

No. _____

**In The
Supreme Court of the United States**

—————◆—————
JOHN CHIARENZA,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

—————◆—————
**On Petition For Writ Of Certiorari To The
Florida Third District Court Of Appeal**

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the Florida courts violate petitioner's due process protections in a self-defense Stand Your Ground criminal prosecution by excluding the defense-proffered human factors expert witness who offered testimony on a recognized area appropriate for an expert and whose analysis was essential to petitioner's fair trial rights?

Did the Florida courts engage in an unfair denial of a criminal defendant's due process rights when depriving the jury of the defense requested theory of defense instruction that constituted a correct statement of the law, was not duplicative of the Florida standard instructions, and was essential to the petitioner's ability to obtain a fair consideration of his case by the jury?

PARTIES TO THE PROCEEDING

All parties are listed in the caption.

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John Chiarenza petitions for a writ of certiorari to review the judgment of the Third District Court of Appeal of Florida.



OPINION BELOW

The opinion of the Third District Court of Appeal is reported at *Chiarenza v. State*, 217 So. 3d 128 (Fla. 3d DCA 2017), and is reprinted at Appendix, App. 1. The Florida Supreme Court denied petitioner's timely request for discretionary review on October 20, 2017. That order appears in the Appendix at App. 4.



STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). The Florida Supreme Court issued its decision declining to accept jurisdiction on October 20, 2017. *Chiarenza v. State*, SC17-1072, 2017 WL 4707478, at *1 (Fla. Oct. 20, 2017). The appellate decision of the Florida Third District Court of Appeal was entered on August 31, 2017. This petition is filed within 90 days of the denial of discretionary review, as provided in Rule 13.1 of the Supreme Court Rules. This Court's jurisdiction rests on 28 U.S.C. § 1257(a) and Supreme Court Rules 10(b) & (c) and 13.



CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment states, in relevant part: “No person shall . . . be deprived of life, liberty, or property, without due process of law.”

The Sixth Amendment states, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . . ”

The Fourteenth Amendment states, in relevant part: “No state shall . . . deprive any person of life, liberty, or property, without due process of law.”



STATEMENT OF THE CASE

This case arises from Robert Bell’s belligerent response to petitioner John Chiarenza’s authorized issuance of a parking ticket for Bell’s illegally parked car within a restricted area of a condominium community. Mr. Chiarenza, a 50-year-old lawyer with a respected history of public and community service, had no history of violence, and was exercising his assigned parking enforcement authority as a condominium board director (T. 620-624). Bell’s tirade ended only when Chiarenza, in fear for his life, pointed and displayed his lawfully carried handgun at Bell (T. 681-682, 840-842). Chiarenza did not discharge his firearm, no violence ensued, and no injury occurred. The key issue in the Florida courts was whether Chiarenza used non-deadly force in self-defense.

1. Robert Bell, Alleged Victim.

Robert Bell was visiting his mother, who lived in Chiarenza's Briarwinds condominium apartment complex (T. 437-438, 440) at which Chiarenza served as a member of the board. Locked out of his mother's apartment, he waited for his sister to arrive with the apartment key (T. 441). Bell acknowledged he did not have a valid parking decal and knew he could get ticketed (T. 456, 461). However, when Chiarenza issued the parking violation sticker, Bell responded with aggression and belligerence (T. 442, 444). Cursing, he confronted Chiarenza and said, "Don't put the f . . . ing sticker on my car . . ." (T. 444). Chiarenza, in furtherance of his condominium association authorization, put the parking violation sticker on Bell's car (T. 445-446). Chiarenza then returned into his car.

Bell angrily tore off the sticker, and then **followed** Chiarenza to his car. Still belligerent, he yelled "Take your sticker" (T. 444, 446-447, 475-479, 491). Bell's hand moved toward the open window as if reaching to hit Chiarenza inside (T. 479). Chiarenza de-escalated Bell's aggressive response by displaying his licensed gun. Bell recounted that Chiarenza pulled his gun "out of his – his waist, and hold my chin around here, and he twisted and he pushed me down on a car was parked right next to mine and used the word, 'Don't fuck with me, don't fuck with me. [will] kill you, motherfucker. Don't fuck with me.'"¹ (T. 444-445, 448-449, 480).

¹ This appears to be a transcription error. The original transcript reads, "I kill you, motherfucker. Don't fuck with me." Bell's

Bell's sister and girlfriend both screamed "let him go" as Chiarenza exclaimed "he were [sic] gonna jump me." (T. 445). Chiarenza then went back to his car (T. 451, 488). This time, Bell did not follow Chiarenza to his car, yelling and cursing. He instructed his sister to call the police (T. 451, 488) and yelled to his girlfriend to "get his tag number." (T. 489-490). Chiarenza stopped his car so they could record his license (T. 489-490).

