

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC17-1978

STATE OF FLORIDA,

Petitioner,

vs.

PETER PERAZA,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

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RECEIVED, 11/15/2017 10:48:26 AM, Clerk, Supreme Court

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PRELIMINARY STATEMENT

Petitioner was the prosecution and Respondent was the defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was the Appellant, and Respondent was the Appellee in the Fourth District Court of Appeal ("Fourth District").

The parties will be referenced as they appear before this Court. The Petitioner may also be referenced as the "State", and the Respondent may also be referenced as "Peraza". The opinion of the Fourth District Court of Appeal is attached as an appendix and will be referred to as such.

STATEMENT OF THE CASE AND FACTS

The only relevant facts to a determination of this Court's discretionary jurisdiction under Art. V, § 3(b)(3), Fla. Const. are those set forth in the opinion (Appendix).

The Fourth District Court of Appeal found as follows:

We conclude the circuit court's findings of fact are supported by competent substantial evidence. The record supports the circuit court's finding that the officer's account of the incident was consistent with the other credible witnesses' testimony and the physical evidence. The record also supports the circuit court's finding that the man ignored repeated warnings to stop and drop the weapon, turned towards the officers, and pointed his weapon at the officers, causing the officer to be in fear for his life and the lives of others, prompting the officer to shoot at the man, resulting in the man's death.

The circuit court's most significant finding of fact is that the officer was responding to an emergency and investigating a disturbance, but was not making an arrest. That finding of fact is significant because, if true, it eliminates section 776.05's application to this case and distinguishes this case from Caamano, where three officers already had detained the suspect before Officer Caamano used unnecessary force against the suspect.

While we conclude the finding of fact here that the officer was responding to an emergency and investigating a disturbance was supported by competent substantial evidence, we also recognize an argument could be made that the officer here was in fact making an arrest. As the circuit court found, after the officer and his sergeant spotted the man about twenty yards from them, both the officer and the sergeant shouted the commands "Stop!", "Police!", and "Drop the weapon!" The officer then closed his distance from the man to approximately five to ten feet, and continued to command the man to "stop" and "drop the weapon." It is reasonable to conclude that the officer was taking these actions to make an arrest, and not merely to investigate the man's

intentions.

Assuming that the officer was making an arrest, then we are squarely faced with the legal question which the circuit court called to our attention. That is, whether Caamano correctly held that if an officer is entitled to any immunity during the course of an arrest, then such protection must flow from section 776.05, which applies specifically to law enforcement officers, rather than section 776.032, which applies generally to the public at large.

We disagree with Caamano. We hold that a law enforcement officer, who while making a lawful arrest, uses deadly force which he or she reasonably believes 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, is not limited to invoking a defense under section 776.05(1), but is also permitted to seek immunity from criminal prosecution under sections 776.012(1) and 776.032(1).

State v. Peraza, --So. 3d--, 42 Fla. L. Weekly D1917(Fla. 4th DCA August 30, 2017) reh'g denied (October 5, 2017) (Emphasis Added) (Appendix).

The Fourth District Court of Appeal certified conflict with State v. Caamano, 105 So. 3d 18 (Fla. 2d DCA 2012) and certified the following as a question of great public importance:

WHETHER A LAW ENFORCEMENT OFFICER, *WHO WHILE MAKING A LAWFUL ARREST*, USES DEADLY FORCE WHICH HE OR SHE REASONABLY BELIEVES 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, IS LIMITED TO INVOKING A DEFENSE UNDER SECTION 776.05(1), OR IS ALSO PERMITTED TO SEEK IMMUNITY FROM CRIMINAL PROSECUTION UNDER SECTIONS 776.012(1) AND 776.032(1), FLORIDA STATUTES (2013), MORE COMMONLY KNOWN AS FLORIDA'S ``STAND YOUR GROUND'' LAW.

SUMMARY OF THE ARGUMENT

This Court should accept jurisdiction. The opinion of the Fourth District Court of Appeal directly and expressly conflicts with the decision of the Second District Court of Appeal in State v. Caamano, 105 So. 3d 18 (Fla. 2d DCA 2012).

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION SINCE THE DECISION OF THE FOURTH DISTRICT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN State v. Caamano, 105 So. 3d 18 (Fla. 2d DCA 2012).

This Court has clear authority to accept discretionary review pursuant to Rule 9.030(a)(2)(A)(iv), Fla. R. App. P., and Article V, Section 3(b)(4) of the Constitution of the State of Florida since the instant decision expressly and directly conflicts with the decision of the Second District Court of Appeal in State v. Caamano, 105 So. 3d 18 (Fla. 2d DCA 2012).

