In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

CHARLES ELMORE,

Defendant and Appellant.

Case No. S188238

SUPREME COURT
FILED

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Second Appellate District, Case No. B216917
Los Angeles County Superior Court, Case No. TA090607
The Honorable Arthur M. Lew, Judge

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TABLE OF CONTENTS

Page

ISSUE PRESENTED 1
INTRODUCTION 1
STATEMENT OF THE CASE 2
STATEMENT OF FACTS 5
A. Prosecution 5
B. Defense 8
1. Appellant's Testimony 8
2. The Defense Forensic Psychiatric Expert 10
3. The Other Defense Witnesses 11
C. Rebuttal 12
SUMMARY OF ARGUMENT 13
ARGUMENT 14
I. THE NARROW DOCTRINE OF VOLUNTARY MANSLAUGHTER BASED ON IMPERFECT SELF-DEFENSE DOES NOT APPLY WHEN THE DEFENDANT IS SUFFERING FROM A DELUSION ALONE 14
A. The Applicable Statutes on Diminished Capacity, Mental Defect, and Malice 15
B. The Applicable Legal Principles Regarding Voluntary Manslaughter Based on Imperfect Self-Defense 16
1. This Court's Rejection of Mental Disorder As a Basis for Voluntary Manslaughter in *People v. Saille* 18
2. The Court of Appeal's Application of *Saille* to Imperfect Self-Defense in *People v. Mejia-Lenares* 20
C. Courts in Other States Have Also Rejected Delusion Alone As a Basis for Supporting A Theory of Imperfect Self-Defense Manslaughter 25

TABLE OF CONTENTS
(continued)

Page

II. APPELLANT'S ATTEMPT TO EXTEND DELUSION TO THE NARROW DOCTRINE OF IMPERFECT SELF-DEFENSE SHOULD BE REJECTED 28

A. This Court Has Previously Refused to Expand Voluntary Manslaughter to Allow for Delusions in *People v. Steele* 29

B. Legislative History, *In re Christian S.*, and *People v. Flannel* Also Demonstrate the Intent to Exclude Delusion As a Basis for Reducing Murder to Voluntary Manslaughter 32

C. Justice Brown's Concurring Opinion in *People v. Wright* Does Not Dictate Otherwise 36

CONCLUSION 40

TABLE OF AUTHORITIES

Page

CASES

Commonwealth v. Sheppard
(Pa. Super. Ct. 1994) 648 A.2d 563 .... 26, 27, 31

In re Christian S.
(1994) 7 Cal.4th 768 .... passim

People v. Anderson
(2002) 28 Cal.4th 767 36

People v. Barton
(1995) 12 Cal.4th 186 16

People v. Best
(1936) 13 Cal.App.2d 606 .... 34, 35

People v. Breverman
(1998) 19 Cal.4th 142 .... 16, 31

People v. Castillo
(1969) 70 Cal.2d 264 14

People v. Cordova
(1939) 14 Cal.2d 308 1

People v. Flannel
(1979) 25 Cal.3d 668 .... passim

People v. Hernandez
(2000) 22 Cal.4th 512 20

People v. Mejia-Lenares
(2006) 135 Cal.App.4th 1437 .... passim

People v. Molina
(1988) 202 Cal.App.3d 1168 .... 18, 19, 20

People v. Rios
(2000) 23 Cal.4th 450 .... 16, 17

People v. Saille
(1991) 54 Cal.3d 1103 .... passim

People v. Steele
(2002) 27 Cal.4th 1230 .... 29, 30

People v. Watson
(1956) 46 Cal.2d 818 31

People v. Wells
(1949) 33 Cal.2d 330 .... 1, 22, 23, 24

People v. Wetmore
(1978) 22 Cal.3d 318 .... 1, 22

People v. Wright
(2005) 35 Cal.4th 964 .... passim

State v. Ordway
(Kan. 1997) 934 P.2d 94 .... 25, 26

State v. Seifert
(Wis. 1990) 454 N.W.2d 346 .... 27, 28

STATUTES

Pa. C.S., Tit. 18, § 2503 26

Pen. Code
§ 25 .... 15, 23
§ 28 .... 1, 15
§ 182 2
§ 187 .... 2, 16
§ 188 .... 15, 19
§ 192 16

CONSTITUTIONAL PROVISIONS

Cal. Const., art. VI, § 13 31

OTHER AUTHORITIES

CALCRIM
No. 571 32
No. 627 .... 3, 4
No. 3428 30

Leg. History, Senate Bill No. 54 34

ISSUE PRESENTED

Does the doctrine of imperfect self-defense apply when the defendant's actual but unreasonable belief in the need to defend himself was based solely on a psychotic delusion?

INTRODUCTION

For decades, it has been the rule in California that a defendant's alleged insanity may not be used as a basis for extending leniency. "It is either a complete defense, or none at all. There is no degree of insanity which may be established to affect the degree of crime." (*People v. Cordova* (1939) 14 Cal.2d 308, 311.) In 1949, this Court established the doctrine of diminished capacity in California law. (*People v. Wells* (1949) 33 Cal.2d 330; see *People v. Wetmore* (1978) 22 Cal.3d 318, 325.) In 1978, this Court held that "a defense of diminished capacity arising from mental disease or defect extends to all specific intent crimes, whether or not they encompass lesser included offenses." (*People v. Wetmore* (1978) 22 Cal.3d 318, 328.) Three years later and in partial response to this Court's decisions, the California Legislature abolished the defense of diminished capacity with the enactment of Penal Code section 28.[1] (See *People v. Saille* (1991) 54 Cal.3d 1103, 1111.)

Meanwhile, in 1979, this Court recognized the doctrine of voluntary manslaughter based on imperfect self-defense as a general principle of law. The doctrine was defined as follows:

> An honest but unreasonable belief that it is necessary to defend oneself from imminent peril to life or great bodily injury negates malice aforethought, the mental element necessary for murder, so that the chargeable offense is reduced to manslaughter.

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[1]All further statutory references will be to the Penal Code.

(*People v. Flannel* (1979) 25 Cal.3d 668, 674.) In 1991, however, this Court narrowed the category of voluntary manslaughter, finding that the law of this State did not permit "a reduction of what would otherwise be murder to nonstatutory voluntary manslaughter due to voluntary intoxication and/or mental disorder." (*People v. Saille*, *supra*, 54 Cal.3d at p. 1107.)

Nonetheless, this Court later held that the doctrine of imperfect self-defense was not abolished by the Legislature when it abolished the defense of diminished capacity. (*In re Christian S.* (1994) 7 Cal.4th 768, 771.) Specifically, this Court found:

> Nothing in the language, history, or context of the amendments compels the conclusion that the Legislature intended to abrogate the well-established doctrine of imperfect self-defense - a doctrine that differs significantly from the doctrine of diminished capacity.

(*Id.* at pp. 771 -772.) Although the narrow doctrine of imperfect self-defense survived, there is no statutory basis or legal precedent which extends this doctrine to a defendant who unlawfully kills someone solely on the basis of a psychotic delusion.

STATEMENT OF THE CASE

In an information filed by the District Attorney of Los Angeles County, appellant was charged with murder in violation of section 187, subdivision (a). Appellant initially pled not guilty and then changed his plea to not guilty by reason of insanity. (1CT 65, 85.) Appellant was convicted by jury of first degree murder in violation of section 187, subdivision (a). (1CT 143-145.) After his conviction, appellant withdrew his not guilty plea by reason of insanity. (2CT 274; see Slip Opn at 11.) The trial court sentenced appellant to 25 years to life in state prison. (2CT 295-298; 9RT 4504-4506.)

Appellant filed an appeal claiming that the trial court erroneously refused to instruct the jury on voluntary manslaughter based on imperfect self-defense due to psychotic delusion and hallucination and in refusing to instruct the jury with CALCRIM No. 627 regarding the effect of hallucination evidence on the elements of premeditation and deliberation. (See Appellant's Opening Brief (AOB) 13-39.)

As to appellant's first claim, the Court of Appeal found that the doctrine of imperfect self-defense could not be based on delusion alone. The Court of Appeal reasoned:

> The doctrine of imperfect self-defense, however, does not apply where the subjective belief in the need to defend oneself arises not from objective circumstances but purely from the defendant's mental illness. (*People v. Mejia-Lenares* (2006) 135 Cal.App.4th 1437.) Imperfect self-defense "is predicated upon negligent perception of facts, not, as in the case of a delusion, a perception of facts not grounded in reality. A person acting under a delusion is not negligently interpreting actual facts; instead, he or she is out of touch with reality. That may be insanity, but it is not a mistake as to any fact." (*Id.* at pp. 1453-1454; see also *People v. Wright* (2005) 35 Cal.4th 964, 982 [conc. opn. of Brown, J.] [imperfect self-defense must be measured against some minimum objective standard to be consistent with case law requiring objective reasonableness to negate malice].)

