



People v. Salcida

2007 | Cited 0 times | California Court of Appeal | May 25, 2007

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OPINION

John Angel Salcida appeals from a judgment after a jury convicted him of spousal rape by force, sexual penetration by a foreign object by force, misdemeanor assault and battery, and first degree murder by means of lying in wait. Salcida argues the trial court erroneously refused to instruct the jury with his special instruction defining "heat of passion." We disagree and affirm the judgment.

FACTS

Salcida and B. P., married and had a daughter, K., in 1999. They lived with Vida (Vida) and Greg (Greg) Parry (collectively, the Parrys) before and after K. was born. Richard Parry (Richard), Salcida's half-brother, also lived there. Vida was Salcida's and Richard's legal guardian. Over the next few years, Salcida, B., and K. moved to Reno, to the Parry's residence, to Huntington Beach, and back to the Parry's residence. Salcida and B. suffered from marital problems during this time.

In July 2003, B. met and began dating 18-year-old co-worker Sergio Ojeda. She did not tell Salcida or the Parrys about Ojeda. She often stayed with Ojeda at his sister's house in Rialto, telling Salcida and the Parrys she was staying with friends.

Over the next few months, B. told Salcida numerous times she wanted a divorce. In September, Salcida picked up B. from work, they fought over B.'s cellular telephone, Salcida threatened to commit suicide while B. watched, he grabbed his shotgun, and when he slowed down, she got out of the car and ran away. The next month, Salcida was at a party with two friends, and he told them he was upset his wife was leaving him "for another man" and wanted "to get things straight with [her]." Salcida also told them "he wanted to shoot [Ojeda]."

In October 2003, B. usually stayed with Ojeda in Rialto. However, she kept her belongings at Vida's residence in Huntington Beach, where K. and Salcida also stayed. Every morning, she would travel one and one-half hours to Vida's home to take K. and Richard to school, and then get ready and go to



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work.

One morning, when B. arrived at Vida's house, Salcida told her he had already taken the children to school. B. went into the guest room to get ready for work. Salcida followed her, grabbed and hugged her, roughly put her on the floor, and got on top of her. When she resisted, he pulled out a kitchen knife and told her he wanted to "fuck" her. She said, "no[,]"" but Salcida touched her "vaginal area and tr[ied] to pull down [her] pajama bottoms." Salcida said, "he picked the "perfect day" because the construction noise outside would prevent anyone from hearing her screams. When she screamed, he stabbed the knife into the carpet near her head and cut his hand.

B. tried to distract Salcida by telling him she needed to eat and use the bathroom. When B. went into the bathroom, she tried to lock the door, but Salcida pushed himself inside. He forced her pajamas off, asked her about having sex with Ojeda and who had the bigger penis, turned her onto her stomach, and put his penis in her vagina for a few seconds. He put his hands over her mouth when she began yelling. She told him to stop and tried to push him off her. He ejaculated on her vaginal area, put his hands in the ejaculate, inserted his fingers inside her vagina, and wiped the ejaculate on her face. Salcida then pushed B. into the shower while dressed in her socks and shirt, squirted shampoo and conditioner on her, and told her to wash herself.

When B. emerged from the shower, Salcida tried to take B.'s cellular telephone to search for telephone numbers. When she resisted, Salcida pushed her, said he felt "horny," and pulled down her pants. She gave him the telephone, and he left. B. called her boss, told him what happened, and asked him to call the police. That day, Salcida called B.'s boss and asked to speak with Ojeda because he had business to take care of with him. B.'s boss refused and told him not to call there again. Salcida was arrested later that day. B.'s examination revealed bruises on her arms, tenderness in her vaginal area, and semen from Salcida and Ojeda. She changed the locks at Vida's house and resumed her normal routine of driving from Rialto in the mornings.

Salcida's biological mother and her boyfriend bailed him out of jail and took him to Nevada to stay with them. After a week, Salcida drove the boyfriend's blue Saturn to Orange County to hire an attorney.

The day after Salcida returned, he and Ojeda exchanged text messages. Ojeda called Salcida a "retard," told him he did not care about Salcida, and accused Salcida of taking his family for granted.

The next day, on the morning of November 6, 2003, after spending the night in Rialto, B., Ojeda, and K. drove to Vida's house. Vida was not home. After Ojeda and B. showered, Ojeda went into the guest bedroom to iron B.'s work clothes, with his back facing the door. B. woke up Richard, and he left to walk the dog, but he did not lock the front door. B. turned on the television in the guest bedroom, ran the bath water in the guest bathroom for K., and proceeded to give her a bath. Salcida entered the bathroom. B. was not expecting him, and she yelled for Ojeda. Salcida said, "He's dead. I



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killed him.'" Although Salcida did not allow B. to go to the guest bedroom, she saw Ojeda's body on the floor through the partially open door and a wet spot on his shirt.

