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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. ERIN RAMON AMIE, Defendant and Appellant.	B230639 (Los Angeles County Super. Ct. No. BA 336601)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bob S. Bowers, Jr., Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

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Erin Ramon Amie was convicted of two counts of second degree murder after a bench trial. The victims were Rachel Campos, appellant's ex-girlfriend, and her unborn fetus. Appellant contends that we must reverse his conviction because the evidence was insufficient to show that malice was not negated by provocation or heat of passion. We disagree and affirm.

STATEMENT OF FACTS

1. Prosecution Evidence

Campos was 18 years old when she died. Lachan Brown was Campos's mother. Appellant and Campos did not date when they first met. Brown said appellant was a friend and mentor to Campos initially. Appellant sometimes looked after Brown's children, including Campos. Campos and her sisters would go to appellant's house and spend the night. Appellant had three kids of his own. At some point, the relationship between Campos and appellant turned romantic. Appellant's aunt, Flora Stewart, said that Campos moved into appellant's apartment, which was across the street from Stewart's. Campos and appellant had problems, including that Campos did not want appellant's children living with them, and she had reported appellant to child protective services. She hit appellant on at least two occasions. Campos did not get along with appellant's mother.

On or around October 30, 2007, appellant obtained a temporary restraining order against Campos. The court issued a permanent restraining on or around November 15, 2007. Brown found out Campos was pregnant sometime in October 2007. Campos and appellant came over to Brown's house. Appellant told Brown that he was the father, and Brown and appellant got into a fight when Brown expressed her disapproval of appellant. Afterward, appellant took Campos to his house to collect her belongings there. Brown told him to bring Campos back to her house. Appellant brought her back two days later. Campos showed her mother bruises underneath her chin, on her hand, and on her sides, and scrapes on her knee. Brown feared for Campos's safety after seeing the injuries. Campos stayed with her mother for three weeks in October. Brown then took Campos to a homeless shelter in Pomona around November 1, 2007, because she believed Campos

was not safe staying with her. Brown still had phone contact with Campos after she went to live in the shelter.

Laquashawn Lewis was appellant's friend. Appellant told Lewis that Campos was "stressing him out" because she called child protective services on him. He was also upset about Campos's pregnancy, and he told Lewis he was not sure the baby was his.

In early November 2007, appellant moved into a new apartment complex where the Siggens family also lived.[1] He lived there with his mother and three children. William Siggens helped appellant move into the complex. While he was helping, appellant received a call on his cell phone. He told William that the call was from "some girl" who was "stalking" him. He also said he had a restraining order against the girl.

On November 8, 2007, appellant asked his cousin, Lafayette Amie,[2] to go with him to a motel the next day to see Campos. He told Lafayette that Campos had been kicked out of a shelter and had called appellant for help. He wanted Lafayette to go with him as a witness because he had a restraining order against Campos and he was not sure he was allowed to see her. The next day, appellant picked up Lafayette at his house in Upland and drove to a Motel 6 in Pomona where they picked up Campos. After they picked up Campos and got some food, appellant drove Lafayette home. Lafayette did not know what happened with Campos after appellant took him home.

On November 10 or 11, 2007, the Siggens family had a birthday party at the apartment complex for William and his daughter Tabitha Siggens. The party was outdoors. Appellant did not come out to the party, but his children came out and played at the party. William took two plates of food to appellant's apartment, one for appellant and one for his mother. Separately, Tabitha also took appellant two plates of food; she

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[1] Several members of the Siggens family testified at trial. We refer to them by their first names solely as a convenience to the reader. We do not intend this informality to reflect a lack of respect.

[2] We refer to Lafayette by his first name as a convenience to the reader and do not intend this informality to reflect a lack of respect.

had asked whether he wanted any, and he said yes, one plate for him and one for his mother. She did not know William had already taken him two plates.