(Slip Opn. at 12.) The Court of Appeal, thus, determined that the trial court properly declined to offer the jury the option of convicting appellant of voluntary manslaughter based on imperfect self-defense, and properly instructed the jury that it was required to determine whether or not appellant actually formed the specific intent necessary for murder. (*Ibid.*)

The Court of Appeal, however, concluded that there was substantial evidence from which the jury could have inferred that appellant was hallucinating. The Court of Appeal discussed the hallucination instruction as follows:

> CALCRIM No. 627 assists a jury in considering evidence that a defendant was hallucinating when the jury determines whether the defendant acted with deliberation and premeditation. (CALCRIM No. 627.) It potentially negates the premeditation element of first degree murder and reduces a first degree murder to second degree murder. (*People v. Padilla* (2002) 103 Cal.App.4th 675, 677 (*Padilla*).) The instruction reads, "A hallucination is a perception not based on objective reality. In other words, a person has a hallucination when that person believes that he or she is seeing or hearing [or otherwise perceiving] something that is not actually present or happening. [¶] You may consider evidence of hallucinations, if any, in deciding whether the defendant acted with deliberation and premeditation. [¶] The People have the burden of proving beyond a reasonable doubt that the defendant acted with deliberation and premeditation. If the People have not met that burden, you must find the defendant not guilty of first degree murder." (CALCRIM No. 627.)

(Slip Opn. at 13.) The Court of Appeal, accordingly, found that the trial court should have instructed the jury with CALCRIM No. 627 and that this instructional error was not harmless. (Slip Opn. at 13, 19.)

As a result, the Court of Appeal vacated the judgment of conviction of first degree murder and remanded the matter to the trial court with directions permitting the prosecution to retry appellant on first degree murder within 60 days of the filing of the remittitur. Under the Court of Appeal's order, if the prosecution decided not to charge appellant with first degree murder, the trial court must enter a judgment of conviction of second degree murder and sentence him accordingly. (Slip Opn. at 19.)

Before the 60-day period had lapsed, appellant filed a petition for review asking this Court to consider the following issue:

> Under California law, does the doctrine of imperfect self-defense apply in a case in which the defendant's actual, though unreasonable, belief in the need to defend himself was based on delusions and/or hallucinations resulting from mental illness, without any objective circumstances suggestive of a threat?

(Pet. for Review at 2.) On February 2, 2011, this Court granted the petition for review.

STATEMENT OF FACTS

A. Prosecution

On April 29, 2007, appellant was a resident at Right Road Rehabilitation Center, a live-in facility, at 4807 Normandie Avenue in Los Angeles. (5RT 1807, 1809.) Residents of the facility had access to paintbrushes like the one recovered from the crime scene. On that day, appellant left the facility between 10:15 and 10:30 a.m. (5RT 1811-1812, 1898-1899.)

Between 11:00 and 11:30 a.m., appellant visited his grandmother, Naomi Daniels, who lived at 1513 Burris Avenue. (5RT 1814-1817.) Appellant asked her for money. Ms. Daniels told him that she did not have any money. (5RT 1822-1823, 1826.) Appellant left his grandmother's house between 12:30 and 1:00 p.m. (5RT 1827.)

At approximately 1:00 p.m., Brandon Wilson, his sister Brittany Todd, and other family members were at an IHOP in Compton. (4RT 1688-1689, 1749.) Mr. Wilson saw a woman, Ella Suggs, sitting at a bus stop on Compton Boulevard. Ms. Suggs had a red bag and purse. (4RT 1692-1698.)

Mr. Wilson saw appellant, who walked with a limp, walk by Ms. Suggs in a westerly direction toward the courthouse. Appellant was wearing a blue hoodie jacket and black pants. (4RT 1698-1702, 1708.) Appellant walked to the corner and looked in both directions. Appellant then walked back toward the bus stop. Appellant did not appear to be talking to himself or someone who was not there. (4RT 1700-1702.)

Appellant then grabbed Ms. Suggs. He put his hand near Ms. Suggs's neck and yanked her in a downward motion. Appellant pulled on what appeared to be Ms. Suggs's necklace or chain. Ms. Suggs got up, and walked away. Appellant grabbed Ms. Suggs and pulled her down again. Ms. Suggs returned to the bus bench. Appellant then raised both hands over his head and came down on Ms. Suggs's chest area and continued this motion for five to 10 seconds. (4RT 1703-1708.) Mr. Wilson told his family that there was an old lady across the street being beaten. (4RT 1751.)

Once appellant stopped, he ran in an easterly direction toward Burger King. (4RT 1708, 1711, 1752.) Appellant looked around when he was leaving the area. (4RT 1708.) Ms. Suggs fell to the ground. (4RT 1712.)

About 15 or 30 minutes later, Mr. Wilson went to Burger King on Alameda and Compton Boulevards. Mr. Wilson saw appellant on the corner outside the Burger King. (4RT 1714-1715, 1719-1721.) At this point, the police were already at the bus stop. Appellant crossed the street and looked toward the bus stop. He had a puzzled look on his face. Appellant then ran behind the Burger King. (4RT 1723-1726, 1755.)

At approximately 1:00 p.m., Los Angeles County Sheriff's Deputy Daniel Martinez responded to 200 East Compton Boulevard. A woman was rendering aid to Ms. Suggs, who was on her back. (5RT 1854-1855.) Deputy Martinez and four other deputies detained appellant in a parking lot between Ralphs and Burger King. (5RT 1856-1857.) Appellant did not exhibit odd behavior, such as yelling out to anyone in particular or walking up to an inanimate object and talking to it. The deputies told appellant to put his hands behind his back. One deputy approached appellant to handcuff him. Appellant became combative. Appellant pushed and kicked the deputies. During the struggle, appellant said, "I didn't do it." (5RT 1859-1861.)

Mr. Wilson and Ms. Todd identified appellant at a field show-up. (4RT 1730, 1759, 5RT 1861-1863.) Appellant was still wearing the same blue hoodie jacket and black pants. (4RT 1752, 1759-1760, 5RT 1866-1868.)

Ms. Suggs was Laquita Suggs's mother.[2] Ms. Suggs was 53 years old when she died. Ms. Suggs had a routine on the weekends where she would go to the thrift store and then stop by the grocery store. Ms. Suggs wore a gold chain with a turtle necklace, which had a magnifying glass. Ms. Suggs also had glasses on a gold chain which she wore around her neck. (4RT 1659-1664.) After her mother's death, Laquita went through her mother's personal effects. Laquita could not find her mother's turtle necklace and glasses. Laquita never got those items back. (4RT 1665-1669.)

Los Angeles County Sheriff's Sergeant Jeffrey Cochran was assigned to the Homicide Bureau and was the lead detective in this case. (5RT 1886-1887.) At 4:50 p.m., Sergeant Cochran went to the crime scene where he identified items of evidence. (5RT 1887, 1889-1893, 1895-1901.) Sergeant Cochran found a paintbrush with a wooden handle under the bus stop. (5RT 1896-1899.)

Sergeant Cochran also interviewed Ms. Daniels. Ms. Daniels said that appellant came to her house before noon on the date of the incident. (5RT 1914-1915.) Ms. Daniels said that appellant was "fidgety" and anxious and asked her for $20. (5RT 1918.)

Dr. Vladimir Levicky, a Deputy Medical Examiner with the Department of Coroner for Los Angeles County, performed the autopsy on Ella Suggs. Dr. Levicky determined that the cause of death was a stab wound to the chest. Dr. Levicky found that the stab wound suffered by

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[2] In order to avoid confusion, respondent will refer to Ella Suggs as "Ms. Suggs" and Laquita Suggs as "Laquita" in the Statement of Facts.

Ms. Suggs was consistent with being caused by the paintbrush. (6RT 2138-2150.)

On April 29, 2007, blood was collected from appellant for toxicology testing. The results of the toxicology tests were negative. (6RT 2153-2154, 2157-2158.)

B. Defense

1. Appellant's Testimony

Appellant testified in his own defense. In 2001, appellant went to the police department to straighten out some tickets for jaywalking and drinking in public. He was taken to jail. Appellant was then taken to Olive View Medical Center. (7RT 2493-2493, 2496.) Appellant asked why he was being taken to a mental hospital. He was not given an answer. Appellant did not think that he should be in a mental hospital. Appellant did not believe that he had a mental illness but "felt messed up in the head at the time." (7RT 2494-2496, 2498.)

The doctors at Olive View did not tell appellant what was wrong with him. The doctors tied appellant down and gave him medication. (7RT 2495.) Appellant refused to get out of his bed because he was scared. Appellant told the staff at Olive View that he did not want to take medication. When he did this, the staff would strap him down and give him shots. Appellant was not placed in restraints. (7RT 2499-2500.)

Appellant did not want to stay at Olive View. He had problems with his thinking. Many times, appellant refused to take a shower. After some months, appellant left Olive View. Appellant was given medication to take with him. Appellant stopped taking the medication after three or four months. (7RT 2501-2503.)

Appellant was also admitted to Patton State Hospital because of a stalking case. He stayed there for four or five months. Appellant talked to

a doctor every day. Appellant had schizophrenia and paranoia. (7RT 2504-2507.)

