

.....
Case No. SC01-1930
.....

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA

Appellant

V.

EUGENE MICHAEL BYARS

Appellee

.....
**ON APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FOURTH DISTRICT (CASE 4D00-2812)**
.....

.....
**AMICUS CURIAE BRIEF BY THE FLORIDA COALITION
AGAINST DOMESTIC VIOLENCE IN SUPPORT OF THE
APPELLANT AND AGAINST THE DISMISSAL OF THE
BURGLARY CHARGE**
.....

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PRELIMINARY STATEMENT

Appellant was the prosecution and the Appellee was the defendant in the

Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for Indian River County, Florida.

In this brief, the symbol “R” reflects the Record (Volume I, and page numbers contained within), and the symbol “T” reflects the Transcript (Volume 2, and pages contained within).

INTEREST OF AMICI CURIAE

The Florida Coalition Against Domestic Violence (FCADV) serves as the professional association for Florida's thirty-eight domestic violence centers. The mission of FCADV is to end domestic violence through public awareness, policy development, and support for Florida's domestic violence centers.

In 1977, fourteen shelters in Florida formed a network of battered women's advocates known as the Refuge Information Network; this network later incorporated to form FCADV. Efforts on behalf of FCADV include law reform, education, and training. Raising the awareness of the public and courts about the realities of domestic violence and the dangers women encounter when exposed to partner violence is of particular importance.

The FCADV is highly knowledgeable about domestic violence and the governmental policies and practices that affect victims of domestic violence. In the interest of justice, FCADV seeks to assist this Honorable Court by addressing the issue raised in the context of domestic violence and violence against women.

STATEMENT OF CASE & FACTS

Kathleen Kincaid was killed as a result of domestic violence. On September 17, 1998, the date of her murder, Ms. Kincaid had an injunction for protection against Eugene Michael Byars (T.15). The injunction, issued pursuant to section 784.046, Fla. Stat., specifically prohibited Mr. Byars from coming into her place of employment (R. 17-21), Over the Rainbow (a children's consignment store), where she had been employed for over two and a half years (T. 12-14).

Brenda Pickerall, the owner of the shop (T. 12-14), had her own restraining order against Mr. Byars that was in effect the day of Ms. Kincaid's murder (T. 16-17). Ms. Pickerall also had given Mr. Byars specific verbal instructions not to enter her store (T.19).

In violation of Ms. Kincaid's injunction, Ms. Pickerall's restraining order, and Ms. Pickerall's express verbal warning not to enter her store, Mr. Byars willfully entered the store, during open hours (T. 20-21), and shot and killed Kathleen Kincaid at her workplace.

The trial court dismissed the charge of armed burglary of an occupied structure with an assault or battery, based upon the reasoning in Miller v. State So.2d 955 (Fla. 1998), and Collett v. State, 675 So.2d 1046 (Fla. 1st

DCA 1996).¹ The State appealed, and the District Court of Appeal, Fourth District, affirmed based on Miller and the language of Section 810.02(1), Florida Statutes (1999). The Fourth District subsequently granted the State's motion to certify the issue to this Court as a matter of great public importance. State v. Byars, 792 So.2d 1235 (Fla. 4th DCA 2001).

¹See also, Johnson v. State, 26 Fla. L. Weekly S184 (Fla. Mar. 29, 2001), State v. Butler, 735 So.2d 481 (Fla. 1999), Franklin v. State, 750 So.2d 63 (Fla. 1st DCA 1996) reaffirming and applying the holding in Miller).

SUMMARY OF ARGUMENT

More than any other place, the workplace opens the gates to freedom for the abused woman who is the victim of domestic violence. The ability to work and generate income allows her personal autonomy. Work provides the financial independence needed to provide a stable, violence-free life for her children and herself. A woman's work, and the resulting financial independence, is crucial, if not essential, to her starting a new life away from her abuser.

The abuser specifically targets a victim at her workplace because his ability to control the victim is often directly correlated to her ability to generate a personal source of income. A victim is especially in danger at her workplace because it is the one place she has to be every day, at a prescribed time. Consequently, a victim's work-related routine is predictable and is usually known to the abuser. Thus, a victim is most vulnerable at her workplace.

It is critical to both a victim's safety, as well as her ability to establish financial independence, that injunctions for protection are forcefully and diligently enforced at her workplace. This especially includes providing protection for the victim when she is employed in a workplace that is accessible to the general public. To apply the public premises exception to a burglary charge when a victim or repeat violence has an injunction prohibiting the abuser from entering her

workplace deprives victims who work in such establishments of deserved and needed protection.

The facts of this case are distinguishable from this Court's decision in Miller v. State, 733 So.2d 955 (Fla. 1998), and the other cases cited affirming Miller.

Two injunctions legally barred Mr. Byars from entering Ms. Kincaid's workplace.

