

>> OQUENDO V. STATE OF FLORIDA  
CASE NO. 2023-0807.

>> Rachel P Roebuck, Petitioner's Attorney: I'M GOING TO FOCUS ON THE CONFLICT ISSUE TODAY UNLESS THE COURT HAS QUESTIONS ABOUT ISSUE TWO BECAUSE I CONSIDER IT TO BE CLEAR CONSTITUTIONAL VIOLATION THE CONFLICT ISSUE HAVE TO UNDERSTAND HOW PTSD IMPACTS THE MIND AND THE BODY TO REALLY APPRECIATE THAT IT COULD BE RELEVANT IN SOME SELF DEFENSE CASES. PTSD CAN IMPACT YOUR STATE OF MIND OR FEAR WITHOUT AUTOMATICALLY RESULTING IN UNREASONABLE VIOLENCE. BUT TO THE EXTENT THAT THIS COURT THINKS THE SECOND YOU MENTION A MENTAL HEALTH ISSUE THAT YOUR BACK DOOR IN DIMINISHED CAPACITY TO EXPLAIN THE THOUGHT PROCESS AND ONLY PHYSICAL MALADIES MATTER IN SELF-DEFENSE CASES PTSD CAN GET PRETTY PHYSICAL. IT IMPAIRS YOUR CENTRAL NERVOUS SYSTEM AND CAN CAUSE PHYSICAL VULNERABILITY.

THAT WOULD MAKE A FIGHT FOR LIFE OR A STRESSFUL SITUATION WOULD MAKE THOSE PHYSICAL VULNERABILITY IS PRESENT. AND PTSD ALSO CAN NEGATIVELY IMPACT YOUR DEemeanor AND YOUR MEMORY WHICH CAN RESULT IN CREDIBILITY DISCOUNTS. WHICH CAN SCARCELY FRUSTRATE YOUR CHANCES OF ACQUITTAL. THE BOTTOM LINE IS PTSD IS A COMPLEX INJURY WITH DIVERSE SYMPTOMOLOGY. AND THAT DIVERSITY MAKES IT WAY MORE APPROPRIATE FOR A CASE-BY-CASE ADMISSIBILITY DETERMINATION.

>> Justice John Couriel: CAN YOU ADDRESS THIS PARTICULAR CASE IT IS NOT OBVIOUS HOW OBVIOUSLY THERE IS THE ISSUE JUST IS IT RELEVANT SAY RELEVANT OR NOT RELEVANT BUT THEN THERE IS THE POSSIBILITY OF CONFUSION AND IS IT RELEVANT IN A PARTICULAR CASE JUST LOOKING IN THIS CASE IN PARTICULAR AND AT THE STATE'S VERSION OF EVENTS IN THE DEFENDANT'S VERSION OF EVENTS IT IS HARD TO SEE HOW HIS KIND OF SUBJECTIVE FEAR OR EVEN IF YOU CAN SEE THAT THAT IS PART OF IT THERE IS THE OBJECTIVE COMPONENT AND WAS HE ACTUALLY AFRAID SUBJECTIVE COMPONENT . IT IS NOT OBVIOUS KIND OF WHAT THIS ISSUE HAS TO DO WITH THIS CASE.

>> Rachel P Roebuck, Petitioner's Attorney: DO YOU MEAN IT WAS NOT A SELF-DEFENSE CASE.

>> Justice John Couriel: ACTUALLY IT SEEMS LIKE THE WAY THAT THE TWO VERSIONS OF EVENTS IT DOES NOT SEEM IN THIS PARTICULAR CASE THAT THAT REALLY IS KIND OF IT DOESN'T HAVE ANYTHING TO DO WITH WHAT WAS GOING ON. THE STATE'S VERSION WAS THAT THE DEFENDANT JUST KIND OF WAS THERE WAS NO ALTERCATION OR WHATEVER DEFENDANT JUST KIND OF STOOD OUTSIDE THE CAR AND WAS THE DEFENDANT'S VERSION WAS THAT THEY WERE KIND OF TUSSLING FOR THE GUN INSIDE THE CAR IT DOESN'T SEEM LIKE IT SEEMS LIKE IT DOESN'T SEEM LIKE A PTSD ISSUE THAT'S ACTUALLY WHAT YOU'RE DEFENDANT WAS CLAIMING ANYWAY.

>> Rachel P Roebuck, Petitioner's Attorney: THERE ARE A FEW EXAMPLES IN THE BRIEF

THAT I THINK APPLY TO OQUENDO ONE OF THEM WAS THAT HE FLED THE SCENE. THE PROSECUTOR OF COURSE LIKE THEY ALWAYS DO TOLD THE JURY THAT THE SECOND YOU FLEE THE SCENE THAT IS GUILTY CONSCIENCE.

THERE IS NO OTHER REASON TO DO THAT HE WAS TRYING NOT TO GET CAUGHT. PTSD CAN PROVIDE AN ALTERNATIVE REALITY TO THAT SITUATION. AND FOR SUPPORT OF WHAT DR. [LISTING NAMES] TESTIFIED TO AT THE PROFFER THE ONE THING THAT PTSD DOES ITS HALLMARK OF THE DISEASE ONCE THE DANGER HAS DISSIPATED YOUR FEAR REMAINS. IT REMAINS ELEVATED THAT CAN EXPLAIN HIS FLIGHT FROM THE SCENE. ALSO IN THE DCA BRIEFS I BELIEVE MS. SHEA GAVE THE EXAMPLE OF BASICALLY OVERDOING IT WITH THE SHOOTING.