At some point after being released from Patton, appellant went to Right Road Recovery on 48th and Normandie. Appellant did not do drugs at Right Road Recovery. (7RT 2507.)

On April 29, 2007, the date of the incident, the pastor at Right Road Recovery and appellant had an argument. The pastor asked appellant to leave. Appellant caught the bus and went to his grandmother's house in Compton. Appellant asked his grandmother for a few dollars, but she did not give him any money. Deniece Bonner gave appellant $5. (7RT 2508-2509.)

Appellant was panhandling to get some more change. Appellant went to a church and spoke with a pastor. Appellant's grandmother and Ms. Bonner showed up at the church and asked appellant to go home with them. Appellant returned home with them for a minute and left again. (7RT 2509-2510.)

Appellant walked around and then sat down at a bus stop on Compton Boulevard and Alameda. Appellant picked up a paintbrush somewhere. Appellant saw a Black woman who was about 50 years old. Appellant was about to drink a beer and "something went wrong." Somebody said something violent to appellant. Appellant "blanked out" at the time, and he did not know if the person was a man or a woman. The only thing that appellant knew was that something went wrong. (7RT 2510-2513.)

Appellant fell to the ground and got up. Somebody did something violent to appellant. Appellant picked up a paintbrush from the ground, made an object out if it, and stabbed someone. Appellant acted out of anger. He did not intentionally kill Ms. Suggs. (7RT 2514-2516, 2533, 2535.)

The police contacted appellant as he was walking toward a market. The police had their guns drawn and told appellant to put his hands up. Appellant complied, and the police took him to the ground. Appellant was arrested by 15 or 20 deputies. He did not resist. Appellant was transported to a hospital. (7RT 2523-2524.) After a couple of days, appellant was transported to county jail. (7RT 2526-2527.)

Appellant was then taken to Los Angeles County USC Hospital. About one week later, appellant was returned to county jail. (7RT 2527-2528.) Appellant was dizzy and "messed up in the head." He did not take a chain or pair of glasses from the woman. (7RT 2516.)

2. The Defense Forensic Psychiatric Expert

Dr. Jack Rothberg was a psychiatrist specializing in forensic psychiatry. Dr. Rothberg interviewed appellant on two occasions several months apart. Dr. Rothberg opined that appellant was suffering from schizophrenia and was psychotic at the time of the incident. Schizophrenia is a major mental condition often associated with hallucinations and delusions. Dr. Rothberg arrived at his opinion based on the description of the incident, the interviews with appellant, and records going back to 2001 documenting appellant's condition. (6RT 2164-2167.)

Dr. Rothberg evaluated appellant's records when he was at Olive View Medical Center from February 16 to March 15, 2001. Appellant had poor "activities for daily living" (ADL's) for most of his stay at Olive View. (6RT 2168-2170.) Appellant laughed and talked to himself on many occasions and refused to take his medications at Olive View. (6RT 2171, 2178.) Appellant was diagnosed with schizophrenia, possibly caused by chronic drug use. (6RT 2175.)

Dr. Rothberg also reviewed appellant's records for his stay at Patton State Hospital from October 4, 2004, to February 28, 2005. Appellant was diagnosed with schizophrenia and anti-social personality disorder at Patton.

He also had poor ADL's, paranoid ideations, disorganized thinking, and incoherent speech. Appellant did not appear to be malingering at Patton. (6RT 2180-2184.)

Dr. Rothberg stated that the absence of controlled substances in appellant's system at the time of the incident indicated his behavior was more likely due to schizophrenia. (6RT 2187.)

3. The Other Defense Witnesses

Sheldon Daniels was appellant's uncle. Mr. Daniels lived with his mother, Naomi Daniels, at 1513 South Burris Avenue. Deniece Bonner was a close friend of Mr. Daniels, "like [his] wife." (7RT 2751-2752, 8RT 3018.)

On April 29, 2007, between 10 a.m. and 12:30 p.m., appellant came by the house and was not dressed well. (7RT 2752-2754, 8RT 3019, 3021.) Appellant seemed "antsy" and animated. He was not himself. (7RT 2753.) Mr. Daniels later told police that appellant appeared to be under the influence of "Sherm," a powerful and hallucinogenic drug. (7RT 2785, 2794.) Ms. Bonner said that appellant was under the influence of a drug or alcohol. (8RT 3021.) Appellant stayed about 30 to 35 minutes. (7RT 2754.)

Later, Ms. Daniels and Ms. Bonner went to the church to get appellant. (7RT 2755, 8RT 3023.) They found appellant in the church parking lot. Appellant was not talking rationally. Ms. Daniels and Ms. Bonner brought appellant back to the house. (8RT 3023-3025.)

Appellant said that he wanted to go back to Right Road Recovery, but did not have any money to catch the Blue Line. Ms. Bonner gave appellant $7 and two bus tokens. Appellant left. (7RT 2754-2755, 8RT 3022, 3025.)

After appellant left, he called Mr. Daniels and said, "Uncle Shel, something's wrong," and "I need my brother [Ebony] to come and get me." Mr. Daniels asked appellant what was wrong with him. Appellant said that

somebody was after him. Mr. Daniels said, "What?" Appellant said someone was pursuing him and said, "Could you call Ebony so Ebony can take me back to the place I go to, Road to Recovery." Mr. Daniels called appellant's brother. (7RT 2757-2758.)

Julia Fleming was a Rehabilitation Therapist at Patton State Hospital. Ms. Fleming was assigned to appellant from the end of 2004 to February 2005. (8RT 3031-3032.) When Ms. Fleming first encountered appellant, he was responding to internal stimuli, which meant that he was hearing voices or seeing things. Appellant's symptoms decreased with medication. Appellant showed improvement over time. (8RT 3034-3035.)

Ms. Fleming stated that there was no correlation between mental illness and intelligence. People with a high degree of mental illness can perform functions like getting on a bus to get to a particular location. (8RT 3052-3053.)

C. Rebuttal

Dr. Kaushal Sharma was a medical doctor specializing in forensic psychiatry. Dr. Sharma worked at the USC Medical Center. (8RT 3335-3336.) On October 2, 2008, Dr. Sharma interviewed appellant. Dr. Sharma also reviewed appellant's medical records, the police reports, and witness statements and interviews. (8RT 3339-3340.)

Dr. Sharma accepted appellant's diagnosis of schizophrenia, even though he did not personally see symptoms of this diagnosis. Dr. Sharma opined that appellant was mentally ill on the day of the instant crime based on appellant's history, but he did not have enough information to determine whether appellant was schizophrenic on that day. Appellant did not report any hallucinations to Dr. Sharma or anyone else. (8RT 3342-3344.)

Schizophrenics generally can form the intent to steal, stab with a sharp object, or kill. However, a schizophrenic on any given case may not be able to form such an intent. (8RT 3344-3346.) Malingering in the

context of psychiatry is either presentation of symptoms which are not there for some type of rational gain or consciously using symptoms which may be there for deceiving somebody else for some type of gain. (8RT 3346.) On May 2, 2007, appellant asked the treatment staff at County USC Medical Center for medications to make him crazy and to write down that he was hearing voices. These statements clearly showed that appellant was trying to fake mental illness and was malingering. (8RT 3348-3349.)

Appellant told Dr. Sharma that he wanted to go to Patton State Hospital for a few years. (8RT 3350.) Appellant's statements to Dr. Rothberg were not consistent with what appellant originally told police. (8RT 3352-3353.)

Appellant did not give Dr. Sharma any statement about the victim regarding delusions. Appellant told Dr. Sharma that he was hearing voices but did not state that he heard voices at the time of the crime. At one point in the interview, appellant said that he had sharpened the paintbrush. At another point, appellant said that he found it on the ground already sharpened. Dr. Sharma did not believe that appellant was psychotic at the time of the incident because he ran away from the scene and fought back when the police tried to arrest him. Appellant knew that he was "in hot water." (8RT 3355-3361.)

SUMMARY OF ARGUMENT

A killing that would otherwise be murder is reduced to voluntary manslaughter based on a theory of imperfect self-defense when a defendant kills in an honest but unreasonable belief that it is necessary to defend himself or herself from imminent peril to life or great bodily injury. A killing under these circumstances negates malice aforethought, the mental element necessary for murder, so that the murder is reduced to manslaughter. But malice aforethought is no longer negated by diminished

capacity, which was a "showing that the defendant's mental capacity was reduced by mental illness, mental defect or intoxication." (*People v. Castillo* (1969) 70 Cal.2d 264, 270.)

Similarly, a defendant's honest, but unreasonable belief that his or her life is in danger must be factually based. And a defendant suffering from a delusion at the time of the killing has no perception of reality. Such a delusion is therefore in the realm of diminished capacity and by definition is not based in fact. Accordingly, the Court of Appeal correctly found that the doctrine of imperfect self-defense, which must be based on the facts as they exist, cannot be based on delusion alone.