On the night of November 16, 2007, Tabitha and her sister Berniece Siggens went to a Thanksgiving turkey giveaway at First AME Church. They camped out in line that night, and the giveaway was to be at 7:00 or 8:00 the next morning. Appellant joined them early in the morning of November 17. While they were waiting in line, appellant told them he had a girl staying with him whom he had known since she was a young girl, and he was trying to help her out. He said "nobody wanted to deal with her," and he took her in to try to help her, but he was trying to find a shelter for her. He said he would refer to the girl as "Danielle," a made-up name, to keep her true name private. He told them Danielle was "bad news" and every time she was around, there seemed to be problems. At some point, he said he had to leave because he needed to fix breakfast for his kids and also get Danielle out of the apartment. He said he had to get Danielle out because his mother did not like her. He described an incident in which she had been violent with his mother and thrown a phone at her. He also said he had a restraining order against her, and he told Tabitha that if she ever saw the girl, "a light skin kind of Mexican girl with wild crazy hair," she should call the police.

Appellant, Berniece, and Tabitha also went to a second Thanksgiving giveaway sponsored by Jackson Limousine. Tabitha thought that giveaway was on November 19, 2007. However, Ellsworth Jackson, the owner of Jackson Limousine, said the Thanksgiving turkey giveaway is always the Tuesday before Thanksgiving, which would have been November 20, 2007. All three of them camped out in line the night before the giveaway again. They were there from approximately 11:00 p.m. the night before the giveaway until the next morning at 8:00 or 9:00 a.m.

Campos had a cell phone and appellant had two cell phones. Cell phone records showed that between November 6, 2007, and November 18, 2007, there were numerous cell phone calls between appellant and Campos. The last outgoing call made from Campos's cell phone was on November 18, 2007, at 12:28 p.m. The cell tower accessed to make that call was located one mile away from appellant's apartment. The last call

from appellant's cell phone to Campos's cell phone was also on November 18, 2007. There was no activity on either of appellant's cell phones from approximately 9:45 p.m. on November 18 to approximately 8:00 a.m. on November 19.

The last time Brown spoke to Campos was on November 16, 2007. Brown spoke to her daughter approximately every other day at the time. Officer Christopher Gonzalez of the Los Angeles Police Department was on duty at the Hollenbeck station on November 19, 2007. At approximately 7:00 a.m. that day, Officer Gonzalez was in front of the station when a man drove up and told the officer that he thought there was a dead body in an alley down the street. Officer Gonzalez and his partner went to the alley and discovered a female on the ground, clothed and not moving. She was not exhibiting any signs of life. Officer Gonzalez set up a crime scene around the body with yellow tape. The body was later identified as Campos.

Maria Budchart lived near the alley where police discovered Campos's body. She walked her son to the bus stop on November 19, 2007, at approximately 6:45 a.m. On the way, she passed the alley but did not notice anything. On the way back from the bus stop, however, she passed the same alley around 7:00 a.m. and saw a body lying in the alley. There were already people standing around the body. The night before, she did not hear any fighting, yelling, or disturbances outside in the alley.

Gloria Carnalla also lived near the alley. She testified that she saw the body in the alley at approximately 8:00 a.m. on November 19, 2007, when she looked out her apartment window. She did not hear any noises outside her apartment the night before.

Detective Scott Smith responded to the alley after Officer Gonzalez discovered Campos, at approximately 7:20 a.m. She was clothed in a white T-shirt and white sweatpants and was wearing socks and no shoes. He detected an odor of gasoline from the immediate area of the body, and there were stains on her shirt, possibly gasoline. There were also black markings on her left leg that appeared to be burn marks. There were burnt matches on the ground near the body. He also observed that she had a black right eye and bruising and a cut on the bridge of her nose. She had a tattoo on her right arm that said "Erin."

The criminalist arrived at the scene at approximately 9:20 a.m. He noticed the distinct odor of an apparent accelerant, such as gasoline, on Campos's body or clothing. He also noted apparent burn marks on her shirt and other parts of her clothing. Her shirt was wet to the touch all over.

The medical examiner autopsied Campos on November 21, 2007. At the time the body had not yet been identified as Campos. He determined that the cause of death was asphyxia, or lack of oxygen to the brain. He found Campos had bruising and severe swelling on her right eyelid, a scalp hemorrhage, a hemorrhage on the right eye, a petechia on the left eye, small abrasions on the left cheek and bridge of the nose, a left temporal abrasion with underlying temporal muscle bruising, and small bruises on the inside of the lower lip. A petechia is a tiny hemorrhage usually caused by increased blood pressure in the head. For example, if the neck is compressed and the compression causes blockage of the veins in the neck, increased blood pressure in the head would result, and this could cause small blood vessels to pop and bleed. There were no visible injuries on Campos's neck. There was a male fetus in Campos's body. The medical examiner who performed her autopsy did not perform an autopsy on the fetus.