K. yelled for Salcida and ran to him. He picked her up. When B. ran for the kitchen telephone, Salcida grabbed it and threw it on the floor. Richard returned home, B. yelled for him to get help, and Salcida told him to take K. B. ran to the bedroom and tried to call 911. The house telephone did not work, and a cellular telephone lost service. Salcida took the cellular telephone, called 911, and said he "just killed [Ojeda]." He also called Vida and told her he killed Ojeda.

Salcida again called 911 and said he would kill B. if the police "didn't get his real mother there[.]" Salcida grabbed B. by the hair, pulled her into the bathroom, took off her pajama pants against her will, said he "wanted to have sex one more time[.]" and threatened to kill her while holding a ceramic pot over her head. The police arrived. Salcida broke the pot he was holding and, in a "dazed" state, began "stabbing himself in the neck[.]" which later required emergency surgery. The police forced the bathroom door open.

Ojeda suffered from two blunt force injuries to his head that were consistent with having been hit with a hammer. Additionally, Ojeda suffered from 24 stab wounds over his body, including his head, neck, chest, back, and groin region. Ojeda did not have defensive wounds on his hands.

Officers recovered a broken hammer at the crime scene that had Ojeda's blood on it and was consistent with the blunt head injuries. Officers also recovered a knife at the crime scene that had Ojeda's blood on it and was consistent with the stab wounds. Salcida had brought the hammer and knife with him from Nevada.

An amended information charged Salcida with spousal rape by force (Pen. Code, § 262, subd. (a)(1))¹ (count 1), sexual penetration by foreign object by force (§ 289, subd. (a)(1)) (count 2), attempted spousal rape by force (§§ 664, 262, subd. (a)(1)) (count 3), and murder (§ 187, subd. (a)) (count 4). The information further alleged the special circumstance Salcida murdered Ojeda by lying in wait. (§ 190.2, subd. (a)(15).)

Vida's neighbors testified they had seen the blue Saturn parked across the street on the day before and the day of the incident. One neighbor testified she saw Salcida just "standing right there[]" in front of the residence at 7:00 a.m., which made her feel "uncomfortable" because she "had never seen that person there before" and "it was early in the morning."

Salcida raised two defenses. His first defense was he killed Ojeda in the heat of passion. Salcida requested a special instruction defining heat of passion (Special Instruction). The trial court denied his request because the standard CALJIC instructions were adequate as they "clearly and accurately describe what is required for heat of passion and also definitions of provocation." However, the court stated it would not prevent Salcida from arguing his proposed instruction during closing arguments.



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Salcida's second defense was he suffered from fetal alcohol syndrome, posttraumatic stress disorder, and major depressive disorder. He asserted his psychological conditions and traumatic childhood experiences predisposed him to impulsiveness and rashness. Thus, the events leading up to the homicide, including seeing his wife and child with Ojeda, aroused passion to kill Ojeda.

The jury convicted Salcida on counts 1, 2, and 4, and found true the special circumstance of murder by lying in wait. The jury found Salcida not guilty on count 3, but found him guilty of the lesser included offenses of misdemeanor assault and battery. The trial court sentenced Salcida to a total prison term of life without the possibility of parole plus two concurrent six-year terms for the spousal rape and rape convictions.

DISCUSSION

Salcida argues the trial court erroneously refused to instruct the jury with the Special Instruction defining heat of passion. We disagree.

"A criminal defendant is entitled, on request, to instructions that pinpoint the theory of the defense case." (People v. Gutierrez (2002) 28 Cal.4th 1083, 1142 (Gutierrez).) However, if the standard instructions given adequately cover the valid points in the proposed pinpoint instruction, then the court is not required to give additional instructions on that point. (Id. at p. 1144.)

Here, the trial court instructed the jury with the standard CALJIC instructions on voluntary manslaughter. The trial court instructed the jury with CALJIC No. 8.40, "Voluntary Manslaughter-Defined[,] " which stated: "Every person who unlawfully kills another human being [without malice aforethought but] either with an intent to kill, or with conscious disregard for human life, is guilty of voluntary manslaughter in violation of . . . section 192, subdivision (a). [¶] [There is no malice aforethought if the killing occurred [upon a sudden quarrel or heat of passion][.] [¶] The phrase, 'conscious disregard for life,' as used in this instruction, means that a killing results from the doing of an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his or her conduct endangers the life of another and who acts with conscious disregard for life. [¶] In order to prove this crime, each of the following elements must be proved: [¶] 1. A human being was killed; [¶] 2. The killing was unlawful; and [¶] 3. The perpetrator of the killing either intended to kill the alleged victim, or acted in conscious disregard for life; and [¶] 4. The perpetrator's conduct resulted in the unlawful killing."

