

May 25, 2011

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice
And the Associate Justices

California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102

RE: People v. Beltran, California Supreme Court No. 192644
[Appellate Case No. A124392]
Amicus Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and the Associate Justices :

This letter is being submitted pursuant to California Rule of Court 8.500(g), by the San Francisco Domestic Violence Consortium, in support of the Petition for Review filed in this Court by the Attorney General of California in the above-referenced case.

Identification of Amicus Curiae

The San Francisco Domestic Violence Consortium (DVC) is a coalition of seventeen anti-violence agencies that collaborate to provide services to domestic violence survivors in San Francisco. The DVC works to maximize resources, break isolation, transcend turf issues, and build a cohesive, diverse network of resources and a broader response beyond any one agency alone. DVC services are coordinated to meet the diverse needs of all survivors of domestic violence in all communities in San Francisco.

San Francisco Domestic Violence Consortium

Asian Pacific Islander Legal Outreach • APA • Asian Women's Shelter • Bay Area Legal Aid • Community United Against Violence • Cooperative Restraining Order Clinic • Donaldina Cameron House • Futures Without Violence (formerly Family Violence Prevention Fund) • Jewish Family and Children's Services • Manalive Violence Prevention Programs • P.O.C.O.V.I. • Riley Center of St. Vincent de Paul • Shalom Bayit • Violence Intervention Program (formerly Center for Special Problems) • Volunteer Legal Services Program • Victim Services Division of the DA's Office • W.O.M.A.N., Inc.

Executive Director: Beverly Upton

Interest of Amicus Curiae

This case is of interest to the DVC on both an individual and policy level. Claire Joyce Tempongko, the victim in this case, was killed in San Francisco, and agencies of the DVC have helped to support her family after her killing. The DVC also participates in various efforts to prevent domestic violence and enhance the response of public and private agencies to victims and perpetrators of abuse. The DVC is an active member of the Justice and Courage Project, a city of San Francisco collaborative formed in the aftermath of Ms. Tempongko's homicide, to improve the handling of domestic violence cases by San Francisco criminal justice system agencies. The DVC has an interest in ensuring that perpetrators of domestic violence who kill their current or former partners are held accountable for their actions, and that the laws applied in domestic violence homicides do not remove that accountability.

Argument Supporting Grant of Review

Allowing the decision of the Court of Appeal to stand in this case will distort the standard for provocation in murder cases. The decision will set back the efforts of the past thirty years to recognize domestic violence as a crime and to hold abusive partners accountable for their actions. This ruling has widespread implications for female homicide victims. Forty-one percent of women killed (when there is a known motive) in California are killed by an intimate partner. California Department of Justice, Criminal Justice Statistics Center, Homicide in California 2009, 21 (February 2011). Nationally, thirty-five percent of women who are killed are killed by a current or former intimate partner. FBI, Uniform Crime Report: Crime in the United States, 2009, Tables 1 and 10 (September 2010). Women in California are more likely to be killed by an intimate partner than by a stranger. Marci L. Fukuroda, California Women's Law Center, Murder at Home: An Examination of Legal and Community Responses to Intimate Femicide in California, 1 (2005).

Studies of men who batter show that abusers beat their partners as part of a deliberate pattern of power and control, and not because they "lose control." See Donna Coker, Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill, 2 S. Cal. Rev. L. & Women's Stud. 71, 85 (1992). Homicide is the ultimate and foreseeable result of an abuser's quest for control when he feels he is losing his partner. See Myrna S. Raeder, People v. Simpson: Perspectives on the Implications For the Criminal Justice System: The Admissibility of Prior Acts of Domestic Violence: Simpson and Beyond, 69 S. Cal. L. Rev., 1463, 1499-1500 (1996); Donald Dutton and Susan Golant, The Batterer: A Psychological Profile (Basic Books, 1995) 15 (citing a study that found that 45% of women are killed by a man enraged at an actual or impending separation from his partner). The majority of men who kill their partners have previously used violence or threats against them. See Jacquelyn C. Campbell, If I Can't Have You, No One Can: Power and Control in Homicide of Female Partners, in Femicide: The Politics of Woman Killing 111 (Jill Radford & Diana E.H. Russell eds. 1992); Gary Kleck, Policy Lessons from Recent Gun Control Research, 49 Law & Contemp. Probs., 35, 41 (1986) (in ninety

percent of domestic homicides in one study, the police had on average five prior “domestic disturbance” calls to the home).