ARGUMENT

I. THE NARROW DOCTRINE OF VOLUNTARY MANSLAUGHTER BASED ON IMPERFECT SELF-DEFENSE DOES NOT APPLY WHEN THE DEFENDANT IS SUFFERING FROM A DELUSION ALONE

The question presented in this case is whether voluntary manslaughter on a theory of imperfect self-defense can be based on a defendant's delusion alone. The correct answer, consistent with the applicable statutes, this Court's prior cases, the Court of Appeal's sound reasoning in *People v. Mejia-Lenares* (2006) 135 Cal.App.4th 1437, and the precedent of other jurisdictions, is that a defendant's delusion alone cannot support the basis of voluntary manslaughter on a theory of imperfect self-defense. Extending the narrow doctrine of imperfect self-defense to include delusions would permit a defendant to set up his or her own standard of conduct, which is contrary to the law.

A. The Applicable Statutes on Diminished Capacity, Mental Defect, and Malice

Section 25, subdivision (a) states:

> The defense of diminished capacity is hereby abolished. In a criminal action, as well as any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect shall not be admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged.

Section 28 states in relevant part:

> (a) Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.
>
> (b) As a matter of public policy there shall be no defense of diminished capacity, diminished responsibility, or irresistible impulse in a criminal action or juvenile adjudication hearing.

Section 188 states:

> [M]alice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.
>
> When it is shown that the killing resulted from the intentional doing of an act with express or implied malice as defined above, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice.

B. The Applicable Legal Principles Regarding Voluntary Manslaughter Based on Imperfect Self-Defense

The laws of homicide are well settled in this State. "California statutes have long separated criminal homicide into two classes, the greater offense of murder and the lesser included offense of manslaughter." (*People v. Rios* (2000) 23 Cal.4th 450, 460.)

Murder is defined as "the unlawful killing of a human being, or a fetus, with malice aforethought." (§ 187, subd. (a).) California recognizes two limited forms of voluntary manslaughter, defined as "the unlawful killing of a human being without malice" (§ 192, subd. (a)):

> [A] defendant who intentionally and unlawfully kills lacks malice only in *limited, explicitly defined circumstances*: either when the defendant acts in a "sudden quarrel or heat of passion" (§ 192, subd. (a)), or when the defendant kills in "unreasonable self-defense" - the unreasonable but good faith belief in having to act in self-defense (see *In re Christian S.* (1994) 7 Cal.4th 768 [30 Cal.Rptr.2d 33, 872 P.2d 574]; *People v. Flannel, supra*, 25 Cal.3d 668).

(*People v. Barton* (1995) 12 Cal.4th 186, 199, italics added.) As to this second form of voluntary manslaughter, this Court has explained:

> "[U]nreasonable self-defense" is . . . not a true defense; rather, it is a shorthand description of one form of voluntary manslaughter. And voluntary manslaughter, whether it arises from unreasonable self-defense or from a killing during a sudden quarrel or heat of passion, is not a defense but a crime; more precisely, it is a lesser offense included in the crime of murder.

(*Id.* at pp. 200-201.)

Mitigating circumstances such as unreasonable self-defense reduce an intentional, unlawful killing from murder to voluntary manslaughter "'by *negating the element of malice* that otherwise inheres in such a homicide [citation].' (*Breverman, supra*, 19 Cal.4th 142, 154, italics in original)." (*People v. Rios, supra*, 23 Cal.4th at p. 461.) "*Imperfect self-defense*

obviates malice because that most culpable of mental states 'cannot coexist' with an actual belief that the lethal act was necessary to avoid one's own death or serious injury at the victim's hand. [Citations.]" (*Ibid.*)

This Court has found that the doctrine of imperfect self-defense was not abolished when the diminished capacity defense was eliminated in 1981. (*In re Christian S., supra*, 7 Cal.4th at p. 771.) Despite the survival of the imperfect self-defense doctrine, this Court emphasized its limitations:

> We caution, however, that the doctrine is narrow. It requires without exception that the defendant must have had an *actual* belief in the need for self-defense. We also emphasize what should be obvious. Fear of future harm-no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The defendant's fear must be of *imminent* danger to life or great bodily injury. "'[T]he peril must appear to the defendant as immediate and present and not prospective or even in the near future. *An imminent peril is one that, from appearances, must be instantly dealt with.*' . . . [¶] This definition of imminence reflects the great value our society places on human life." (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1187, 1189 [264 Cal.Rptr. 167], italics added.) Put simply, the trier of fact must find an *actual* fear of an *imminent* harm. Without this finding, imperfect self-defense is no defense.

(*Id.* at p. 783.)

Subsequently, the Court of Appeal concluded that *In re Christian S.* did not allow for diminished capacity to be resurrected and imported into the narrow doctrine of imperfect self-defense by means of delusion:

> Although *Christian S.* settled the question of the imperfect self-defense doctrine's viability following the elimination of the diminished capacity defense, neither it nor any subsequent Supreme Court opinion suggests this "narrow" doctrine (*Christian S., supra,* 7 Cal.4th at p. 783) now covers aspects of diminished capacity or diminished actuality not previously included. Thus, imperfect self-defense remains a species of mistake of fact (see *id.* at p. 779, fn. 3); as such, it cannot be founded on delusion. In our view, a mistake of fact is predicated upon a negligent perception of facts, not, as in the case of a

> delusion, a perception of facts not grounded in reality. [Footnote.] A person acting under a delusion is not negligently interpreting actual facts; instead, he or she is out of touch with reality. That may be insanity, but it is not a mistake as to any fact.

(*People v. Mejia-Lenares*, *supra*, 135 Cal.App.4th at pp. 1453-1454.)

1. This Court's Rejection of Mental Disorder As a Basis for Voluntary Manslaughter in *People v. Saille*

Twenty years ago, this Court addressed a similar issue to the one in this case. In *Saille*, this Court addressed the issue of whether the law in California permits a reduction of murder to nonstatutory voluntary manslaughter, i.e., manslaughter based on imperfect self-defense due to voluntary intoxication and/or mental disorder. (*People v. Saille*, *supra*, 54 Cal.3d at p. 1107.)

The defendant in *Saille* relied primarily on *People v. Molina* (1988) 202 Cal.App.3d 1168, to argue that the then-new legislation barring the diminished capacity defense did not limit his ability to reduce an intentional killing to voluntary manslaughter as a result of mental illness or involuntary intoxication. (*People v. Saille*, *supra*, 54 Cal.3d at pp. 1112-1113.) In *Molina*, the defendant killed her 18-month-old son by stabbing him repeatedly in the heart. (*People v. Molina*, *supra*, 202 Cal.App.3d at p. 1170.) The defendant then tried to kill herself. (*Ibid.*) A psychiatrist testified that the defendant had auditory hallucinations and suffered from delusions that her husband and mother were going to kill her and that people were out to get her and her son. (*Id.* at pp. 1170-1171.) The trial court instructed the jury on first and second degree murder, but refused to instruct on voluntary manslaughter. (*Id.* at p. 1172.)

The Court of Appeal in *Molina* concluded:

> The inclusion of the language in [Section 28,] subdivision (a) regarding actual formation of mental states shows that the

> Legislature did not foreclose the possibility of a reduction from murder to voluntary manslaughter where malice is lacking due to mental illness, or a further reduction to involuntary manslaughter where intent to kill is not present for the same reason.

(*People v. Molina*, *supra*, 202 Cal.App.3d at p. 1174.) The Court of Appeal thus held that trial court erred in refusing to give requested instructions on the alternatives to acquittal, i.e., voluntary and involuntary manslaughter. (*Id.* at p. 1175.)

In *Saille*, however, this Court criticized the reasoning in *Molina* "since the court's analysis failed to consider the effect on the definition of malice of the amendment to section 188, which was part of the same legislative package as sections 25, 28, and 29." (*People v. Saille*, *supra*, 54 Cal.3d at p. 1113.) This Court then found that section 188 repudiated diminished capacity as a viable basis for nonstatutory manslaughter:

> Pursuant to the language of section 188, when an intentional killing is shown, malice aforethought is established. Accordingly, the concept of "diminished capacity voluntary manslaughter" (nonstatutory manslaughter) recognized in *Conley*, *supra*, 64 Cal.2d 310 [], is no longer valid as a defense.

(*People v. Saille*, *supra*, 54 Cal.3d at pp. 1113-1114, italics in original.) This Court then harmonized the abolishment of diminished capacity with the existing law allowing mental conditions to be evaluated in considering the issue of malice:

> Sections 22 and 28 state that voluntary intoxication or mental condition may be considered in deciding whether the defendant actually had the required mental state, including malice. These sections relate to *any* crime, and make no attempt to define what mental state is required. Section 188, on the other hand, defines malice for purposes of murder. In combination, the statutes provide that voluntary intoxication or mental condition may be considered in deciding whether there was malice as defined in section 188. Contrary to defendant's contention, we see no conflict in these provisions.

(*People v. Saille*, *supra*, 54 Cal.3d at pp. 1115-1116.)

