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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

THE PEOPLE, Plaintiff and Respondent, v. ADRIAN FELLIPE RAMIREZ, Defendant and Appellant.	B226765 (Los Angeles County Super. Ct. No. KA085909)

APPEAL from a judgment of the Superior Court of Los Angeles, Charles E. Horan, Judge. Affirmed.

Danalynn Pritz, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and David F. Glassman, Deputy Attorney General, for Plaintiff and Respondent.

PROCEDURAL HISTORY

In a second amended information filed on July 29, 2010, Adrian Fellipe Ramirez was charged with five counts: murder in violation of Penal Code section 187, subdivision (a)[1] (count 1); assault with a firearm in violation of section 245, subdivision (a)(2) (count 2); the making of criminal threats in violation of section 422 (count 3); attempted murder in violation of sections 664 and 187, subdivision (a) (count 4); and assault with a deadly weapon in violation of section 245, subdivision (a)(1) (count 5). Counts 1 through 3 pertain to February 1, 2009 events, which culminated in the shooting and killing of Arthur David Perez (Perez), and counts 4 and 5 concern Ramirez's August 28, 2009 stabbing of Jamie Stark (Stark). Count 1 of the information alleged that Ramirez personally and intentionally discharged a firearm within the meaning of 12022.53, subdivisions (b), (c), and (d), and counts 2 and 3 charged that Ramirez personally used a firearm within the meaning of section 12022.5. Count 4 alleged that Ramirez personally used a deadly weapon within the meaning of section 12022, subdivision (b)(1). Counts 4 and 5 also alleged that Ramirez inflicted great bodily injury within the meaning of section 12022.7, subdivision (a). Ramirez pleaded not guilty to all charges and denied all enhancements.

A jury found Ramirez guilty of all charges, found all the enhancements true, and fixed the degree of murder at the first degree. Ramirez filed a timely notice of appeal.

FACTUAL BACKGROUND

I. The assault on Maria Elizalde and murder of David Perez (counts 1–3)

At trial, Maria Elizalde testified that just after midnight on February 1, 2009, she and Ramirez were eating in her car at Jack in the Box. Ramirez had a sawed-off shotgun concealed in his pants. Ramirez and Elizalde argued at Jack in the Box and returned to her apartment. Valerie and "Boy" were sitting on the couch when Ramirez and Elizalde arrived; Elizalde went immediately into her bedroom. Ramirez followed her into her

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[1] All subsequent statutory references are to the Penal Code unless otherwise indicated.

bedroom and continued arguing. Ramirez struck Elizalde once on the forehead with the butt-end of the sawed-off shotgun, then pointed the gun at her face and told her "he was going to kill [her]." Elizalde testified that she knew that the shotgun was loaded because she had seen Ramirez load it and she believed that he would kill her. Valerie and Boy "ran in the room," attempted unsuccessfully to take the gun away from Ramirez, and told him that killing Elizalde "wasn't worth it." Ramirez told them to leave the room and told Elizalde, "he was sorry and that he would never hurt [her] again." Minutes later, Valerie or Boy used Elizalde's cellular phone to call Perez and his brother Manny Perez for a ride; Valerie, Boy, and Ramirez left the apartment about 15 minutes later.

Elizalde stated that Ramirez took the shotgun and another "long gun, like a shotgun" from her apartment. Ramirez also took Elizalde's "cell phone and some money that [she] had on her dresser" when he left with Valerie and Boy. Elizalde immediately grabbed her keys and went to the Pomona Police Station where she reported what had happened. The police photographed Elizalde's forehead injuries and interviewed her.