The medical examiner concluded that Campos's cause of death was asphyxia because she was healthy with no diseases or any other health problems, she had a negative toxicology report, and the injuries to her face and the left eye petechia were signs of asphyxia. Because of the larger hemorrhage on the right eye, which was caused by a significant amount of force to the eye, the medical examiner could not tell if there were also smaller petechial hemorrhages to the right eye. He could not determine how Campos was asphyxiated. Lack of oxygen to the brain could be achieved by several means, including by smothering with a hand over the mouth and nose. The abrasions on Campos's face and the bruises on her lower lip were marks consistent with asphyxiation by smothering. If ligatures were used to strangle someone, one would expect to see abrasions on the neck, but it is possible to not leave any marks by placing something soft between the neck and the ligature. If one was smothered by a pillow, there would typically be no injuries to the face. Also, it would be possible to asphyxiate someone by

choke hold without leaving any marks on the neck. Death by asphyxiation would have required blocking her airways for approximately one minute.

The second medical examiner did the autopsy on Campos's fetus two days after her autopsy, on November 23, 2007. It is not routine to have two different examiners for mother and fetus, nor is it routine to delay the fetus's autopsy after the mother's. The medical examiner could not explain the delay. The fetus he observed was in a macerated state, which meant the skin was becoming liquefied, and the organs were soft and in a liquefied state. He determined the fetus was approximately 11 weeks old. He believed the fetus would have been viable. There was no defect or disease in the fetus. It was developing normally. He determined the cause of death was intrauterine fetal demise, or death due to the mother's demise.

After Campos's body was discovered, an artist prepared a sketch of her, including her tattoo that said "Erin." The sketch was released to the media on November 26, 2007. Appellant's aunt, Stewart, saw the sketch on the news and thought it was Campos. She called appellant and told him to turn on the news. He told Stewart that the sketch did not look like Campos, though he acknowledged that Campos had a tattoo of "Erin" like the girl in the sketch. Stewart contacted Campos's mother, Brown, and told her she had seen a sketch on the news that looked like her daughter. Brown did not want to believe her, even though it had been a week or so since Brown had spoken to Campos. Brown told Stewart that Campos was fine. Stewart also called the police and identified the girl in the sketch as Campos. She spoke to Detective Wallace Tennelle on November 27, 2007, and provided him with Brown's name. Detective Tennelle contacted Brown, who identified Campos's body.

Appellant used to drive his friend Lewis around because she did not have a car. In November 2007, Lewis noticed a change in appellant's behavior. He no longer wanted to drive her around, and when he did, he was very nervous when he saw police cars. One evening in November, Lewis and her husband were in appellant's car with him when he cried and said he had "done a lot of stuff." He said he was having problems with Campos or there were things going on with Campos and his mother. He looked stressed out.

After Thanksgiving, he stopped talking about his problems with Campos. He never told Lewis that Campos had died. A detective told Lewis she had died. Around December 2 or 3, 2007, Lewis asked appellant about Campos, and he said something "funny" was happening because she had stopped calling him, but he did not mention Campos's death.

Detective Tennelle and his partner interviewed appellant on December 6, 2007. Appellant said he had met Campos through a friend, Jasmine Hopkins, when Campos was a minor, and that their relationship became romantic once she turned 18. He said Campos had been pregnant before by another man and had an abortion. She became violent toward appellant, his mother, and his children and after she had the abortion. This was why he obtained a restraining order against Campos. He said he last saw her on October 31, 2007, and had not been in telephonic contact with her since that date. He said Hopkins told him of Campos's death.