In this way, this Court rejected the reasoning of *Molina*, which ostensibly created a new category of voluntary manslaughter where malice was absent due to mental illness. Based on the analysis of the applicable statutes, this Court found that diminished capacity manslaughter no longer existed as a valid defense. Accordingly, it held that the law of this State no longer "permits a reduction of what would otherwise be murder to nonstatutory voluntary manslaughter due to voluntary intoxication and/or mental disorder." (*People v. Saille*, *supra*, 54 Cal.3d p. 1107; see *People v. Mejia-Lenares*, *supra*, 135 Cal.App.4th at p. 1450.) Because the doctrine of imperfect self-defense was not present in *Saille*, this Court declined to "decide whether it has been affected by Proposition 8 and the 1981 legislation." (*People v. Saille*, *supra*, 54 Cal.3d at p. 1107, fn. 1.)

2. The Court Of Appeal's Application of *Saille to* Imperfect Self-Defense in *People v. Mejia-Lenares*

Building on this Court's decision in *Saille*, the Court of Appeal in *People v. Mejia-Lenares*, *supra*, 135 Cal.App.4th 1437, squarely addressed the issue of whether an imperfect self-defense theory of voluntary manslaughter could be based on delusion alone. In that case, the defendant fatally stabbed the victim allegedly out of fear that the victim was transforming into the devil. (*Id.* at p. 1445.) The trial court refused the defendant's modified instruction, which would have instructed the jurors to consider evidence of his hallucination on the issue of whether he "'killed in the actual but unreasonable belief in the necessity to defend oneself against imminent peril to life or great bodily injury.' [Footnote.]" (*Ibid.*)

The Court of Appeal noted that under this Court's authority, guilt and insanity are separate issues in criminal law although there may be some overlap. (*People v. Mejia-Lenares*, *supra*, 135 Cal.App.4th at pp. 1455-1456; see *People v. Hernandez* (2000) 22 Cal.4th 512, 520; *People v.*

Saille, supra, 54 Cal.3d pp. 1111-1112.) The court stressed that "[a] lack of the requisite mental state is not the same, however, as insanity." (*People v. Mejia-Lenares, supra,* 135 Cal.App.4th at p. 1456.) As to this, the Court of Appeal stated the point of an insanity defense:

> The plea of insanity is thus necessarily one of 'confession and avoidance.' [Citation.] 'Commission of the overt act is conceded' but punishment is avoided 'upon the sole ground that at the time the overt act was committed the defendant was [insane].' [Citation.]" (*Hernandez,* at pp. 520–521, italics omitted.)

(*Ibid.*)

The *Mejia-Lenares* court then examined the relationship between insanity and delusion on the one hand, and imperfect self-defense and mistake of fact on the other. In this regard, the Court of Appeal explained that a delusion was in contrast to a mistake of fact:

> Persons operating under a delusion theoretically are insane since, because of their delusion, they do not know or understand the nature of their act or, if they do, they do not know that it is wrong. By contrast, persons operating under a mistake of fact are reasonable people who have simply made an unreasonable mistake. To allow a true delusion—a false belief with no foundation in fact—to form the basis of an unreasonable-mistake-of-fact defense erroneously mixes the concepts of a normally reasonable person making a genuine but unreasonable mistake of fact (a reasonable person doing an unreasonable thing), and an insane person. Thus, while one who acts on a delusion may argue that he or she did not realize he or she was acting unlawfully as a result of the delusion, he or she may not take a delusional perception and treat it as if it were true for purposes of assessing wrongful intent. In other words, a defendant is not permitted to argue, "The devil was trying to kill me," and have the jury assess reasonableness, justification, or excuse as if the delusion were true, for purposes of evaluating state of mind.

(*People v. Mejia-Lenares, supra,* 135 Cal.App.4th at p. 1456.) The court further reasoned that permitting imperfect self-defense based on delusions

would defeat the purpose of having separate guilt and insanity determinations:

> To hold otherwise would undercut the legislative provisions separating guilt from insanity. Allowing a defendant to use delusion as the basis of unreasonable mistake of fact effectively permits him or her to use insanity as a defense without pleading not guilty by reason of insanity, and thus to do indirectly what he or she could not do directly while also avoiding the long-term commitment that may result from an insanity finding. If a defendant is operating under a delusion as the result of mental disease or defect, then the issue is one of insanity, not factual mistake. To allow a mistake-of-fact defense to be based not on a reasonable person standard but instead on the standard of a crazy person would undermine the defense that is intended to accommodate the problem.

(*Id.* at pp. 1456-1457.)

Accordingly, the Court of Appeal concluded that the imperfect self-defense form of voluntary manslaughter cannot be based on delusion alone. (*People v. Mejia-Lenares, supra*, 135 Cal.App.4th at p. 1461.)

Despite the thorough and sound reasoning in *Mejia-Lenares*, appellant criticizes the opinion, arguing that the Court of Appeal's analysis of this Court's decision in *Wells* was flawed. Appellant appeals for this Court to return to the standard of voluntary manslaughter in *Wells*, stating it was "decided long prior to *Flannel* in which this Court determined that the defendant was entitled to negate malice by relying upon imperfect self-defense premised solely on evidence of mental illness. [Citation.]" (OBM at 18-28.) But this suggestion would amount to an acceptance of diminished capacity, a doctrine no longer recognized in California.

This Court has noted that *Wells* was the "seminal decision which established the doctrine of diminished capacity in California law" holding that evidence of diminished mental capacity, whether caused by intoxication, trauma, or disease, can be used to show that a defendant did not have a specific mental state essential to an offense. (*People v.*

Wetmore, *supra*, 22 Cal.3d at p. 323; see *People v. Saille*, *supra*, 54 Cal.3d at p. 1109.) Since then, the doctrine of diminished capacity has been abolished. (§ 25, subd. (a).) Thus, the doctrine relied upon by *Wells* no longer exists in California.

Furthermore, the defendant in *Wells* was not suffering from a delusion, as was appellant. Two doctors examined the defendant in *Wells* and found that he was suffering from a

> "state of tension"; i.e., a condition in which "the whole body and mind are in a state of high sensitivity to external stimuli, and the result of this state is to cause the victim or patient to react abnormally to situations and external stimuli. *One of the characteristics of this state is that the patient possesses an abnormal fear for his personal safety and that an external stimulus apparently threatening that personal safety will cause the patient to react to it more violently and more unpredictably than the same stimulus applied to a normal person. In other words, that the threshold of the fear of the patient is lower to the extent where stimuli which would normally not cause fear in the patient will cause fear in the patient suffering from this state*." (Italics added.)

(*People v. Wells*, *supra*, 33 Cal.2d at pp. 344-345.)

Appellant nonetheless claims that the psychiatric testimony used to describe the defendant's mental condition in *Wells* "rather than using the word 'delusion' or another term is a distinction without a difference." (OBM at 19.) Appellant, however, improperly equates the condition of the defendant in *Wells* with a delusion. Instead, this Court found that Wells' condition was not the equivalent of insanity. (*People v. Wells*, *supra*, 33 Cal.2d at p. 344.) The *Wells* case, the court in *Mejia-Lenares* observed,

> involved a belief which, although skewed by mental illness, was nevertheless factually based. In that case, the defendant suffered from a condition in which his body and mind were in a state of high sensitivity to external stimuli, causing him to react abnormally to situations and such stimuli. His threshold of fear was lower than that of an ordinary person, so that stimuli which

> would normally not cause fear would cause fear in him. (*People v. Wells, supra,* 33 Cal.2d at pp. 344–345.)

(*People v. Mejia-Lenares, supra*, 135 Cal.App.4th at pp. 1449-1450.) Therefore, the defendant in *Wells* was reacting to fact-based circumstances, although his reaction was greater due to his high sensitivity.

On the other hand, appellant's attack on Ms. Suggs was allegedly based purely on his delusion. That delusion was not grounded in any facts as they existed. Unquestionably, Ms. Suggs, who was 53 years old, never provoked appellant in any manner whatsoever. In fact, Ms. Suggs twice retreated from appellant's assaults before he fatally stabbed her. (See 4RT 1703-1708.) Consequently, unlike appellant, "the defendant [in *Wells*] was not suffering from a delusion, but from an abnormal reaction to reality." (*People v. Mejia-Lenares, supra*, 135 Cal.App.4th at p. 1450.)

Appellant next argues that the *Mejia-Lenares* decision "erroneously equated imperfect self-defense with a mistake of fact defense and reasoned that because in their view mistake of fact requires a negligent perception of actual facts, imperfect self-defense cannot be founded on a delusion." Appellant suggests that this analysis is flawed because mistake of fact is a complete defense whereas imperfect self-defense is a partial defense. (OBM at 20-21.) However, appellant's claim ignores that this Court likened imperfect self-defense to mistake of fact. (See *In re Christian S., supra*, 7 Cal.4th at p. 779, fn. 3; *People v. Mejia-Lenares, supra*, 135 Cal.App.4th at p. 1453.)

The *Mejia-Lenares* decision correctly applied principles that this Court pronounced in *Saille* and *In re Christian S.* Accordingly, respondent urges this Court to follow the sound reasoning of *Mejia-Lenares* and specifically find that delusion is not a basis for imperfect self-defense.