Perez, according to his sister Jessica Perez (hereinafter Jessica), "had just got out of prison . . . after serving two years." He was "a stocky, rather large man." Perez and his friends, including Ramirez, "always had guns." Jessica gave Perez permission to borrow her car, a white Ford Explorer, between 10:30 p.m. and 11:00 p.m. on the evening of January 31, 2009. Perez often gave Ramirez rides in Jessica's white Ford Explorer. Ramirez had been to Jessica and Perez's residence several times before the night in question, and she had often observed Ramirez wearing a Green Bay Packer sweatshirt. Jessica testified that her white Ford Explorer was parked in the driveway in the early morning hours of February 1, 2009, and that she normally parked her car there or by the sidewalk.

Early on February 1, 2009, Perez had about 10 visitors over to his family's garage. Jessica stated that she saw "Bullet" (Ramirez) "getting high" when she went to the garage to put in a load of laundry sometime after midnight. As she was walking into the garage, Perez was leaving the garage, and Jessica caught a glimpse of Ramirez in the garage

through the doorway. That was the last time that Jessica saw Perez alive. Ramirez was wearing "that green sweatshirt he always wore." Jessica went to bed around 1:00 a.m.

Olivia Avila, Perez's girlfriend, testified at trial that Perez woke her up to have sex. About 15 minutes later Avila heard somebody banging on the garage. Avila told the police she heard a voice shout, "Don't come back to the ghetto, you or your brother . . . or I'll blast you," and recognized the voice as that of Ramirez, whom she also knew as "Bullet." Avila also told the police that after the knocking and threats, Avila heard a car door open. She knew it was the white Ford Explorer because the car was parked close to the garage. Avila knew "the ghetto" as the east side of Pomona. A minute later, Perez's cellular phone rang and he had a conversation with someone. In the police interview, Avila told the police she recognized the caller's voice as Boy (at trial, she was uncertain of the caller's identity). Perez said, "these fools are tripping; I have to go talk to them," and "he had to go take care of business." Perez left in the Ford Explorer a short time later; Avila did not know where he was going.

Just before 8:00 a.m. on February 1, 2009, Perez was found dead "in the west alley of a street called Karesh in the City of Pomona", in a particular area also known as "the ghetto." Perez had been shot 13 times: once in his upper back area by a shotgun from three to four or more feet away, 11 times in his upper torso by a .22-caliber firearm from two or more feet away and at varied angles, and once in the back of the head. At least half of Perez's wounds "were immediate life-threatening injuries"; Perez died in a matter of minutes. The coroner found that Perez was under the influence of methamphetamine, which can cause a person to become aggressive. According to Ramirez's interview with the police, Perez's body was found in the same alley where Perez took Ramirez that morning after they had a disagreement.

The first police officer to respond to the 7:50 a.m. "man down" call for service, Officer Thomas Delavega of the Pomona Police Department, observed Perez lying face down with blood coming from his nose and mouth. Perez lay next to a white Ford Explorer with the driver's door open and window down ; a hole in the windshield may have been a bullet hole. Paramedics pronounced Perez dead at the scene. At the scene,

Detective Jerry Uribe of the Pomona Police Department found Elizalde's cellular phone "broken into several pieces." Several days later, the police discovered a shotgun inside a single car garage 25 yards north of where Perez's body was found.

Detective Uribe determined that a phone call to Perez occurred around 7:00 a.m. by reviewing the call logs on Perez's cellular phone. Perez made two outgoing calls to Boy at 7:13 a.m. and another at 7:29 a.m. The last incoming call to Perez's phone was from Boy at 7:37 a.m.; the last outgoing call Perez made was that same minute.

Jack Moreno, the Perez family's next-door neighbor, testified at trial that when he woke up "around 7:00" a.m. on February 1, 2009, he "looked out the window" and noticed a vehicle "suspiciously parked" across the street with the door open, on the wrong side of the street. Moreno stated that he only looked at the vehicle for "[s]econds[,] . . . went to the restroom [for] [¶] . . . [¶] [a] second or two" before he "came back" and noticed that the vehicle had not left. He subsequently observed two individuals, one of whom was wearing a gray sweatshirt that appeared to have the Green Bay Packer logo on it, running from the garage side of the Perez's property. Moreno noticed the individual wearing the Green Bay Packer sweatshirt remove what "looked like a gun or something" about 12 inches long from his neighbor's car, a white Ford Explorer, before leaving the scene.