I THINK PTSD COULD EXPLAIN THAT IN THE SAME WAY.

THE DANGER HAS DISSIPATED YOU HAVE SHOT SOMEONE ALREADY YOU DON'T NEED TO KEEP DOING IT. BUT YOUR FEAR.

>> Justice John Couriel: I DON'T THINK MY QUESTION IS A RESTATEMENT OF THE CHIEFS I FEEL LIKE THE STATE COULD'VE STIPULATED EVERYTHING FORCING IT DOES NOT AMOUNT TO WHAT A REASONABLY CAUTIOUS AND PRUDENT PERSON UNDER THE SAME CIRCUMSTANCES WOULD HAVE FOUND TO BE A CREDIBLE THREAT. THAT IS THE TEST IT'S AN OBJECTIVE TEST IT IS NOT I HEAR YOU ON THIS FELLOWSHIP REGARDING THE DISEASE.

AND IF IN FACT IT MIGHT'VE HAD ON MR. OQUENDO'S SUBJECTIVE UNDERSTANDING OF REALITY. THE TROUBLE IS THAT IS NOT A LOT.

THAT IS NOT WHAT WE REQUIRE.

IN ESTABLISHING SELF-DEFENSE. IT'S AN OBJECTIVE STANDARD.

>> Rachel P Roebuck, Petitioner's Attorney: JUST BECAUSE THE COURT DOES NOT SEE THE RELEVANCE DOES NOT MEAN THAT A JUROR WOULD NOT HAVE.

>> Justice John Couriel: THE COURT HAS TO INSTRUCT THE JURY ON THE LAW.

>> Petitioner's Attorney: UNDERSTAND WHAT I WOULD SAY YOU HAVE TO BE CAREFUL EVEN THOUGH THE OBJECTIVE STANDARD IS ULTIMATELY WHAT THE ACTIONS AND THOUGHTS AND WHATEVER YOU'RE CEMENTING TO THE JURY IS JUDGED BY. THERE IS A SUBJECTIVE PIECE AND WE HAVE TO BE CAREFUL TO NOT LET THE OBJECTIVE PIECE COMPLETELY OVERRIDE. THE DEFENDANTS ENTITLEMENT TO PRESENT HIS SUBJECTIVE STATE OF MIND. WE BELIEVE THAT PTSD AND IN SOME CASES COULD BE RELEVANT TO THAT.

WITHOUT RESULTING IN AN OBJECTIVE MISTAKE OR OBJECTIVELY UNREASONABLE VIOLENCE.

>> Justice: WHERE DO YOU THINK THIS SUBJECTIVE RIGHT THE RIGHT TO REPRESENT THAT IS WITHIN WHAT THE LAW ALLOWS IN A SELF-DEFENSE INSTRUCTION.

>> Rachel P Roebuck, Petitioner's Attorney: I BELIEVE THE WORD DEFENDANTS CIRCUMSTANCES.

>> Justice John Couriel: IS REASONABLY CAUTIOUS AND PRUDENT PERSON UNDER THE SAME CIRCUMSTANCES WOULD HAVE TO BE THE CIRCUMSTANCES COULD THEN DEFEAT THE PRECEDING WORDS REASONABLY CAUTIOUS AND PRUDENT PERSON UNDER THE SAME CIRCUMSTANCES.

>> Rachel P Roebuck, Petitioner's Attorney: WHAT DO YOU MEAN DEFEAT.

>> Justice John Couriel: YOU'RE SAYING THE CIRCUMSTANCES COULD INCLUDE THE PERSON NOT BEING REASONABLY CAUTIOUS AND PRUDENT.

>> Rachel P Roebuck, Petitioner's Attorney: NO I'M NOT I AM SAYING THAT PTSD DOES NOT MAKE YOU UNNECESSARILY MAKE YOU UNREASONABLY CAUTIOUS IT IS NOT THAT YOU OVERREACT IT'S A COMPLEX DISEASE THAT HAVE MANY BACKS ON YOU AND THE STATE WAS TO CHARACTERIZE IT AND AT THE SECOND DCA WITH THE CHARACTERIZE IT AS IS DISEASE IT BASICALLY MAKES YOU OVERREACT AND MAKE MISTAKES AND IT IS MORE THAN THAT THEY CAN HAVE MORE IMPACT ON YOU THAN THAT. FOR EXAMPLE, IF YOU TAKE EVEN THE MOST UNCHARITABLE OR STEREOTYPICAL WORLDVIEW OF SOMEONE THAT HAS PTSD THAT THERE IS A JUROR LOOKING AROUND EVERY CORNER THAT EVERYBODY'S GOING TO HURT ME. HOW THAT CAN IMPACT A PERSON COULD MAKE THEM OVERREACT IT COULD ALSO IMPACT THEM BY MAKING THEM HIGHLY AVOIDANT.

LIKE THAT ELDER CASE WE SET IN THE BRIEF IF THE WAIT FOR YOUR PTSD IMPACTS YOU ACCORDING TO A CLINICIAN IS THAT IT MAKES YOU AVOID A BALANCE IN MAKES YOU AVOID PEOPLE IN GENERAL THAT CAN BE RELEVANT TO WHETHER OR NOT YOU ARE THE INITIAL AGGRESSOR OR NOT THAT CAN BE RELEVANT AS TO YOUR STATE OF MIND YOUR STATE OF MIND IS NOT JUST THE MOMENT OF THE VIOLENCE. IN A SELF-DEFENSE CASE EVERYTHING MATTERS. WHAT YOU DID BEFORE THE VIOLENCE MATTERS WHAT YOU DO AFTER AND PTSD CAN IMPACT MANY OF THOSE THINGS.

