

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTINE MARIE REYNOLDS
Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA
Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL, FOURTH
APPELLATE DISTRICT, DIVISION THREE**

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QUESTIONS PRESENTED (Rule 14.1(a))

Must a reviewing court review the evidence in the light most favorable to the defendant in order to determine if substantial evidence supports an instruction on a necessarily included lesser offense?

In a murder trial, does the failure to review the evidence in the light most favorable to the defendant and the resulting affirmance of the failure to give a required instruction on the lesser-included offense of voluntary manslaughter result in the deprivation of the a defendant's due process rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution to have the jury determine all factual issues relating to a charged offense?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the California Court of Appeal included the State of California and petitioner Christine Marie Reynolds. There are no parties to the proceedings other than those named in the petition.

INDEX OF APPENDICES (filed concurrently and separately)

Appendix A	Opinion of the California Court of Appeal filed on June 26, 2017
Appendix B	Order of the California Supreme Court filed on August 30, 2017, denying review
Appendix C	California Rules of Court, rule 8.532

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTINE MARIE REYNOLDS
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v.

PEOPLE OF THE STATE OF CALIFORNIA
Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL, FOURTH
APPELLATE DISTRICT, DIVISION THREE**

Petitioner Christine Marie Reynolds respectfully asks that a writ of certiorari issue to review the judgment and opinion of the California Court of Appeal, Fourth Appellate, Division Three, filed on June 26, 2017.

The California Supreme Court denied review on August 30, 2016, which caused the opinion of the Court of Appeal to become final on that day pursuant to California Rules of Court, rule 8.532(b)(2)(A).

OPINION BELOW

The unpublished opinion of the California Court of Appeal issued on June 26, 2017, is filed as Appendix A.

The California Supreme Court’s one-page order denying review is filed as Appendix B.

The relevant California Rule of Court is filed as Appendix C.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the California Court of Appeal was filed on June 26, 2017, and became final on August 30, 2017. (California Rules of Court, rule 8.532(b)(1)(B), attached hereto in Appendix C.)

The Supreme Court of California is the state court of last resort in the State of California, and this petition is filed within 90 days of the Supreme Court of California’s entry of judgment which took place on August 30, 2017. This petition is timely under rules 13.1 and 9.2 of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Federal Constitutional Provisions

The Fifth Amendment of the United States Constitution provides, in pertinent part: “No person shall . . . be deprived of life, liberty, or property, without due process of law”

The Sixth Amendment of the United States Constitution provides, in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence. . . .”

The Fourteenth Amendment of the United States Constitution provides,
in pertinent part:

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.

B. State Statutory Provisions

Section 187 of the California Penal Code provides in pertinent part:

“Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.”

Section 189 of the California Penal Code provides in pertinent part:

All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

...

To prove the killing was “deliberate and premeditated,” it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

Section 192 of the California Penal Code provides in pertinent part: “Manslaughter is the unlawful killing of a human being without malice. It is of three kinds: [¶] (a) Voluntary—upon a sudden quarrel or heat of passion.”

Section 193 of the California Penal Code provides in pertinent part: “(a) Voluntary manslaughter is punishable by imprisonment in the state prison for 3, 6, or 11 years.”

C. California Rules Of Court

The relevant California Rules of Court rule is attached as Appendix C: rule 8.532.

STATEMENT OF CASE

Following a jury trial, petitioner was found guilty as charged of first degree premeditated murder in count 1.

On June 26, 2017, in an unpublished decision, included as Appendix A, the California Court of Appeal, Fourth Appellate District, Division Three, affirmed the judgement of the Orange County Superior Court.

As is relevant here, the Court of Appeal concluded that the trial court did not err in failing to instruct the jury sua sponte on heat of passion as a potentially mitigating circumstance for her actions, and allowing the jury to reach a verdict on the lesser included charges of second degree murder or involuntary manslaughter. (Appendix A.)