Pursuant to State v. Caamano, 105 So. 3d 18, 21-22 (Fla. 2nd DCA 2012) Peraza was not permitted to claim self-defense immunity pursuant to F.S. § 776.012 and F.S. § 776.032. Rather, because Peraza, a police officer who was on duty and was making an arrest, he is required to proceed pursuant to F.S. § 776.05. This statute is specific to law enforcement and permits Peraza to assert a claim of qualified immunity. Id. This is so because, as found by the Court in Caamano, when construing multiple statutes addressing similar subjects, the specific statute controls over the general. Id. at 21, citing Mendenhall v. State, 48 So.3d 740, 748 (Fla.2010). The Second District Court of Appeal found as follows:

Upon such a review, it is evident that if Caamano is entitled to any immunity under either statute in this case, then such protection must flow from section 776.05. We hold that the specific language of section 776.05, titled "Law enforcement officers; use of force in making an arrest," must apply to the behavior of law enforcement

officers during the course of an arrest, rather than the language of section 776.032, which applies generally to the public at large. We agree with the State's argument that holding otherwise would render the specific statute meaningless. See Mendenhall, 48 So.3d at 749.

Id. at 22

In this case, the Fourth District Court of Appeal found that assuming that Peraza was making an arrest, it disagreed with Caamano and found that that a law enforcement officer, who while making a lawful arrest, uses deadly force which he or she reasonably believes 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, is not limited to invoking a defense under section 776.05(1), but is also permitted to seek immunity from criminal prosecution under sections 776.012(1) and 776.032(1).

The Fourth District Court of Appeal never addressed the longstanding precedent that a specific statute controls over a general statute. Rather the Fourth District Court of Appeal simply ignored this precedent and found, as did the trial Court that because sections 776.012(1)'s and 776.032(1)'s plain language is clear and unambiguous, and applies to "a person", this includes a law enforcement officer, who under any reasonable understanding of our language qualifies as "a person". Thus, pursuant to the opinion in this case, Peraza was not limited to seeking qualified immunity pursuant to section 776.05(1).

Thus, because the opinion of the Fourth District Court of Appeal expressly and directly conflicts with State v. Caamano, 105 So. 3d 18, 21-22 (Fla. 2nd DCA 2012), this Court must accept jurisdiction.

Finally, undersigned recognizes that the Fourth District Court of Appeal alternatively found that the trial court finding that Peraza was not effecting an arrest was supported by the evidence. This factual finding could distinguish this case from Caamano. This distinction should not prevent this court from taking jurisdiction as the Fourth District Court of Appeal also certified the following question as one of great public importance:

WHETHER A LAW ENFORCEMENT OFFICER, *WHO WHILE MAKING A LAWFUL ARREST*, USES DEADLY FORCE WHICH HE OR SHE REASONABLY BELIEVES 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, IS LIMITED TO INVOKING A DEFENSE UNDER SECTION 776.05(1), OR IS ALSO PERMITTED TO SEEK IMMUNITY FROM CRIMINAL PROSECUTION UNDER SECTIONS 776.012(1) AND 776.032(1), FLORIDA STATUTES (2013), MORE COMMONLY KNOWN AS FLORIDA'S "STAND YOUR GROUND" LAW.

However, the same factual inconsistency, regarding whether Peraza was making an arrest, exists in the certified question. This is because section 776.05(1) does not require an actual arrest, rather the statute requires that an officer be engaged in efforts to make a lawful arrest because of resistance or threatened resistance to that arrest. In this case, it is undisputed that the

victim, defied multiple commands that he stop and drop his weapon. This fact establishes that the victim was resisting the efforts of law enforcement to arrest him for openly carrying a rifle. Thus, undersigned would suggest that the question be changed as follows to track the specific language of section 776.05(1):

WHETHER A LAW ENFORCEMENT OFFICER, WHO IS ENGAGED IN EFFORTS TO MAKE A LAWFUL ARREST BECAUSE OF RESISTANCE OR THREATENED RESISTANCE TO THE ARREST, USES DEADLY FORCE WHICH HE OR SHE REASONABLY BELIEVES 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, IS LIMITED TO INVOKING QUALIFIED IMMUNITY UNDER SECTION 776.05(1), OR IS ALSO PERMITTED TO SEEK ABSOLUTE IMMUNITY FROM CRIMINAL PROSECUTION UNDER SECTIONS 776.012(1) AND 776.032(1), FLORIDA STATUTES (2013), MORE COMMONLY KNOWN AS FLORIDA'S "STAND YOUR GROUND" LAW.

Should this Court find that there is no conflict jurisdiction, this Court should exercise its jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(v) as the question presented is significant as it essentially renders section 776.05(1) meaningless. The Legislature limited the immunity available to officers acting with violence in their official capacity when it enacted section 776.05(1). Permitting an officer facing a criminal charge to elect an absolute immunity over qualified immunity defeats the legislative intent and purpose of the statute. The opinion of the Fourth District finding that a defendant may pick and choose under which statute to proceed nullifies that deliberate intent of the Legislature. The Fourth District Court of Appeal has afforded an

on-duty law enforcement officer a choice between protections that the Legislature never intended; that no average citizen enjoys. Thus, the conclusion that an officer can elect total, unqualified, immunity over the qualified immunity intended by the Legislature would render section 776.05 meaningless thus, this Court must take jurisdiction to review the question presented.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests that this Court accept discretionary review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing "Petitioner's Brief on Jurisdiction" has been furnished electronically Eric Schwartzreich on November 15, 2017 to Jlallen520@aol.com & eschwartzreich@floridalawyerdefenseteam.com .

/s/ Melanie Dale Surber
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CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12-point Courier New Type.

/s/ Melanie Dale Surber
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