ONE OTHER THING THAT IS COME UP TO MY SELF-DEFENSE CASES IN POLK IS WHY THE DEFENDANT IS ARMED IN THE FIRST PLACE.

THAT IS BECOME A POINT OF CONTENTION THE PROSECUTOR WILL ARGUE THIS IS PREMEDITATION THIS GUY WHICH IS LOOKING FOR A FIGHT.

PTSD CAN PROVIDE A PERSONALLY REASONABLE ALTERNATIVE THAT YOU LEFT THE HOUSE WITH A WEAPON THAT MORNING BECAUSE THAT IS WHAT MAKES YOU FEEL SAFE IT DOESN'T MEAN YOUR PTSD MADE YOU DO ANYTHING IT JUST MEANS IT IS RELEVANT TO YOUR STATE OF MIND.

>> Justice John Couriel: THAT SEEMS LIKE THAT IS A COMPLETELY NEW GIVING HYPOTHETICAL THE QUESTION IS WHY WOULD HE HAVE UNDERGONE IN THIS CASE YOU DEFENDANT DENIED HAVING A GUN I DON'T THINK ANYBODY IS ASKING THE COURT TO SAY THAT PTSD IS NEVER RELEVANT TO ANYTHING.

>> Petitioner's Attorney: I THINK THAT IS EXACTLY WHAT THE STATE IS SAYING THEY ARE SAYING DIMINISHED CAPACITY.

>> Justice John Couriel: THEY ARE SAYING ON A SPECIFIC ISSUE WITH A SELF-DEFENSE TEST AND A PART OF IT HAS TO DO WITH THE REASONABLE WHAT WOULD A REASONABLY PRUDENT PERSON DO UNDER THE CIRCUMSTANCES THEY ARE JUST FOCUSING ON THAT PART.

>> Rachel P Roebuck, Petitioner's Attorney: I THINK THEY ARE HEARING THE SECOND YOU THAT THIS INTO A SELF-DEFENSE CASE YOUR BACK DURING DIMINISHED CAPACITY OUR POSITION IS THAT IS NOT TRUE THAT DIMINISHED CAPACITY IS DIFFERENT THAN

MEANS YOU'RE ESSENTIALLY UNABLE OR DON'T HAVE DIFFICULTY AT THAT PARTICULAR MOMENT TO HAVE A SPECIFIC THOUGHT AND PTSD WORKS DIFFERENTLY THAN THAT.

>> Justice: FUNCTIONALLY I'M STRUGGLING TO SEE THE DIFFERENCE IF YOUR ARGUMENT IS ACTUALLY THIS IS REASONABLE BECAUSE OF SOMEBODY'S CONDITION WHETHER IT IS DIMINISHED CAPACITY OR PTSD BUT IN DETERMINING WHAT IS REASONABLY OBJECTIVE WE DETERMINE THE CAPACITY OF THE INDIVIDUAL OR THE CONDITIONS THAT THAT INDIVIDUAL HAS RATHER THAN AN OBJECTIVE TEST OF THE CIRCUMSTANCES AND WHAT A REASONABLE PERSON WOULD DO THEN IT BECOMES INDIVIDUALIZED AND IN THIS EARLY FOCUS IS THE CAPACITY OF THE PERSON HOW IS THAT SIGNIFICANTLY DIFFERENT FROM A LEGAL PERSPECTIVE.

>> Rachel P Roebuck, Petitioner's Attorney: I'M NOT SURE I HEARD A DIFFERENCE I'M NOT SURE I HEARD A DIFFERENCE.

>> Justice: THAT IS WHAT I WAS ASKING.

>> Rachel P Roebuck, Petitioner's Attorney: ONE THING I WANT TO POINT OUT THERE ARE MANY SAFEGUARDS IN OUR SYSTEM I HAVE HAD MANY PEOPLE FOR MANY DIFFERENT REASONS EVALUATED OVER THE YEARS AT THE PUBLIC DEFENDER'S OFFICE I'VE HAD ONE CLIENT WHO HAS BEEN DIAGNOSED WITH PTSD THAT DOVETAILS WITH THE STATISTICS THAT WE SET IN THE BRIEF THAT ONLY 7% OF PEOPLE WILL EVER EXPERIENCE PTSD I THINK THAT IS SOMEWHAT OF SAFEGUARD ANOTHER SAFEGUARD IS THAT WE HAVEN'T JURY INSTRUCTIONS THAT WILL LESSEN THE CHANCE THAT A JUROR IS GOING TO BE CONFUSED.

BY THIS EVIDENCE OR USE IT IN AN APPROPRIATE MANNER.

WE HAVE 3.6 P WE HAVE THE STANDARD INSTRUCTIONS ABOUT NOT DECIDING THE CASE ON SYMPATHY. WE HAVE WHAT YOU CAN FASHION AROUND THE WILLIAMS RULE INSTRUCTIONS AND INSTRUCTION TO USE THIS FOR THIS PURPOSE BUT NOT THIS OTHER PURPOSE. AFTER ALL OF THAT THE JURY IS ADJUSTABLY FREE TO REJECT IT.

>> Justice John Couriel: CAN I ASK THIS LARGER POLICY DISCUSSION WHY IS THIS CASE, RIGHT THIS WAS NOT PART OF THE ARGUMENT BELOW? ALL OF THE SORT OF DATA YOU'RE PUTTING IN FRONT OF US.

>> Rachel P Roebuck, Petitioner's Attorney: YOU'RE RIGHT.

