

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTINE MARIE REYNOLDS
Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA
Respondent

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

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APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTINE MARIE REYNOLDS,

Defendant and Appellant.

G052948

(Super. Ct. No. 14WF3283)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Patrick Donahue, Judge. Affirmed as modified.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Marilyn L. George, Deputy Attorneys General, for Plaintiff and Respondent.

A month after her 71st birthday, appellant shot and killed her mother, Gretchen DeStefano, who was 96 years old. Although appellant does not challenge the jury's finding she murdered Gretchen in a deliberate and premeditated fashion, she contends the trial court erred in failing to instruct the jury sua sponte on heat of passion as a potentially mitigating circumstance for her actions. She also contends the court's instructions on voluntary intoxication were flawed, and the judgment must be modified to reflect the court stayed sentence on one of the firearm enhancements. We agree the judgment must be modified to reflect the stay. In all other respects, we affirm.

FACTS

Appellant has a history of personal problems and strained relationships. As a child, she felt slighted because her physically disabled sister Maria took up a lot of Gretchen's time and attention. While appellant felt sorry for Maria, she resented the fact Gretchen decided to care for her in the family home instead of sending her off to an institution. Upon entering adulthood, appellant struggled as a single mother and was haunted by depression and alcoholism. She's been a heavy drinker since her mid-20's and was drinking over a quart of vodka per day at the time this case arose.

Gretchen frowned on appellant's drinking. A devout Catholic, she also frequently harped on appellant's failure to attend church or marry the father of her son. Gretchen and appellant's discussions about these and other matters would often devolve into arguments that were marked by profanity and name-calling. Appellant testified the arguments were really not so bad, but according to her brother Paul, appellant would often get "weird and nasty" when she drank. In 2005, she was arrested for making a death threat against Paul and Gretchen while she was drunk.

Despite their tumultuous history, appellant accepted Gretchen's invitation to live at her home with her and Paul at the beginning of 2014. The living arrangement did little to improve appellant's relationship with her mother. In fact, appellant's sister Claudia testified appellant would call her to complain about Gretchen so often that she

began screening appellant's calls to avoid talking to her. Still, Claudia was not prepared for what happened at Gretchen's house on August 28, 2014.

That afternoon, Paul took Gretchen to the grocery store. When they returned home, appellant was lying on the sofa in the living room and there was no arguing or any sense of friction between appellant and Gretchen at that time. After putting away the groceries, Paul went into his bedroom. Gretchen took a seat in the living room and began talking on the phone with her niece Ruth. The call began at 3:49 p.m. and was wholly unremarkable at first. However, about twenty minutes into the call, Paul heard the front door to the house open and close twice. Unbeknownst to Gretchen, appellant had gone out to the driveway and retrieved a gun she kept in the trunk of her car.

When appellant returned to the living room, Ruth heard a "commotion" on Gretchen's end of the phone. As Ruth described it at trial, she could hear a "very sinister" voice in the background repeatedly saying, "You fucking bitch." She also heard Gretchen say, "You shouldn't do this" or "don't do this." Ruth told Gretchen she was going to hang up and call the police. But it was too late. Appellant fired a bullet into Gretchen's forehead, killing her on the spot.

Upon hearing the gunshot, Paul opened his bedroom door and saw Gretchen slumped in her chair. He asked appellant what happened, and she replied, "I shot the bitch." Sensing appellant was "pissed off," Paul ran outside and called 911 from a neighbor's house. Appellant also called 911. She reported she had just shot her mother and was going to shoot herself. The operator asked appellant to stay on the line, but she responded "fuck you" and hung up. When the police arrived at appellant's house, she came outside with her gun pointed in the air. It took several commands, but she eventually dropped the weapon and surrendered. Upon hearing an officer comment that her gun was still loaded, appellant remarked, "Of course it is."