Petitioner sought discretionary review of the issue in the California Supreme Court, making the same federal constitutional argument and citing the same basic authorities set forth above. (See PFR (Petition for Review) at pp. 10-27.) On August 30, 2017, the California Supreme Court summarily denied review without opinion, and the decision of the Court of Appeal became final that day. (Appendix B.)

This timely petition for writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

UNDER SETTLE PRINCIPALS, A TRIAL JUDGE MUST REVIEW THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE DEFENDANT IN DETERMINING WHETHER AN INSTRUCTION ON A NECESSARILY INCLUDED LESSER OFFENSE IS REQUIRED, BUT THAT STANDARD WAS NOT APPLIED HERE, RESULTING IN A DENIAL OF PETITIONER'S RIGHTS UNDER THE UNITED STATES CONSTITUTION

In the case at bar, petitioner contends herein as she did below that there was sufficient evidence she killed in the heat of passion to require the trial court to instruct the jury sua sponte on the lesser included crimes of second degree murder and voluntary manslaughter. The California Court of Appeal found no error, holding: “We do not believe the evidence rose to that level, and if it did, the alleged error could not have been prejudicial to appellant under the circumstances presented in this case.” (Opn. 5.)

Petitioner sought review in the California Supreme Court where she argued that the Court of Appeal was required to reverse her conviction because it failed to review the evidence in support of then instruction on a lesser included offense in the light most favorable to the defendant, but the Supreme Court of California denied review without comment.

Petitioner urges that this Court should grant certiorari because the California Court of Appeal's decision made an error of law implicating her rights under the United States Constitution to due process, a fair trial, and the effective assistance of counsel.

“In a criminal trial, the State must prove every element of the offense, and a jury instruction violates due process if it fails to give effect to that requirement. [Citation.]” (*Middleton v. McNeil* (2004) 541 U.S. 433, 437.) “If the issue of provocation or imperfect self-defense is thus ‘properly presented’ in a murder case [citation], the *People* must prove *beyond reasonable doubt* that these circumstances were *lacking in order to establish the murder element of malice*. [Citations.]” (*Id.* at 462, emphasis in original, citing *Mullaney v. Wilbur* (1975) 421 U.S. 684, 704.)

Where the People's own evidence suggests that the killing may have been provoked, the People must also “prove beyond reasonable doubt that [heat of passion and adequate provocation] were lacking in order to establish the murder element of malice. [Citations.]” (*People v. Rios* (2000) 23 Cal.4th 450, 454, applying *Mullaney v. Wilbur*, *supra*, 421 U.S. at p. 704 [Due Process Clause requires the prosecution to prove beyond a reasonable doubt the absence of the heat of passion on sudden provocation when the issue is properly presented in a homicide case].)

[W]here murder liability is at issue, evidence of heat of passion or imperfect self-defense bears on whether an intentional or consciously indifferent criminal homicide was malicious, and thus murder, or nonmalicious, and thus the lesser offense of voluntary manslaughter. In such cases, the People may have to prove the absence of provocation, or of any belief in the need for self-defense, in order to establish the malice element of murder.

(*People v. Rios, supra*, 23 Cal.4th at p. 454.)

The jury instructions given at petitioner's trial did not comply with this federal constitutional standard. They did not convey the necessity to find absence of heat of passion on adequate provocation as a prerequisite to a verdict of murder.

As long as there is some evidence upon the subject [of manslaughter] the proper weight to be given it is for the jury to determine. . . . The evidence might appear to the court to be simply overwhelming to show that the killing was in fact murder, and not manslaughter or an act performed in self-defense, and yet, so long as there was some evidence relevant to the act of manslaughter, the credibility and force of such evidence must be for the jury, and cannot be [a] matter of law for the decision of the court.

(*Stevenson v. United States* (1896) 162 U.S. 313, 314.) This Court has long espoused similar views, at least in the context of a murder trial. (See, e.g., *Beck v. Alabama* (1980) 447 U.S. 625, 635.)