C. Courts in Other States Have Also Rejected Delusion Alone As a Basis for Supporting a Theory of Imperfect Self-Defense Manslaughter

The consistent holdings of other state courts on this issue also support respondent's position. (See *People v. Mejia-Lenares, supra*, 135 Cal.App.4th at p. 1458 ["[c]ourts in other states have held that defendants whose belief in the need to use self-defense stems entirely from mental delusions and paranoia, cannot avail themselves of the doctrine of imperfect self-defense"].)

For example, in *State v. Ordway* (Kan. 1997) 934 P.2d 94, the defendant was tried and convicted of second-degree murder for killing his parents. (*Id.* at p. 96.) At trial, a psychiatrist had testified that the defendant was legally insane at the time he killed his parents. (*Id.* at p. 100.) The psychiatrist stated:

> "I believe as I said before that he was suffering from a major depressive reaction with psychotic features, principally the delusional idea that his parents were hurting his children and auditory hallucinations of his children yelling for him to save them, and also the idea that if [he] did not act, he would be condemned to hell. I believe that these ideas were what guided his behavior at the time to the extent that he did not know what he was doing in any kind of rational way."

(*Ibid.*)

The defendant claimed that the jury should have been instructed on voluntary manslaughter "because the evidence showed that he killed his parents without malice and for the purpose of preventing them from harming his children." (*State v. Ordway, supra*, 934 P.2d at p. 100.) The Kansas Supreme Court rejected this claim, holding that its version of imperfect self-defense voluntary manslaughter:

> has no application where a defendant raises the defense of insanity, and more specifically, the 'unreasonable but honest

belief' necessary to support the 'imperfect right to self-defense manslaughter' *cannot be based upon a psychotic delusion.*"

(*Id.* at p. 104, italics added.)

Along the same lines, in *Commonwealth v. Sheppard* (Pa. Super. Ct. 1994) 648 A.2d 563, a defendant in Pennsylvania was convicted of the first degree murder of his friend. The defendant and his friends, including the victim Karl Kerr, were drinking in the basement of the defendant's home. (*Id.* at pp. 564-565.) The victim and defendant argued and fought during the course of the evening. (*Id.* at p. 565.) The homicide "occurred as a result of a steadily escalating process of drinking and horseplay until [defendant] used excessive and unwarranted force with an ax to retaliate for Kerr's aggressive behavior." (*Id.* at p. 568.)

On appeal, the defendant claimed that his trial counsel was ineffective for failing to argue psychological testimony was relevant to help establish defendant's state of mind when he acted "under an unreasonable belief the killing was justifiable." (*Commonwealth v. Sheppard*, *supra*, 648 A.2d at pp. 566-567.) The superior court of Pennsylvania found: "The facts of record belie the likelihood that any objective basis existed for a subjective, although unreasonable, belief that appellant was in danger and acted in self-defense." (*Id.* at p. 567.)

As aptly noted by the *Sheppard* court:

Where the appellant goes astray is in the creation of a third category of mental impairment to diminish or relieve culpability by creating a subjective state of mind to permit an imperfect self-defense. Title 18 Pa. C.S. § 2503(b) does not contemplate diagnosed mental disorders as a shield to a defendant under these circumstances but rather speaks to a misperception of the factual circumstances surrounding the event. [Citation.] The classic case is the situation where a person comes to the door in the middle of the night to ask to use the telephone because of a breakdown, and the occupant, believing a burglar or robber is attempting to gain entrance, shoots in the belief he is acting in self-defense. To extend this concept to the degree proposed by appellant to include a paranoid mental state would open the flood gates to

> imperfect self-defense claims based entirely on a subjective state of mind when the objective component is not present.

(*Commonwealth v. Sheppard*, *supra*, 648 A.2d at p. 569.)

The same principles applied in a Wisconsin case too. There, the defendant confronted two officers at the front door, closed the door, and then fired a gun through the door. (*State v. Seifert* (Wis. 1990) 454 N.W.2d 346, 347-348.) The defense presented evidence of the defendant's mental condition at the time of the shooting and his substantial history of mental illness. (*Id.* at p. 348.) At the close of trial, defense counsel requested an instruction on attempted imperfect self-defense manslaughter. (*Id.* at p. 349.) The trial court rejected the instruction. (*Ibid.*) The defendant was found guilty of two counts of attempted first-degree murder. (*Ibid.*) In the second phase of the trial, a psychiatrist testified that "the shooting occurred because of Seifert's schizophrenia and delusional thinking." (*Ibid.*)

After determining that the crime of attempted imperfect self-defense manslaughter existed under Wisconsin law, the Wisconsin Supreme Court addressed the following issue:

> Whether, in Seifert's bifurcated trial for attempted first-degree murder, a jury instruction on the lesser-included offense of attempted imperfect self-defense manslaughter was available to Seifert, at the guilt phase of the trial, when he presented evidence of an actual, unreasonable belief in the need to use force that stemmed entirely from mental delusions and paranoia.

(*State v. Seifert*, *supra*, 454 N.W.2d at p. 351.)

After analyzing another Wisconsin case, a case from New Jersey, and a case from Arkansas, the Wisconsin Supreme Court concluded that "the doctrine of imperfect self-defense manslaughter was meant to apply to the situation where the defendant has unnecessarily or unreasonably killed in self-defense." (*State v. Seifert*, *supra*, 454 N.W.2d at p. 352.) In

concluding that it was evident the defendant was not entitled to an instruction on imperfect self-defense, the court reasoned:

> In this case, the record shows that Seifert's actual belief in the need to use force was caused entirely by his insane delusions. Clearly, Seifert did not make an error of judgment or perception in interpreting his situation, nor did he possess a negligently-formed belief about his situation, thus rendering his actions unreasonable under the objective, prudent-person standard. Rather, his actions, propelled by his insane delusions, display an utter incapability to reason or to comprehend or judge the nature of his situation. The doctrine of imperfect self-defense manslaughter was simply never intended to cover situations such as this one where it is entirely the defendant's mental disease or defect, not an error in judgment or perception or a negligently-formed perspective of the situation, that motivates the defendant's actions. [Footnote 5.]

(*Ibid.*)

In sum, as other state courts have correctly found, the doctrine of imperfect self-defense was never intended to apply to situations, like this, where the defendant's acts were based on a delusion alone.

II. APPELLANT'S ATTEMPT TO EXTEND DELUSION TO THE NARROW DOCTRINE OF IMPERFECT SELF-DEFENSE SHOULD BE REJECTED

As is evident from the cases discussing imperfect self-defense, this doctrine is a narrow one and should not be extended to include delusions as a basis for voluntary manslaughter. Despite this precept, appellant claims that he is entitled to expand the doctrine of imperfect self-defense to include psychotic delusions. (OBM at 14-15.) Appellant's proposed addition to the narrow doctrine of imperfect self-defense, however, is tantamount to setting up his own standard of conduct, which is contrary to the law.

A. This Court Has Previously Refused to Expand Voluntary Manslaughter to Allow for Delusions in *People v. Steele*

This Court addressed a similar contention in the context of heat-of-passion voluntary manslaughter in *People v. Steele* (2002) 27 Cal.4th 1230. In *Steele*, the defendant picked up a female hitchhiker, had sexual intercourse with her, and then killed her. The defendant later told police that he had "snapped" after drinking a lot of liquor. (*Id.* at pp. 1238-1239.) At trial, the defendant requested a special instruction on heat of passion, which the trial court denied. (*Id.* at pp. 1251-1252.)

This Court found that the trial court properly denied the defendant's instruction on heat of passion since there was no provocation. (*People v. Steele*, *supra*, 27 Cal.4th at p. 1253.) Evidence that Steele was intoxicated, suffered various mental deficiencies, had a psychological dysfunction due to traumatic experiences in the Vietnam War, and just "snapped" when he heard the helicopter did not satisfy the objective element of voluntary manslaughter. (*Ibid.*) This Court then found:

> As far as manslaughter is concerned, defendant's evidence, if anything, shows diminished capacity, not heat of passion. "Provocation and heat of passion are not synonymous with diminished capacity." [Citation.] "The essence of a showing of diminished capacity is a 'showing that the defendant's mental capacity was reduced by *mental illness, mental defect or intoxication*.'" [Citation.] However, the Legislature *abolished* the defense of diminished capacity before defendant committed this crime. [Citations.] Only diminished *actuality* survives, i.e., the jury may generally consider evidence of voluntary intoxication or mental condition in deciding whether defendant actually had the required mental states for the crime. [Citations.] The trial court instructed the jury on this point.

(*Ibid*, fn. omitted.)

This Court then found that defendant Steele's psychological evidence could not be admitted on voluntary manslaughter, but was admissible to

show whether he had the actual mental state for the crime of murder. (*People v. Steele*, *supra*, 27 Cal.4th at p. 1253; see *People v. Saille*, *supra*, 54 Cal.3d at p. 1116.) Similarly, the trial court in this case also properly refused to instruct the jury on imperfect self-defense due to appellant's psychological evidence, i.e., his hallucinations and delusions, but instructed the jury with CALCRIM No. 3428, which allowed them to consider evidence of mental defect to determine whether appellant acted with the requisite mental state for murder. (2CT 264.) Thus, the jury was permitted to consider evidence of appellant's mental condition, i.e., the purported hallucinations and delusions, in deciding whether he actually had the required mental states for the crimes of murder and robbery. (*People v. Steele*, *supra*, 27 Cal.4th at p. 1253; *People v. Saille*, *supra*, 54 Cal.3d at p. 1116.)

