**PEOPLE v. SOSA**

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*THE PEOPLE, Plaintiff and Respondent, v. RODRIGO SOSA, Defendant and Appellant.*

Court of Appeals of California, Second District, Division Five.

Filed January 9, 2012.

***Attorney(s) appearing for the Case***

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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

TURNER, P. J.

**I. INTRODUCTION**

A jury convicted defendant, Rodrigo Sosa, of second degree murder. (Pen. Code,[1](https://www.leagle.com/decision/incaco20120109020#fid1) § 187, subd. (a).) The jury found defendant personally used a deadly and dangerous weapon, a knife, in the commission of the murder. (§ 12022, subd. (b)(1).) The jury rejected both self-defense and imperfect self-defense theories. Defendant was sentenced to 16 years to life in state prison. Defendant asserts it was prejudicial error to instruct the jury the right to self defense may not be contrived and to refuse a requested heat of passion instruction. We modify the judgment to reflect a $40 rather than a $30 court security fee. We affirm the judgment in all other respects.

**II. THE EVIDENCE**

**A. Prosecution Evidence**

On July 1, 2009, the victim, Craig Wright, was standing in a food line in Hollywood waiting for breakfast to be served. There were several people ahead of him. Defendant got in line behind Mr. Wright. Defendant may have "cut" the line. Mr. Wright said to defendant, "Hey, what are you doing?" Defendant said, "I was here, I was ahead of you." Mr. Wright said: "No, you weren't . . . you got here after [me] so you were behind [me]." Defendant said, "[W]ell, we'll see. Mr. Wright answered, "[Y]eah, we'll see."

Ronald Griffith, who was standing in line with Mr. Wright, described the encounter. Defendant and Mr. Wright were not screaming or yelling. They were both calm, very quiet. It was not a heated exchanged. But they were both determined to stand their ground. Mr. Griffith told investigating officers he thought the two men were going to have a fist fight. Defendant and Mr. Wright continued to stand next to each other, facing the front of the line. Five minutes later, the food truck arrived. Volunteers started to off-load food and drinks. As the line moved forward, Mr. Griffith was behind Mr. Wright. Defendant was standing to the left of Mr. Wright. Defendant and Mr. Wright were shoulder to shoulder. Suddenly, defendant turned 90 degrees toward Mr. Wright. Defendant raised his right hand and made a forward motion. The motion was made towards Mr. Wright's side. Defendant's hand was wrapped in a black plastic bag. Defendant repeated the forward hand motion three to four times. Mr. Wright clutched himself and fell against a cyclone fence. Mr. Griffith saw that Mr. Wright did not have anything in his hands. Mr. Griffith looked at defendant's right hand. No weapon was visible. Mr. Wright slid down the fence to the pavement. Defendant was still standing there. Mr. Griffith saw blood on Mr. Wright's shirt. Only then did Mr. Griffith realize what had happened. Mr. Griffith said to defendant, "You fucker, you knifed the man." Defendant never said a word. People ahead of them began to turn around. Mr. Griffith said, "[T]he son-of-a-bitch just stabbed the man up." Defendant reached down, picked up his backpack, and started walking away. He was walking "somewhat fast," but not running. Mr. Griffith never heard Mr. Wright yell or scream at defendant. Nor did Mr. Griffith see Mr. Wright argue with defendant. Mr. Griffith never saw Mr. Wright elbow defendant. Mr. Griffith never saw Mr. Wright take out a knife or any other weapon.

Christopher Wehrle was working as a volunteer that morning, serving juice. Mr. Wehrle was 10 feet from Mr. Wright at the time of the stabbing. Mr. Wehrle did not see anything in Mr. Wright's hands. Mr. Wehrle saw defendant push Mr. Wright. Mr. Wright was pushed so hard he hit the fence and fell down. Defendant walked past Mr. Wehrle and down the street. Defendant had a black plastic liquor store bag in his hands. Mr. Wehrle described defendant: ". . . This guy was so nonchalant . . . [¶] . . . [¶] So calm. It was like he just pushed this guy, and then he was perfectly still, just not any emotion on his face, just calm."