The detectives also interviewed Hopkins on December 6, 2007. She said that she had learned about Campos's death from appellant. Hopkins later heard from her sister that Campos had been shot in the legs, raped, and strangled. She called appellant and related these details to him. Hopkins told the detectives that she had spoken to appellant the night before her interview when he gave her a ride to a friend's house. He told her that Campos used to hit his children and called his mother a "b--ch." He also said Campos used to beat him. He had previously told her that Campos was pregnant and he did not want to have a baby with her. He asked Hopkins if she would testify for him, and he asked her not to bring up his name if detectives talked to her. He also asked if she would "rat" on him, and she said she would not. She told detectives that appellant told her he had "something to do with" what had happened to Campos and that he could not take it anymore because she was hitting his children and his mother.

The detectives told Hopkins they believed she was lying. She then said that appellant told her he shot Campos in the leg. The detectives again accused Hopkins of lying, and she told them appellant took Campos for a ride in the car, raped her, and strangled her with a rope. They told her yet again they thought she was lying. Hopkins said she told them appellant had shot Campos because she had heard this from her sister.

She then said that appellant never told her what happened to Campos. She recanted her statements that appellant took Campos somewhere in the car and had something to do with Campos's death. She said she had lied because she wanted to go home to her baby.

On January 14, 2008, Hopkins took a polygraph test at the police station. She stated that appellant never told her he was involved in Campos's death. The polygraph examiner told her she failed the test. She then stated that appellant had taken Campos to a hotel room where they had argued. She said that Campos had "probably" hit appellant because he had bruises on his arms. She agreed with the detective's statement that Campos "hit [appellant] and he kind of lost it." She said he raped, beat, and strangled Campos. Appellant told her he dumped Campos's body in East Los Angeles.

At trial, Hopkins denied that appellant told her he was involved in Campos's death. She said she had lied because she was afraid of Detective Tennelle, he had threatened her, and she wanted to go home and be with her family. She acknowledged at trial that she had testified at the preliminary hearing to the following: appellant told Hopkins he wanted Campos to get an abortion; he told her he and Campos had gone to a hotel room; and he told her he fought with Campos and beat and strangled her.

2. Defense Evidence

Maria Garcia lived near the alley where Campos's body was discovered. Her window faced the alley. On November 19, 2007, between 3:00 a.m. and 3:30 a.m., she heard girls yelling and calling each other names in the alley. When she took her children to school at around 7:30 a.m., she saw detectives in the same alley near a body.

Dr. Harry Bonnell was formerly the chief medical examiner for San Diego County. Dr. Bonnell reviewed the medical examiners' files in this case. He did not observe any anatomic cause of death for Campos, and in his opinion, her cause of death was undetermined. He saw no evidence of homicide. As to Campos's fetus, he estimated that the fetus had been dead two to three days before Campos, based on the extensive decomposition of the fetus and the presence of syncytial knots.

PROCEDURAL HISTORY

Appellant was charged with two counts of murder, one for Campos and one for her unborn fetus. The information alleged that appellant had suffered two prior strikes under the three strikes law and two prior serious felony convictions within the meaning of Penal Code section 667, subdivision (a)(1).[3]

The court granted appellant's request to represent himself and appointed standby counsel. Appellant waived a jury trial and requested a court trial. On the first day of trial, appellant informed the court that he wanted standby counsel to take over and he no longer wanted to proceed in pro. per. The trial proceeded with standby counsel representing appellant. The court found appellant guilty of two counts of second degree murder and found the prior strike allegations to be true. It sentenced appellant to 100 years to life in state prison, consisting of 15 years to life on counts one and two, with each term tripled pursuant to the three strikes law, and two consecutive five-year terms pursuant to section 667, subdivision (a)(1). Appellant filed a timely notice of appeal.

STANDARD OF REVIEW

"[W]hen a criminal defendant claims on appeal that his conviction was based on insufficient evidence of one or more of the elements of the crime of which he was convicted, we *must* begin with the presumption that the evidence of those elements *was* sufficient, and the defendant bears the burden of convincing us otherwise." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) We "must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We must also accept logical inferences that the trier of fact might have drawn from the circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396.) Moreover, "it is the exclusive province of the trial

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[3] All further statutory references are to the Penal Code.

judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends." (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

DISCUSSION

Substantial Evidence Supported Appellant's Conviction for Second Degree Murder

Appellant argues that the evidence was insufficient to support his conviction because too little was known about the deaths of Campos and her fetus to provide proof of malice, and more specifically, that malice was not negated by heat of passion or provocation. He essentially contends that the prosecution had the burden of proving an absence of provocation as a component of malice, and it failed to meet this burden. Appellant's argument lacks merit.