The trial court also instructed the jury with CALJIC No. 8.42, "Sudden Quarrel or Heat of Passion and Provocation Explained[,] " which provided: "To reduce an unlawful killing from murder to manslaughter upon the ground of sudden quarrel or heat of passion, the provocation must be of the character and degree as naturally would excite and arouse the passion, and the assailant must act under the influence of that sudden quarrel or heat of passion. [¶] The heat of passion which will reduce a homicide to manslaughter must be such a passion as naturally would be aroused in the mind



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of an ordinarily reasonable person in the same circumstances. A defendant is not permitted to set up his own standard of conduct and to justify or excuse himself because his passions were aroused unless the circumstances in which the defendant was placed and the facts that confronted him were such as also would have aroused the passion of the ordinarily reasonable person faced with the same situation. Legally adequate provocation may occur in a short, or over a considerable, period of time. [¶] The question to be answered is whether or not, 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 passion rather than from judgment. [¶] If there was no provocation, whether of short or long duration, but of a nature not normally sufficient to arouse passion, or if sufficient time elapsed between the provocation and the fatal blow for passion to subside and reason to return, and if an unlawful killing of a human being followed the provocation and had all the elements of murder, as I have defined it, the mere fact of slight or remote provocation will not reduce the offense to manslaughter."

Additionally, the trial court instructed the jury with CALJIC No. 8.43, "Murder or Manslaughter-Cooling Period[,]" which stated: "To reduce a killing upon a sudden quarrel or heat of passion from murder to voluntary manslaughter, the killing must have occurred while the slayer was acting under the direct and immediate influence of the quarrel or heat of passion. Where the influence of the sudden quarrel or heat of passion has ceased to obscure the mind of the accused, and sufficient time has elapsed for angry passion to end and for reason to control his conduct, it will no longer excuse express or implied malice, and reduce the killing to voluntary manslaughter. The question, as to whether the cooling period has elapsed and reason has returned, is not measured by the standard of the accused, but the duration of the cooling period is the time it would take an average or ordinarily reasonable person to have cooled the passion, and for that person's reason to have returned."

Furthermore, the trial court instructed the jury with CALJIC No. 8.44, "No Specific Emotion Alone Constitutes Heat of Passion[,]" which provided: "Neither fear, revenge, nor the emotion induced by and accompanying or following an intent to commit a felony, nor any or all of these emotional states, in and of themselves, constitute the heat of passion referred to in the law of manslaughter. Any or all of these emotions may be involved in a heat of passion that causes judgment to give way to impulse and rashness. Also, any one or more of them may exist in the mind of a person who acts deliberately and from choice, whether the choice is reasonable or unreasonable."

Finally, the trial court instructed the jury with CALJIC No. 8.50, "Murder and Manslaughter Distinguished[,]" which stated: "The distinction between murder and manslaughter is that murder requires malice while manslaughter does not. [¶] When the act causing the death, though unlawful, is done in the heat of passion or is excited by a sudden quarrel that amounts to adequate provocation, the offense is manslaughter. In that case, even if an intent to kill exists, the law is that malice, which is an essential element of murder, is absent. [¶] To establish that a killing is murder and not manslaughter, the burden is on the [p]eople to prove beyond a reasonable doubt each of the elements



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of murder and that the act which caused the death was not one done in the heat of passion or upon a sudden quarrel."

Salcida requested the following Special Instruction: "The passion necessary to constitute heat of passion need not mean rage or anger but may be any violent, intense, overwrought or enthusiastic emotion which causes a person to act rashly and without deliberation and reflection." Salcida contends the trial court should have instructed the jury with the Special Instruction because it was an accurate statement of law as set forth in California Supreme Court opinions. Additionally, Salcida claims he was entitled to the Special Instruction because it pinpointed a defense theory. Finally, Salcida argues the incorporation of similar language in the new CALCRIM instruction on voluntary manslaughter² validates his Special Instruction. None of these contentions have merit.

Relying on a series of California Supreme Court cases that use similar language to define "heat of passion," Salcida insists the language of his Special Instruction is recognized law in California. However, those cases are factually different because they did not deal with pinpoint jury instruction requests. (*People v. Lasko* (2000) 23 Cal.4th 101, 108-111; *People v. Breverman* (1998) 19 Cal.4th 142, 163- 164; *People v. Berry* (1976) 18 Cal.3d 509, 515; *People v. Borchers* (1958) 50 Cal.2d 321, 329.) None of these cases dealt with a special instruction defining heat of passion, nor did they address the adequacy of the given heat of passion instructions. They merely used similar language as the Special Instruction to define heat of passion. Thus, although California cases have used similar language to define heat of passion, the issue here is whether the Special Instruction was necessary. We conclude the Special Instruction was unnecessary because the given instructions adequately explained heat of passion, as we explain anon.