>> Justice John Couriel: WHY WOULD THIS CASE BE THE RIGHT VEHICLE EVEN IF WE AGREED WITH YOU THIS IS UNPRESERVED WHY WOULD WE REACH THIS IN THIS CASE?

>> Rachel P Roebuck, Petitioner's Attorney: SIMPLY BECAUSE I BELIEVE THE THIRD DISTRICT NOW IS FOLLOWING MR. OQUENDO OF CONFUSION AMONG THE DISTRICTS NOW IS THE TIME TO STRAIGHTEN THIS OUT.

>> Justice John Couriel: WE.

[UNCLEAR AUDIO]

>> Rachel P Roebuck, Petitioner's Attorney: I DON'T THINK YOU HAVE TO AS FAR AS PRESERVATION GOES WE TALKED ABOUT HARM A FEW MINUTES AGO AS FAR AS PRESERVATION GOES AT THE TIME THAT THIS PROFFER HAPPENED AND THIS TRIAL

HAPPENED [LISTING NAMES] WAS BINDING ON THE TRIAL COURT IT IS OUR POSITION THAT ALL THE ATTORNEY HAD TO DO WAS SIMPLY TO SAY ESTABLISH THE DIAGNOSIS SAY THIS IS GOING TO BE A SELF-DEFENSE CASE HE ACTUALLY TESTIFIED AT TRIAL THAT THIS WAS SELF-DEFENSE I WAS IN FEAR FOR MY LIFE AND THEN AT THE PROPER HEARING THE ATTORNEY ALSO SAID I'M NOT GOING TO USE IT FOR DIMINISHED CAPACITY I'M NOT GOING TO USE IT TO ARGUE THAT HIS ACTIONS WERE INVOLUNTARY. HE WENT THROUGH ALL OF THIS SORT OF SAFEGUARDS THAT. [LISTING NAMES] HAS IS OUR POSITION THAT THAT IS ALL THAT WAS REQUIRED AT THE TIME. NOW WE ARE HAVING THESE LARGER DISCUSSIONS BECAUSE THEY ARE STATEWIDE APPLICATIONS AT ISSUE AND PUBLIC POLICY BUT AT THE TIME OUR POSITION IS THAT IT IS INSUFFICIENT FOR PRESERVATION THEN LOOK TO WHETHER OR NOT THERE IS HARM. AS FAR AS BRIDGING THE ISSUE THAT IS HOW YOU GET THERE.

I WILL RESERVE THE REST OF MY TIME.

>> Laurie M.Benoit-Knox,Respondent's Attorney: FOR ALL OF THESE OTHER ARGUMENTS TO BE PRESERVED THEY WOULD HAVE TO BE RAISED IN AT THE TRIAL COURT . AND IN THE SECOND DCA. THAT IS JUST THAT WAS DONE HERE THE CONFLICT ISSUE BETWEEN THE FIRST DCA AND THE SECOND DCA IS STRICTLY OTHER EVIDENCE OF PTSD CAN BE ADMITTED TO EXPLAIN THE DEFENDANT'S ELEVATED PERCEPTION OF pt IN A SELF-DEFENSE CASE.

THERE WAS NEVER ANY DISCUSSION OF PTSD USED IN OTHER CONTEXTS OR ANY DISCUSSION OF PHYSICAL MANIFESTATION OF PTSD THAT IS NOT IN.

[LISTING NAMES] IN MY CELL THAT IS NOT IN OQUENDO THE STANDARD.

>> Justice John Couriel: THE STANDARD JURY INSTRUCTIONS IT SEEMS LIKE IT IS MAINLY FOCUSED ON THE OBJECTIVE PART BUT THEN THERE IS THAT LAST SENTENCE THAT SAYS THAT THE DEFENDANT HAS TO ACTUALLY HAVE BEEN IN FEAR. IN A CASE WHERE THAT PART OF IT IS CONTESTED OR MAYBE EVERYBODY AGREES THAT SORT OF THE CIRCUMSTANCES TO A REASONABLE PERSON WOULD HAVE SATISFIED THE FIRST PART OF THE TEST BUT THEN FOR SOME REASON THERE IS A DISPUTE WHERE THE STATE SAYS THIS PARTICULAR PERSON NOTWITHSTANDING WHAT WAS GOING ON JUST FACTUALLY JUST WAS NOT IN FEAR COULDN'T PTSD BE RELEVANT AT THAT POINT? DO WE NEED TO BE CAREFUL IF WE AGREE WITH YOU TO MAKE IT CLEAR THAT REALLY ALL YOU'RE ASKING ABOUT A SORT OF THE FIRST COMPONENT OF THE TEST AND NOT JUST IN A GENERAL WITH SELF-DEFENSE.

>> Laurie M.Benoit-Knox,Respondent's Attorney: THE STATES POSITION IS STILL REGARDLESS PTSD WOULD NOT COME IN UNDER THIS ACTUAL PERCEPTION BECAUSE THE ACTUAL PERCEPTION STILL NEEDS TO BE REASONABLE.

>> Justice John Couriel: THAT DOESN'T FOLLOW FROM IT DOES NOT FOLLOW FROM THE WORDS OF THE INSTRUCTION OR THE LOGIC OF THE INSTRUCTION.

>> Laurie M.Benoit-Knox,Respondent's Attorney: RESPECTFULLY, I DO BELIEVE IT DOES. THE ACTUAL BELIEF STILL NEEDS TO BE REASONABLE IT NEEDS TO BE IN ACTUAL BELIEF THAT THE REASONABLE PERSON WOULD HAVE HAD

>> IN THIS ANALYSIS HERE THAT IS ALREADY ESTABLISHED I THINK THE CHIEF IS

SAYING IF WE SAY A REASONABLE PERSON WOULD BELIEVE THAT THERE WAS THE THREAT BUT FOR SOME REASON THE STATE SAYS ORIGINAL PERSON WHAT BUT THIS PERSON FOR WHATEVER REASON DID NOT ACTUALLY FEEL THAT.

