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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

JARED B. GOUDY — PETITIONER,

vs.

JENNIFER E. CALUORI — RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE SECOND DISTRICT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

JARED B. GOUDY
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ORIGINAL

QUESTION(S) PRESENTED

Florida's Second District Court of Appeal affirmed the Twelfth Judicial Circuit's dismissal of Petitioner's case. Following an evidentiary hearing, the lower tribunal dismissed the complaint, holding that the Respondent was immune from civil action based on Florida's Stand Your Ground Law, Fla. Stat. 776. Section 776.012(2) states, in pertinent part, that: "A person is justified in using or threatening to deadly force if ... she *reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to herself...*" (emphasis added) 776.032(1) states, in pertinent part, that "A person who uses or threatens to use force as permitted in 776.012... is justified in such conduct and is immune from ... civil action for the use or threatened us of such force..." However, at the evidentiary hearing there was no evidence adduced to support a finding that the Respondent was in imminent danger or that she could have reasonably believed that turning her car around, driving approximately 50 yards, and purposely striking the Petitioner with her vehicle as he was walking away from her and back to his house was necessary to defend herself. Furthermore, the Respondent was statutorily prohibited from asserting immunity because she engaged in the criminal activity of driving under the influence. Was Petitioner's Constitutional Rights to due process violated when the trial court found the Respondent immune and dismissed the complaint?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

1. The Twelfth Judicial Circuit, State of Florida, Criminal Case
No.582017CF013543XXXANC
2. The Twelfth Judicial Circuit, State of Florida, Civil Case No.: 2018-CA-2699NC
3. The Second District Court of Appeal, State of Florida, Case No.: 2D21-2494

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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

The State court's opinion in the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the *per curiam* affirmation of that decision by the Second District Court of Appeal, Florida. The opinion of the highest State Court to review the merits appears at Appendix B to the petition and is reported at *Goudy v. Caluori*, Case No. 2D21-2494, 2022 FL APP LEXIS 8724 (Fla. 2nd DCA 2022). The order rendered by the Twelfth Judicial Circuit in Case No.: 2018-CA-2699NC appears at Appendix A.

JURISDICTION

The date of which the highest state court decided Goudy's case was on December 9, 2022. A copy of that decision appears at Appendix B.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions involved in this petition are the 5th and 14th Amendment rights to due process and a fair trial.

Amendment 5

Criminal actions Provisions concerning Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14

Section 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE AND FACTS

On the evening of September 26, 2017, Petitioner, Mr. Goudy, and his then girlfriend, Respondent, Jennifer Calouri, made arrangements to go out for dinner, drinks, and to watch the Dodgers game. (T.T. 130-131, 270) They had been in a turbulent relationship for approximately 4 months, in which Mr. Goudy had repeatedly broken up with her. (T.T. 129, 271) After dinner, on the way to Mr. Goudy's residence, Ms. Calouri became angry that they had not been spending enough time together and began yelling and shouting at Mr. Goudy. (T.T. 272-273) At one point, she pulled a knife out of her glove box, threatened Mr. Goudy, and threatened to "kill" one of Mr. Goudy's female acquaintances that he'd been spending time with. (T.T. 279) When they arrived back at his residence, Mr. Goudy told Ms. Calouri that he was done with the relationship and told her not to text or call him anymore. (T.T. 274) Ms. Calouri became irate, jumped into the driver's seat, began wailing, threw the car into gear, and took off. (T.T. 137, 275) She was intoxicated and as she drove away she cut through two of Mr. Goudy's neighbor's yards on her way out of the cul-de-sac. (T.T. 137, 275)

As Mr. Goudy attempted to enter his residence he realized that he had left his keys on the driver side floorboard of Ms. Calouri's vehicle—Mr. Goudy had been driving Ms. Calouri's vehicle that night, which was a common occurrence. Mr. Goudy attempted to call her, but she refused to answer.

When Ms. Calouri drove away, she only made it a couple houses down from Mr. Goudy's residence and ended up stopping and parking her vehicle on the side of the road. (T.T. 138) Mr. Goudy approached her vehicle and tapped on the window. Ms. Calouri, who was very emotional and still crying, rolled down the window. (T.T. 277) Mr. Goudy said that he forgot his keys and she replied that they were not in the car. He told her they were and reached into the car to retrieve his keys from the driver side floor boards. (T.T. 277) Mr.

Goudy had no intent to commit any crime as he reached for his keys and at no point did Ms. Calouri ever withdraw her permission to enter or remain in her car. (T.T. 173) As he reached in, Ms. Calouri began punching and hitting him in the ribs and shoulders (T.T. 278). Mr. Goudy never retaliated in any manner and never possessed a knife, pulled out a knife, or threatened Ms. Calouri in anyway. (T.T. 280) Any contact initiated by Mr. Goudy was incidental and in self-defense.

