), *with Price*, 298 So. 2d at 464 (explaining that "[t]he conduct of a person acting in self defense is measured by an *objective* standard" (emphasis added)).

The introduction of battered-spouse syndrome evidence to support a self-defense theory is not for the purpose of justifying a defendant's misperception of reality or to explain why an unreasonable belief was nonetheless justifiable due to her condition. Rather, the Florida Supreme Court has sanctioned the use of battered-spouse syndrome to show why the defendant's actions were *reasonable*—to show that in spite of a reasonable perception of danger from the battering spouse, the battered defendant would remain in the home with her batterer where she may resort to the exertion of force against him to prevent imminent death or great bodily harm. *See Weiand v. State*, 732 So. 2d 1044, 1048, 1053–55 (Fla. 1999) (comparing "a common myth that the victims of domestic violence are free to leave the battering relationship any time they wish to do so" with "[s]tudies [that] show that women who retreat from the residence when attacked by their co-occupant spouse or

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our opinion applies to males and females alike. *See* art. XI, § 5(c), Fla. Const."); *see, e.g.*, *Morris v. State*, 283 So. 3d 436, 438–39 (Fla. 1st DCA 2019) (discussing whether counsel was ineffective for failing to argue that the defendant suffered from "battered *spouse* syndrome" at the time he shot his wife seven times (emphasis added)).

boyfriend may, in fact, increase the danger of harm to themselves due to the possibility of attack after separation"); *Rasley v. Buss*, No. 5:08CV368/RH/EMT, 2011 WL 2358650, at *29 n.13 (N.D. Fla. Apr. 11, 2011), report and recommendation adopted, 5:08CV368-RH/EMT, 2011 WL 2293383 (N.D. Fla. June 9, 2011) ("Under Florida law, battered woman's syndrome is not a legal defense, but rather is used to explain the woman's experiences and state of mind to the jury. In the context of self defense, it is used to show that because of the prior conduct of the batterer, the woman *reasonably* believed that taking the batterer's life was a real necessity." (emphasis added) (citing *Hickson*, 630 So. 2d 172)).

Thus, unlike PTSD evidence, battered-spouse syndrome evidence does not tend to show that a sufferer's perceptions were impaired or altered by the condition; rather, it goes to show that while a defendant's perception of the danger was reasonable, her choice to remain in the dangerous situation—despite the risk she would have to exert force to protect herself—was also reasonable:

> [T]here is a difference in purpose between the expert testimony offered in battered-spouse syndrome cases and in cases such as the one before us. . . . In . . . a battered spouse syndrome case, . . . [t]he factor upon which the expert testimony would be offered was secondary to the defense asserted. . . [,] [offered not] to show through the expert testimony that the mental and physical mistreatment of [the defendant] affected [the defendant's] mental state so that she could not be responsible for her actions; rather, the testimony would be offered to show that because she suffered from the syndrome, it was *reasonable* for her to have remained in the home and at the pertinent time, to have believed that her life and the lives of her children were in imminent danger.

Nazario, 726 So. 2d at 349–51 (emphasis added) (quoting *Hawthorne v. State*, 408 So. 2d 801, 807 (Fla. 1st DCA 1982)) (quashing an order admitting "expert testimony regarding . . . human behavior and brain

functioning while experiencing the fight/flee syndrome, the factors that trigger said syndrome, and the physical sumptoms [sic] that are experienced during said syndrome . . . and how the effects of this syndrome precluded Nazario from forming an intent to kill, but rather, caused him to kill out of an involuntary survival instinct" (alteration in original)).

In this case Oquendo sought to introduce PTSD evidence to show why he might have mistaken as dangerous what others who do not suffer from PTSD would perceive to be less dangerous or not dangerous at all. By contrast, a defendant introducing battered-spouse syndrome evidence would be supporting her theory that she was *not* mistaken in her perception of danger, arguing that she had made rational choices in response to a reasonable assessment of the riskiness of her situation—i.e., that she had done what a "reasonably cautious and prudent person" might have done under the circumstances despite the "appearance of danger [having] been so real" that she "believed [it] could only be avoided through the use of [force]." *See* Fla. Std. Jury Instr. (Crim.) 3.6(f). As such, unlike PTSD, it is possible for battered-spouse syndrome to be relevant in a way that is consistent with the objective reasonable-person standard for the justification of self defense.

Resolving this evidentiary question does not require a value judgment that one condition or another is more or less worthy of excusing the use of force by an affected individual. Rather, it is the language chosen by the legislature to describe the justification of self defense that renders battered-spouse syndrome relevant and PTSD irrelevant. *Cf. Chestnut*, 538 So. 2d at 825 ("If . . . principles [such as diminished capacity] are to be incorporated into our law of criminal responsibility, the change should lie within the province of the

legislature." (quoting *Bethea*, 365 A.2d at 92)). Evidence that the defendant might have had an aberrant perception of danger due to an abnormal condition cannot be relevant to a test of objective reasonableness based on how a typical individual would have assessed the situation. *See* § 776.012 (justifying the use of force only when a defendant "reasonably believes [it] is necessary"); Fla. Std. Jury Instr. (Crim.) 3.6(f) (requiring that "the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of" the force exerted). The trial court correctly excluded such evidence in this case.

For the reasons set forth above, we certify conflict with *State v. Mizell*, 773 So. 2d 618 (Fla. 1st DCA 2000).

Affirmed; conflict certified.

LABRIT, J., Concurs.
KELLY, J., Concurs in result only.

Opinion subject to revision prior to official publication.