2. Marra Chinn Allen, Eyewitness.

Marra Chinn Allen, a Briarwinds resident, looked out her window into the parking lot and saw the alleged victim, Bell, angrily yelling something about his car and ripping a parking violation sticker off his car window (T. 421, 428). Bell and Chiarenza were "five feet" from one another (T. 422) when Chiarenza went to his car "like he was going to get in his car" (T. 423-424). Bell followed Chiarenza, still belligerent, and then at a certain point she could not see the incident clearly but observed Chiarenza push Mr. Bell (T. 428-429). She saw that Bell was "screaming" and had what appeared to be the ripped up parking violation sticker balled up into his fist "a hand's length" away from Chiarenza within "proximity" of hitting Chiarenza (T. 431-433).

Chiarenza walked "a few feet" toward Bell as he "aggressively went towards him and had the gun." (T. 424). While Chiarenza pointed the gun at Bell's head

girlfriend confirms the future tense of Bell's statement. She recalled him saying, "I'll effin' kill you." (T. 501-502).

(T. 423-425), everybody was “screaming” and the “ladies” nearby tried to break up the quarrel (T. 423). Suddenly, with an “exasperated I don’t know what is going on kind of look,” Chiarenza brought down the weapon, turned around, got into his car, drove his car “eight spots” away, and went to check the decal on another car (T. 425).

3. Nilsa Rodriguez, Girlfriend of Robert Bell.

Nilsa Rodriguez, Bell’s girlfriend, testified she saw Bell say “Don’t put that sticker on my car, that’s my mom’s space” (T. 501). Afterward, Bell followed Chiarenza to his car “to hand him the sticker” when “the next thing I see, he has the gun to Robert [Bell]’s head . . .” (T. 501). She heard cursing and “then he said ‘I’ll effin’ kill you.’ And it was a lot of commotion.” (T. 501-502). The gun was to Bell’s temple and Chiarenza threw Bell on top of the car as they struggled (T. 504). Then, Bell’s sister yelled out “What are you doing? That’s my brother,” and Chiarenza “put the gun down.” (T. 504).

4. Blossom Brown, Robert Bell’s Sister.

Blossom Brown, Bell’s sister, saw Chiarenza next to Bell’s car as her “upset” brother approached Chiarenza’s car saying in a loud voice “Don’t put the sticker on my car.” (T. 517, 520-521, 524). Words were exchanged as her brother went up to his car and pulled the sticker off (T. 517). The next thing she knew, Chiarenza “grabbed my brother and slam[med] him on a

white car.” (T. 518). Then Chiarenza “pulled his gun out of a holster” and put “the gun to my brother’s head” saying “I will f . . . ing kill you.” (T. 518). Blossom Brown ran to her brother and pushed the gun away (T. 518) when Chiarenza said Bell “tried to jump me.” (T. 519). As soon as she said he was “my brother,” Chiarenza put the gun away and walked back towards his car (T. 519). When she said she needed to get the license plate, Chiarenza stopped his car and said “I’ll stop and let you get my license plate. Call the cops.” (T. 519, 525).

5. John Chiarenza, Defendant.

John Chiarenza, a lawyer, has a valid concealed weapons permit (T. 726, 777-780; Defense Exhibit 2-A); as a member of the Briarwinds condominium association Board of Directors, he was responsible for enforcing the condominium parking rules (T. 652, 768-770). Chiarenza testified he acted in self-defense because he has severe second impact syndrome, such that even a minor blow to his head means certain death or great permanent injury. He was a victim in a near-death car accident in 1994 (T. 624-626). Comatose for seven weeks (T. 628), he woke up in a Mississippi hospital room unaware he had suffered 34 bone fractures, including tearing off most of his left ear (T. 627).

After two months in Mississippi Baptist Hospital, he was transported to the Ryder Trauma Center in Miami for treatment of his severe head trauma, where he was slowly patched back together (T. 628-629, 632). His

treating physicians made it very clear to him: “[I]f I hit my head again I would be likely to die.” (T. 642). He “could have no future head impacts” whatsoever because “probably I’m dead. And if not dead, I’m definitely in a vegetative state.” (T. 639). “Oh, if I was hit in the head again, that’s it.” (T. 641).