Once he had retrieved his keys, Mr. Goudy immediately left, began walking home, cutting through a neighbor's lawn on his way back to his house.

Ms. Calouri drove to the next street, made a three point turn, and drove back towards Mr. Goudy's house. As she approached Mr. Goudy from behind she swerved into the neighbors yard and hit Mr. Goudy with her car. Mr. Goudy was thrown up into the air and onto the hood of the car. (T.T. 280) Mr. Goudy managed to stand up and retreat into his residence despite head trauma, internal bruising, and cervical strain. Upon further medical treatment at the Department of Corrections Reception and Medical Center, it was discovered that Mr. Goudy suffered a torn ACL, MCL, and Patella in his left knee; a torn ACL in his right knee; cervical strain; and 2 bulging discs in his spine (L4 and L5); all resulting from Ms. Calouri hitting him with her vehicle.

After Ms. Calouri hit Mr. Goudy, he told her that she needed to leave or he was going to call the police. Ms. Calouri refused to leave and defiantly pulled into Mr. Goudy's driveway. Both parties called 911: Mr. Goudy at 1:48 A.M. and Ms. Calouri at 1:51 A.M.

In Mr. Goudy's 911, he informed the dispatcher about Ms. Calouri's intoxication, her use of a knife, the break-up, Ms. Calouri striking of Mr. Goudy with her vehicle, that he was injured from her attack, and that she refused to leave Mr. Goudy's residence after he demanded her to do so.

In Ms. Calouri's 911, she was slurring and clearly intoxicated. She informed the dispatcher that she was not injured and she never mentioned anything about a weapon being used. (T.T. 152)

Law enforcement arrived on scene at 2:00 A.M and, after questioning both parties, determined that the situation would be resolved if both parties signed waivers of prosecution forms. Both Mr. Goudy and Ms. Calouri signed these forms. Prior to signing his form, Mr. Goudy was permitted to read Ms. Calouri's waiver, which stated, like Mr. Goudy's, that no criminal activity had transpired that evening.

Sergeant Dicapua's shift ended at 3:00 AM. Sergeant Arik Smith arrived on scene and relieved Sergeant Dicapua. Smith knew Mr. Goudy from prior interactions and, after being on the scene for approximately 5 minutes, persuaded Ms. Calouri to retract her waiver and ordered the waivers destroyed. (T.T. 7-9) Smith then authorized the arrest of Mr. Goudy.

At approximately 3:30 AM, Smith placed Mr. Goudy under arrest for Aggravated Assault and or Battery with a Deadly Weapon. Notably, Mr. Goudy never had a weapon in his possession, deputies never searched Ms. Calouri's vehicle, and no weapon was ever recovered by law enforcement. Mr. Goudy was transported to Sarasota Memorial Hospital where he was treated for injuries sustained when Ms. Calouri hit him with her car and then transported to Sarasota County Jail.

Following a jury trial, Mr. Goudy was found guilty and convicted of Armed Burglary of a Conveyance with an Assault or Battery. On April 24, 2018, he was sentenced to Life imprisonment as Prison Release Reoffender. Mr. Goudy is still fighting his criminal conviction in State Court and has postconviction proceedings pending in Florida's Twelfth Judicial Circuit. (Case No. 582017CF013543XXXANC)

On May 18, 2018, Mr. Goudy filed a Civil Complaint against Ms. Calouri alleging auto negligence, specifically that Ms. Calouri willfully and intentionally struck Mr. Goudy with her car. (Appendix G, Original Complaint)

On October 30, 2020, Ms. Calouri, through counsel, filed a Motion to Dismiss Mr. Goudy's Complaint with Prejudice, claiming immunity under Florida Statute 776.032.

On January 22, 2021, and February 10, 2021, the Lower Tribunal held an Evidentiary Hearing. (See Appendix C, Evidentiary Hearing transcripts)

On June 29, 2021, the Lower Tribunal entered an Order Granting Ms. Calouri's Motion to Dismiss (Stand Your Ground Statutory Immunity). (See Appendix A, Order Granting Defendant's Motion to Dismiss Based on Fl. Stat § 776.032 (1))

On August 12, 2021, Mr. Goudy filed a Notice Of Appeal in the Second District Court and raised three issues to be appealed.

On December 9, 2022, The Second District Court of Appeal affirmed the Lower Tribunals decision. (See Appendix B, Second Districts Court's Affirmance)

On January 27, 2022, The Second District Court of Appeal issued the Mandate.

REASONS FOR GRANTING THE PETITION

The trial court erred in granting the Respondent's motion for dismissal by finding that she was immune to civil action under Fla. Stat. 776. This was a violation of due process where there was no imminent threat of death or great bodily harm to the Respondent, the Respondent was committing the offense of Driving Under the Influence (D.U.I.), and, in the process of committing premeditated attempted vehicular murder, she was intoxicated.