I THINK THAT IS.

>> Chief Justice Carlos Muniz: YOU HAVE THE INSTRUCTION IN FRONT OF YOU.

>> Laurie M.Benoit-Knox,Respondent's Attorney: WHICH ONES.

>> Chief Justice Carlos Muniz: THE JURY INSTRUCTION AND 3F WHATEVER WE ARE ARGUING ABOUT.

>> Laurie M.Benoit-Knox,Respondent's Attorney: I BELIEVE I DO.

>> Chief Justice Carlos Muniz: IT SAYS THE DANGER MAY NOT HAVE BEEN NATURAL TO JUSTIFY THE USE OF DEADLY FORCE THE APPEARANCE OF DANGER MUST'VE BEEN SO REAL VISIBLY CAUTIOUS AND PRUDENT PERSON UNDER THE SAME CIRCUMSTANCES WOULD HAVE BELIEVED THAT THE DANGER COULD BE AVOIDED THROUGH THE USE OF FORCE NEW SENTENCE BASED UPON THE APPEARANCES DEFENDANT MUST'VE ACTUALLY BELIEVED THAT THE DANGER WAS REAL. THE ACTUAL BELIEF THAT IS THE SUBJECT OF PART.

>> Laurie M.Benoit-Knox,Respondent's Attorney: CORRECT.

>> Chief Justice Carlos Muniz: SO PTSD COULD BE RELEVANT TO THAT, IT SEEMS TO ME.

>> Laurie M.Benoit-Knox,Respondent's Attorney: I'M NOT SURE HOW I UNDERSTAND HOW THAT WILL COME OUT.

>> Chief Justice Carlos Muniz:

>> Justice John Couriel: IMAGINE A CIRCUMSTANCE WHERE THE DEFENDANT WAS IGNORANT OF THE DANGER IMAGINE A REASONABLE PERSON WOULD BE SCARED IF THE PERSON HOLDING HIS ORIGIN POINT LOOKING GOD WAS ACTUALLY HOLDING A 3D PRINTER GIN THE DEFENDANT WAS IGNORANT OF THAT FACT. AND TOOK ACTION REASONABLE CAUTIOUS PERSON WOULD BE PERCEPTIVE OF THAT BUT THE DEFENDANT WAS IGNORANT OF IT. I GUESS THE CHIEF AND JUSTICE CANADY ARE ASKING WHAT IS THE STATES POSITION THEN WHEN THERE IS NO PROBABLE INDIVIDUAL AWARENESS OF THE DANGER BUT REASONABLE PERSON WOULD BE AFRAID. WHAT IS THE STATES POSITION ON THAT.

>> Laurie M.Benoit-Knox,Respondent's Attorney: THERE IS NO A REASONABLE PERSON THAT WOULD BE AFRAID BUT FOR THE DEFENDANT IN THIS CASE WOULD PTSD BE ADMISSIBLE AT THAT POINT.

>> Justice John Couriel: YES THAT IS THE QUESTION.

I CAN TRY TO ANSWER FOR YOU IF YOU WANT.

[LAUGHTER]

>> Laurie M.Benoit-Knox,Respondent's Attorney: YOU JUST KIND OF STUMPED ME ON THAT ONE ALL THE HYPOTHETICALS I TALKED ABOUT

>> IT SEEMS LIKE THERE'S TWO PARTS TO THIS ALWAYS

WAS THE PERSON AFRAID FACTUALLY PTSD COULD BE RELEVANT TO THAT THEN THE QUESTION IS IF I WAS AFRAID THEN YOU ASKED WOULS A REASONABLE PERSON IN THESE CIRCUMSTANCES HAVE BEEN AFRAID?

AND THAT IS OBVIOUSLY OBJECTIVE BUT IT SEEMS TO ME LIKE THERE IS ALWAYS AN

ELEMENT OF THIS THAT HAS TO DO WITH THE INDIVIDUAL IN THIS CASE I DON'T THINK IT MATTERS BECAUSE THAT DOESN'T SEEM LIKE THAT IS WHAT THE ARGUMENT WAS ABOUT.

IN TERMS OF LIFE ACTUALLY WHAT WAS PUT IN FROM THE JURY I'M JUST SAYING MY CONCERN IS JUST SAYING SOMETHING THAT IS IT MAKES ME NERVOUS JUST IN GENERAL WITH EVIDENCE SELF FIRST PRONOUNCE THAT SOMETHING JUST IS NOT RELEVANT IF THE QUESTION IS IS THIS AN OBJECTIVE TEST OR WHATEVER THAT IS DIFFERENT I DON'T WANT TO I DON'T WANT THE COURT OVERSTATE WHAT RELIEF THE RULE SHOULD BE AND I'M TRYING TO.

>> Laurie M.Benoit-Knox, Respondent's Attorney: FROM DEFENDANT'S PERSPECTIVE ONCE HE CLAIM SELF-DEFENSE I THINK IN AND OF ITSELF HE IS SAYING HE WAS IN FEAR I DON'T KNOW THAT THE DEFENDANT I DON'T KNOW IN THAT CASE INDICATES THAT WE ARE COMING UP WITH HERE IT SEEMS ALMOST LIKE WE ARE SAYING THE STATE WOULD USE PTSD AGAINST THE DEFENDANT. I DON'T REALLY SEE HOW.