On the day in question, he saw Bell’s vehicle – parked illegally in a reserved space without a decal or guest pass (T. 679). The car was not temporarily parked there, as it had been there for more than a half an hour (T. 681-682, 697-698). Chiarenza issued a parking violation sticker and wrote an incident report (T. 682-683). But as Chiarenza affixed the violation notice to Bell’s car, Bell responded belligerently (T. 703). Bell was irate, screaming and yelling “Don’t stick it on the vehicle, that’s my vehicle.” (T. 702-703, 795). To which Chiarenza responded: “It’s illegally parked. You need a decal.” (T. 703). The man “was mad, and he was yelling.” (T. 703). He used curse words and angrily yelled out “F . . . ing tow my car.” (T. 704-705, 797).

Chiarenza returned to his car and was starting to call the towing company (T. 705-706, 799), when he saw Bell had followed him to his car (T. 714). Bell’s arms were “flailing,” “coming directly at me.” (T. 714). Bell was “humping and pumping” with closed fists “bearing down at me in an aggressive, hostile manner.” (T. 714-715, 802-803, 807-808). Chiarenza did not know what Bell had in his hands (T. 808).

Knowing he was vulnerable in his sitting position and fearing for his life if Bell attacked him through the

open window and hit him in the head (T. 715-716), Chiarenza made a split-second decision to exit the car and get onto his feet (T. 716) to defend himself. Bell shoved Chiarenza, and Chiarenza grabbed Bell's shirt, pulled his gun from his holster, and pointed it at Bell's head (T. 718-719, 810). No round was chambered (T. 719). Chiarenza warned Bell, "Don't fuck with me." (T. 720). Bell stopped his belligerent rant over the issuance of a parking sticker.

Just then, a woman grabbed Chiarenza's arm while yelling at him, "What are you doing?" (T. 722-723). Chiarenza responded, "He jumped me." (T. 723). He immediately put his gun away and returned to his car (T. 723). As he started to drive through the parking lot to look at other cars, the same woman yelled "Get his license tag." (T. 723). Chiarenza cooperated by stopping his car so she could write down his license plate number (T. 724).

6. Sam Elalouf, Defense Witness.

Currently in graduate school (T. 870-871), Sam Elalouf was visiting his mother (T. 871). From the balcony, he saw Chiarenza doing parking enforcement (T. 871-872) when he heard a commotion and observed a very upset Bell yelling as Chiarenza put a parking violation sticker on his car (T. 871-874). Bell moved aggressively toward Chiarenza (T. 874) with his fist balled up and angrily shaking it at Chiarenza (T. 875-877). In mere moments as Bell came within two feet of

the car, Chiarenza was out of his car with his gun pointed at Bell (T. 877-878, 882-884).

7. Dr. Bushan Agharkar, Expert Medical Witness.

Dr. Bushan Agharkar confirmed Chiarenza has second impact syndrome, which means that even a minor blow to his head could be “catastrophic” and result in brain damage or death (T. 901-902, 905-906).

8. Excluded Defense Witness, Roy Bedard.

Why did Chiarenza exit the vehicle, when he had second impact syndrome? The defense attempted to answer this burning question with expert testimony on human behavior response, often referred to as human factors evidence (T. 547-548). Roy Bedard proposed to testify about the four responses to a perceived threat (T. 578). According to Bedard, human responses to threats extend beyond flight or fight and include posturing and submission (T. 578-579). In sum, Bedard intended to explain the different types of responses to enable the jury to understand that Chiarenza’s response was consistent with someone trying to “out posture” his aggressor by convincing the aggressor (in this case Bell) that “this was a fight that he [Bell] didn’t want.” (T. 581). Bedard would opine that posturing has the effect of de-escalating a potentially explosive situation, which importantly is what happened in this case (T. 581). Bell ended his rant only because of Chiarenza’s

posturing. The trial court excluded his testimony (T. 617).

9. Theory of Defense Jury Instruction.

The defense requested the following theory of defense instruction, which the court declined to give (R. 695-696):

It is Defendant's theory of defense that John Chiarenza was in a severe car accident in 1994 in Mississippi for which he sustained severe head injuries and for which he was in a coma for six and half weeks and hospitalized in Mississippi for approximately two months.

This was followed by additional hospitalization at the Ryder Trauma Center in Miami Florida for over three weeks. John Chiarenza was told and he believed, after the accident, that if he was ever hit in the head again that it would result in either his death or additional traumatic brain injury with a catastrophic result.

On August 19, 2012, as a member of the Board of Directors at his condominium assigned to parking enforcement, he lawfully ticketed a vehicle which he later learned was owned by Robert Bell.