Appellant asked for a lawyer after she was arrested. However, she did not remain silent by any means. To the contrary, she rambled on incessantly while she was handcuffed in the back of a police car at the scene. Among the unsolicited statements she made at that time were: "I can't believe this happened"; "I don't know why I did that, but my mother was abusing me so much"; "She never let up on me"; "I couldn't stand it anymore"; "Every day she would tell me what a horrible person I was. Well she's gone now, isn't she? Crazy old bitch"; "I tried to kill myself"; "The fucking gun wouldn't go off"; "I was trying to kill myself, not her"; "It was a mistake"; and "I didn't mean to do it." Later, appellant stated, "I know I'm a murderer, and I'm gonna be in jail for the rest of my life"; "Well, at least [I won't have to] live with that old bitch."

Appellant also told the police she had been drinking that day. When her blood was drawn at 9:24 that evening, roughly five hours after the shooting, her blood-alcohol level was .09 percent. Citalopram, Diphenhydramine and Quinine/Quinidine were also found in her system. An expert witness testified appellant's blood-alcohol level was probably somewhere between .14 and .25 percent at the time of the shooting. The defense presented evidence and argument that appellant was so drunk at the time that she was either unconscious or largely unaware of what she was doing. Alternatively, the defense posited appellant accidentally killed Gretchen while she was trying to commit suicide.

For her part, appellant testified she has no memory of the actual shooting. She said she remembers drinking and talking to Paul on the morning of the shooting, but she can't recall having any interaction with Gretchen. All she can remember about the shooting is hearing the gun go off and then coming to the realization she had shot her mother. Appellant claimed she only wanted to kill herself and had no intention of harming her mother. When asked about her post-arrest statements in which she alleged Gretchen had been abusive to her, appellant said those statements were not true, and she could not understand why she said them. While admitting she and Gretchen argued at

times, appellant downplayed any rift between them. She said she loved and missed her mother and that they cared for each other very much.

The jury convicted appellant of first degree murder, finding she willfully, deliberately and premeditatedly killed Gretchen. The jury also found appellant personally discharged a firearm causing death and used a firearm during the murder. In light of these findings, the trial court sentenced her to 50 years to life in prison.

DISCUSSION

Failure to Instruct on Heat of Passion

Appellant contends there was sufficient evidence she killed Gretchen 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. 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.

In deciding what jury instructions to give, the trial court must be cognizant of lesser offenses that are included in the charged crimes, even when instructions on lesser offenses are not requested by the parties or are inconsistent with the defendant's theory of the case. (*People v. Breverman* (1998) 19 Cal.4th 142, 154-157.) However, the duty to instruct on lesser included offenses is not triggered in every case. (*People v. Cruz* (2008) 44 Cal.4th 636, 664.) Rather, it only arises when there is *substantial evidence* the defendant has committed the lesser, but not the greater offense; instructions on lesser included offenses are not required when the evidence to support them is minimal and insubstantial. (*People v. Shockley* (2013) 58 Cal.4th 400, 403; *People v. Barnett* (1998) 17 Cal.4th 1044, 1152.)

As our Supreme Court has explained, heat of passion "is a state of mind caused by legally sufficient provocation that causes a person to act out, not out of rational thought but out of unconsidered reaction to the provocation. While some measure of thought is required to form either an intent to kill or conscious disregard for human life, a

person who acts without reflection in response to adequate provocation does not act with malice.” (*People v. Beltran* (2013) 56 Cal.4th 935, 942.) “If the provocation would not cause an average person to experience deadly passion but it precludes the defendant from subjectively deliberating or premeditating, the crime is second degree murder. [Citation.] If the provocation would cause a reasonable person to react with deadly passion, the defendant is deemed to have acted without malice so as to further reduce the crime to voluntary manslaughter. [Citation.]” (*People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1332.)

Courts have also recognized that sufficient provocation “need not occur instantaneously, but may occur over time.” (*People v. Wharton* (1991) 53 Cal.3d 522, 569 (*Wharton*).) Thus, whether physical or verbal, provocation can arise from a series of acts or events. (*People v. Lee* (1999) 20 Cal.4th 47, 60; *People v. Kanawyer* (2003) 113 Cal.App.4th 1233, 1245.) However, where ““sufficient time has elapsed between the provocation and the [killing] for passion to subside and reason to return,”” culpability for the killing will not be reduced. (*People v. Breverman, supra*, 19 Cal.4th at p. 163.)