Randall Morgan was working as a volunteer security guard for the food program that morning. He saw Mr. Wright, who was a regular, near the front of the line. Mr. Morgan realized Mr. Wright had been stabbed. Mr. Morgan then told two of his security people to follow defendant, who was walking away. Mr. Morgan administered aid to Mr. Wright. Mr. Morgan noted that Mr. Wright did not have anything in his hands. Mr. Morgan testified: "I was looking for his camera. He always carries his camera around his wrist hanging down from his right hand. [¶]. . . [¶] That was not there either."

Frederick Scott was also volunteering as a security guard at the food line. His attention was attracted to what Mr. Scott described as, "[A] little ruckus, not a loud ruckus, it was kind of quiet . . . ." A man ran by and said someone is getting stabbed. Defendant walked past Mr. Scott toward the street. Mr. Scott followed defendant. Defendant had something greenish in his left hand. It looked like a sweater or a shirt draped over his hand. Defendant was walking "very" calmly.

Roy Kissine was performing community service picking up trash that morning. Mr. Kissine assisted in efforts to aid Mr. Wright. Mr. Kissine did not see anything in Mr. Wright's hands. Nor did Mr. Kissine see any knives or other weapons lying on the ground in the area.

Mr. Wright died of multiple stab wounds. One fatal wound was inflicted with enough force to push Mr. Wright's chest in an inch and a half. The knife penetrated his ribs, struck his heart and injured a major artery. The wound was an inch longer than the blade of defendant's knife. A second wound went through Mr. Wright's arm and into his torso, penetrating his liver. A third wound went through the back of Mr. Wright's arm and penetrated his back.

**B. Defense Evidence**

Defendant testified he was in the food line. Defendant was standing behind Mr. Wright for more than an hour. They did not have any contact until the food truck arrived. When the food truck arrived, defendant testified, "[P]eople started to get in [the] front [of the line] and they were pushing us back." Mr. Wright elbowed defendant in the stomach two or three times. This hurt defendant's stomach. Defendant said to Mr. Wright, "Watch out." He told Mr. Wright to watch what he was doing. Mr. Wright turned around. Defendant testified that then, "He told me if I wanted to get hurt." Defendant thought he was being threatened. Defendant answered, "[G]o ahead." Defendant testified, "I thought he was going to do something to me." Defendant testified he responded by saying, "Go ahead, . . . [b]ecause it seemed to me that [Mr. Wright] was like very self-confident, very sure of himself." That, according to defendant "pissed" him off. Defendant admitted he got "a little" angry. He was upset. Mr. Wright was very sure of himself. Defendant conceded he did not like that self-assuredness. Defendant described Mr. Wright as "petite." By contrast, defendant weighed "something like" over 200 pounds. Mr. Wright took a knife out of a computer bag he was holding. Mr. Wright swung the knife at defendant. This swinging motion cut defendant's finger. Defendant took his own knife out of his pants pocket because, as he testified, "I saw that I was in danger." Defendant also testified, "That he could stab me somewhere in my body." Mr. Wright had the knife in his hand. Mr. Wright had already cut defendant. Defendant thought he was going to be hurt "big" in his words. He was afraid he could lose his life. Defendant stabbed Mr. Wright "[a]round" two times. Defendant stabbed Mr. Wright first in the chest. At trial, defendant was asked, "When you stabbed him on his chest the first time, he didn't do anything to you, did he?" Defendant answered, "No." It happened quickly. After being stabbed in the chest, Mr. Wright turned away from defendant. Mr. Wright's back was to defendant. Nonetheless, defendant continued to stab Mr. Wright. Between the first and second time he was stabbed, Mr. Wright dropped his knife to the ground. As he was being stabbed the second time, Mr. Wright's knife was falling to the ground. Defendant testified that his intention was to "defend" himself. Defendant intended only to "cut" Mr. Wright. Defendant became scared and started to walk away. Defendant did not think anyone had seen what he had done, so he walked away calmly.