Where the statute has been found constitutional, the question becomes whether the statute is correctly and constitutionally applied and enforced in respect to the facts of the instant case. *Dahake-Walker Mill v. Bondurant*, 257 U.S. 286 66 L. Ed. 239 (1921).

A. Ms. Calouri was not in imminent fear of death or great bodily harm

The Lower tribunal held an evidentiary hearing on January 22, 2021, and February 10, 2021. During the hearing Mr. Goudy testified, and counsel from Ms. Calouri corroborated, that Mr. Goudy turned away from the vehicle leaving Calouri completely alone and walked back towards his house. Calouri's had to drive away from Mr. Goudy, up to the next street, and make a U-turn. She then drove back down the street, swerved into Mr. Goudy's neighbor's yard, and intentionally struck Mr. Goudy from behind as he was walking back to his home. (Appendix C, 109-111; Appendix D, 2, Probable Cause Affidavit)

B. While engaged in the specific criminal activity of driving under the influence, Ms. Calouri used her vehicle to further a criminal activity.

By admission of all parties involved, Ms. Calouri had consumed copious amounts of alcohol on the night of the incident. Testimony during the hearing on the motion revealed that Ms. Calouri was so intoxicated that she was unable to sign her own bar tab. A verbal offer of proof was given that her bar bill amount was \$117.00 plus tip. (Appendix C, 30-31) Ms Calouri relied on Fla. Stat. §776.013 in her motion to dismiss; however, Fla. Stat. §776.013(3)(c) does not apply when a person is engaged in criminal activity:

(3) The presumption set forth in subsection (2) does not apply if:

(C) The person who uses or threatens to use defensive force is engaged in criminal activity or is using the dwelling residence, or occupied vehicle to further criminal activity.

Where Ms. Calouri was engaged in the criminal activity of driving under the influence,

Stand Your Ground immunity can not be claimed.

C. Ms. Calouri made multiple inconsistent statements to law enforcement about the incident.

Ms. Calouri gave multiple inconsistent statements to law enforcement concerning the incident in question. She reported to officers that night, in depositions, and testified at trial that she only consumed two mixed drinks and two-three shots. At the evidentiary hearing, Ms. Calouri, through counsel, made an offer of proof that her bar bill was in fact \$117.00 plus tip. Ms. Calouri's statements and her actual bar bill are in direct conflict with one another. The bar bill, that contains only Ms. Calouri's drinks directly refutes her statement and indicates that she consumed approximately 17 drinks (drinks were approximately \$7 each) that night. 17 drinks is substantially more than what she claimed in her statements of 4 or 5 drinks. (See Appendix C, 30, 31)

During her 911 call, she told the dispatcher that she had not received any injuries. (See Appendix E, 152 , Criminal Trial Transcripts) Later, when talking to law enforcement on the scene, she stated that Mr. Goudy had cut her with a knife. (See Appendix D, 2, Probable Cause Affidavit)

Also during her 911 call, dispatcher asked if Mr. Goudy used a weapon. Ms. Calouri never said there were weapons used. (See Appendix E, 152, Criminal Trail Transcripts) Later, when talking to law enforcement on the scene, she stated that Mr. Goudy used a knife. (See Appendix D, 2, Probable Cause Affidavit)

Calouri in her witness statement to the Sheriff's Department admitted to hitting Mr. Goudy with her vehicle. (See Appendix H, Calouri's Witness Statement) During trial, Calouri modified her testimony from hitting Goudy to merely clipping him. (See Appendix E, 162 , Criminal Trail Transcripts)

During Ms. Calouri's trial testimony, when the state asked her if she gave permission to Mr. Goudy to enter the vehicle, she said, "no." (See Appendix E, 161, Criminal Trail Transcripts) Later on cross exam when Mr. Goudy's Counsel asked if Mr. Goudy had permission to drive the car she responded with, "yes." (See Appendix E, 166, Criminal Trail Transcripts) Moreover, on recross when she was asked if she ever denied Mr. Goudy permission to enter the vehicle she said, "no."(See Appendix E, 173, Criminal Trail Transcripts)

The Lower Tribunal's interpretation and application of the statute is unconstitutional as it allows an individual to invoke immunity where there is no imminent threat of death or great bodily harm or where the individual is in the process of committing another crime. This application allowed the Respondent to use a vehicle as a weapon with the intent to kill with impunity. The lower court's dismissal and the district courts affirmance violated the Petitioner's due process guaranteed under the 5th and 14th Amendments.

CONCLUSION

Wherefore, Petitioner respectfully asks this Honorable Supreme Court to grant this petition for writ of certiorari and remand this case back to the Circuit Court for trial.

Respectfully submitted,

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Date: March 27, 2023