II. The assault on Stark (counts 4 and 5)

On August 28, 2009 around 10:00 p.m., Ramirez approached Stark "as if [she were] a guy" by walking up to her "with no shirt on . . . ready to fight" when she was walking to pick up her daughter from her friend's house. She testified that her only prior experience with Ramirez had been noticing him "walking through the neighborhood," but she "never knew who he was [or] . . . said hi to him." Stark had said nothing to Ramirez before he made his initial statement to her. Ramirez said to Stark, "Where you from, ay," a standard gang challenge. Stark was shocked and told him that she was just picking up her daughter from her friend's house.

Ramirez hit or stabbed her in the face, slicing her face three times on her left jaw by the end of the assault. After the initial blow Stark was "stunned . . . then [she] fought

back," and tried to make her way up the driveway to a residence, but Ramirez pulled her down by her purse, straddled her, and kept stabbing her. According to Stark, "there was blood everywhere." Finally, two of Ramirez's friends intervened and Stark's friend's son and his companion chased Ramirez, but lost him. After Ramirez ran away, someone called 911. Stark testified that Ramirez attacked her "like he wanted to kill" her, "like [she] was a man," and Ramirez "was just out to kill." Stark suffered eight to 10 wounds that had to be stapled shut.

III. Ramirez's interview with the police

The police interviewed Ramirez on September 6, 2009. Ramirez stated that he had been using drugs since he was 15 years old, and he was a member of "GF,"[2] a gang he had been jumped into at 14, after he moved to Pomona. He "did what he did" because he "was going to get smoked" by Perez. He left Elizadle's house with a rifle and did not have any other guns. Ramirez told the police that he and Perez got into an altercation when he was hanging out in Perez's garage because they were both "tripping" on methamphetamines. Ramirez had Perez drop him off in the alley. Perez came back later in the white Ford Explorer. Perez did not have a gun. Perez hit Ramirez a couple of times, in an attempt to "fuck [him] up or something," so Ramirez shot Perez. Ramirez initially told the police that he shot Perez "[a] couple times," then changed it to "[l]ike six" times, and he shot Perez in the chest. Ramirez acknowledged that he was wearing his Green Bay Packer jacket. When asked if he was angry at Perez that morning because Perez had taken a gun from Boy, Ramirez stated, "That's why I shot him. I thought he had a gun" and denied taking the gun out of the Ford Explorer.

After Ramirez shot Perez, he threw the gun into the bushes and went straight to his mother's house. Ramirez acted alone. Later, he said he ditched the .22-caliber gun by the apartments.

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[2] Outside the presence of the jury, Detective Uribe explained that GF was "a smaller gang in the east side of the city known as Ghetto Fame."

When Ramirez described his encounter with Stark to the police, he said that he was "fucked up" at the time and that Stark mentioned his tattoos and "got in [his] face" "[t]alking about [his] hood," meaning his gang GF, and scratched him on his lip. Ramirez said Stark "got [him] good" during the altercation and he stabbed her with a "[l]ittle pocketknife" to get her off of him.

IV. Gang evidence

The defense objected to the introduction of gang evidence in the tape of Ramirez's interview with the police, including a statement regarding how he was jumped into his gang. Given that Ramirez stated that Stark spoke ill of his gang, the trial court admitted the evidence because it had "obvious . . . strong relevance." The trial court advised the jury that this evidence could only be considered as it related to the issues of motive and intent, but not to show that Ramirez is a person of bad character or a person prone to commit crimes. The trial court reasoned that Ramirez's altercation with Stark was the result of his "gang being spoken ill of," and that there was no reason to exclude the gang evidence because otherwise "it sounds like for no apparent reason, off goes the defendant . . . a strong motive has now been suggested both by the testimony of [Stark] and by the defendant's own statement." The court also noted that during Ramirez's interview with the police Ramirez stated that he joined the gang "Ghetto Fame" or "GF" when he was about 14 years old.