On cross-examination, the following occurred: "[Deputy District Attorney Ana Ashvanian]: Okay. So he has the knife out, he had cut the tip of your finger according to you, correct, Mr. Sosa? [¶] A Yes. [¶] Q And that's what you observed to be the danger? [¶] A Yes, that he could continue hitting me. [¶] Q Hitting me, meaning with the knife? [¶] A Yes. [¶] Q And that's what you observed to be the danger? [¶] A Yes. [¶] Q And then that's when you said yesterday that you took out the knife? [¶] A Yes. [¶] Q And that's when you went for his heart? [¶] A Not in his heart, it was in his ribs. [¶] . . . [¶] Q And then you said that you were scared because you thought you were going to be hurt, big. [¶] Do you remember that? [¶] A Yes." At another point the following occurred when defendant was cross-examined: "[The prosecutor]: [Y]ou could have punched that man, knocked him down to the ground with one fist that morning; isn't that right? [¶] A. . . . [Y]es. If he had hit me, I would have also hit him, and he would have just had a fist fight." Defendant testified, "Well, maybe I could have, but I didn't dare do it because he had a knife." Defendant reiterated that his intent was to defend himself: "By Ms. Ashvanian: Mr. Sosa, so your claim is you were protecting yourself against Mr. Wright, correct? [¶] A. Yes. [¶] . . . [¶] Q . . . Now, Mr. Sosa, when you used that knife on Mr. Wright, what was the purpose? What were you trying to do with that knife to this man? [¶] A I saw my life in danger. [¶] Q Sir, My question is: What were you going to do with that knife when you pulled it out of your pocket? [¶] A Just to cut him."

On redirect examination, defendant testified that when he saw the knife, he thought, "That my life was in danger." When questioned on redirect examination, defendant was asked, "[Y]ou testified that Mr. Wright seemed sure of himself . . . what did you mean by that?" Defendant explained Mr. Wright seemed very sure of himself. By that, defendant testified he meant, "[T]hat he was carrying something, . . . [s]omething like to fight with." Defendant was mad and upset because he had been cut. The following occurred when defendant was questioned by his lawyer: "[Ms. Dixon]: Can you explain to the jury why you took out your knife and cut Mr. Wright? [¶] A To defend myself. [¶] Q Against what? [¶] The thing is I thought that he was going to cut me more."

**III. DISCUSSION**

**A. Contrived Self-Defense**

The trial court instructed the jury pursuant to CALCRIM No. 3472, "A person does not have the right to self-defense if he or she provokes a fight or quarrel with the intent to create an excuse to use force." Defense counsel objected to the contrived self-defense instruction stating: ". . . I would object to [CALCRIM No.] 3472, given the state of the evidence . . . it would be my argument [defendant] didn't provoke the initial. And I understand there's a conflict in the evidence regarding that."

On appeal, defendant asserts the instruction was prejudicial and undermined his state and federal due process right to a fair trial. Defendant argues: "In the instant case, there was no evidence that appellant provoked a fight with Craig Wright in order to create an excuse to use force. According to Ronald Griffith, after three people cut in line in front of [defendant], he moved up to stand next to Craig Wright, who had been ahead of him. When Mr. Wright objected, [defendant] asserted his right to the place he had taken. According to Mr. Griffith, the two did not raise their voices during this conversation. Mr. Griffith testified that the use of force happened about five minutes later when the line began to move forward. Thus, on these facts there was no evidence that [defendant] changed his position in line with the intent to provoke a fight or quarrel so that he could use deadly force against Mr. Wright." (Citations to the record omitted.)

Our Supreme Court has explained: "`The trial court has the duty to instruct on general principles of law relevant to the issues raised by the evidence [citations] and has the correlative duty "to refrain from instructing on principles of law which not only are irrelevant to the issues raised by the evidence but also have the effect of confusing the jury or relieving it from making findings on relevant issues." [Citation.] "It is an elementary principle of law that before a jury can be instructed that it may draw a particular inference, evidence must appear in the record which, if believed by the jury, will support the suggested inference. [Citation.]" [Citation.]' (*People v. Saddler* (1979) [24 Cal.3d 671](https://www.leagle.com/cite/24%20Cal.3d%20671), 681.)" (*People v. Alexander* (2010) [49 Cal.4th 846](https://www.leagle.com/cite/49%20Cal.4th%20846), 920-921; accord, *People v. Coffman* (2004) [34 Cal.4th 1](https://www.leagle.com/cite/34%20Cal.4th%201), 102.) We apply the *Watson* standard of prejudice review. (*People v. Moye* (2009) [47 Cal.4th 537](https://www.leagle.com/cite/47%20Cal.4th%20537), 555-556; *People v. Coffman, supra,* 34 Cal.4th at p. 101; *People v. Prieto* (2003) [30 Cal.4th 226](https://www.leagle.com/cite/30%20Cal.4th%20226), 249.)

