

22-6840

No. _____

ORIGINAL

FILED

FEB 14 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID OMAR CARABALLO — PETITIONER
(Your Name)

vs.

SECRETARY, DEPARTMENT OF
CORRECTIONS, et al... — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT COURT OF APPEALS OF FLORIDA, SECOND DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID OMAR CARABALLO #H91048/EJ-126L
(Your Name)

GRACEVILLE C.F. - 5168 EZZELL RD.
(Address)

GRACEVILLE, FLORIDA 32440
(City, State, Zip Code)

850-263-5500
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

WHETHER THE INSTANT STATE DISTRICT COURT OF APPEALS
ERRED IN DENYING PETITIONER'S POINTS OF ARGUMENT
AS PRESENTED ON DIRECT APPEAL.

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ATTORNEY FOR RESPONDENTS
WILLIAM C. SHELLARD
william.shelhart@myfloridalegal.com

RELATED CASES

NOT APPLICABLE

TABLE OF AUTHORITIES CITED

PAGE NUMBER

CASES

(SEE APPENDIX A, #4-8.)

STATUTES AND RULES

(SEE APPENDIX A, page #9.)

OTHER

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Nov. 16, 2022.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FLA. STAT. § 921.0026 (D) & (F)

(D) THE DEFENDANT REQUIRES SPECIALIZED TREATMENT FOR A MENTAL DISORDER THAT IS UNRELATED TO SUBSTANCE ABUSE OR ADDICTION OR FOR A PHYSICAL DISABILITY AND THE DEFENDANT IS AMENDABLE TO TREATMENT

(F) THE VICTIM WAS THE AGGRESSOR, WILLING PARTICIPANT, AGGRESSOR OR PROVOKER OF THE INCIDENT

FLORIDA STAT. ANNOTATED 2018
CHAPTER 776. JUSTIFIABLE USE OF FORCE
(REFS. & ANNOS) 776.032 IMMUNITY FROM
PROSECUTION AND CIVIL ACTION FOR JUSTIFIABLE
USE OF OR THREATENED USE OF FORCE

(4) IN A CRIMINAL PROSECUTION ONCE A PRIMA FACIE CLAIM OF SELF-DEFENSE, IMMUNITY FROM CRIMINAL PROSECUTION HAS BEEN RAISED BY THE DEFENDANT AT A PRE-TRIAL IMMUNITY HEARING, THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE IS ON THE PARTY SEEKING TO OVERCOME THE IMMUNITY FROM CRIMINAL PROSECUTION PROVIDED IN SUBSECTION (1)

STATEMENT OF THE CASE

(SEE APPENDIX A, pages #10-32.)

REASONS FOR GRANTING THE PETITION

MR. CARABALLO'S CLAIM OF SELF-DEFENSE COMES DOWN ENTIRELY TO WHETHER MR. HASTY'S TESTIMONY PROVED THAT MR. CARABALLO CONTINUED TO USE LETHAL FORCE AFTER NO REASONABLE PERSON WOULD HAVE CONSIDERED LETHAL FORCE TO BE JUSTIFIED MR. CARABALLO SEEKS REVERSAL BECAUSE (1) THE EVIDENCE AT THE "STAND YOUR GROUND" HEARING WAS INADEQUATE TO DISPROVE SELF-DEFENSE BY CLEAR AND CONVINCING EVIDENCE; (2) THE ADMISSION OF HEARSAY TESTIMONY WAS HIGHLY PREJUDICIAL AND CONTRARY TO MR. CARABALLO'S RIGHT TO CONFRONT TESTIMONY OFFERED AGAINST HIM; (3) THE TRIAL EVIDENCE WAS INSUFFICIENT TO DISPROVE SELF-DEFENSE BEYOND A REASONABLE DOUBT; AND (4) THE JURY INSTRUCTIONS WERE CONFUSING AND INCORRECTLY SUGGESTED THAT MR. CARABALLO MIGHT HAVE HAD A DUTY TO RETREAT FOR REASONS THAT WERE NOT SUPPORTED BY ANY EVIDENCE

AT THE LEAST, THE SENTENCE SHOULD BE REVERSED AND THE CASE REMANDED FOR RESENTENCING BECAUSE THE DENIAL OF THE DOWNWARD DEPARTURE REQUEST AMOUNTED TO FAILURE TO EXERCISE JUDICIAL DISCRETION TO CONSIDER STATUTORY FACTORS THAT JUSTIFY A DOWNWARD DEPARTURE, AND TO IMPOSE A MORE RATIONAL SENTENCE CONSIDERING ALL OF THE RELEVANT FACTORS

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

D. Caraballo

Date: FEBRUARY 14TH, 2023