DISCUSSION

Ramirez contends that: the trial court abused its discretion by granting the People's motion to consolidate, and the court's joinder of the charges resulted in denial of Ramirez's due process and a fair trial; the manner in which the trial court instructed the jury on use of deadly force in response to an attack with fists, CALJIC 5.31, misled the jury; he was denied his Sixth Amendment right to counsel when his counsel failed to request modification of CALJIC 5.31; the trial court committed a reversible error, which resulted in denying Ramirez's rights to due process, when it refused to instruct the jury on imperfect self-defense with respect to the counts involving Ms. Stark; and the cumulative

effect of the errors that occurred during the trial was the denial of his right to due process and a fair trial.

For the reasons discussed below, we affirm the trial court's judgment.

I. The trial court did not abuse its discretion by granting the people's motion to consolidate.

Ramirez argues that the court erred in granting the People's motion to consolidate over Ramirez's objection. Rulings by trial courts on matters of joinder are reviewed for abuse of discretion, which requires a "'clear showing of potential prejudice'" at trial due to the joinder of the cases. (*People v. Gray* (2005), 37 Cal.4th 168, 221; see also *People v. Koontz* (2002) 27 Cal.4th 1041, 1074–1075; *People v. Mason* (1991) 52 Cal.3d 909, 933–935.)

Under section 954 of the Penal Code, an accusatory pleading may charge two or more different offenses connected together in their commission, or two or more different offenses of the same class of crimes. (§ 954; see *People v. Soper* (2009) 45 Cal.4th 759, 771 (*Soper*).) Offenses that are of the same class of crimes "but charged in separate pleadings, may be consolidated for trial in order to promote judicial efficiency." (*People v. Koontz* (2002) 27 Cal.4th 1041, 1074; *People v. Mason*, *supra*, 52 Cal.3d at p. 935; see § 954.)

"'[A]ssaultive crime[s] against the person'" possess common attributes and are crimes of the same class. (*People v. Poggi* (1988) 45 Cal.3d 306, 320 (*Poggi*).) In *Poggi*, the California Supreme Court held that joinder of the following charges against different victims was proper because they were assaultive crimes against the person: robbery, rape, murder, and assault with a deadly weapon. (*Ibid*.) Consolidation also is appropriate when "the joined offenses share certain characteristics" in terms of the way that the crimes were executed. (*People v. Lucky* (1988) 45 Cal.3d 259, 276.)

Here, all of Ramirez's charges—murder, assault with a firearm, making criminal threats,[3] and attempted murder—are assaultive crimes against the person. During Ramirez's commission of each of these crimes, he referred to his gang affiliation. In Perez's murder he referred to territory when he said, "Don't come back to the ghetto . . . or I'll blast you," and when he approached Stark he made a standard gang threat, "Where you from, ay?" In each, Ramirez used a deadly weapon—guns and a knife—and physically injured or killed the victims. Thus, Ramirez's charges were properly subject to consolidation as crimes of the same class and offenses sharing certain characteristics.

We next consider whether Ramirez was prejudiced by the consolidation by applying a factor test. (See *Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1220–1221.) The first factor considered is the cross-admissibility of the evidence in separate trials. (*Ibid*.) If it is determined that "evidence underlying properly joined charges would *not* be cross-admissible," it must then be considered "'whether the benefits of joinder were sufficiently substantial to outweigh the possible "spill-over" effect of the "other crimes" evidence on the jury in its consideration of the evidence of defendant's guilt in each set of offenses.' [Citations.]" (*Soper*, *supra*, 45 Cal.4th at p. 775.) In assessing the potential "spillover" effect, three additional factors are considered: "(1) whether some of the charges are particularly likely to inflame the jury against the defendant; (2) whether a weak case has been joined with a strong case or another weak case so that the totality of the evidence may alter the outcome as to some or all of the charges; or (3) whether one of the charges (but not another) is a capital offense, or the joinder of the charges converts the matter into a capital case. [Citations.]" (*Ibid*.) But, "'even if a trial court's ruling on a motion to sever is correct at the time it was made, a reviewing court still must