As a result, Mr. Byars lost his status as an unencumbered, welcomed member of the "general public" to enter the store. Thus, when Mr. Byars unlawfully entered Kathleen Kincaid's workplace with the intent to commit an unlawful offense, he should be subject to a burglary charge.

ARGUMENT

Victims depend on court ordered domestic violence injunctions and restraining orders to ensure their safety, and, in the case of Kathleen Kincaid, her life. The gravity, weight and seriousness afforded domestic violence injunctions and restraining orders by the courts are important and instrumental in the eradication of domestic violence.

The Florida legislature has sent a strong message that domestic violence will be treated as a crime and not as a private occurrence. The legislature has expressed that criminal prosecution is the favored method of eliminating domestic violence in Florida. Criminal prosecution sends a strong message to the public. Prosecuting the abusers, who violate their injunctions with the intent to commit further offenses, as a burglary, will hold the perpetrator accountable, and sends a clear message that domestic violence will not be tolerated in Florida.

Section 741.2901(2), Florida Statutes, forcefully expresses the intent of the Florida legislature in regard to domestic violence:

It is the intent of the Legislature that domestic violence be treated as a criminal act rather than a private matter. For that reason, criminal prosecution shall be the favored method of enforcing compliance with injunctions for protection against domestic violence as both length and severity of sentence for those found to have committed the crime of domestic violence can be greater, thus providing greater protection to victims and better accountability of perpetrators. This provision shall not preclude such enforcement by the court through the use of indirect criminal

contempt. *The state attorney in each circuit shall adopt a pro-prosecution policy* for acts of domestic violence, as defined in s. 741.28,...(*Emphasis added*).

Indeed, this Court has recognized that “The public policy of this State is clearly directed at reducing domestic violence.” *See, Weiland v. State*, 732 So. 2d 1044, 1057 (Fla. 1999)

The Florida legislature unequivocally favors the criminal prosecution of domestic violence, and specifically requests the courts to uphold injunctions for the protection of domestic violence victims. The legislature’s intent is to lengthen and increase the severity of punishment for perpetrators of domestic violence who willfully violate their injunctions. Interpreting Mr Byars’ actions (of entering Ms. Kincaid’s workplace, in violation of two court orders, to commit an offense therein) as burglary, undoubtedly falls within the spirit of legislative intent.

The United States Congress has also loudly proclaimed that it wants to protect victims of domestic violence in the workplace. *See, Violence Against Women Act, (VAWA), 18 U.S.C. §2265.*² A stable income is a basic necessity for

²Senator Paul Wellstone (D-MN) said, “What a tragedy that women have to deal with domestic violence in the home and the double tragedy of having to deal with it at work.” *New Bill Would Give Victims of Domestic Violence and Sexual Violence Workplace Protections*, Family Violence Prevention Fund, San Francisco, Ca., July 27, 2001.

a victim to provide for herself and her children outside the home of the abuser.³

Domestic violence experts agree that the first two requirements for survival for victims of domestic violence are: 1.) a safe place to go and 2.) *an income*.

(Emphasis added). See, e.g. S. Miller, No Visible Wounds; Identifying Nonphysical Abuse of Women by Their Men, 140-142 (1996). A violence-free workplace gives victims the support they need to ensure economic viability for themselves and their children.

Congress has noted the damaging effects of domestic violence in the workplace and actively supports eradicating domestic violence with the Violence Against Women Act (Violence Against Women Act, (VAWA), 18 U.S.C. §2265). Congress found that violence against women resulted in “lost careers, decreased productivity, forgone educational opportunities, and long-term health problems,” S. Rep. No. 101-545, at 33 (1990).

Additionally, Congress found “the cost to society is staggering” *id.* at 33. Domestic violence against women is costing the United States, “\$5 to \$10 billion a year on health care, criminal justice, and other social costs of domestic violence.” S. Rep. No. 103-138, at 41 (1993). Federal officials estimate that “battering costs

³Studies show that one quarter to one half of domestic violence victims lose their jobs as a result of abuse, *Id.*

U.S. Firms four billion dollars a year in lower productivity, staff turnover, absenteeism, and excessive medical benefits.” A. Jones, Next Time She’ll Be Dead, Battering and How to Stop It, at 12 (1994). The fear of violence “*takes a substantial toll on the lives of all women, in lost work, social, and even leisure opportunities.*” S. Rep. No. 102-197, at 38 (1991)(*Emphasis added*).

In one study reported by the U.S. Department of Labor Women’s Bureau, it was found that “almost three-quarters [of domestic violence victims] reported being harassed by their abusive partners in person or by telephone while at work and more than half reported missing three days of work each month because of abuse,” See, U.S. Department of Labor Women’s Bureau, *Facts on Working Women*, No. 96-3 (1996).