Salcida also argues he was entitled to the Special Instruction as it pinpoints his defense theory. Although a trial court "may be required to give a requested jury instruction that pinpoints a defense theory of the case[.]" the trial court is not required to give the requested pinpoint instruction if it "merely duplicates other instructions[.]" (*People v. Bolden* (2002) 29 Cal.4th 515, 558-559.) "Accordingly, a trial court is required to give a requested instruction . . . only when the point of the instruction would not be readily apparent to the jury from the remaining instructions." (*Ibid.*)

Here, the trial court refused Salcida's Special Instruction and properly concluded the jury instructions were adequate to define heat of passion. In *Gutierrez*, supra, 28 Cal.4th at page 1142, the California Supreme Court addressed the issue of whether the trial court erroneously refused to instruct the jury with the requested pinpoint instructions on manslaughter, including one defining heat of passion. The heat of passion instruction stated: "'The term "passion" as used in the phrase "heat of passion" need not mean rage or anger, but may be any violent, intense, high-wrought, or enthusiastic emotion, other than a passion for revenge, and includes a "passion" which might be induced by a victim's long-continued provoking [sic] conduct which causes a "long smoldering resentment" on the part of the defendant towards the victim.'" (*Ibid.*) The court concluded the standard manslaughter instructions given, including CALJIC Nos. 8.40, 8.42, 8.43, 8.44, and 8.50,



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"adequately covered the valid points in the proposed pinpoint manslaughter instructions." (Id. at p. 1144.)

The language of Salcida's Special Instruction is similar to the requested instruction in Gutierrez, as they both state heat of passion "need not mean rage or anger[.]" but "may be any violent, intense . . . or enthusiastic emotion[.]" Here, the trial court instructed the jury with the same instructions the jury was instructed with in Gutierrez. The language of the Special Instruction was already covered by the standard instructions, from which the definition for heat of passion was readily apparent to the jury. Specifically, CALJIC No. 8.42 instructed the jury to determine whether "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[.]" (Italics added.) Additionally, pursuant to CALJIC No. 8.44, the court instructed the jury: "Neither fear, revenge, . . . nor any or all of these emotional states, in and of themselves, constitute the heat of passion referred to in the law of manslaughter. Any or all of these emotions may be involved in a heat of passion that causes judgment to give way to impulse and rashness." (Italics added.)

Finally, Salcida argues that because the language of his Special Instruction has been incorporated into the new criminal jury instructions, CALCRIM No. 570, "Voluntary Manslaughter: Heat of Passion-Lesser Included Offense[.]" the CALJIC instructions on heat of passion were inadequate. Not so.

The Judicial Council of California Task Force on Criminal Jury Instructions "charge was to write instructions that are both legally accurate and understandable to the average juror."³ The Task Force was not vested with the authority to render invalid prior jury instructions, nor was it purporting to do so. It is for the California Supreme Court and California appellate courts to make such a determination. As we explain above, based on Gutierrez, the standard manslaughter instructions given adequately covered the points in the Special Instruction.

Even if we assume the trial court erred in not instructing the jury with the Special Instruction, we conclude any error was harmless. A trial court's refusal to instruct with a proposed pinpoint instruction is harmless under the *People v. Watson* (1956) 46 Cal.2d 818, standard where defense counsel's jury argument pinpoints the defense and the instructions given sufficiently cover the topic. (Gutierrez, *supra*, 28 Cal.4th at p. 1144.)

Here, Salcida's defense counsel argued his definition of heat of passion and CALJIC No. 8.44 instructed the jury no specific emotion alone constitutes heat of passion. And, as we explain above, the trial court's instructions sufficiently covered the topic. (Gutierrez, *supra*, 28 Cal.4th at p. 1144.) Additionally, there was overwhelming evidence Salcida was guilty of premeditated, deliberate murder. A few months prior to the incident, Salcida told his friends he wanted to shoot Ojeda. Also, he brought the hammer and knife with him from Nevada, he waited outside the house the day before and the day of the incident, he struck Ojeda's head with the hammer two times, and he stabbed



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Ojeda 24 times. Finally, the jury found true the allegation of murder by lying in wait. Therefore, it was not reasonably probable Salcida would have received a better result had the trial court instructed the jury with the Special Instruction.

DISPOSITION

The judgment is affirmed.

WE CONCUR: BEDSWORTH, ACTING P. J., ARONSON, J.

1. All further statutory references are to the Penal Code, unless otherwise indicated.
2. Judicial Council of California Criminal Jury Instructions (2006- 2007) CALCRIM No. 570, "Voluntary Manslaughter: Heat of Passion-Lesser Included Offense" provides: "Heat of passion does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection."
3. Judicial Council of California Criminal Jury Instructions (2006) Preface, pages ix- x (by Carol A. Corrigan, former Associate Justice of the Court of Appeal, First Appellate District).