Appellant now impermissibly seeks to expand the use of psychological evidence as a basis for imperfect self-defense manslaughter. Although the issue in *Steele* was the heat-of-passion form of voluntary manslaughter, appellant's attempt to expand the use of psychological evidence in this case would also "in effect, resurrect the abolished defense of diminished capacity in the guise of an expanded form of heat of passion manslaughter." (*People v. Steele*, *supra*, 27 Cal.4th at pp. 1254 -1255, italics added.)

Appellant further claims that "as a matter of policy, equity, and logic, it makes no sense to hold that a person who kills in the actual, but unreasonable belief in the need to use self-defense because of a severe mental illness that caused him to misperceive reality should be considered to have acted with malice . . . ." (OBM at 31.) However, as discussed above, logic and practice dictate that insanity and guilt be considered separately; the blending of these phases in this way would result in gamesmanship and a lack of criminal accountability, not equity.

Besides, the evidence shows that appellant's attack on Ms. Suggs was entirely unprovoked. Appellant's delusion prevented him from facing the circumstances as they existed at the time of the killing. According to his own testimony at trial, appellant "blanked out" at the time of the killing. He did not even know whether the intended victim was a man or a woman. The only thing that appellant remembered was that something went wrong. (7RT 2510-2513.) Appellant then testified that he fell to the ground and got up. At this point, appellant claimed that some unidentified person did something violent to him. Appellant then picked up a paintbrush, made an object out if it, and stabbed someone whom he could not identify. Appellant's only memory of the incident was that he did not kill anyone intentionally. (7RT 2514-2516, 2533.) Appellant's self-serving version of what occurred differs from that of an eyewitness who saw appellant grab Ms. Suggs two times and try to pull her down before stabbing her to death. (See 4RT 1703-1708.) Thus, even if appellant's claim that he was operating under a delusion when he attacked Ms. Suggs was to be believed, the facts of the case belie that the delusion caused him to act in an honest and unreasonable belief under the circumstances in the need to defend himself. (See *Commonwealth v. Sheppard, supra,* 648 A.2d at p. 567.)

For similar reasons, the failure to instruct the jury on imperfect self-defense was harmless. "[T]he failure to instruct sua sponte on a lesser included offense in a noncapital case is, at most, an error of California law alone, and is thus subject only to state standards of reversibility." (*People v. Breverman* (1998) 19 Cal.4th 142, 165.) Even assuming that there is misdirection of the jury based on the trial court's failure to instruct sua sponte on a lesser-included offense, such an error "is not subject to reversal unless an examination of the entire record establishes a reasonable probability that the error affected the outcome." (*Ibid.*, citing Cal. Const., art. VI, § 13 and *People v. Watson* (1956) 46 Cal.2d 818, 836.) Because

appellant's story was far-fetched and inconsistent, it is not reasonably probable that had the jury been instructed with CALCRIM number 571, it would have found that appellant acted under imperfect self-defense. Thus, any instructional error was harmless.

B. Legislative History, *In re Christian S.*, and *People v. Flannel* Also Demonstrate the Intent to Exclude Delusion As a Basis for Reducing Murder to Voluntary Manslaughter

Appellant seeks support for his claim in this Court's *Christian S.* decision, which discussed the legislative history of the 1981 amendments, particularly, a letter to the Governor purportedly showing an intent to allow imperfect self-defense by means of delusion. (OBM 10-11.) Neither *Christian S.* nor the legislative history, however, supports appellant's position.

In *Christian S.*, this Court noted that "those involved in the legislative process made clear the purpose was to eliminate the diminished-capacity defense." (*In re Christian S.*, *supra*, 7 Cal.4th at p. 781.) This Court then recounted that a letter to the Governor's office containing "an extensive analysis of the amendments by the Legislature's Joint Committee for the Revision of the Penal Code was titled: The Diminished Capacity Defense: Why Senate Bill 54?" In that letter, the committee explained that

> "[t]he defenses of *diminished capacity, diminished responsibility, and irresistible impulse* are repealed . . . ." (Letter from Joint Com. for the Revision of the Pen. Code to Governor's Deputy Legal Affairs Sect., Sept. 4, 1981, italics added.) There was no suggestion of eliminating imperfect self-defense. To the contrary, the same analysis stated that "to reduce murder to manslaughter, *except in the delusional self-defense kinds of cases*, there will have to be a showing of provocation, the traditional basis of manslaughter, to reduce murder to manslaughter." (*Ibid.*, italics added.)

(*Ibid.*)

This communication to the Governor's office further stated:

> 4. The defenses of diminished capacity, diminished responsibility, and irresistible impulse are repealed. (See attached analysis for full discussion on this change)
>
> SB 54 does permit the introduction of evidence of mental illness to show the absence of intent, but not to show a diminished capacity to form intent. Thus, where a soldier has a history of delusions, and during a flashback he perceives his neighbor to be an enemy soldier, and shoots, evidence of the history and effect of delusions is admissible to show the mistake of fact.
>
> Evidence of mental illness or intoxication will not be admissible to negate malice aforethought, in cases where the defendant intended to kill the victim. People vs Conley is overruled, and to reduce murder to manslaughter, except in the delusional self defense kinds of cases, there will have to be a showing of provocation, the traditional basis of manslaughter, to reduce murder to manslaughter.

(Letter from Joint Com. for the Revision of the Pen. Code to Governor's Deputy Legal Affairs Sect., Sept. 4, 1981, pg. 2.)

Contrary to appellant's contention, the letter shows an intention to require actual provocation in order to reduce murder to manslaughter. Further, the phrase "except in the delusional self-defense kinds of cases" appears to refer to the previous paragraph where the author discusses a soldier with a history of delusions and operating under a flashback and equates this with a mistake of fact. Critically, this language does not suggest that the delusional soldier should be convicted of voluntary manslaughter under an imperfect self-defense theory. Instead, the author appears to believe that the soldier would be acquitted of *any* crime if the jury finds that his delusion prevented him from forming the requisite intent.

As the *Mejia-Lenares* court *observed* regarding the language "except in the delusional self-defense kinds of cases":

> This statement does not persuade us that the Legislature intended imperfect self-defense to apply to cases where the defendant's actual belief is unsupported by any factual basis, since the legislative history suggests the Legislature did not focus on the question of imperfect self-defense. [Footnote 24.] (*Id.* at pp. 781–782.) . . . Indeed, if the word "delusional" were read literally, it could be argued the Legislature meant to eliminate nonstatutory manslaughter in all cases *except* those involving self-defense based on true delusions. Instead, it is apparent the reference is to unreasonable self-defense situations.

(*Id.* at p. 1455 & fn. 24.)

In analyzing the legislative history to support the conclusion that imperfect self-defense was not abolished, this Court stated: "But there is no discussion, not a single mention, of also eliminating imperfect self-defense." (*In re Christian S., supra,* 7 Cal.4th at p. 782.) Likewise, there is not a single reference or mention in the legislative history of Senate Bill Number 54 which shows the Legislature intended to create a new class of imperfect self-defense based on delusion alone. (See Leg. History, Senate Bill No. 54.) Thus, appellant's claim that the legislative history of Senate Bill Number 54 supports the theory of imperfect self-defense based on delusion alone because one letter in that history uses the phrase "except in the delusional self-defense kinds of cases" is too thin a reed to support a doctrinal transformation of imperfect self-defense.

Furthermore, in *People v. Flannel* (1979) 25 Cal.3d 668, this Court implicitly recognized that there was an objective component to imperfect self-defense, when it cited with approval the following passage from *People v. Best* (1936) 13 Cal.App.2d 606, 610:

> If the circumstances are both adequate to raise and sufficient to justify a belief in the necessity to take life in order to save oneself from such a danger, where the belief exists and is acted upon, the homicide is excusable upon a theory of self-defense [citing cases]; while, if the act is committed under the *influence of uncontrollable fear of death or great bodily harm,* caused by the circumstances, but without the presence of all the ingredients

> necessary to excuse the act on the ground of self-defense, the killing is manslaughter. (Italics added.)

(*People v. Flannel*, *supra*, 25 Cal.3d at p. 676.)

Justice Brown later explained that this language in *Best* meant that imperfect self-defense must be rooted in reality:

> This language tends to ground imperfect self-defense in some objective circumstance that the defendant could conceivably interpret as threatening. Thus, it was not the absence of objective circumstances, but the unreasonable response to those circumstances—a miscalibration—that characterized imperfect self-defense.

(*People v. Wright* (2005) 35 Cal.4th 964, 980 (conc. opn. of Brown, J.).) Thus, the defendant's actions leading to a claim of imperfect self-defense must be committed under the influence of fear or death *caused by the circumstances*. Appellant's delusion alone cannot supply these circumstances. If that were the case, a defendant would be allowed to set up his own standard of conduct to support a theory of voluntary manslaughter.