Soon after ticketing the vehicle and as John Chiarenza was returning to his own vehicle, Robert Bell shouted at him. John Chiarenza explained to Bell that he was improperly parked because his car was without the

appropriate guest pass. After pulling the sticker off his own vehicle, Bell angrily approached John Chiarenza with Bell's hand formed into a fist while Mr. Chiarenza was sitting in his vehicle. Fearing for his own safety and that he was about to be hit in the head which he reasonably believed would kill him or catastrophically injure him, John Chiarenza quickly jumped out of his vehicle, was pushed by Bell, and to protect his own safety John Chiarenza displayed a firearm, for which he had a legally issued concealed firearm license, while pushing Bell away toward Bell's car. Mr. Chiarenza no longer fearing for his safety, withdrew his firearm and reholstered it.

If you believe that Defendant Chiarenza displayed the firearm reasonably because he feared for his safety in self-defense then you must find Defendant Chiarenza not guilty.

10. Procedural Posture.

On appeal, Chiarenza challenged the sufficiency of the evidence, the exclusion of his proposed expert on human factors evidence, and the refusal to give his requested theory of defense jury instruction. In a written opinion, the Third District Court of Appeal affirmed the conviction and sentence on all points and denied his timely filed motion for rehearing. *Chiarenza v. State*, 217 So. 3d 128 (Fla. 3d DCA 2017). The Florida Supreme issued its decision declining to accept jurisdiction on October 20, 2017. *Chiarenza v. State*,

SC17-1072, 2017 WL 4707478, at *1 (Fla. Oct. 20, 2017).



REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW OF THE COURT OF APPEAL'S DECISION BECAUSE OF THE MATERIAL CONFLICT WITH *DAUBERT V. MERRELL DOW PHARM., INC.*, 509 U.S. 579 (1993), IN EXCLUDING THE DEFENSE EXPERT ON HUMAN FACTORS EVIDENCE, THEREBY DENYING PETITIONER DUE PROCESS.

Critical to Chiarenza's theory of defense at trial was providing an explanation of the ordinary reasonableness of his actions in removing himself from his car when Bell began his aggressive advance in a manner that caused the defendant's reasonable fear and apprehension for his own health and safety. Petitioner's explanation for his conduct was not sufficient; instead, an objective assessment of his actions in the context of human performance and behavior was both legally appropriate and factually necessary, especially in a Stand Your Ground self-defense case. But the court excluded defense expert Roy Bedard, proffered as a human factors expert to explain "why people would get out of their car, how human behavior – he can talk about and is an expert on this" (T. 547). His extensive proffer, including cross-examination (T. 565-614), demonstrated his knowledge of and training in human

performance, reactions, defensive tactics, and subjective factors (T. 565-574).

Currently a doctoral student in “sport exercise and performance psychology” (T. 565), Bedard is experienced in the science and practice of analyzing human reactions in high anxiety and stress situations (T. 566). His training, experience, and expertise are science based (T. 575). He has developed scenario-based training programs for law enforcement, lectures worldwide on human performance, and has studied “systemic training methodologies” (T. 567-570). He is a subject matter expert for the Florida Department of Law Enforcement in this area (T. 570).

In *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993), this Court held that “an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation.” Florida recently adopted the *Daubert* standard. Human factors and perception evidence is a recognizable and admissible subject for expert testimony, as explained by the Tenth Circuit Court of Appeals in *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1244 (10th Cir. 2000), and the First Circuit Court of Appeals in *Espeaignnette v. Gene Tierney Co., Inc.*, 43 F.3d 1, 11 (1st Cir. 1994). Such “[t]estimony is admissible under Rule 702 if the subject matter at issue is ‘beyond the common knowledge of the average layman,’ *United States v. Winters*, 729 F.2d 602, 605 (9th Cir. 1984),” and thus can aid the jury in making its factual determinations. Failure to admit such testimony, when

warranted, is reversible error. *Id.* (citing *Griefer v. DiPietro*, 625 So. 2d 1226 (Fla. 4th DCA 1993)).

In *Humphries v. Mack Trucks, Inc.*, 198 F.3d 236 (4th Cir. 1999), expert human factors testimony was admissible because the witness “applied his experience and training in the field of cognitive psychology and relied, in part, on generally accepted psychological principles of human perception and memory embodied in various published authorities.” The same is true in Petitioner’s case, in which the ordinariness of a person’s defensive reactions to a perceived life threatening situation is beyond the knowledge and experience of most jurors, and the explanation of that science is of significant benefit to a jury’s factual determination whether Petitioner’s conduct was reasonable under the circumstances.