Contrary this established precedent, the reviewing court in California applied far different test and deprived petitioner of an instruction that was supported by substantial evidence upon which the jury could have convicted

her of either second degree murder or voluntary manslaughter under heat of passion/provocation. The California Court of Appeal failed to apply the correct standard of review. The California Supreme Court failed to grant review of that decision.

The instructional error here deprived appellant of her due process rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution to have the jury determine all factual issues relating to a charged offense. (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 277-278; *In re Winship* (1970) 397 U.S. 358, 364; *United States v. Gaudin* (1995) 515 U.S. 506, 522-523; *Mullaney v. Wilbur*, *supra*, 421 U.S. 684, 698, 704 [discussing heat of passion]; *People v. Breverman* (1998) 19 Cal.4th 142, 187-195 [dissenting opinion of Kennard, J.] [explaining how unusual relationship between voluntary manslaughter and murder makes failure to give voluntary manslaughter lesser instruction federal constitutional due process violation]; *Hopper v. Evans* (1982) 456 U.S. 605, 611 [due process requires instruction on lesser included when evidence warrants].) Due process also requires fundamental fairness in criminal proceedings leading to conviction. (See, e.g., *United States v. Valenzuela-Bernal* (1982) 458 U.S. 858, 772.) Additionally, a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor.

(*Matthews v. United States* (1988) 485 U.S. 58, 63; *United States v. Escobar de Bright* (9th Cir. 1984) 742 Fd.2d 1196, 1201-1202.)

California law is supposed to be applied in line with these federal standards. As applicable to the case at bar, “[t]here is no specific type of provocation required by section 192 and ... verbal provocation may be sufficient.’ [Citation.]” (*People v. Wickersham* (1982) 32 Cal.3d 307, 326 fn. omitted; *People v. Lee* (1999) 20 Cal.4th 47, 59 [“The provocative conduct by the victim may be physical or verbal, but the conduct must be sufficiently provocative that it would cause an ordinary person of average disposition to act rashly or without due deliberation and reflection”].)

In line with the prosecution’s own theory in this case, provocation can arise as a result of a series of events over time. (See *People v. Wharton* (1991) 53 Cal.3d 522, 569 [“provocation sufficient to reduce murder to manslaughter need not occur instantaneously, but may occur over a period of time”]; *People v. Borchers* (1958) 50 Cal.2d 321, 323–326, 329 [referring to unspecified period of “long continued provocatory conduct” by deceased woman that defendant knew less than five months]; *People v. Bridgehouse* (1956) 47 Cal.2d 406, 407 [defendant and his wife discussed her relations with deceased man for ““well over a year””].)

If the jury did not find the provocation sufficient to reduce the defense to voluntary manslaughter, CALCRIM 522 would have given it the option of determining that the provocation was sufficient to reduce the offense to second degree murder. (*People v. Thomas* (1945) 25 Cal.2d 880, 903 [provocation raised reasonable doubt about premeditation or deliberation, “leaving the homicide as murder of the second degree; i.e., an unlawful killing perpetrated with malice aforethought but without premeditation and deliberation”].)

The evidence here was more than sufficient to require instructions on second degree murder and voluntary manslaughter based on heat of passion/provocation and as contained in CALCRIM Nos. 522 and 570. Petitioner killed her mother in a drunken rage which was the culmination of years of discord between them. Unlike cases that have held a cooling off period between the provocation and the killing militates against an instruction on provocation, here, the evidence is uncontroverted that petitioner and her mother were arguing just before the killing.

Immediately upon her arrest, petitioner told the arresting officers that her mother had been abusing her constantly, never let up, and that “[e]veryday she would tell me what a horrible person I was. Well, she’s gone now, isn’t she? Crazy old bitch.” (2CT 288, 311.) Petitioner said that killing her mother was a mistake, and that when she had tried to fire a second bullet, the gun

would not shoot. (2CT 326.) Clearly, something set petitioner off during an argument with her mother that arguably could have been seen by the jury as the result of her out of rage, rather than premeditation.

The defense operated under the theory that petitioner shot her mother by accident (while attempting to shoot herself) or while unconscious. However, that theory was not inconsistent with also arguing that in the alternative, she killed in the state of mind described in CALCRIM 570, which would have reduced the offense to voluntary manslaughter.

