



May 27, 2011

To the Honorable Tani Gorre Cantil-Sakauye, Chief Justice
and the Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

RE: People v. Tare Nicholas Beltran
Supreme Court No. S192644
Court of Appeal No. A124392

To the Honorable Chief Justice and Associate Justices:

This letter in support of a petition for review is submitted pursuant to rule 8.500(g) of the California Rules of Court by the Alameda County District Attorney as Amicus Curiae.

I. THE INTEREST OF AMICUS CURIAE

Nancy O'Malley is the elected district attorney of Alameda County. The Alameda County District Attorney's Office has a strong interest in protecting victims of all crimes, and in particular victims of homicide and domestic violence. The Office charges more than 70 murder cases a year and last year tried more than 30 murder cases to jury. The protection of families and the prosecution of domestic violence is also a high priority for the Office. The Alameda County District Attorney is also concerned that this court give guidelines to prosecutors in this county and throughout California that will enable them to draw clear distinctions between murder and manslaughter when charging, prosecuting and arguing homicide cases.

II. WHY THE COURT SHOULD GRANT REVIEW

The Alameda County District Attorney requests the Court to grant review for two reasons: to distinguish between murder and manslaughter in a way that protects the safety of victims as well as the rights of defendants, and to promote clarity in the prosecution of homicide cases.

A. The Definition of "Heat of Passion" Must Encompass Reasonable Limitations Already Recognized by the Courts.

The court of appeal reversed the murder conviction because of a perceived ambiguity in the jury instructions defining the “heat of passion” necessary to negate malice and thereby to reduce a murder to a manslaughter. “What negates malice is simply *a state of mind obscured by passion*. ... Thus, in the context of voluntary manslaughter, provocation is sufficient if it would trigger such a *state of mind* in a reasonable person.” (*People v. Beltran* (March 30, 2011 A124392) (*emphasis in original*)). The import of this holding is that there need be no showing that the defendant’s homicidal reaction was reasonably related to the provocation.

The court of appeal’s emphasis on state of mind as the *sole* basis for reducing a homicide from murder to manslaughter fails to consider other discussions in the case law of heat of passion. In discussing the heat-of-passion defense, the courts often consider whether the ordinarily reasonable person would become “homicidally enraged” by the provocation. In *People v. Avila*, for example, the Court observed that “Reasonable people do not become homicidally enraged when hearing ... a fleeting gang reference or challenge.” (*Id.* at 706.) In *People v. Superior Court (Henderson)* the court stated that heat-of-passion would mitigate a murder “only in those situations where the provocation would trigger a homicidal reaction in the mind of an ordinary reasonable person under the given facts and circumstances.” (*People v. Superior Court (Henderson)* (1986) 178 Cal.App.3d 516 at p. 524, fn. 4.) Under this analysis, a killing is not mitigated by heat of passion unless the ordinarily reasonable person would be provoked into a homicidal rage by the conduct in question.

The failure to consider whether the killer’s reaction is proportionate to the provocation could lead to many injustices. This is especially true in homicides involving domestic violence where defendants frequently raise the heat-of-passion defense. The instant case is a good example. A woman’s decision to have an abortion might be shocking to the father of the unborn child. Arguably such a shock could impair the judgment of a reasonable person in the same position. But by no means would her decision amount to a provocation sufficient to mitigate an act of homicide by the putative father. What if a parent at a crowded department store looks away for a moment, just long enough for a toddler to become lost. News of a lost child may be shocking to many parents. Upon hearing the news, the other parent might reasonably suffer from fear and panic so great as to impair her judgment. Nevertheless she would not be entitled to a manslaughter conviction if she killed the offending parent on the spot.

B. Clarity in the Definition of “Heat of Passion” Promotes the Administration of Justice.

In addition to the concerns about protection of murder and domestic violence victims, the Alameda County District Attorney is also concerned about the administration of justice. The instant case is but one of several that demonstrate how prosecutors might be caught between the

“homicidal rage” and the “rash judgment” interpretations of the heat-of-passion defense. This confusion can lead to mistakes in charging, resolving or arguing homicide cases. These mistakes could lead to reversals or to miscarriage of justice or both. A clear pronouncement from this Court would significantly lessen the risk of such a result.

For the foregoing reasons, the Alameda County District Attorney respectfully urges the court to grant review in the instant case.

Very truly yours,

by:

NANCY E. O’MALLEY,
District Attorney
Micheal O’Connor,
Assistant District Attorney
ATTORNEYS FOR AMICUS CURIAE