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[3] "'[C]rimes against the person'" generally refers to offenses where the actor uses or threatens to use force. "The use or threat of force, therefore, distinguishes crimes against person from other crimes." (See *Doe v. Saenz* (2006) 140 Cal.App.4th 960, 986–987.) For example, here, when Ramirez threatened Elizalde by telling her that "he was going to kill her"—the criminal threat—it was a crime against the person.

determine whether, in the end, the joinder of counts or defendants for trial resulted in gross unfairness depriving the defendant of due process of law. [Citations.]'" (*Id*. at p. 783.) "[M]isjoinder [rises] to the level of a constitutional violation only if it results in prejudice so great as to deny a defendant" his right to a fair trial. (*United States v. Lane* (1986) 474 U.S. 438, 446, fn. 8.)

Ramirez argues, and Respondent does not dispute, that there was no cross-admissible evidence. Although cross-admissibility may be an influential consideration for the court, it "'is not the sine qua *non* of joint trials.'" (*People v. Geier* (2007) 41 Cal.4th 555, 575.) "[W]hile 'prejudice is usually dispelled' if 'evidence of one crime would be admissible in a separate trial of the other crime,' [citation], lack of cross-admissibility is not, by itself, sufficient to show prejudice and bar joinder.'" (*Ibid*.) Thus, the lack of cross-admissible evidence, standing alone, is not sufficient to require reversal of the trial court's decision granting the People's motion to consolidate.

When the crimes at issue "are similar in nature and equally egregious," meaning that neither crime "when compared to the other, was likely to unduly inflame a jury against defendant" (*Soper*, *supra*, 45 Cal.4th at p. 780), the risk of inflaming the jury against the defendant is not present. (See *People v. Cook* (2006) 39 Cal.4th 566, 582 (*Cook*).) In *Cook*, the Court held that three separate murder charges were not "especially likely to inflame the jury's passions" because the "killings were each committed for seemingly trivial reasons and all involved excessive force." (*Ibid.*) In *Soper*, *supra*, 45 Cal.4th 759, the court held that homicides sufficiently similar in nature are unlikely to unduly inflame a jury against the defendant.

Ramirez urges that "[t]he charges involving Stark were definitely likely to unusually inflame the jury against Ramirez" because the incident involving Stark "was *far more egregious* than the murder and assault charges in the Elizalde-Perez case." Ramirez argues that Stark was unknown to him and his assault of her was a random, inexplicable attack, which caused jurors to become "outraged and their passions unusually inflamed against Ramirez." By contrast, Ramirez had a relationship with the victims in the Elizalde and Perez crimes, and argued with each victim before he

committed the crimes. He also contends that he used a different weapon during the commission of the crimes, that gang undertones were present in the Stark offense but not in the Elizalde and Perez offenses, and that Stark's testimony about the brutality of the attack inflamed the jury against him. In support of his contention, Ramirez cites the court's decision in *People v. Harris* (1998) 60 Cal.App.4th 727 (*Harris*).

Unlike this case, the controlling issue in *Harris* was the use of the defendant's convictions of sex offenses as evidence "'in cases where the admission of such evidence could result in a fundamentally unfair trial.'" (*Harris*, *supra*, 60 Cal.App.4th at p. 730.) The court found that the trial court erred in admitting prior crime evidence that allowed the jury to hear evidence that 23 years earlier, the defendant had been paroled for a prior violent crime involving sexual mutilation, and the defendant's current charges stemmed from sex offenses involving two women who were patients where the defendant worked. (*Id*. at pp. 733–741.) The *Harris* court reasoned that 23 years between parole and a newly charged crime was "a long time," and that the first incident described "a viciously beaten and bloody victim who as far as the jury knew was a stranger to the defendant," whereas the newly charged crime involved, "at worst," the defendant licking and fondling two women, of whom one was incapacitated and the other was his former sexual partner, and both of whom remained on speaking terms with him. (*Id*. at pp. 738–739.)