In this case, appellant argues instructions on heat of passion were proper because she “killed her mother in a drunken rage which was the culmination of years of discord between them.” However, according to appellant’s own testimony, she loved and appreciated her mother, and although they argued from time to time, their arguments – which appellant described as mere bickering – were not that upsetting to her. Sometimes they used harsh words with one another, but when pressed to give an example of how Gretchen was abusive to her, appellant testified, “I’m really having a hard time coming up with anything specific[.]”

Appellant was also at a loss to explain why she accused her mother of being abusive to her following her arrest. When asked about that at trial, appellant admitted none of her allegations in that regard were true. Therefore, contrary to appellant’s belief, her post-arrest statements were insufficient to justify instructions on heat of passion. (Cf.

People v. Harris (1981) 28 Cal.3d 935, 957-958 [defendant's statements to the police suggesting he was intoxicated at time of murder were insufficient to justify instructions on diminished capacity where he repudiated those statements at trial]; see generally *People v. Hendricks* (1988) 44 Cal.3d 635, 643 [defendant's self-serving statements did not provide a sufficient basis to support jury instructions on lesser included offense]; *People v. Evers* (1992) 10 Cal.App.4th 588, 598 [same].)

Based on Ruth's testimony about hearing a "commotion" while talking on the phone to Gretchen before the shooting, appellant contends Gretchen must have done something to cause her to act out in rage. That is rank speculation. The fact is, the only thing Ruth heard Gretchen say to appellant before the shooting was, "You shouldn't do this" or "don't do this." She was apparently trying to calm appellant down, not rile her up. Thus, the cases appellant relies on in which the victim triggered a lethal response from the defendant are not apt. (See *People v. Berry* (1976) 18 Cal.3d 509 [long-simmering discord between defendant and victim erupted into volatile argument right before the killing]; *People v. Borchers* (1958) 50 Cal.2d 321 [same].) Viewed objectively, the circumstances in this case were simply not shown to be such as to cause a reasonable person in appellant's position to abandon all reason and judgment and act out in deadly passion.

The record is also devoid of substantial evidence appellant was subjectively acting under the heat of passion at the time she shot her mother. When Paul and Gretchen returned home from the store before the shooting, appellant was not emotionally worked up in any sense; rather, she was simply lying on a sofa resting. By her own account at trial, appellant could not recall having any cross words with Gretchen that day. Nor could she remember harboring any ill will toward Gretchen at the time of the shooting. And when Paul spoke to her afterwards, all she said was "I shot the bitch." Appellant may have been upset at the time, but she demonstrated no astonishment, excitement or regret. Her relatively low-key attitude after the shooting speaks volumes

about the absence of passion surrounding her actions. It is further evidence the shooting was part of a preconceived plan as opposed to a spontaneous eruption of emotion. All things considered, we are unable to assign error to the trial court's failure to instruct the jury on heat of passion.

Even if instructions on heat of passion were warranted, the failure to give them was harmless error given the jury's finding appellant murdered Gretchen while harboring a premeditated mindset. As our Supreme Court has explained, "This state of mind, involving planning and deliberate action, is manifestly inconsistent with having acted under heat of passion[.]" (*Wharton, supra*, 53 Cal.3d at p. 572.) In finding planning and deliberation, the jury necessarily rejected a spur of the moment heat of passion interpretation of the facts. Therefore, the failure to instruct the jury on that theory could not have caused appellant any prejudice. (*Ibid.*; *People v. Carasi* (2008) 44 Cal.4th 1263, 1306; *People v. Peau* (2015) 236 Cal.App.4th 823, 831; *People v. Speight* (2014) 227 Cal.App.4th 1229, 1245-1246.)¹

Jury Instruction on Voluntary Intoxication

Appellant also challenges CALCRIM No. 625, the standard jury instruction on voluntary intoxication. In her view, the instruction violated her right to due process and a fair trial because it permitted, *but did not require*, the jury to consider the evidence on voluntary intoxication in deciding the case. We disagree.²