This understanding of a batterer’s deliberate use of violence has not penetrated the criminal law of manslaughter, where abusive men are allowed to claim they “lost control” when they killed their partner, even when, as in this case, there was a documented history of abuse and stalking. Men accused of killing their intimate partners frequently claim they were provoked, to mitigate murder to manslaughter. See Coker, supra, at 91. The standard for provocation thus has broad ramifications in domestic violence homicides.

The principle issue on appeal in this case was whether, in order to find that the defendant was “provoked” to kill, a jury must determine (1) only that the provocation was sufficient to cause a loss of judgment in a reasonable person, or (2) whether both the loss of the judgment and the resulting action taken were reasonable. The Court of Appeal determined that to find provocation, a jury must find only that a reasonable person would have lost their judgment, but not that a reasonable person would have lost their judgment in a similar fashion (i.e. by using lethal force). Removing the requirement that the response have an objective component, the court of appeal eliminates accountability for abusers who claim provocation.

Men who kill their intimate partners already benefit from a “domestic violence discount” that holds them less accountable for murder than other killers. See Coker, supra, at 73. Social norms embedded in the very heart of “classic” provocation permit men who kill their female partners to claim they were provoked by mere words or adultery, without actual or threatened physical assault. Id. at 73. The origin of adultery as a provocation to murder stretches back to eighteenth century notions of wives as the property of their husbands, and adultery as the “highest invasion of property.” Id. at 80, citing Regina v. Mawgridge, 84 Eng. Rep. 1107, 1115 (1707).

Even though modern laws have evolved to grant women equality in most areas, criminal manslaughter statutes perpetuate harmful stereotypes about women’s “fault” in their own abuse and abusive men’s inability to control their violence. Coker, supra, at 90, 98. Cases decided decades ago, when our understanding of domestic violence was minimal, continue to set precedent today. This Court, for example, has held that verbal insults and discussions of infidelity by a wife to her husband may be sufficient to support a finding of provocation, even when the husband choked the wife to unconsciousness just days before he strangled her to death after laying in wait for her for twenty hours in her apartment. People v. Berry (1976) 18 Cal. 3d 509, 515. See also People v. Borchers (1958) 50 Cal.2d 321, 328-329 (infidelity of a lover may also support a finding of provocation).

While the standard for provocation permits provocation to be found based on words alone, a review of the case law finds that as applied, only intimate partner killers are able to claim provocation based on non-violent actions or words. Amicus could find no published California cases in which a person who killed someone other than an intimate partner was able to mitigate murder to manslaughter based on verbal insults or non-

violent action alone. Numerous cases involving verbal taunts from strangers, acquaintances and family members have found insufficient provocation to reduce murder to manslaughter. See People v. Najera (2006) 138 Cal.App.4th 212, 226 (calling the defendant “faggot” was insufficient provocation); People v. Manriquez (2005) 37 Cal.4th 547, 586 (calling the defendant a “mother fucker” and taunting him to use his weapon was insufficient provocation); People v. Lucas (1997) 55 Cal.App.4th 721, 739 (evidence of name calling, smirking, or staring at a stranger insufficient provocation); People v. Odell David Dixon (1961) 192 Cal.App.2d 88, 91 (insulting words or gestures from a stranger was insufficient provocation); People v. Breverman (1998) 19 Cal.4th 142, 163-164 (vandalism of an automobile insufficient provocation); People v. Michael Sims Dixon (1995) 32 Cal.App.4th 1547, 1555-1556 (prostitute refusing to have sex in exchange for drugs insufficient provocation); People v. Rich (1988) 45 Cal.3d 1036, 1112 (a stranger victim's resistance against a rape attempt not provocation); People v. Fenenbock (1996) 46 Cal.App.4th 1688, 1704 (the desire for revenge against an alleged molestation of a child not related to defendant was not provocation); People v. Kanawyer (2003) 113 Cal.App.4th 1233, 1246-1247 (a long history of criticism and belittlement from the defendant's grandparents insufficient provocation where the defendant had not seen the victims for over two weeks prior to the killings).