"Murder is the unlawful killing of a human being, or a fetus, with malice aforethought." (§ 187, subd. (a).) A killing without malice, on the other hand, is manslaughter and not murder. (§ 192.)

Malice "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." (§ 188.) But "[m]alice is presumptively absent when the defendant acts upon a sudden quarrel or heat of passion on sufficient provocation (§ 192, subd. (a)) . . . ." (*People v. Manriquez* (2005) 37 Cal.4th 547, 583.)

The heat of passion on provocation requirement has an objective and a subjective component. (*People v. Steele* (2002) 27 Cal.4th 1230, 1252.) "The defendant must actually, subjectively, kill under the heat of passion. [Citation.] But the circumstances giving rise to the heat of passion are also viewed objectively. '[T]his heat of passion must be such a passion as would naturally be aroused in the mind of an ordinarily reasonable person under the given facts and circumstances . . . .'" (*Id.* at p. 1252.) The provocation must be sufficient to cause an ordinary person of average disposition to abandon reason and judgment and act rashly from strong passion, without due deliberation or reflection. (*People v. Breverman* (1998) 19 Cal.4th 142, 163.)

"[I]n a murder case, unless the People's own evidence suggests that the killing may have been provoked . . . , it is the *defendant*'s obligation to proffer some showing" on provocation sufficient to reduce a killing to manslaughter. (*People v. Rios* (2000) 23 Cal.4th 450, 461-462.) "If the issue of provocation . . . is thus 'properly presented' in a murder case [citation], the *People* must prove *beyond reasonable doubt* that these circumstances were *lacking* in order to establish" the malice element of murder. (*Id.* at p. 462.) Appellant contends that the prosecution's evidence "properly presented" or suggested provocation, and therefore the prosecution had the burden of proving an absence of it.

First, we do not agree with the premise that the issue of provocation was properly presented such that the burden of proof shifted to the prosecution. Appellant relies on evidence that Campos had a history of being violent with appellant, his mother, or his children, Hopkins's statement that appellant and Campos argued at the hotel, Hopkins's statement that Campos probably hit him because he had bruises, and Hopkins's inference that he must have "lost it" as a result. None of this evidence suggests that Campos provoked appellant to such a degree that an ordinary person would abandon all reason and judgment and be so aroused as to kill her. Even if the two did argue, and she did hit him, """[a] provocation of slight and trifling character, such as words of reproach, however grievous they may be, or gestures, or an assault, or even a blow, is not recognized as sufficient to arouse, in a reasonable man, such passion as reduces an unlawful killing . . . to manslaughter."""" (*People v. Najera* (2006) 138 Cal.App.4th 212, 226.)

Second, even assuming that the issue of provocation was properly presented, substantial evidence supported any implied finding by the court that provocation and heat of passion were lacking and this was an intentional killing with malice. The evidence showed that Campos was killed by asphyxiation, probably smothering, which would have required blocking her airways for approximately one minute. The burn marks on her clothing, the odor of an accelerant around her, and the dampness of her clothing suggest that appellant tried to set her body on fire. Her body was dumped in an alley in the

middle of the night or early in the morning. Appellant had a motive to kill Campos in that she had been abusive toward his mother and children and he did not want her to have his baby. But there was no evidence that Campos said or did something to so inflame appellant that a reasonable, ordinary person would have reacted in a heat of passion by killing her. Malice is implied "when no considerable provocation appears" or the circumstances "show an abandoned or malignant heart." In either case, the trial court could reasonably infer from the evidence that appellant acted with implied malice.

The trier of fact, not the appellate court, must be convinced that the prosecution met its burden beyond a reasonable doubt. (*People v. Holt* (1997) 15 Cal.4th 619, 668.) Our duty is to affirm a conviction if there was substantial evidence supporting the trial court's findings. (*Ibid.*) That is the case here.

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.