Respondent urges this Court not to expand the narrow doctrine of imperfect self-defense by allowing it to include a new category based on delusion alone. In *In re Christian S.*, *supra*, 7 Cal.4th 768, the People suggested that the doctrine of imperfect self-defense would lead to a proliferation of unfounded self-defense claims. (*Id.* at p. 783.) In response to this concern, this Court found:

> We leave that concern to the Legislature. We caution, however, that the doctrine is narrow. It requires without exception that the defendant must have had an *actual* belief in the need for self-defense. We also emphasize what should be obvious. Fear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The defendant's fear must be of *imminent* danger to life or great bodily injury. "'[T]he peril must appear to the defendant as immediate and present and not prospective or even in the near

> future. *An imminent peril is one that, from appearances, must be instantly dealt with.'* . . . [¶] This definition of imminence reflects the great value our society places on human life." (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1187, 1189 [264 Cal.Rptr. 167], italics added.) Put simply, the trier of fact must find an *actual* fear of an *imminent* harm. Without this finding, imperfect self-defense is no defense.

(*Ibid.*, italics in original.) This Court should heed its own caution and avoid creating a new class of voluntary manslaughter based on delusional, imperfect self-defense. (See, e.g., *People v. Anderson* (2002) 28 Cal.4th 767, 783 ["[r]ecognizing killing under duress as manslaughter would create a new form of manslaughter, which is for the Legislature, not courts, to do"].)

C. Justice Brown's Concurring Opinion in *People v. Wright* Does Not Dictate Otherwise

Appellant also relies upon Justice Brown's concurring opinion in *People v. Wright*, *supra*, 35 Cal.4th 964, as support for his proposition that a theory of imperfect self-defense voluntary manslaughter can be based on delusion alone. Appellant focuses on Justice Brown's recognition of "'the problem of how, without a statutory provision, we can fictionally impute malice where there is no actual malice in the defendant's delusional inner world. [fn.]'" (OBM at 13-14, quoting *People v. Wright*, supra, 35 Cal.4th at p. 984 (conc. opn. of Brown, J.).)

Quite the opposite of appellant's suggestion, a careful reading of Justice Brown's concurrence does not support a theory of imperfect self-defense based on delusion alone. In fact, Justice Brown's concurrence, joined by Justices Moreno and Baxter, criticized the separation of the imperfect self-defense form of voluntary manslaughter from the heat-of-passion form. Justice Brown stated that the Court's decision in *Flannel* "to conjure a *nonstatutory* category of voluntary manslaughter" led to several

problems. (*People v. Wright, supra,* 35 Cal.4th at p. 981 (conc. opn. of Brown, J.).)

Particularly, Justice Brown feared that *Flannel* could remove an objective component to imperfect self-defense. And rather than endorsing delusion as a basis for imperfect self-defense as appellant suggests, Justice Brown criticized such a standard as "fly[ing] in the face" of 90 years of legal precedent requiring that a defendant show some objective reasonableness to negate malice. (*People v. Wright, supra,* 35 Cal.4th at pp. 982-983 (conc. opin. of Brown, J.).) Justice Brown further recognized:

> In fact, the requirement announced in *Best, supra,* 13 Cal.App.2d at page 610, 57 P.2d 168, and reiterated in our cases (see *Christian S., supra,* 7 Cal.4th at p. 776; *Flannel, supra,* 25 Cal.3d at p. 676), that the defendant's fear must be "caused by the circumstances" indicates that, since its inception, imperfect self-defense has required a showing of some objective circumstances that the defendant could conceivably interpret as a threat.

(*Ibid.*) Therefore, Justice Brown concluded that defendant's fear had to be grounded in some objective criteria indicating that he or she was facing a threat. Appellant's delusion, by contrast, was not based on any objective circumstances from which one could conceivably interpret a threat.

Justice Brown also discussed the problem with defendants whose belief in the need for self-defense was based on an unreasonable fear in response to a minor provocation. Justice Brown explained:

> The anomaly in this reasoning is that, in the case of heat-of-passion manslaughter, we have *always* required some objective reasonableness, though the act of manslaughter is inherently unreasonable. A person who *unreasonably and delusionally* reacts to a *minor* provocation may have the same subjective mental state as a person who *reasonably and accurately* reacts to a *major* provocation, but in the case of heat-of-passion manslaughter, the law imputes malice (*regardless of the defendant's actual mental state*) "when no considerable provocation appears." (§ 188; cf. *People v. Padilla* (2002) 103

> Cal.App.4th 675, 678–679 [126 Cal.Rptr.2d 889].) Thus, the defendant's actual subjective mental state is, at least to that extent, deemed to be irrelevant, and a murder conviction is appropriate.

(*People v. Wright*, *supra*, 35 Cal.4th at p. 984 (conc. opn. of Brown, J.,), italics in original.)

Justice Brown recognized this difficult situation in applying the theory of imperfect self-defense stating:

> With respect to imperfect self-defense, however, we are dealing with a judicially created gloss on the voluntary manslaughter statute, and therefore the statutory basis for imputing malice to a defendant who acts in response to a very minor or wholly nonexistent threat is uncertain. We can cite as a limitation on imperfect self-defense the long-standing objective requirement that it be "caused by the circumstances" (*Best, supra,* 13 Cal.App.2d at p. 610; see *Christian S., supra,* 7 Cal.4th at p. 776; *Flannel, supra,* 25 Cal.3d at p. 676), but doing so does not necessarily solve the problem of how, without a statutory provision, we can fictionally impute malice where there is no actual malice in the defendant's delusional inner world.

(*People v. Wright*, *supra*, 35 Cal.4th at p. 984 (conc. opn. of Brown, J.).) Critically, Justice Brown explained that defendants who claimed to be delusional at the time of the killing still had a remedy:

> If we were to hold that imperfect self-defense is unavailable to a delusional defendant who cannot identify sufficient provocation, that defendant would not be without a remedy. The defendant would be able to invoke the defense of unconsciousness (§ 26) or insanity (§ 25, subd. (b)), if applicable.

(*Id.* at p. 984, fn. 2 (conc. opn. of Brown, J.).)

Justice Brown traced the problems and anomalies with the imperfect self-defense doctrine "to our misstep in 1979 in *Flannel,* when we waved our judicial magic wand and created a new nonstatutory category of manslaughter rather than keeping imperfect self-defense linked to heat-of-passion manslaughter." (*People v. Wright*, *supra*, 35 Cal.4th at p. 985

(conc. opn. of Brown, J.).) Justice Brown suggested the problem could be easily corrected by placing the imperfect self-defense doctrine "once again" within the doctrine of heat-of-passion manslaughter. (*Ibid.*) Justice Brown urged the Legislature to do so. (*Id.* at pp. 985-986.) However, Justice Brown never advocated for a separate class of imperfect self-defense on delusion alone. In fact, Justice Brown criticized the creation of the doctrine of imperfect self-defense by judicial fiat. The creation of a new class of voluntary manslaughter on a theory of imperfect self-defense based on delusion alone would expand the narrow doctrine of imperfect self-defense beyond the limits envisioned by the Legislature and this Court. Thus, this Court should reject appellant's attempt to expand the narrow doctrine of imperfect self-defense to include homicides in which the provocation was due solely to the defendant's delusion.

No objective circumstances existed which suggested appellant was provoked in any manner. In fact, his attack on Ms. Suggs was wholly unprovoked. In effect, appellant is asking this Court to allow his delusion to be the basis for the provocation and the reaction to that provocation, i.e., the unreasonable fear to defend oneself, as a basis for imperfect self-defense. This result would allow any delusional defendant to set up his or her own standard of imperfect self-defense even though he or she faced no provocation whatsoever.

In short, the narrow doctrine of imperfect self-defense does not permit a defendant's delusion to circumvent the requirement that a person be defending himself or herself from a perceived but *real* threat. And this Court should not expand the doctrine to include delusions because doing so would circumvent the elimination of the diminished capacity defense and undermine the purposes of having separate guilt and insanity phases in a criminal trial.

CONCLUSION

Accordingly, for the foregoing reasons, respondent respectfully requests this Court to affirm the judgment of the Court of Appeal.

Dated: August 10, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13-point Times New Roman font and contains 12,020 words.

Dated: August 10, 2011

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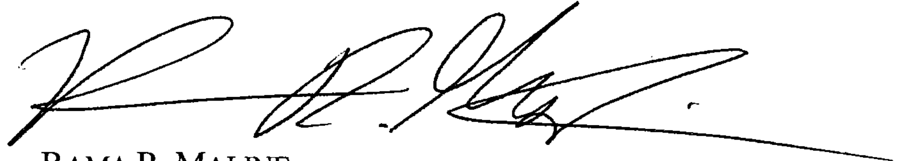

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DECLARATION OF SERVICE BY U.S. MAIL

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Case No.: **S188238**

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On August 11, 2011, I served the attached **ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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K. Amioka
Declarant

Signature

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