Whatever motivated petitioner to get the gun and shoot herself in front of her mother could just as well have been the sort of provocation sufficient under CALCRIM 570 to reduce the offense to voluntary manslaughter. If the jury had a reasonable doubt as to how to interpret petitioner's rage, it would have been required to find her guilty of the lesser offense. If the jury had properly been instructed with CALCRIM 522, it would have had the additional option of finding petitioner guilty of second degree murder because the evidence of provocation raised a reasonable doubt as to premeditation and deliberation.

Petitioner's testimony at trial diverged somewhat from the statement that was recorded by the arresting deputies. However, she testified that her mother was emotionally abusive for many years. (2RT 297-298.) She did not

remember the shooting itself. This did not preclude the jury finding that petitioner killed her mother after years of building emotional abuse. (See *People v. Berry* (1976) 18 Cal.3d 509, 515 [the fundamental inquiry is whether defendant's reason was so obscured by some passion that he acted from this passion rather than from judgment].) Accordingly, there was substantial evidence of the lesser offenses of second degree murder and voluntary manslaughter based on a heat of passion/provocation theory, and the California trial court committed federal constitutional error when it failed to give such instructions sua sponte.

The California Court of Appeal's rejection of this evidence as "self-serving" and inconsistent with petitioner's trial testimony (Opn. 6-7) fails to look at the evidence in support of the instruction in the light most favorable to this defendant. Instead, the California Court of Appeal has improperly weighed the evidence.

Petitioner admitting she killed her mother, and her statement right after she was arrested that "[e]veryday she would tell me what a horrible person I was. Well, she's gone now, isn't she? Crazy old bitch," can only be seen as self-serving if one were to assume that petitioner had a working knowledge of the law regarding homicide, and that she intended to concoct a heat of passion "defense" which would still not have helped her to avoid complete culpability.

The California Court of Appeal's dismissal of this powerful evidence fails to follow settled law and should not be allowed to stand.

Petitioner's jury reasonably could have found on the facts presented here that she acted out of passion as defined in CALCRIM 570 rather than reason. Nobody heard all of the words were exchanged between petitioner and her mother in the hours and minutes leading up the shooting, and, from an objective standpoint, it appears that years of mental abuse may have provoked her to aggression. The jury should have been allowed to determine whether under the circumstances the years of abuse petitioner spoke of could have provoked someone to act rashly and without deliberation.

To reduce the offense to voluntary manslaughter based on provocation, the jury had only to conclude the combination of the years of mental abuse and the verbal confrontation just before the shooting was sufficient to cause an ordinarily reasonable person to act rashly and, in fact, provoked petitioner into shooting. Of course, a jury may not have accepted that version of events; but the evidence in the record, viewed in the light most favorable to petitioner, was sufficient to trigger the trial court's obligation to instruct on voluntary manslaughter based on sudden quarrel as a lesser included offense of murder. (See *People v. Millbrook* (2014) 222 Cal.App.4th 1122, 1141-1142 [sudden quarrel instruction required based on victim's belligerent and threatening

behavior]; in *People v. Ramirez* (2010) 189 Cal.App.4th 1483, 1484-1488 [shooting preceded by fight among rival gang members; prejudicial error not to give sudden quarrel/heat-of-passion instruction]; see generally *People v. Elmore* (1914) 167 Cal. 205, 211 [fight that escalated into killing supported verdict of voluntary manslaughter not murder].)

Moreover, a fully instructed jury would have had the option of finding that the years of abuse petitioner spoke of caused her to act in sufficient rage as to raise a doubt regarding the premeditation and deliberation necessary for first degree murder.

Granting certiorari in this case is important to explain that the standard of review which is required when determining whether sufficient evidence warrants instruction on a necessarily included lesser offense requires review of the evidence in the light most favorable to the defendant.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant this petition for certiorari.

Dated: November 22, 2017

Respectfully submitted,

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