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June 8, 2017

Clerk
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

SUPREME COURT
FILED

JUN 12 2017

Jorge Navarrete Clerk

Deputy

Re: People v. Soto, case no. S236164
Appellant Soto's reply to amicus curiae brief
of Ray Haynes

Dear Sir or Madame,

Appellant Soto submits this letter brief pursuant to Rule 8.520(f)(7) to address the amicus curiae brief (amicus br.) of former state legislator Haynes.

Amicus Haynes does not deny or address, and thus implicitly concedes, the following contentions in Appellant Soto's briefs:

1. The legislative history of former Penal Code §22 (current §29.4) does not mention or contain a single word discussing imperfect self-defense.
2. Current Penal Code §29.4 provides that intoxication is relevant to both express malice and specific intent.
3. Specific intent generally includes knowledge.
4. People v. Blakeley (2000) 23 Cal.4th 82, 88-89, decided several year after the subject amendment to §22, holds that "the mitigating effects of imperfect self-defense on implied malice murder are the same as they would be on express malice murder - - namely, reduction to voluntary manslaughter."

Amicus' various contentions are inapplicable or mistaken. Appellant needs only to address a few.

1. Amicus' statement of facts asserts that the victim's body was found "in the apartment hallway." (amicus br. 15) That is not quite accurate. The body was found in the building hallway, not in the apartment hallway. The body was found outside the apartment, approximately 20' away from the apartment's front door, near the stairway leading down to the first floor.

Because of this incorrect understanding as to where the body was found, amicus seems not to fully appreciate the facts of this case. (See amicus br. 55-61) The knife fight began inside the apartment. Then Appellant Soto fled from the apartment. He ran down the building hallway, toward the stairway leading downstairs. The quantity of blood on the building hallway floor and hallway walls supports Soto's testimony that the fight recommenced in that location. Because Soto tried to escape in this manner, he sufficiently withdrew from the fight, and sufficiently made Ramirez aware of that withdrawal, so as to regain the right to self-defense. People v. Salazar (2016) 63 Cal.4th 214, 249 (original attacker may regain the right to self-defense if he withdraws from fight, and causes opponent to be aware of that withdrawal, and if opponent then re-initiates the fight with deadly force); People v. Nem (2003) 114 Cal.App. 4th 160, 167-168 (ibid.).

2. Amicus presents various sociological and policy arguments as to why society might want to eliminate intoxication as a defense of any kind. (See, e.g., amicus br. 23-31, 35-36, 50-54) However, such arguments are beside the point. When the Legislature amended former §22, it rejected such positions and explicitly reaffirmed that intoxication remains relevant to both express malice and specific intent.

3. Amicus argues: "the Legislature carefully weighed the policy considerations and concluded voluntary intoxication did not support mitigating a homicide from murder to manslaughter." (amicus br. 13) Amicus is wrong. Neither current Penal Code §29.4, nor its legislative history, says a word about imperfect self-defense. Nor does that statute limit the applicability of imperfect self-defense. (See amicus curiae brief of California Public Defenders Association, analyzing the legislative history.) The 1994 amendment to the intoxication statute merely abrogated the holding in People v. Whitfield (1994) 7 Cal.4th 737 that intoxication could serve as a stand-alone defense to implied malice second degree murder. The amendment did not go further.

Amicus' contention is similar to the argument made by the Attorney General in In re Christian S., (1994) 7 Cal.4th 768, 774-778. The AG argued there that the 1981 statutory amendments to former Penal Code §28, which eliminated the defense of diminished capacity, also eliminated the defense of imperfect self-defense. In In re Christian S. this Court rejected those contentions. It held that nothing in the relevant amendments said anything about imperfect self-defense. Id., 7 Cal.4th at 774-778. Those amendments merely prevented diminished capacity from serving as a stand-alone defense to second degree implied malice murder. The same logical analysis should apply here.

Because nothing in the 1995 amendments to former Penal Code §22(b) said anything about the relationship between intoxication and imperfect self-defense, those amendments are similarly inapplicable to imperfect self-defense.

4. Amicus argues that intoxication is not relevant to prove imperfect self-defense, as long as the prosecution proceeds on a theory of implied malice murder. (amicus br. 23-31) Amicus is incorrect. Virtually every murder committed with express malice, namely, an intent to kill, is also committed with implied malice, namely, a conscious disregard of human life. Under amicus' contention that, whenever the prosecution proceeds on the theory, or alternate theory, of implied malice murder, evidence of intoxication is not admissible, the use of intoxication would be barred in virtually all imperfect self-defense cases. That contention is contrary to law. Penal Code §29.4 explicitly makes evidence of intoxication admissible regarding express malice and to specific intent, both of which factors are relevant to imperfect self-defense.

5. Amicus argues that "an armed intruder who forcibly enters the victim's home is not entitled to instruction on any form of self-defense regardless of his level of intoxication." (amicus br. 55 ff.) Amicus is incorrect. Amicus overlooks the line of authority, discussed above, that an original attacker may regain the right to self-defense if he withdraws and notifies the original victim by word or deed that he is withdrawing, and if the original victim re-initiates the fight with deadly force. People v. Salazar, supra; People v. Nem, supra

6. In conclusion, adopting amicus' position would require this Court to completely rewrite the law on imperfect self-defense, because Penal Code §29.4, upon which amicus relies, says not a word about imperfect self-defense. Any such rewriting is unwarranted. In any event, that would be a job for the Legislature, not for the courts.

Respectfully submitted,



/s/ STEPHEN B. BEDRICK

STEPHEN B. BEDRICK

Attorney for Appellant Soto

SBB:sbm

PROOF OF SERVICE BY MAIL

I, S.B. MERIDIAN, hereby declare under penalty of perjury that I am a citizen of the United States, over the age of eighteen years, and not a party to the within action; that my business address is 1970 Broadway, Suite 1200, Oakland, CA 94612.

On the date below, I served the following documents:

APPELLANT'S REPLY TO BRIEF OF AMICUS CURIAE

by placing a true copy thereof, enclosed in a sealed envelope, postage prepaid, in the United States mail addressed as follows, except as to those parties where an e-mail address is given, and they have been served through the TrueFiling system:

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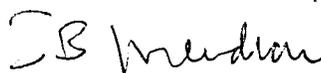
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DATE: June 8, 2017



/s/ S. B. MERIDIAN
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