22-7246

In The Supreme Court of the United States

MIKEQUALE MILLER

Petitioner

VS.

PEP BOYS—MANNY, MOE & JACK
OF DELAWARE, INC, et al.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MIKEQUALE MILLER, *Pro Se*
753 South Front Street
Columbus, Ohio 43206

QUESTION PRESENTED

Should a *Pro Se* Litigant in a products-liability case be given the same or similar Constitutional protection and liberties as *Pro Se* criminal defendants with the Court's insight and wisdom utilized in *Gideon v. Wainwright,* 372 U.S. 335 when he cannot afford counsel in a non-frivolous products-liability case involving strict liability?

PARTIES

The Petitioner Mikequale Miller who was a minor at the time of the cause of action was also the injured party in this matter. The respondents are Pep Boys—Manny, Moe & Jack of Delaware, Inc., Northeastern Technical, Techtronic Industries Co., Ltd., and Baja, Inc. Motorsports who are the parties responsible for Petitioner's irreparable injuries.

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Sixth Circuit is unreported. A copy is attached as Appendix A hereto. The order of the United States District Court for the Southern District of Ohio is not reported. A copy is attached as Appendix B hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on January 4, 2023. Jurisdiction is conferred by 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article III, Section 2, Clause 1 which provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State, between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT OF THE CASE

When Petitioner was eight years old, his father and former Plaintiff Demetrais Miller wanted to purchase a Baja Go Kart for Petitioner. A "prepping" service was purchased from Respondent Pep Boys. Petitioner test-drove the go kart in Respondent's parking lot. During the test-drive, the go-kart flipped and landed on top of Petitioner, knocking him unconscious and causing permanent injuries to his head, jaw, teeth, and collarbone. From this incident, Petitioner developed post-traumatic stress disorder.

The district court initially dismissed the lawsuit regarding eleven other plaintiffs stating that the statute of limitations was at issue. However, because Petitioner was a minor during this ordeal, the court allowed the case to proceed as the time was tolled for Petitioner until he was of lawful age to proceed.

Being *pro se* and without the financial provisions to secure counsel or experts, Petitioner forged ahead as best he could with the only realization being that he had been irreparably injured by Respondents.

Due to Petitioner's being eight years old when the injuries occurred, he was unable to recall specifically how his injuries occurred and during a deposition, his responses were held against him which in turn caused the district court to grant summary judgment in favor of Respondents.

The court below opined that Petitioner failed to meaningfully address the district court's reasons for granting summary judgment and likely forfeited appellate review.

Petitioner now turns to this Court resulting from the court below affirming the district court granting summary judgment.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution as it relates to federal diversity matters. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1331.

REASONS FOR GRANTING THE WRIT

Importance of the Question Presented

In 1963, (*Gideon v. Wainwright* 372 U.S. 335) this Court heard the petition of one Clarence Earl Gideon who after spending time in and out of prison for non-violent crimes was ultimately charged with breaking and entering with the intent to commit a misdemeanor. Because Florida law only permitted appointment of counsel for poor defendants charged with capital offenses, Mr. Gideon was forced to represent himself at trial with only an eighth-grade education.

Mr. Gideon filed a handwritten petition to this Court on the question of whether the right to counsel guaranteed under the Sixth Amendment of the Constitution applied to defendants in state courts. This Court held that the Sixth Amendment's guarantee of counsel is a fundamental right essential to a fair trial and, as such, applies the states through the Due Process Clause of the Fourteenth Amendment. In overturning *Betts v. Brady,* 316 U.S. 455 (1942), Justice Black stated that "reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." He further wrote that the "noble ideal" of "fair trials before impartial tribunals in which ever defendant stands equal before the law . . . cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

Although this is not a criminal case, there are myriad Americans who must endure a lifetime of pain and suffering because, even though there was no dispute that certain defendants caused their injuries, the current system is designed as a "Pay for Justice" just as if people want to look at a prize fight, if they cannot afford "Pay per View," it is a fight they will not see.

Petitioner was eight years old. He recalls that he was excited about being able to ride in a go-kart. The respondents knew, or should have known, that their product was defective and capable of causing harm

and injury. They had made enough money selling this unsafe product that they would certainly have enough money to hire the right lawyers to ensure Petitioner would have no significant redress for the harm done to him.