>> Justice: I HAVE A QUESTION MAYBE CAN HELP RATHER THAN THAT HYPOTHETICAL. WHAT IF YOU HAD A SITUATION WHERE EVERY REASONABLE PERSON WOULD BE IN FEAR. LET'S SAY A SPOUSE.

WHEN THEY SEE A REASONABLE PERSON WOULD LOOK AT THE SERIES OF EVENTS AND SAY THAT SPOUSE SHOULD HAVE BEEN IN FEAR OBJECTIVELY THAT IS A SITUATION. FOR WHATEVER REASON THE STATE DECIDES TO ARGUE THAT MOMENT THIS PERSON HAS BEEN ABUSED LIKE THIS FOR YEARS.

SHE KNOWS HE WILL NEVER GO THROUGH WITH IT. SHE HAD NO REAL PERSONAL FEAR SHE HAS BEEN IN THE SITUATION 10 TIMES BEFORE AND NOTHING HAD EVER HAPPENED.

AT THAT POINT I THINK WE WOULD SAY THAT BATTERED SPOUSE SYNDROME CAN COME IN IN A SITUATION LIKE THAT IS THAT A SITUATION WHERE THIS SUBJECTIVE RELEVANT OF OTHER SITUATIONS CAN GO TO THAT PERSON'S STATE OF MIND TO SAY NO THEY WERE IN FEAR AT THAT POINT ONCE YOU'VE ESTABLISHED OBJECTIVELY THAT IT IS A DANGEROUS SITUATION?

>> Laurie M.Benoit-Knox, Respondent's Attorney: I THINK THE ONLY WAY THE STATE COULD ARGUE THAT THAT BATTERED SPOUSE WOULD COME IN AT THAT POINT BECAUSE THE ARGUMENT FROM THE STATE WOULD BE THAT SHE WAS NOT AFRAID AND IT WOULD KIND OF FOLLOW THE PROOF IF SHE STAYED THERE AND THE POINT OF BATTERED SPOUSE SYNDROME IS THE SAME SHE STAYED AND THAT IS REASONABLE BECAUSE WHEN WOMEN OR MEN SUFFER FROM BATTERED SPOUSE SYNDROME LEAVING IS JUST THE SCARIEST THING THAT IS WHAT THAT SYNDROME IS OFFERED TO EXPLAIN IT IS NOT OFFERED TO EXPLAIN AN UNREASONABLE PERCEPTION OF REALITY.

>> Justice: RIGHT THINK WITH THE CHIEF THING COULD THERE BE TIMES WHEN NOT BATTERED SPOUSE SYNDROME BUT OTHER SITUATIONS WHERE A PERSON'S MENTAL WHETHER IT IS PTSD OR SOME OTHER SITUATION COULD NOT BE USED TO EXPLAIN THAT SUBJECTIVE WAS THAT PERSON REALLY IN FEAR?

OR IS THE STATE SAYING THAT THESE TYPE OF THINGS ARE NEVER APPROPRIATE?

FOR SELF DEFENSE INSTRUCTIONS AT ALL.

>> Laurie M.Benoit-Knox,Respondent's Attorney: IS THE STATES POSITION BASED ON THE SECOND DCA'S OPINION IS THAT PTSD DOES NOT COME IN TO EXPLAIN AND UNREASONABLE PERCEPTION OF DANGER THAT IS ONLY REASONABLE TO THE DEFENDANT BECAUSE HE SUFFERS FROM PTSD. THAT IS NOT REASONABLE TO THE REASONABLE PERSON.

>> Justice: THAT WOULD NOT PRECLUDE IN YOUR ARGUMENT EVIDENCE ADMITTED I THINK THE DEFENSE POINT OUT THAT BEYOND BATTERED SPOUSE THEY CAN BE RELATIONSHIPS WHERE THE HISTORY OF THE INDIVIDUALS WOULD CAUSE SOMEBODY TO BE INFERIOR REASONABLY.  
FROM A PTSD YOUR ARGUMENT DOES NOT PRECLUDE EVIDENCE IN THE SOURCE OF FACT SPECIFIC SITUATIONS. BASED ON THE LONG-TERM RELATIONSHIPS WITH INDIVIDUALS.

>> Laurie M.Benoit-Knox,Respondent's Attorney: CORRECT IN THE CIRCUMSTANCES THAT ARE OR THAT DO COME IN FRONT OF THE JURY THEY ARE PRIOR THREATS, PRIOR ACTS OF VIOLENCE BETWEEN THE PARTIES. ALL OF THAT IS ALREADY IN FRONT OF THE JURY AS PART OF THE CIRCUMSTANCES.  
I THINK ADDED PTSD TO THAT DOES NOT SERVE ANY PURPOSE OTHER THAN TO THEN TRY TO EXPLAIN AND UNREASONABLE FEAR WHICH BY LAW ONCE WE CAN PUT IN FRONT OF THE JURY THAT THERE IS PRIOR ACTS OF VIOLENCE I THINK THAT MAKES THE CIRCUMSTANCES OR REASONABLE.

>> Justice John Couriel: WHAT IF THERE IS A PHYSICAL ALTERCATION AND THE PERSON WHO WAS SAYING IT WAS SELF-DEFENSE WAS A NAVY SEAL THAT SOMEBODY LIKE ME JUST SOMEBODY YOU CAN IMAGINE THE STATE SAYING THIS GUY WAS NOT AFRAID.