Even assuming *Harris* applies here, Ramirez committed the crimes against Perez and Elizalde only six months before he attacked Stark. Also, all the charges against Ramirez involve violence and deadly weapons, which resulted in the death of Perez and could have resulted in the deaths of Stark and Elizalde. Respondent correctly observes, "the differences in the charges is due to the different result of Ramirez's violent conduct in each case, a difference that does not render the crimes meaningfully different in type. Therefore, neither charge can be readily found to inflame the other." Further, each of Ramirez's charges involved references to his gang affiliation. In the Perez murder, there was evidence that Ramirez threatened Perez using territorial threats when he shouted, "Don't come back to the ghetto . . . I'll blast you." In the Stark assault, he asked her, "Where you from, ay," a standard gang threat. Although Perez died and Stark survived,

the jury convicted Ramirez of attempted murder of Stark. Thus, there is no basis to conclude that the consolidation of the charges against Ramirez posed a risk of inflaming the jury against him.

We also conclude that joinder did not bolster a weak case.

Where a defendant's responsibility for one crime is "virtually conclusive," and the evidence for the other crime is "extremely strong," even if it is circumstantial, joinder does not "serve to bolster a weak case or cases." (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1130, overruled on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Here, Ramirez's charges *all* involve violence, the use of deadly weapons, gang-related territorial threats, and drug use. Ramirez's murder of Perez is supported with a great amount of circumstantial evidence including witness testimony and his interview with the police, and the Stark assault is supported by the victim's testimony.

Ramirez argues that the Stark case "was strong, and essentially uncontested by the defense at trial," but the Elizalde and Perez case "was vulnerable to attack" because of the possibility that Ramirez killed Perez in self-defense. We disagree. The evidence of Perez's murder includes Ramirez's admissions to the police. Further, careful examination of the record reveals that the circumstantial evidence of Ramirez's murder of Perez supports the jury's determination that it was a murder in the first degree. The jury could reasonably conclude from the evidence that Ramirez intentionally lured Perez into the alley where his body was found, which was within "the ghetto," after making the threat that if Perez ever returned to "the ghetto," Ramirez would kill him and, thus, Ramirez simply carried out his threat.

Therefore, as in *People v. Zambrano*, "joinder did not serve to bolster a weak case" because Ramirez's responsibility for his assault on Stark "is virtually conclusive"—it is supported by his admission and the victim's testimony—"and the evidence that [Ramirez is responsible for the murder of Perez] though circumstantial [(his interview with the police and witness testimony)], [is] extremely strong." (41 Cal.4th at p. 1130.)

Ramirez argues that joinder denied him due process. Where the cases are supported with enough evidence to have been tried separately, the joinder of unrelated

cases and the evidence introduced at trial does not result in gross unfairness. (*People v. Thomas* (2012) 53 Cal.4th 771, 799–801.)

Here, the charges against Ramirez involved his violent acts against others. There was sufficient evidence to try the cases separately, as noted above. Thus, the trial court's ruling on joinder was "reasonable and within the bounds of discretion. . . . Moreover, viewed in light of the evidence presented at trial, the judgment is not subject to reversal based on any unfairness in the joinder ruling that would amount to a denial of due process." (*People v. Macklem* (2007) 149 Cal.App.4th 674, 701.)