To Petitioner' knowledge, there is no *Gideon* factor for Americans who have a valid, non-frivolous claim, but who don't have the wherewithal to lawfully be compensated. No, the Constitution does not have a provision like the Sixth Amendment to protect poor, law-abiding citizens when they are injured. Lawyers representing those like respondents who are paid to find the tricks and loopholes to ensure that poor plaintiffs will typically be dissuaded from seeking court action.

The Ohio Supreme Court in *Linert v. Foutz,* 2014-Ohio-4431 stated that "[u]nless the danger posed by a product is generally known and recognized by a consumer, Ohio imposes on manufacturers two related duties to warn: a duty to warn of dangers known to the manufacturer at the time of sale of the product and a duty to warn of dangers that were not obvious at the time of sale but became known to the manufacturer after the product was sold to a consumer. These duties are codified in R.C. 2307.76:

> (A) Subject to division [ ] (B) * * * of this section, a product is defective due to inadequate warning or instruction if either of the following applies:
> (1) It is defective due to inadequate warning or instruction at the time of marketing if, when it left the control of its manufacturer, both of the following applied:
> (a) The manufacturer knew or, in the exercise of reasonable care, should have known about a risk that is associated with the product and that allegedly caused harm for which the claimant seeks to recover compensatory damages;
> (b) The manufacturer failed to provide the warning or instruction that a manufacturer exercising reasonable care would have provided concerning that risk, in light of the likelihood that the product would cause harm of the type for which the claimant seeks

"As a general rule, a manufacturer does not have a duty to warn consumers of dangers inherent in the use of the manufacturer's product if those dangers are generally known and recognized by the ordinary consumer." *Gawloski v. Miller Brewing Co.*, 96 Ohio App.3d 160, 163, 644 N.E.2d 731 (9th Dist.1994), citing 2 Restatement of the Law 2d, Torts, Section 402A, at 352-353, Comments I and j (1965); *Sapp v. Stoney Ridge Truck Tire*, 86 Ohio App.3d 85, 98-99, 619 N.E.2d 1172 (1993).

"In other words, a defendant's statutory duty to warn is obviated when the dangerous condition causing injury to the plaintiff is open and obvious or commonly known." *Lykins v. Fun Spot Trampolines*, 172 Ohio App.3d 226, 2007-Ohio-1800, 874 N.E.2d 811.

Under well-established principles of strict liability in tort, a manufacturer is responsible for the damage caused by any product that the manufacturer markets in a defective condition

unreasonably dangerous to the user. In *Suvada v. White Motor Co.*, 32 Ill. 2d 612, 210 N.E.2d 182 (1965), the Illinois Supreme Court adopted the theory of strict liability in tort.

It has been established that federal diversity is based upon state law. The law of Ohio states that the deposition of an unrepresented deponent cannot be used against him. When Petitioner was being deposed, it was not established whether he was being deposed under the federal rules or the state rules. Therefore, the rule of lenity operates in such a manner as to determine that since all else has been decided under state law, so should the rules on depositions. Moreover, how fair is it to require a petitioner to recall traumatic experiences when he was eight years old?

Regardless of what theory of negligence or strict liability one may assess, just the fact that Petitioner cannot and could not afford legal representation, respondents' legal team knew from Day One that as long as Petitioner did not have a lawyer, he would have to live his life as an impaired human being with no adequate redress.

Just as in *Gideon*, this Court can and may augment the chances for litigants who have been wronged but cannot afford a lawyer to substantiate it. The Declaration of Independence, though not a part of the Constitution, in the significant portion relevant herein holds "That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." In Petitioner's view, this means when the judges in the lower Court all know that Petitioner was done wrong, but must allow him to lose because he does not know the book and verse of the law, the law itself is destructive, and whenever any form of government is destructive to an American, this Court can alter or abolish it.

CONCLUSION

Petitioner, like many Americans, was told it was useless to ask this Court to review this case because Petitioner is not a lawyer and Petitioner does not have the kind of money it takes to get this Court's attention. *Gideon* was probably told the same thing, yet he believed that if fairness was ever to be extended to the non-lawyer little guy, he had to try it. Petitioner Mikequale Miller is asking this Court to establish a standard in cases like Petitioners where the only reason a litigant loses is because he cannot afford counsel. Certainly, some will opine that if the Court does such a thing, it will open up a floodgate. However, the only time the standard would apply is when someone can take a common sense look at the facts an irrefutably know that an American has been wronged and that the defendant(s) is/are the wrongdoer(s).

Respectfully submitted,

Mikequale Miller
753 South Front Street
Columbus, Ohio 43206

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