The trial court reasonably concluded instruction with CALCRIM No. 3472 was proper. There was substantial evidence defendant: armed himself with a knife; attacked Mr. Wright without provocation; and executed the murder in a calm yet brutal and violent manner. The jury reasonably could have concluded defendant sought a quarrel with Mr. Wright. Moreover, the instruction did not prejudice defendant. The conflicts in the evidence were clear. The jury's potential resolution of those conflicts led in concrete directions. Either Mr. Wright had a knife or he did not. Either defendant had cause to defend himself, to believe in a need to defend himself, or he did not. It is not reasonably probable the contrived self-defense instruction confused the jury in the resolution of those factual issues. Further, the trial court instructed the jury to disregard any instruction it found inapplicable. We presume the jury understood and followed that instruction. (*People v. Frandsen* (2011) [196 Cal.App.4th 266](https://www.leagle.com/cite/196%20Cal.App.4th%20266), 278; *People v. Olguin* (1994) [31 Cal.App.4th 1355](https://www.leagle.com/cite/31%20Cal.App.4th%201355), 1381.) The evidence of defendant's guilt was very strong. His self-defense claim was uncompelling. Even if we view the evidence in the light most favorable to the defense, the jury reasonably could have found it was unreasonable for defendant to react to being cut on the finger with a knife by brutally stabbing a man to death. It is not reasonably probable the verdict would have been more favorable to defendant if the contrived self-defense instruction had been omitted.

**B. Heat of Passion**

Defendant asserts prejudicial error and constitutional rights deprivation in the denial of his request for a heat of passion voluntary manslaughter instruction. Our Supreme Court has held: "`[A trial court must instruct on a lesser included offense] whenever evidence that the defendant is guilty only of the lesser offense is "substantial enough to merit consideration" by the jury. [Citations.] "Substantial evidence" in this context is "`evidence from which a jury composed of reasonable [persons] could . . . conclude[]'" that the lesser offense, but not the greater, was committed. [Citations.]' ([*People v.*] *Breverman* [(1998)] 19 Cal.4th [142,] 162.)" (*People v. Moye, supra,* 47 Cal.4th at p. 553.) Our Supreme Court has described the elements of heat of passion voluntary manslaughter as follows: "A heat of passion theory of manslaughter has both an objective and a subjective component. [Citations.] [¶] `"To satisfy the objective or `reasonable person' element of this form of voluntary manslaughter, the accused's heat of passion must be due to `sufficient provocation.'" [Citations.] . . . [¶] To satisfy the subjective element of this form of voluntary manslaughter, the accused must be shown to have killed while under `the actual influence of a strong passion' induced by such provocation. [Citation.] `Heat of passion arises when "at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from such passion rather than from judgment." [Citations.]' [Citation.]" (*People v. Moye, supra,* 47 Cal.4th at pp. 549-550; see also *People v. Gutierrez* (2002) [28 Cal.4th 1083](https://www.leagle.com/cite/28%20Cal.4th%201083), 1144; *People v. Wickersham* (1982) [32 Cal.3d 307](https://www.leagle.com/cite/32%20Cal.3d%20307), 326, disapproved on another point in *People v. Barton* (1995) [12 Cal.4th 186](https://www.leagle.com/cite/12%20Cal.4th%20186), 201.) We independently review whether the trial court erred in failing to give a heat of passion voluntary manslaughter instruction. (*People v. Booker* (2011) [51 Cal.4th 141](https://www.leagle.com/cite/51%20Cal.4th%20141), 181; *People v. Moye, supra,* 47 Cal.4th at pp. 555-556.) We apply the *Watson* standard of prejudice review. (Cal. Const., art. VI, § 13; *People v. Moye, supra,* 47 Cal.4th at pp. 555-556.)