Another study of domestic violence in the workplace found victims having trouble with job performance (seventy-percent) or losing their jobs (thirty-percent) due to acts of their abuser. Women who experience domestic violence are more likely to switch jobs, receive public assistance and experience health problems, *Id.*⁴

⁴See also, “In another small non-random study of domestic violence victims, 96 percent of those who were employed had some type of problem in the workplace as a direct result of their abuse or abuser. These included being late (more than 60 percent), missing work (more than 50 percent), having difficulty performing one’s job (70 percent), being reprimanded for problems associated with the abuse (60 percent), or losing a job (30 percent).” U.S. Department of Labor Women’s Bureau, *Facts on Working Women*, No. 96-3 (1996).

Unfortunately, but not surprisingly, an estimated 13,000 acts of domestic violence are committed in the workplace each year. *See*, Greenberg Traurig Attorneys at Law, *Domestic Violence and its Effects in the Workplace*, pamphlet (derived from the Family Violence Prevention Fund and the U.S. Office of Personnel Management (Oct. 2000)).

It is crucial that women who are victims of domestic violence be able to pursue a career, generate an income, and enjoy a safe, financially independent and autonomous existence away from their abusers. That victims are able to work in a violence-free environment is fundamental to their existence and survival of their children outside the abusive relationship.⁵

The issue in this case is whether the Appellee, Mr. Byars, in violation of two court orders, could have committed a burglary by entering the public premises where Kathleen Kincaid worked, with the intent to commit an offense therein.⁶

⁵*See*, Victim interview, “I finally figured out what could be done to end home violence as far as I’m concerned,...I always knew that, if I could get me a job paying enough for me to take care of my children, that I could do it, and I did. All you need is a job, a good job...especially if they’re abusive.” Lloyd, Susan, *Domestic Violence and Women’s Employment*, pg. 6. Institute for Policy Research, (1997).

⁶Section 810.02(1) defines burglary as follows: “Burglary means entering or remaining in a dwelling, a structure or conveyance with the intent to commit an **offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.**” *Emphasis added.*

The Fourth District affirmed the trial court's dismissal of the burglary charge based on this Court's holding in Miller v. State, 733 So. 2d 955 (Fla. 1999), that the only issue was "whether the premises were open to the public at the time the defendant entered or remained with the intent to commit an offense therein." Miller, at 957. The Fourth District held that because Ms. Kincaid's workplace was open to the public at the time she was killed, under Miller there was no burglary.

Miller is clearly distinguishable from this case. In Miller, the defendant acted as a member of the general invited public and legally entered the premises. Here, Mr. Byars knowingly entered a structure that was not open to him as a member of the general public. Mr. Byars had both a domestic violence injunction and a restraining order against him, specifically prohibiting him from entering the store. Additionally, he was verbally directed not to enter the structure by the owner, Ms. Pickerall.

Thus, any consent that Mr. Byars may have been granted to enter the structure as a member of the general public was later withdrawn, as a matter of law, by the two court orders specifically prohibiting Mr. Byars from entering the structure. If this were not the legal effect of these orders, the domestic violence injunction and the restraining order would be rendered impotent and meaningless.

The facts here are closer to those of State v. Suarez-Mesa, 622 So. 2d 735

(Fla. 2d DCA 1995), than to those of Miller v. State, 733 So. 2d 955 (Fla. 1999). The court in Suarez-Mesa decided that a husband who had been restrained by a court order from entering a shared house with his wife could be charged with burglary if he enters the home with the intent to commit a crime.

Following the same line of reasoning, the court in State v. Ocean, 546 P. 2d 150 (Or. App. 1975), held that where a person has been prohibited from entering a chain of retail stores without the permission of an officer of the corporate chain, the individual lost his status as a member of the general public to whom the premises were open. The court upheld the defendant's conviction of burglary based on his entering the store, during open hours, with the intent to commit a crime inside.

Suarez-Mesa and Ocean stand for the proposition that an individual loses his status as a member of the "general public" when he has been expressly prohibited by a court from entering a specific structure. When the individual then defies the court order by entering the prohibited structure with the intent to commit an offense therein, the crime of burglary is triggered. FCADV urges this Honorable Court to apply this reasoning in the instant case.

CONCLUSION

Victims seek, and courts issue, domestic violence injunctions against abusers to ensure victims their basic and fundamental freedom to lead a safe, productive and fulfilling life. An abuser with a valid domestic violence injunction and restraining order against him has unequivocally lost his right of entry to the victim's workplace as a member of the "general public." Having been denied his right of entry as a member of the general public, the abuser, with harmful intent, must as a matter of social policy and legal reason fall within the meaning of section 810.02(1), Florida Statutes (1999).

The Florida Coalition Against Domestic Violence respectfully requests this Honorable Court to help eliminate domestic violence in the workplace by answering affirmatively to the question certified by the Fourth District Court of Appeal.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY this document has been typed in Times New Roman Font, size 14, in compliance with the Appellate Rules of Procedure 9.210.

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