Given the existing bias in the law which minimizes accountability for men who kill their current or former wives and girlfriends, the Court of Appeal's decision in this case is troubling as it even further reduces accountability for men who kill their intimate partners. By eliminating the requirement that a reasonable person would have been provoked to lethal violence, the decision permits abusive killers to further abdicate responsibility for their choice to use homicidal violence in a final attempt to control their partner. In failing to hold abusers to an objective standard of reasonable response, this provocation doctrine “passively sanctions violence against women.” See Emily Miller, Comment: (Wo)Manslaughter: Voluntary Manslaughter, Gender, and the Model Penal Code, 50 Emory L.J. 665, 670 (2001).

The fact finder must be able to measure the reasonableness of the response as well as the reasonableness of the “loss of judgment” or the objective component of the provocation standard is rendered meaningless. Many men experience a wife or girlfriend who is unfaithful; very few end up killing their partner. Most of the ones who do kill have a previous history of abuse against that partner. See Jacquelyn Campbell, op cit. The choice to use lethal violence in response to a provocation should be measured against an objective standard.

The Attorney General's Petition for Review aptly summarizes the conflicting lines of cases in California on provocation. Some cases clearly reference or require that provocation must incite a reasonable person to lethal violence, and some limit the reasonableness inquiry to the initial loss of judgment. Amicus San Francisco Domestic Violence Consortium urges this Court to take review of this case to settle this conflict, which has great import on the consequences for men who kill women in California. When persons who kill their current or former wives or girlfriends are permitted to justify their behavior by blaming their victim for “provoking” them, without an objective

analysis of the reasonableness of the response, it reinforces batterer's erroneous beliefs that they are justified in using violence against their intimate partners.

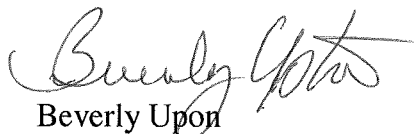
Even using the looser standard required by the Court of Appeal in this case, it is difficult to find provocation as a matter of law in this case. The provocation alleged by the defendant occurred when the victim supposedly said to him as he was leaving, "I knew you were going to walk away someday. That's why I killed your bastard. I got an abortion." Defendant claimed he was so shocked to learn of the victim's pregnancy and abortion that he did not remember what happened next until he found himself holding a bloody knife. These words alone should not have sentenced Ms. Tempongko to death. A reasonable person would not have been provoked by these words. The defendant killed Ms. Tempongko as a final, culminating act of violence just weeks after she ended her relationship with him and started dating another man. His history of abuse against her included four calls in eighteen months to the police, involving incidents in which he: broke a window to get into her apartment; grabbed her and threw her to the ground; pulled her down a hallway; grabbed her to force her to leave with him after she told him she did not want to; grabbed her hair and held her hostage in her bedroom until the police arrived to free her; and violated her restraining order a month before the homicide.

California has made great strides in the past thirty years in creating community resources and legal safeguards for victims of abuse. The criminal law should hold abusers accountable for their violence, especially when that violence escalates to murder. The Attorney General's Petition for Review should be granted so this Court can clarify the proper standard for provocation in manslaughter cases.

Respectfully submitted,



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BAY AREA LEGAL AID
Co-Chair, Steering Committee
San Francisco Domestic Violence Consortium



Beverly Upon
Executive Director
San Francisco Domestic Violence Consortium

PROOF OF SERVICE

I declare that I am employed in the County of San Francisco, California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Bay Area Legal Aid, 1035 Market Street, 6th Floor, San Francisco, California 94103.

On May 26, 2011, I served a copy of the documents described as:

Amicus Letter Brief of San Francisco Domestic Violence Consortium in Support of Petition for Review

on the person(s) named below by placing a true copy thereof addressed as follows, and served the documents in the manner indicated below:

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BY MAIL: I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service on the date this declaration is signed in the ordinary course of business. The names and addresses of the persons served as shown on the envelopes is listed above. The date is May 26, 2011, and the place of business where the correspondence was placed for deposit in the United States Postal Service is: Bay Area Legal Aid, 1035 Market Street, 6th Floor, San Francisco, California 94103. The envelope was sealed and placed for collection and mailing on the date this declaration is signed following ordinary business practice.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 26, 2011, at San Francisco, California.


Minouche Kandell