II. The jury instructions were not erroneous.

Ramirez asserts that he was prejudiced at trial because his trial counsel did not seek to modify CALJIC No. 5.31, which states that use of a deadly weapon in response to an attack "with . . . fists" must be objectively reasonable, because the form of the instruction "eviscerated [his] claim of imperfect self-defense [because of the possibility that] jurors could have misapplied the instruction to [Ramirez]'s claim of imperfect self-defense." However, the trial court's instructions did not pose this risk.

The judge instructed the jury on perfect and imperfect self-defense consecutively, as well as the use of a deadly weapon in self-defense in response to an attack with fists, using CALJIC 5.31: "An assault with the fists does not justify the person being assaulted in using a deadly weapon in self-defense unless that person believes and a reasonable person in the same or similar circumstances would believe that the assault is likely to inflict great bodily injury upon him."

"'Generally, a party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language.' [Citation.]" (*People v. Hudson* (2006) 38 Cal.4th 1002, 1011–1012.) Ramirez argues his counsel was ineffective because he failed to object or request modification of CALJIC 5.31.

"'[T]he correctness of jury instructions is to be determined from the entire charge of the court, not from consideration of parts of an instruction or from a particular instruction.'" (*People v. Carrington* (2009) 47 Cal.4th 145, 192.) We assume that it is

"more likely that the jurors correctly interpreted the instructions." (*Id*. at p. 192.) Reversal based on an instruction or a part thereof is not warranted, even if that instruction is flawed, if "in conjunction with the entire instruction and other instructions, and when combined with the arguments of counsel, the potential for confusion was dissipated." (*People v. Jaspar* (2002) 98 Cal.App.4th 99, 111.)

As noted above, at the close of Ramirez's trial the jury was instructed as to both reasonable and unreasonable self-defense. The jury instructions on self-defense were exhaustive. The instructions stated: "when the act causing the death, though unlawful, is done in the actual but unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury, the offense is manslaughter. In that case, even if the intent to kill exists, the law is that malice, which is an essential element of murder, is absent." The trial court reiterated throughout the instructions to the jury that they could find Ramirez guilty of voluntary manslaughter, with respect to the killing of Perez. The trial court told the jury, "by giving a single instruction [it] is not at all doing that to place undue weight or stress on that particular instruction. The instructions are considered as a whole." The jury was instructed on perfect and imperfect self-defense claims in immediate succession. We assume that the jury correctly interpreted and understood the instructions on imperfect self-defense in immediate comparison and juxtaposition to the perfect self-defense instruction. Thus, the jury was able to make the critical distinction between the concepts of reasonable and unreasonable self-defense.

Ramirez's assertion that the instructions pertaining to both types of self-defense were confusing and misleading is meritless. The jury instructions adequately addressed both concepts with clarity, and the defense counsel explained the concepts in depth during his closing arguments: "Self-defense is justifiable and not unlawful when the person who does the killing actually and reasonably believes" that he will be killed or suffer great bodily injury at the hands of the other person. Counsel then described imperfect/unreasonable self-defense: "[A] person who kills another person in actual but unreasonable belief that there's a necessity to defend against imminent peril to life or great bodily injury kills unlawfully but does not harbor malice aforethought, is not guilty

of murder [¶] . . . [¶] . . . in other words, if you feel that the action out there was unreasonable, okay, but that there was a danger . . . ." Counsel went on to explain that the jury could acquit Ramirez if it found perfect self-defense, and find him guilty of voluntary manslaughter if it found imperfect self-defense. Thus, there is no reason to believe that the jury could have misunderstood the defense theories.

The jury instructions were not erroneous. We therefore reject Ramirez's argument that his counsel was ineffective for failing to object or to request modification to CALJIC 5.31. "The law regarding claims of ineffective assistance of counsel is settled. Defendant must show that counsel's performance was both deficient and prejudicial, i.e., that it is reasonably probable that counsel's unprofessional errors affected the outcome." (*People v. Castillo* (1997) 16 Cal.4th 1009, 1014–1015 (*Castillo*), citing *Strickland v. Washington* (1984) 466 U.S. 668, 687, 693–694 [104 S.Ct. 2052, 80 L.Ed.2d 674].) Claims of ineffective assistance of counsel arising from instruction issues fail as long as a reasonable juror would understand the instructions and the instructions did not hinder counsel in effectively arguing. (*Castillo*, at p. 1017.)