¹ In arguing otherwise, appellant relies on *People v. Berry, supra*, 18 Cal.3d 509, which found the jury's premeditation finding in that case did not render harmless instructions on heat of passion that were legally flawed. However, in assessing prejudice in *Berry* the Supreme Court focused on the inadequacy of the given instructions, not on the question of whether premeditation is legally and logically inconsistent with heat of passion. (*People v. Peau, supra*, 236 Cal.App.4th at pp. 831-832.) We know from the Supreme Court's more recent decision in *Wharton* that the answer to that question is yes.

² The Attorney General suggests appellant forfeited her right to challenge CALCRIM No. 625 on appeal because she did not object to it in the trial court. However, because appellant contends the instruction infringed her constitutional rights we will consider the merits of her argument. (See Pen. Code, § 1259 [allowing appellate review of any instruction which affected the substantial rights of the defendant without regard to whether a formal objection was registered in the trial court].)

Jurors are presumed to be intelligent people who are capable of understanding and correlating all of the instructions they are given. (*People v. Martin* (2000) 78 Cal.App.4th 1107, 1111.) Therefore, in reviewing a claim of instructional error, “the correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction.” [Citation.]” (*People v. Castillo* (1997) 16 Cal.4th 1009, 1016.) We must remember, ““The absence of an essential element in one instruction may be supplied by another or cured in light of the instructions as a whole.”” [Citation.]” (*Ibid.*) Unless there is a reasonable likelihood the jury misunderstood the challenged instruction in a manner that violated the defendant’s rights, we must uphold the court’s charge to the jury. (*People v. Wilson* (2008) 44 Cal.4th 758, 803; *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305.)

With respect to the issue of voluntary intoxication, the law is clear that once the defendant presents evidence that voluntary alcohol consumption may have impaired his or her ability to commit the alleged offense, the jury must be instructed to consider that evidence: “The jury may not *believe* the defense evidence on diminished capacity, but it *must* take it into consideration in its deliberation if the defendant is to have a fair trial[.]” (*People v. Stevenson* (1978) 79 Cal.App.3d 976, 987.)

Here, the trial court instructed the jury per CALCRIM No. 625 as follows: “You may consider evidence, if any, of the defendant’s voluntary intoxication only in a limited way. You may consider that evidence only in deciding whether the defendant acted with an intent to kill, or the defendant acted with deliberation and premeditation, or if the defendant was unconscious when she acted. [¶] A person is voluntarily intoxicated if he or she becomes intoxicated by willingly using any intoxicating drug, drink, or other substance knowing that it could produce an intoxicating effect, or willingly assuming the risk of that effect. [¶] You may not consider evidence of voluntary intoxication for any other purpose.”

Given the repeated use of the word “may” in this instruction, appellant argues it was permissive in nature, meaning it allowed the jury to consider the evidence of her voluntary intoxication but did not require it to do so. However, read as a whole, it is apparent CALCRIM No. 625 focused the jurors on *how* they were supposed to consider the evidence of voluntary intoxication, not on *whether* they were supposed to consider it in the first place. In fact, of the four sentences in the instruction, all but one of them speak to the limited purpose for which that evidence could be considered.

In comparison, CALCRIM No. 220 addressed the broader question of *which* evidence the jury was required to consider. Per that instruction, the jurors were told, “In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider *all the evidence* that was received throughout the entire trial.” (CALCRIM No. 220, italics added; see also CALCRIM No. 223, which informed the jurors, “You must decide whether a fact in issue has been proved based on all of the evidence.”) Thus, even though CALCRIM No. 625 uses the word “may” and did not inform the jurors they were required to consider the evidence of voluntary intoxication, the instructions as a whole conveyed this point to the jury. Therefore, we reject appellant’s claim to the contrary. (Cf. *People v. Anderson* (2007) 152 Cal.App.4th 919, 940 [use of the word “may” in witness credibility instruction did not undermine juror’s obligation to consider all of the evidence; it merely told them how to assess the credibility of witnesses]; *People v. Felix* (2008) 160 Cal.App.4th 849, 859 [same].)