We find no error. As the trial court correctly concluded, there was no substantial evidence defendant acted while under "`the actual influence of a strong passion'" induced by "sufficient provocation" to "`act rashly or without due deliberation and reflection" rather than from judgment. (*People v. Moye, supra,* 47 Cal.4th at pp. 549-550; see also *People v. Gutierrez, supra,* 28 Cal.4th at p. 1144; *People v. Wickersham, supra,* 32 Cal.3d at p. 326.) Defendant repeatedly testified he sought to protect himself in self-defense. Defendant claimed he used his knife only because he feared he would be seriously injured. The trial court was not required to disregard that evidence and instruct the jury on heat of passion voluntary manslaughter. (*People v. Moye, supra,* 47 Cal.4th at pp. 553-554.) Given defendant's testimony, no reasonable juror could conclude he acted rashly, without due deliberation and reflection, and under the actual influence of a strong passion rather than from judgment. (*Ibid.*)

Even if the trial court had erred by failing to instruct on the heat of passion theory of voluntary manslaughter, it is not reasonably probable the verdict would have been more favorable to defendant had the instruction been given. Here, as in *People v. Moye, supra,* 47 Cal.4th at page 556, "[I]t is reasonable to assume the jury considered all of the defense evidence bearing on defendant's state of mind and the question whether he harbored malice when it entertained *and rejected* his claims of reasonable and unreasonable (or imperfect) self-defense." Mr. Griffith testified the stabbing was preceded only by a quiet exchange of words between defendant and Mr. Wright. There was no yelling. Both men were determined to stand their ground and Mr. Griffith thought there might be a fist fight, but none ensued. The two men continued to stand in line. Five minutes passed before the food truck arrived and defendant suddenly assaulted Mr. Wright. Four eye witnesses testified Mr. Wright did not have anything in his hands. No knife was found on his person or among his belongings. No knife was found on the ground. Mr. Wright suffered multiple wounds inflicted with great force. There was strong evidence Mr. Wright was not armed and weaker testimony that he brandished a knife. Here, as in *Moye,* "Once the jury rejected defendant's claims of reasonable and imperfect self defense, there was little if any independent evidence remaining to support his further claim that he killed in the heat of passion, and no direct testimonial evidence from defendant himself to support an inference that he *subjectively* harbored such strong passion, or acted rashly or impulsively while under its influence for reasons unrelated to his perceived need for self-defense." (*People v. Moye, supra,* 47 Cal.4th at p. 557.) It is not reasonably probable, having rejected defendant's self-defense claims, that the jury, had it received heat of passion voluntary manslaughter instructions, would have found there was legally sufficient provocation. (*Ibid.;* see *People v. Crowe* (2001) [87 Cal.App.4th 86](https://www.leagle.com/cite/87%20Cal.App.4th%2086), 97.)

**C. Court Security Fee**

The trial court orally imposed a $30 court security fee pursuant to section 1465.8, subdivision (a)(1). The abstract of judgment reflects a $40 court security fee. Because defendant was sentenced on February 15, 2011, the correct amount is $40. (Stats. 2010 (2009-2010 Reg. Sess.) ch. 720, § 33, eff. October 19, 2010; *People v. Alford* (2007) [42 Cal.4th 749](https://www.leagle.com/cite/42%20Cal.4th%20749), 753-759; *People v. Kingsberry* (2011) [200 Cal.App.4th 169](https://www.leagle.com/cite/200%20Cal.App.4th%20169), 180.) The trial court's oral pronouncement of judgment controls over the abstract of judgment. (*People v. Farell* (2002) [28 Cal.4th 381](https://www.leagle.com/cite/28%20Cal.4th%20381), 384, fn. 2; *People v. Mesa* (1975) [14 Cal.3d 466](https://www.leagle.com/cite/14%20Cal.3d%20466), 471.) Accordingly, the judgment must be modified to reflect imposition of a $40 court security fee.

**IV. DISPOSITION**

The judgment is modified to reflect imposition of a $40 court security fee. In all other respects, the judgment is affirmed.

ARMSTRONG, J. and KRIEGLER, J., concurs.

**FootNotes**

1. All further statutory references are to the Penal Code unless otherwise noted.