Bedard was a qualified and appropriate expert to offer this narrow evidence for the jury, and his exclusion based on his other areas of prior admitted expertise (T. 614-618) constitutes a prejudicial and reversible abuse of discretion that contravenes Petitioner’s right to due process and fundamental fairness. The entirety of Chiarenza’s criminal case depended on the jury making a determination of the reasonableness of his Stand Your Ground self-defense actions. While Petitioner explained his subjective motivations, the jury was given no guidance how to objectively measure his actions or identify the factors giving context to his reactions.

Coupled with the prosecution's belittling of Petitioner's actions by misleading the jury into believing he initiated the confrontation, the exclusion of expert witness Bedard so undercut the defendant's ability to challenge the evidence as to result in not only a reversible abuse of discretion, but an outright denial of constitutional due process and fundamental fairness guaranteed by the United States and Florida Constitutions. Certiorari review is needed to provide direction to the Florida courts on this vital question of law in the context of self-defense criminal prosecutions.

II. THE FLORIDA COURTS UNFAIRLY DENIED PETITIONER'S DUE PROCESS RIGHTS WHEN DEPRIVING THE JURY OF THE DEFENSE REQUESTED THEORY OF DEFENSE INSTRUCTION THAT CONSTITUTED A CORRECT STATEMENT OF THE LAW, WAS NOT DUPLICATIVE OF THE FLORIDA STANDARD JURY INSTRUCTIONS, AND WAS ESSENTIAL TO PETITIONER'S ABILITY TO OBTAIN A FAIR CONSIDERATION OF HIS CASE BY THE JURY.

The refusal to allow the jury to consider the defense requested theory of defense jury instruction (R. 695-696) that significantly and appropriately augmented the standard instructions used by the court

on self-defense (R. 1028-1031)² constituted an unconstitutionally unfair abuse of discretion that deprived Petitioner of a fair trial. A defendant in a criminal case is entitled to have the jury instructed on the law applicable to his theory of defense where there is *any evidence to support it*. *United States v. Briscoe*, 896 F.2d 1476, 1512 (7th Cir. 1990); *United States v. Lewis*, 718 F.2d 883, 885 (8th Cir. 1983). This Court confirmed that fundamental right in *Taylor v. Kentucky*, 436 U.S. 478, 490 (1978), holding that “the trial court’s refusal to give petitioner’s requested instruction on the presumption of innocence resulted in a violation of his right to a fair trial as guaranteed by the Due Process Clause of the Fourteenth Amendment.”

The theory of defense in this case, supported by substantial evidence adduced by both the prosecution and introduced during the defense case, was that Petitioner sustained serious and debilitating head injuries that made him prone to death or great bodily harm in the event of even a minor head injury, so he reacted reasonably to what appeared as an aggressive assault against him. The proposed Theory of Defense Instruction is completely based on the evidence adduced at trial, and is consistent with the law of self-defense, but is not duplicative of or redundant with any standard instructions given to the jury.

The exclusion of the Theory of Defense Instruction violated the cardinal principle that “the trial court

² The defense requested (T. 753-757, 1013-1014) and preserved an objection to the refusal to include the defense instruction (T. 1015).

must ensure that the jury be given full and complete instructions by relating the law to the relevant evidence in the case.” *Townsend v. Lumbermens Mut. Cas. Co.*, 294 F.3d 1232, 1238 (10th Cir. 2002). In rejecting the defense theory instruction, the Florida courts offered no view that the proposal was in conflict with the law or was otherwise not supported by the evidence (T. 1013-1015), but simply ruled that the defense is not allowed to inform the jury of the undisputed allegations presented in a defense theory of the case (T. 1014). This restriction infringed on the right of the defense to have the jury consider the defense theory supported by the evidence.

The theory of defense advanced by Petitioner was legally valid because it presented the operative facts – supported by the trial evidence – in the context of the governing Stand Your Ground self-defense law. When acting reasonably in defending oneself from a believed fear of imminent death or great bodily harm, a defendant is entitled to use force, even aggravated force. The reasonableness of Petitioner’s actions constitute a complete defense to the charge of aggravated assault, even if his belief was foolish or mistaken, so long as it was reasonably perceived by him to be so.

Without an adequate defense theory instruction, coupled with the court’s exclusion of the highly relevant defense expert, the jury was left to guess as to the context of Petitioner’s actions, receiving no guidance on the application of Petitioner’s “eggshell skull” when considering the entirety of his actions. The whole of the instructions were inadequate to support the defense

theory, and the inclusion of the proposed instruction would not have confused the jury or prejudiced the prosecution.

On this record, the exclusion of the defense theory instruction constitutes a prejudicial, reversible assault on the fundamental fairness of a criminal prosecution, compromising the constitutional fairness of Petitioner's trial as guaranteed by the United States and Florida Constitutions.



CONCLUSION

For all these reasons, this Court should grant the petition.

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