Sentence Enhancement

In addition to finding appellant guilty of first degree murder, the jury also found true enhancement allegations she 1) intentionally discharged a firearm causing death (Pen. Code, § 12022.53, subd. (d)), and 2) personally used a firearm in committing the murder (Pen. Code, § 12022.5, subd. (a)). After the trial court sentenced appellant to 25 years to life for the murder, plus 25 years for the first enhancement, defense counsel asked the court to strike the second enhancement. The court replied, “I believe [that

enhancement] goes away as a matter of law[,]” and the prosecutor agreed. Alas, the court did not address the enhancement beyond that. However, on appeal, the parties agree the court was required to impose the second enhancement and then stay its execution. (*People v. Gonzalez* (2008) 43 Cal.4th 1118, 1122-1123.) Because that was the legally correct thing to do, we will modify the judgment to reflect that sentence. (*Ibid.*)

DISPOSITION

The clerk of the superior court is directed to modify the abstract of judgment and the sentencing hearing minute order dated December 18, 2015, to reflect sentence on the Penal Code section 12022.5, subdivision (a) gun enhancement was imposed but stayed. The clerk is also directed to prepare an amended abstract of judgment reflecting this modification and send a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.

APPENDIX B

Court of Appeal, Fourth Appellate District, Division Three - No. G052948

S243392

IN THE SUPREME COURT OF CALIFORNIA

En Banc

**SUPREME COURT
FILED**

THE PEOPLE, Plaintiff and Respondent,

AUG 30 2017

v.

Jorge Navarrete Clerk

CHRISTINE MARIE REYNOLDS, Defendant and Appellant.

Deputy

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

APPENDIX C



California Rules of Court

Rule 8.532. Filing, finality, and modification of decision

(a) Filing the decision

The Supreme Court clerk must promptly file all opinions and orders issued by the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(b) Finality of decision

(1) Except as provided in (2), a Supreme Court decision is final 30 days after filing unless:

- (A) The court orders a shorter period; or
- (B) Before the 30-day period or any extension expires the court orders one or more extensions, not to exceed a total of 60 additional days.

(2) The following Supreme Court decisions are final on filing:

- (A) The denial of a petition for review of a Court of Appeal decision;
- (B) A disposition ordered under rule 8.528(b), (d), or (e);
- (C) The denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause; and
- (D) The denial of a petition for writ of supersedeas.

(Subd (b) amended effective January 1, 2007.)

(c) Modification of decision

The Supreme Court may modify a decision as provided in rule 8.264(c).

(Subd (c) amended effective January 1, 2007.)

Rule 8.532 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.4 effective January 1, 2003.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(2)(A) recognizes the general rule that the denial of a petition for review of a Court of Appeal decision is final on filing. Subdivision (b)(2)(B)–(D) recognizes several additional types of Supreme Court decisions that are final on filing. Thus (b)(2)(B) recognizes that a dismissal, a transfer, and a retransfer under (b), (d), and (e), respectively, of rule 8.528 are decisions final on filing. A remand under rule 8.528(c) is not a decision final on filing because it is not a separately filed order; rather, as part of its appellate judgment at the end of its opinion in such cases the Supreme Court simply orders the cause remanded to the Court of Appeal for disposition of the remaining issues in the appeal.

Subdivision (b)(2)(C) recognizes that an order denying a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause is final on filing. The provision reflects the settled Supreme Court practice, since at least 1989, of declining to file petitions for rehearing in such matters. (See, e.g., *In re Hayes* (S004421) Minutes, Cal. Supreme Ct., July 28, 1989 ["The motion to vacate this court's order of May 18, 1989 [denying a petition for habeas corpus without opinion] is denied. Because the California Rules of Court do not authorize the filing of a petition for rehearing of such an order, the alternate request to consider the matter as a petition for rehearing is denied."].)

Subdivision (b)(2)(D) recognizes that an order denying a petition for writ of supersedeas is final on filing.