We have found no error in counsel's failure to object to the jury instructions. We therefore need not consider whether any error prejudiced Ramirez, and we reject his claim that he was denied effective assistance of counsel.

III. The trial court's refusal to instruct the jury on imperfect self-defense as to the counts involving Ms. Stark did not deny Ramirez his rights to due process.

Ramirez also claims that the trial court's refusal to instruct the jury on imperfect self-defense with respect to the charges pertaining to the Stark incident denied him due process, a fair trial, and the right to present a defense. Ramirez's counsel requested the instruction, but the court refused because "there [was] not even substantial enough evidence to get to unreasonable self-defense." On appeal, claims by a defendant that the trial court's failure to instruct the jury on imperfect self-defense resulted in prejudice is subject to the harmless error test articulated in *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Blakely* (2000) 23 Cal.4th 82, 93.)

"It is well established that the ordinary self-defense doctrine—applicable where a defendant *reasonably* believes that his safety is endangered—may not be invoked by a defendant who, through his own wrongful conduct (e.g., the initiation of a physical assault or the commission of a felony), has created circumstances under which his adversary's attack or pursuit is legally justified. [Citations.]" (*In re Christian S.* (1994) 7 Cal.4th 768, 773, fn. 1; but see *People v. Randle* (2005) 35 Cal.4th 987, 1001–1003, overruled on other grounds in *People v. Chun* (2009) 45 Cal.4th 1172, 1201.) However, the defense remains available where the defendant is responsible for the circumstances that caused the victim to attack the defendant if the victim's use of force against the defendant is unlawful. (*Randle*, at pp. 1002–1003.) Specifically, a person only has the right to defend themselves or their property as long as the threat to themselves or their property persists. (*Ibid*.) In *Randle*, there was excessive force by the victim. In this case, the absence of excessive force by the victim, Stark, lies at the heart of the trial court's ruling.

Here, the trial court correctly stated, "the court needs to give [self-defense instructions,] even absent request if there is some substantial evidence, i.e., nontrivial, substantial evidence. As to the counts involving Miss Stark, the answer is there is not." The testimony, if believed, indicates that "[t]here is simply no evidence from her pointing to self-defense" by the defendant, other than the defendant's statement about getting slapped, to which his use of deadly force was not justifiable as a matter of law. The court also stated there was not sufficient evidence to instruct the jury on unreasonable self-defense, because Ramirez never said, "I thought if I didn't stab her, I would be beaten badly and injured. Of course he didn't say it because there's no way anybody in the world would believe it, including this jury. They are reasonable people, presumably."

Ramirez told the police that he was "fucked up" at the time of his encounter with Stark, who mentioned his tattoos and "got in [his] face" "[t]alking about [his] hood," meaning his gang, and scratched him on his lip. Ramirez said Stark "got [him] good" during the altercation and he stabbed her to get her off of him. Even accepting Ramirez's version of events, there was not substantial evidence justifying an instruction on

imperfect self-defense, as Ramirez never stated that he actually believed he was in imminent peril to life or great bodily injury. Thus, Ramirez was not entitled to an imperfect self-defense instruction as to his attack on Stark, so the trial court did not err in denying it to Ramirez. Since there was no error, Ramirez's due process rights were not violated.[4]

DISPOSITION

The judgment is affirmed.

NOT FOR PUBLICATION.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.

[4] Because we conclude that there were no errors on appeal, we do not address whether Ramirez is entitled to a reversal based on the cumulative effect of errors. (*People v. McDermott* (2002) 28 Cal.4th 946, 1005.)