WHO CARES WHAT CARLOS WOULD HAVE BEEN AFRAID OF.  
THIS GUY THIS INDIVIDUAL WITHOUT AFRAID THEN THE DEFENSE SAYS I MAY LOOK TOUGH AND HAVE HAD ALL OF THESE EXPENSES BUT ACTUALLY HAVE PTSD I WAS AFRAID WHY WOULDN'T THAT BE RELEVANT?

>> Laurie M.Benoit-Knox,Respondent's Attorney: THE PHYSICAL ASPECT OF THE DIFFERENCES BETWEEN THE PARTIES WOULD COME IN AS PART OF THE CIRCUMSTANCES THAT THE JURY CAN TAKE INTO CONSIDERATION AS PART OF THE INSTRUCTIONS.

IF I UNDERSTAND IT THE QUESTION CORRECTLY PTSD WOULD KIND OF NEGATE SEEMS OBVIOUS OTHERWISE IN TERMS OF THE REASONABLENESS OF THE DISTORTION.

>> Justice John Couriel: REMEMBER THE LAST SENTENCE OF THE INSTRUCTION IS NOT ABOUT WHETHER IT WAS REASONABLE IT IS WHETHER YOU ARE ACTUALLY AFRAID.

>> Laurie M.Benoit-Knox,Respondent's Attorney: RIGHT.

>> Justice John Couriel: IT SEEMS TO ME THERE COULD BE RELEVANCE TO THAT. IN THIS CASE THAT IS NOT WHAT THEY WERE ARGUING ABOUT WE ARE BEING ASKED TO KIND OF MAKE THIS GRAND PRONOUNCEMENT ABOUT IT I JUST WANT TO MAKE SURE THAT WE DON'T OVERSTATED.

>> Laurie M. Benoit-Knox, Respondent's Attorney: I THINK UNDER SQUARELY UNDER THE FACTS OF THIS CASE YOU CAN ADOPT THE SECOND PC OPINION. BUT IN THE SECOND DCA OPINION IS REALLY SIMPLY TALKING ABOUT HOW THIS IS DIMINISHED CAPACITY BECAUSE WE ARE SAYING MY MENTAL ILLNESS MY PTSD PREVENTED ME FROM HAVING THE SAME OUTLOOK ON THINGS AS A REASONABLE PERSON. I DON'T THINK YOU HAVE A PROBLEM HERE.

NOW HERE YOU WHEN PTSD CAN COME IN TO NEGATE THIS PHYSICAL THIS NAVY SEAL THAT SAYS BY MY APPEARANCE I LOOK LIKE I SHOULD NOT BE AFRAID BUT I AM AFRAID BECAUSE I HAVE PTSD I'M A LITTLE STUMPED TO BE HONEST I'M NOT QUITE SURE.

AND IF THOSE SITUATIONS.

>> Justice: ESSENTIALLY WE HAVE TO LIMIT THE HOLDING TO WHAT THE SECOND DCA DID IT IS OFFERED FOR WHY MR. OQUENDO MIGHT HAVE MISTAKEN A DANGEROUS SITUATION.

>> Laurie M. Benoit-Knox, Respondent's Attorney:

>> Justice: OTHER THAN THE SECOND HALF OF THE JURY INSTRUCTION.

>> I DO THINK IF YOU STICK BY THE SECOND DCA IT IS EVIDENCE OF DIMINISHED CAPACITY THAT SHOULD NOT BE ALLOWED IT WOULD NOT COME IN FOR THE PURPOSE OF EXPLAINING THE MISPERCEPTION.

CAN YOU COME IN TWO DIFFERENT CIRCUMSTANCES TO PROVE DIFFERENT THINGS? I THINK THAT REMAINS TO BE LITIGATED.

>> Chief Justice Carlos Muniz: IT SEEMS TO ME THERE ARE TWO ELEMENTS TO PUT THIS INTO REVERSE INSTEAD OF IT BEING A CRIME WITH ELEMENTS IMAGINE THAT THIS DEFENSE HAS TWO ELEMENTS AND WHEN IS OBJECTIVE AND ONE IS SUBJECTIVE. IT SEEMS TO ME WITH THE STATE IS REALLY ARGUING ON THAT SECOND ELEMENT THE SUBJECTIVE ONE YOU WOULD NEVER BE MAKING THIS CLAIM IN THE FIRST PLACE. YOU WOULD NEVER BE INVOKING SELF-DEFENSE AS A DEFENSE UNLESS YOU WERE IN FACT AFRAID. IF YOU DO NOT HAVE THAT ELEMENT YOU COULD NOT PROCEED WITH THIS DEFENSE.

AM I ARTICULATING FOR STATES POSITION OR AM I ARTICULATING JUSTICE COURIEL'S POSITION.

>> Laurie M. Benoit-Knox, Respondent's Attorney: NO YOUR HONOR THE STATES POSITION IS IN AGREEMENT WITH JUSTICE COURIEL WHEN SOMEBODY CLAIMS SELF-DEFENSE THEY ARE CLAIMING THEY ARE IN FEAR.

>> Justice John Couriel: OBVIOUSLY THE STATE CAN CONTEST THAT IN A PARTICULAR CASE.

>> Justice: THE JURY STILL HAS TO MAKE THAT FINDING.

>> Justice John Couriel: YOU CAN SAY NO YOU WERE NOT AFRAID IT COULD BE BECAUSE THEY CAN EVOKE THINGS ABOUT THE PERSON'S BACKGROUND YOU CAN IMAGINE LIKE A VERY IT IS NOT YOU DON'T HAVE TO BE SOME HE IS GOOD AT THINKING HYPOTHETICAL I AM NOT. YOU DON'T HAVE TO BE SUPER CREATIVE TO THINK OF A SITUATION.

