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In The Supreme Court of Florida

SC2023-0807

JUAN JAVIER OQUENDO
Petitioner,

v.

STATE OF FLORIDA
Respondent.

On Discretionary Review from the District Court
of Appeal of the State of Florida, Second District
DCA No.: 2D21-2408

BRIEF OF PETITIONER ON JURISDICTION

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STATEMENT OF THE ISSUES

Jurisdictional Issue: In a self-defense case, is evidence that the defendant was diagnosed with PTSD admissible? *See* Fla. R. App. P. 9.030(a)(2)(A)(iv).

Other Issue Petitioner intends to raise if the Court grants review: Because the Legislature created the presumption in Florida Standard Jury Instruction 3.6(f) "that entry into a conveyance creates a presumption of intent to commit an unlawful act with violence" for the defense of self-defense, was it error for the trial court to allow the prosecution to apply the presumption against Oquendo? *See* Fla. R. App. P. 9.210(f).

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STATEMENT OF THE CASE AND FACTS

Petitioner Juan Javier Oquendo ("Oquendo") was convicted by a jury of manslaughter with a firearm following a trial where he unsuccessfully raised a claim of self-defense. App'x 3-5. Oquendo shot and killed James Cason on April 12, 2015, outside of a bar in Pinellas County. App'x 4. Oquendo testified that as he was leaving the bar, he was expecting his friend to pick him up outside and that he tried to enter Cason's car because he mistakenly thought Cason was the friend he had been waiting on. App'x 4. A fight ensued wherein Cason told Oquendo "I got something for you". App'x 4. Oquendo then saw Cason produce a gun and point it at him. App'x 4. Oquendo used a pool stick to try to knock the gun out of Cason's hand and the men ended up fighting over the gun. App'x 4. The gun went off at least once while it was still inside the car. App'x 4. Oquendo eventually wrestled the gun from Cason and shot the gun several times. App'x 4. Cason was hit once in the head and died at the scene. App'x 4-5.

There were varying accounts of the shooting from the other eyewitnesses. One witness heard Cason say: "I got something for you. I'll be right back." App'x 4. Another heard someone say, "I got mine."

App’x 4. One agreed that Oquendo had stuck a pool stick into the car but another claimed Oquendo had reached into the car and punched Cason. App’x 4. Witnesses testified that Oquendo – not Cason – had produced the gun. App’x 4.

Prior to trial, Oquendo proffered the testimony of an expert witness who asserted he suffered from PTSD. App’x 5. Oquendo implored the trial court to follow *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." App’x 8. But the trial court categorized evidence of Oquendo’s PTSD as subjective evidence and excluded the PTSD expert based on its interpretation of Florida’s self-defense law as being measured only by a strict objective standard. App’x 5.

On appeal, the Second District affirmed and reasoned that the rationale in *Mizell* was based on an incomplete analysis of the self-defense jury instruction and a false analogy between battered spouse syndrome and PTSD. App’x 8-11. Since the First District in *Mizell* had reached the opposite result on the same issue, the Second District certified conflict with that decision. App’x 14.

SUMMARY OF THE ARGUMENT

This Court possesses discretionary jurisdiction to review this appeal under Article V, section 3(b)(3) of the Florida Constitution, which authorizes jurisdiction over district court decisions that "expressly and directly conflict" with decisions of other districts on the same question of law. The decision of the Second District below holds that "[b]ecause 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." App'x. 5-6.

Express and direct conflict exists between the districts, with the First District holding that PTSD evidence is relevant in such circumstances because a defendant's perceptions are relevant when assessing applicability of self-defense. *State v. Mizell*, 773 So. 2d 618, 621 (Fla. 1st DCA 2000). In order to maintain uniformity within the districts, Petitioner respectfully requests this Court accept discretionary jurisdiction, quash the *Oquendo* decision, and reverse and remand.

ARGUMENT

I. The Court Should Resolve the Certified Conflict

A. State District Courts are divided on the issue presented

The pertinent facts are the same for both cases. *Mizell* and *Oquendo* each involved claims of self-defense following shootings. Both Mizell and Oquendo had PTSD. The rulings on the admissibility of that diagnosis, however, vary: Mizell's jury heard about his PTSD, Oquendo's did not.

In *Mizell*, the First District held that PTSD evidence was relevant on the question of self-defense because a defendant's perceptions are relevant when assessing applicability of self-defense. 773 So. 2d 618, 621 (Fla. 1st DCA 2000), citing Fla. Std. Jury Instr. (Crim.) 45, 48 ("Based upon appearances, the defendant must have actually believed that the danger was real."). In contrast, the Second District ruled that since self-defense concerns an objective state of mind, "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].” ” App’x 7, citing Fla. Std. Jury Instr. (Crim.) 3.6(f).

Mizell likened the relevance of PTSD evidence in self-defense cases to that of testimony about battered spouse syndrome, which “help[s] the jury understand why the victim would subjectively fear increased aggression against her.” *Mizell*, 773 So. 2d at 621, citing *Hawthorne v. State*, 408 So. 2d 801, 806-07 (Fla. 1st DCA 1982) (“The expert testimony would have been in order to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of her belief ... 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.”).

The Second District called *Mizell*’s reliance on the admissibility of battered spouse syndrome to support its conclusion that PTSD evidence is also relevant to self-defense a “mistake[]”. App’x 10. The Second District claims the First District misapprehends the function of battered spouse syndrome entirely and that its admission 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" but rather to show why despite being fearful of the battering spouse the defendant "would remain in the home with her batterer" instead of leaving. App'x 11, citing *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 boyfriend may, in fact, increase the danger of harm to themselves due to the possibility of attack after separation").

The First and Second Districts are directly at odds – and the Second District even certified as much. App'x 14. Thus, this Court has discretionary jurisdiction and should resolve the conflict. *See* Art. V, §§ 3(b)(3) and 3(b)(4), Fla. Const.

B. The case presents an issue of exceptional importance

This case involves the right to defend oneself to the fullest extent of the law – against both personal violence and from the government in court. Self-defense is one of the oldest and most commonplace jurisprudences in America and such claims are litigated every day in

Florida. The Second District's holding takes the ultimate question in a self-defense case – whether the defendant was laboring under a perception or a misperception, whether the defendant reacted or overreacted – out of the hands of the jury. But jurors are perfectly capable of ferreting out what evidence to rely on and what to discard while deliberating, and they are in fact expected to do so.[1]

This conflict between the First and Second Districts will confuse courts and litigants. Under *Mizell*, jurors in the First District can give meaningful consideration to the defendant's perspective while still ultimately applying a reasonable person test. Jurors in the Second District will now be denied access to such evidence. Whether any citizen is permitted to tell the jury who will decide their fate about their PTSD – should not rest on whether the courtroom sits in Tallahassee, Clearwater, or anywhere else for that matter.

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[1] Jurors are told in every criminal case: "It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. … Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony." Fla. Std. Jury Instr. (Crim.) 3.9.

CONCLUSION

Petitioner respectfully requests that the Court accept this case for review to remedy the trial court's error, to prevent its recurrence, and to ensure reliability and consistency in self-defense litigation in Florida.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing was served via the e-filing portal to the following this 9th day of June 2023:

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Certificate of Compliance

I certify, as required by Fla. R. App. P. 9.210 (a)(2)(A), this document contains 1,393 words, excluding the parts of the document exempted by Fla. R. App. P. 9.045 (e). I further certify that this document complies with the typeface requirements of Fla. R. App. P. 9.045 (b).

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