>> Justice Charles Canady: WHAT IF SOMEBODY SAID THAT THEY WERE NOT AFRAID.

EVEN THOUGH A REASONABLE PERSON WOULD HAVE BEEN TERRIFIED.

I WAS NOT AFRAID OF HIM.

I WAS NOT AFRAID. [LAUGHTER] [UNCLEAR AUDIO]

>> Laurie M. Benoit-Knox, Respondent's Attorney: THE QUESTION OF THE INTENT THE ACTUAL I THINK THE ACTUAL BELIEF IS ANALOGOUS TO LETS TREAD CAREFULLY HERE BUT READING PEOPLE'S MIND IS NOT SOMETHING WE CAN ACTUALLY DO. THAT IS UP TO THE JURY TO CREDIBILITY DETERMINATION.

TYPICALLY IN A SELF-DEFENSE CASE THE DEFENDANT WILL TAKE THE STAND AND WILL EXPLAIN HOW HE WAS SCARED AND THAT IS FOR THE JURY TO DECIDE.

>> Justice Charles Canady: THE REALITIES OVERWHELMINGLY THIS CASE WILL BE LITIGATED ON WHAT WE ARE NOT TALKING ABOUT ON THE PART THAT THIS CASE IS ABOUT WHETHER THERE IS AN OBJECTIVE BASIS FOR THE FEAR.

AND IF THIS OTHER STUFF THE HYPOTHETICAL STUFF IT IS NOT A CAN EVER COME UP WE WOULD NOT NEED TO BE CAREFUL ABOUT WHAT WE SAY AND LIMIT IT TO WHAT WE ARE FOCUSED ON IT IS PROBABLY CAN BE A RARE CASE WAS SOMETHING THAT OTHER DEVELOPMENT THAT WE ARE TALKING ABOUT IN THIS CASE IS A ISSUE SUPPORTING

>> THE VAST MAJORITY IS GOING TO BE JUST THE FACTS WE HAVE HERE.

WHERE AN EXPERT COMES IN TO SAY IT WAS REASONABLE TO HIM BECAUSE HIS PERCEPTION OF FEAR IS ELEVATED BECAUSE HE SUFFERS FROM PTSD.

>> Justice John Couriel: IF NOT VERY COURSE OF THINGS REASONABLE PERSON WOULD BE. THERE IS A PRESUMPTION THAT THE DEFENDANT WOULD'VE ALSO BEEN AFRAID.

>> Laurie M. Benoit-Knox, Respondent's Attorney: RIGHT IS ALMOST KIND OF LIKE A CIRCULAR ARGUMENT. IF THERE ARE NO FURTHER QUESTIONS THE STATE WOULD ASK THAT YOU ADOPT THE SECOND DCA OPINION ON THE ISSUE OF PTSD AND SELF-DEFENSE CASES. THANK YOU.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Rachel P Roebuck, Petitioner's Attorney: THERE IS A PRESUMPTION OF FEAR WHEN SOMETHING IS OBJECTIONABLELY FEARFUL.

THAT YOU ARE ACTUALLY ALSO AFRAID BUT YOU DON'T ACTUALLY GET THE JURY INSTRUCTION UNLESS YOU PROVE THAT AFFIRMATIVELY.

I WOULD CAUTION THE COURT WE HAVE A CASE NOW MIZELL THAT STANDS FOR THE PROPOSITION BASICALLY THAT WE DO THIS ON A CASE-BY-CASE BASIS. IF YOU CAN ARTICULATE THAT YOUR PTSD SUPPORTS A LEGALLY COGNITIVE VERSION OF SELF-DEFENSE IT CAN COME IN. NOW WE HAVE MR. OQUENDO THING NO BYLAW BY STATUTE BECAUSE OF THE WAY THE JURY INSTRUCTION IS WRITTEN THIS IS DIMINISHED CAPACITY. I WOULD CAUTION THE COURT TO MAKE ANY SORT OF NARROW RULING BECAUSE I THINK THE COURTS AND ESPECIALLY THE DCA IN THE TRIAL COURT ARE VERY CONFUSED AT THIS POINT ABOUT WHAT IS AND WHAT IS NOT GOING TO BE ALLOWED.

I WOULD ENCOURAGE YOU TO BE AS THOROUGH AS POSSIBLE SO THAT CAN BE CLEARED UP.

ARE THERE ANY OTHER QUESTIONS?

I THINK THE BOTTOM LINE IS THAT NONE OF US ARE DOCTORS.

NONE OF US ARE PSYCHICS THE DIVERSITY OF SYMPTOMOLOGY WITH PTSD IS SIMPLY TOO COMPLICATED TO BE EXPLAINED IN THESE BRIEFS AND TO BE EXPLAINED AND AT THIS HOUR I'VE BEEN WITH YOU. WE SHOULD KEEP THESE MATTERS BEING LITIGATED AT THE TRIAL COURT AND KEEP ADMISSIBILITY ON A CASE-BY-CASE BASIS. AS FAR AS MR. OQUENDO GOES SPECIFICALLY WE ARE ASKING FOR NEW TRIAL WHERE SHE WOULD BE ALLOWED TO PRESENT HIS STATE OF MIND EVIDENCE AND WHERE HIS JURORS ARE NOT INSTRUCTED BY JURY INSTRUCTIONS THAT ARE CONSTITUTIONALLY FLAWED.

THANK YOU.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH WE WILL BE IN RECESS FOR 10 MINUTES.

>> Marshal: ALL RISE.